

# ADA/§504 Reasonable Modification Policy & Procedures

## 1. Purpose

To define reasonable modification, provide exceptions to what is considered reasonable, and to state TriMet policy and procedures on receiving, processing, and responding to requests for reasonable modification and from the general public. For the purpose of this document, reasonable modification requests may be referred to as requests.

## 2. Definitions

**Direct Threat:** a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or by the provision of auxiliary aids or services.

**Disability:** a physical and/or mental impairment that substantially limits one of more major life activities of such individual, a record of such impairment; being regarded as having such impairment.

**Field (request):** a request that is made in person directly to TriMet operating personnel in the field of operation where the requesting person is requiring a modification as an immediate perceived need in order to obtain full access to TriMet services, programs, or activities at that specific time of request.

**Reasonable:** having sound judgement; appropriate; equitable.



**Reasonable Modification (request):** a reasonable change to a TriMet policy, practice, or procedure for an individual with a disability so that the nature of that person’s disability will not preclude TriMet from providing full access to its services, programs, or activities.

**Reasonable Accommodation (request):** the act of enabling a qualified individual with a disability to obtain full and equal access to TriMet services, programs or activities subject to the exceptions identified in this document. For the purposes of this policy, per CFR Part 27 (§27.7), the term reasonable accommodation shall be interpreted in a manner consistent with the term “reasonable modifications” as set forth in the Americans with Disabilities Act (ADA) Title II Regulations. Employment, which is covered under ADA Title I Regulations (42 U.S.C. 12111-12112 and implementing regulations at 29 CFR part 1630), will be addressed by the Human Resources Department.

### **3. Background**

The Federal Transit Administration (FTA) rules under the Americans with Disabilities Act (ADA), as amended, and §504 of the Rehabilitation Act of 1973, as amended, require TriMet to make reasonable modifications to its policies, practices, and procedures under circumstances that would avoid discrimination to ensure all TriMet services, programs, and activities are accessible to individuals with disabilities. This requirement includes, but is not limited to, the following:

- A public entity providing designated public transportation shall respond to requests for reasonable modification to policies and practices.
- The public entity shall make information about how to make requests for reasonable modification readily available to the public through the same means it uses to inform the public about its policies and practices.
- The process shall provide a means, accessible to and usable by individuals with disabilities, to request a modification in the entity's policies and practices applicable to its transportation services.
- Individuals requesting modification shall describe what they need in order to use the service and are not required to use the term 'reasonable modification' when making a request.
- Whenever feasible, requests for modification shall be made and determined in advance.
- Where a request for modification cannot practicably be made and determined in advance, operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request.
- In any case in which the public entity denies a request, the public entity is required to take, to the maximum extent possible, any other actions (that would not result in a direct threat or fundamental alteration) to ensure that the individual with a disability receives the services or program provided by the public entity.

Additionally it is required that private entities "stand in the shoes" of public entities with whom they contract; subcontract; establish other arrangements including, but not limited to a grant; sub-grant or cooperative agreement; to provide transportation services on behalf of the public entity.

## 4. Policy Statement

It is the policy of TriMet to make reasonable modifications in its policies, practices, and procedures when the former and latter are necessary to avoid discrimination on the basis of a disability in subject to exceptions set forth in this document; to respond to requests for reasonable modifications; to make information available to the public on how to make a request; that upon denial of a request, TriMet shall take, to the maximum extent possible, any other actions (that would not result in a direct threat or fundamental alteration) to ensure that the individual with a disability receives the services and programs provided by TriMet. This policy additionally applies to private entities that contract; subcontract; establish other arrangements including, but not limited to a grant; subgrant or cooperative agreement; to provide transportation on behalf of TriMet.

## 5. Exceptions

TriMet will make reasonable modifications subject to the following (4) four exceptions which apply to both requests made in advance and in the field.

