

Date: December 13, 2023

To: Board of Directors

From: Sam Desue, Jr.



Subject: **RESOLUTION NO. 23-12-64 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING AN AMENDMENT TO ITS CRIMINAL RECORDS POLICY**

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board) adopt an amendment to its current HR Policy 4.4, pertaining to Criminal Records checks for independent contractors who provide transportation services to TriMet LIFT riders.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: HR Policy Amendment

3. Reason for Board Action

As mandated by the Oregon Criminal Records statute, ORS 267.237, TriMet’s HR Policy 4.4 concerning Criminal Records was adopted by Board Resolution. Adoption of any amendment to the Policy similarly requires a Board Resolution.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

ORS 267.237 requires TriMet to conduct criminal records checks of designated “subject individuals” and make subsequent determinations about those individuals’ fitness for placement as employees or contractors of the District in specific safety sensitive positions. These “subject individuals” currently include job applicants and employees who operate motor vehicles, transport passengers, or have access to critical infrastructure or security sensitive facilities or information. The statute further requires that the statutory provisions for criminal records checks be implemented by a Board resolution.

Pursuant to the statute, in 1999 the Board adopted Resolution No. 99-09-58, initially approving HR Policy 4.4 - Criminal Records, which allows TriMet to conduct criminal records checks of job applicants and employees whose positions permit them to transport members of the public. In December of 2015, the Board passed Resolution No. 15-12-71, amending HR Policy 4.4 to allow criminal records checks of job applicants and employees whose positions allow them to have access to critical infrastructure or security sensitive

facilities or information. In July of 2021, the Board passed Resolution No. 21-07-39, amending HR Policy 4.4 to allow criminal background checks of job applicants and employees who are subject to active warrants for arrest. Specifically, HR Policy 4.4 requires a fingerprint-based criminal background check for all TriMet employees who operate motor vehicles for the Agency, including those under contract with entities who provide transportation services for the Agency.

TriMet's Accessible Transportation Program (ATP) relies on a contractor, Transdev, to provide dedicated ADA paratransit service, using TriMet vehicles driven by Transdev employees. Pursuant to HR Policy 4.4, all Transdev's operators and current sub-contractors have passed a fingerprint-based criminal background records check.

In order to address on-going capacity constraints and improve overall performance, TriMet plans to pursue additional options for increased capacity and expanded mobility for eligible LIFT paratransit riders, specifically by incorporating Transportation Network Company (TNC) Drivers into TriMet's supplemental options for paratransit service. A TNC Driver is defined as a private for-hire vehicle operator affiliated with a TNC (e.g.: Lyft, Uber, et al.) and would be classified as a "non-dedicated service provider" by TriMet.

In order to operate in the Portland area, all TNC Drivers must complete and pass a criminal record background check pursuant to the Portland City Code 16.40.270. The criminal background check required by the City Code requires an annually updated electronic criminal record background check and a cross check with the National Sex Offender Public Registry. However, the City Code does not require a fingerprint-based criminal record background check, such as that required by TriMet's current HR Policy 4.4 on Criminal Records.

Currently, H.R. Policy 4.4 does not allow for a "non-dedicated service provider" to forego the requirement for fingerprint-based background checks, even though, in the case of TNC Drivers, drivers have completed and passed a criminal background check pursuant to Portland City Code 16.40.270. This Resolution would amend HR Policy 4.4 to exclude the requirement for fingerprint-based background checks for TNC Drivers as "non-dedicated service providers" for TriMet's LIFT paratransit service, provided that a criminal background check has been completed and passed by the driver pursuant to Portland City Code 16.40.270.

6. Diversity

A private for-hire vehicle operator affiliated with a Transportation Network Company (a TNC Driver) is not subject to TriMet's diversity expectations.

7. Financial/Budget Impact

Adoption of this Resolution will provide TriMet the ability to contract with TNC Drivers to offer eligible LIFT riders more mobility options, such that the option may lower TriMet's cost per trip from \$75.33 (October 2023) to a \$25.00 subsidy.

8. Impact if Not Approved

If this Resolution is not approved, TriMet would not be able to offer eligible LIFT riders the option of obtaining rides from any TNC that does not conduct fingerprint-based criminal records checks. Since no TNC currently conducts fingerprint-based criminal records checks, TriMet's ability to add TNC Drivers as an expanded mobility option for LIFT riders would be precluded.

RESOLUTION NO. 23-09-64

RESOLUTION NO. 23-09-64 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING AN AMENDMENT TO ITS CRIMINAL RECORDS POLICY

WHEREAS, TriMet has authority under ORS 267.237 to conduct criminal records checks on applicants, provided that the TriMet Board of Directors (Board) has implemented the statute by adoption of a Resolution; and

WHEREAS, pursuant to ORS 267.237, the Board previously adopted Resolution No. 99-09-58, approving HR Policy 4.4 - Criminal Records, allowing TriMet to conduct criminal records checks of job applicants and employees whose positions permit them to transport members of the public; Resolution No. 15-12-71, amending HR Policy 4.4 to allow criminal records checks of job applicants and employees whose positions allow them to have access to critical infrastructure or security sensitive facilities or information; and Resolution No. 21-07-39, amending HR Policy 4.4 to allow criminal record background checks of job applicants and employees who are subject to active warrants for arrest; and

WHEREAS, TriMet's Accessible Transportation Program (ATP) relies on a contractor, Transdev, to provide LIFT paratransit service to eligible riders, and all Transdev operators have passed a criminal record background records check; and

WHEREAS, TriMet wants to engage Transportation Network Company (TNC) Drivers as non-dedicated service providers for supplemental paratransit service, provided that the TNC Drivers have completed and passed a criminal record background check pursuant to Portland City Code 16.40.270; and

WHEREAS, the criminal background check required by Portland City Code 16.40.270 requires an annually updated electronic criminal record background check and a cross check with the National Sex Offender Public Registry, but does not require a fingerprint-based criminal record background check as required by HR Policy 4.4; and

WHEREAS, HR Policy 4.4 does not allow TriMet to forego fingerprint-based criminal record background checks for non-dedicated service providers such as TNC Drivers affiliated with Transportation Network Companies, notwithstanding the fact that such TNC Drivers already must have completed and passed a criminal record background check pursuant to Portland City Code 16.40.270; and

WHEREAS, the Board wishes to forego the requirement of HR Policy 4.4 for fingerprint-based criminal record background checks for TNC Drivers, provided that they have completed and passed criminal background checks pursuant to Portland City Code 16.40.270; and

WHEREAS, the Board wishes to amend the current HR Policy 4.4 in the manner shown on the attached Exhibit A;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Board hereby adopts the amendment to HR Policy 4.4 Criminal Records in the manner shown on the attached Exhibit A.
2. That the General Manager or his designee is authorized to implement HR Policy 4.4 Criminal Records, as hereby amended.

Dated: December 13, 2023

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department