1. Granting the request would fundamentally alter TriMet services, programs, or activities. For example, if an individual requests the driver of a fixed route service to stop at a location that is not on the schedule, this constitutes a fundamental alteration to fixed route service. Or, requests to go beyond the established LIFT Paratransit service boundary is considered a *fundamental* alteration of TriMet services.
2. Granting the request would create a direct threat to the health or safety of others. For example, when assisting a passenger means leaving the transit vehicle unattended in a high traffic area, that

could likely result in a collision and endanger the safety of other passengers.

3. The requested modification would not be necessary to allow the individual with a disability to fully use or participate in TriMet services, programs, or activities for their intended purpose. For example, if a passenger asks to sit in the same seat every time because of a personal preference, denying this does not impact the accessibility of the service for the individual.
4. The request would create an undue financial or administrative burden for TriMet. For example, an individual who requests a specific driver for a paratransit trip may be denied this request because this would cause an administrative burden for the agency.

## **6. Determining a Direct Threat**

A direct threat refers to a direct threat to other individuals and not to the person with the disability. TriMet is not required to permit an individual to participate in or benefit from the services, programs, or activities of TriMet when that individual poses a direct threat to the health or safety of others.

In determining such threat, TriMet employees must make an individual assessment, based on reasonable judgement, that relies on the best available objective evidence, to ascertain the following: the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of and within TriMet policies, practices or procedures or the provision of auxiliary aids or services will mitigate the risk.

It is not discrimination to refuse TriMet service or program access to an individual with a disability because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, a TriMet employee shall not refuse to provide service or program access to an individual with a disability solely because the individual's disability results in the appearance or involuntary behavior that may offend, annoy, or inconvenience employees of TriMet or other persons.

## **7. Process and Procedures**

The ADA Coordinator is responsible for processing requests. Field request documentation and those received by private entities that provide transportation services on behalf of TriMet shall also be forwarded to the ADA Coordinator for processing.

Whenever feasible, requests shall be made in advance, before TriMet is expected to provide the modification. Requests may be filed by another individual on behalf of the person in need of the modification.

A complete request requires a description of what is needed for the individual with a disability to use TriMet services and/or participate in its programs. Requestors are not required to use the term 'reasonable modification' when making a request. In the case where a Requestor is unable or incapable of providing a written request, a verbal request may be made to the TriMet ADA Coordinator. Under these circumstances, the Requestor will be interviewed, and the TriMet ADA Coordinator will assist the Requestor, to the best of their ability, in converting the verbal request to writing.

Through the organizational processes of determining ADA Paratransit

Eligibility, the Service Improvement Program (SIP), Customer Service Inquiries, etc. when *Reasonable Modification* requests are potentially identified they will be forwarded to the appropriate TriMet ADA Coordinator(s).

## **7.1 Requests in Advance**

Anyone may submit a request to TriMet for an ADA/§504 reasonable modification by completing and submitting TriMet ADA/§504 Reasonable Modification Request Form (“Request”). The Requestor must state in detail what modification s/he requires to equally access TriMet services or programs. If the Request lacks the requisite detail, the Requestor may be contacted for additional information. A Request may be administratively closed if the Requestor cannot provide the requested information or if the Requestor no longer wishes to pursue their request.

Once a proper Request is received, TriMet will determine if it has authority and jurisdiction to consider the request. The Requestor will receive acknowledgement of the Request from TriMet within ten (10) business days and should be informed of any portion of the Request where TriMet does not have authority to act.

In the event TriMet has full or partial authority and jurisdiction to act, TriMet will review the Request to determine if it is reasonable. TriMet is not required to make modification per any or all of the following conditions: (i) results in a fundamental alteration of the applicable services, programs, or activities; (ii) creates a direct threat to the health or safety of others; (iii) is not necessary to allow the individual to fully use or participate in TriMet services, programs, or activities for their

intended purpose; or (iv) if it would create an undue financial or administrative burden for TriMet.

TriMet will summarize the results of its decision and provide a response to the Requestor within thirty (30) days from receipt of the complete Request. The response will include the original request, summary of relevant analysis, and TriMet's final determination along with the right to appeal and process for doing so. TriMet's final determination will be issued in an accessible form of communication and may include the issuance of a card for the Requestor that can be displayed to mitigate confusion (e.g. to show to drivers, supervisors, transit police, etc.). Should a Request be denied, in whole or in part, TriMet will recommend any pertinent alternative modifications to the Requestor.

## **7.2 Field Requests**

Field requests apply to all operational services provided by TriMet or private entities providing service on TriMet's behalf. Operational services include fixed route, paratransit, light rail, commuter rail, etc.

Where a request cannot practicably be made and determined in advance, operating personnel may determine whether a modification can be reasonably and safely provided to the public at the time of the request.

It is the responsibility of the Transportation Division (i.e. appropriately assigned Safety, Training, etc. Staff Members) to establish protocols for each operational service by which their staff and operating private entity, if applicable, receive; process; document; reasonably determine; and respond to such requests. All applicable protocols must be in full compliance with this policy and must include a means by which the

Requestor may appeal the field request determination. TriMet's ADA Coordinator shall review all established protocols to ensure compliance with ADA regulations.

## **8. Public Notice**

The process for requesting reasonable modification, including the contact information of the ADA Coordinator(s), shall be sufficiently advertised to the public. This information shall be published on the TriMet website printed in the Lift Riders Guide and other Accessible Transportation Program materials, and available in public areas of TriMet facilities.

## **9. Disputes, Grievances, Appeals, and Lawsuits**

Individuals have the right to dispute the procedures herein and decisions made by TriMet by contacting the ADA Coordinator at [adaofficer@trimet.org](mailto:adaofficer@trimet.org) or 503-853-5707 for appropriate referral and handling. Individuals may also file grievances with TriMet by following ADA Title II Grievance Procedures available at <https://trimet.org/access/ada.htm#grievance>. Individuals also have a right to appeal by contacting the Federal Transit Administration at FTA Office of Civil Rights, 1200 New Jersey Avenue SE, Washington DC 20590 or by visiting <http://www.fta.dot.gov>. The State of Oregon is in FTA Region Ten (10) and includes Alaska, Idaho, Oregon and Washington. That Regional Office can be contacted at 915 Second Avenue, Suite 3142, Seattle, WA 98174 or by calling 206-220-7954. Should TriMet receive a complaint, dispute, or appeal in the form of a formal charge or lawsuit, TriMet legal counsel shall be responsible for the investigation and maintaining a log, along with the retention of pertinent files as described in Section 10 (Record Keeping) below.

## **10. Record Keeping**

TriMet shall keep on file a record of all such requests, which may be in summary form, for a minimum of five (5) years after the end of the active period of the *Reasonable Modification*. TriMet shall keep all pertinent and associated records for review by and submittal to FTA or other responsible governmental official as prescribed. In the case in which TriMet extends Federal financial assistance to any other recipient, per 49 CFR §27.121(c), that recipient shall also submit reasonable modification request reports to TriMet. These reports shall be forwarded to the TriMet ADA Coordinator(s) and maintained consistent with this policy.

## **11. Confidentiality**

All personally identifiable information within requests must remain confidential and limited to only those persons receiving, documenting, and/or reviewing the request.

## **12. Surcharges**

TriMet, its contractors, nor subcontractors may place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover any costs associated with determining or providing reasonable modifications or reasonable.

### **13. Accessible Formats**

TriMet documents and information can be made available to the public in accessible formats upon request by contacting TriMet's ADA Officer at:

#### **TriMet ADA Officer**

101 SW Main St., Suite 700

Portland, OR 97204

[adaofficer@trimet.org](mailto:adaofficer@trimet.org)

503-853-5707

#### **Cross Reference**

DOT Final Rule for Reasonable Modification

FTA C4710.1

Policy Attachments (Staff):

#1 Sample Reasonable Modification Card

#2 Reasonable Modification Request Form

#3 Reasonable Modification Tracker (Workbook)