

**LANE TRANSIT DISTRICT
RESOLUTION NO. 2009-008**

CONTESTED CASE HEARING PROCEDURE

WHEREAS, the Lane Transit District (LTD) Board of Directors by this resolution desires to provide procedures for reviewing and/or appealing a Notice of Exclusion issued pursuant to LTD Ordinance 36. This Contested Case Hearing Procedure shall only apply to administrative reviews of exclusions and appeals of exclusions issued pursuant to LTD Ordinance 36. Any capitalized term not defined in this resolution shall have the meaning set forth in LTD Ordinance 36.

SECTION I. ADMINISTRATIVE REVIEW OF EXCLUSION.

1) Request for Administrative Review. Any person receiving a Notice of Exclusion may request an administrative review of the exclusion by contacting the Exclusion Review Officer at any time within 10 days of the issuance of the Notice of Exclusion. A person who received a Notice of Exclusion and made timely request for an administrative review of that Notice of Exclusion shall be entitled to an administrative review as set forth herein.

2) Scheduling of Administrative Review. The administrative review will be conducted in person as soon as reasonably practicable to accommodate the schedules of the excluded person and the Exclusion Review Officer. At the election of the Exclusion Review Officer, the administrative review may be conducted by telephone. In all cases where an administrative review has been timely requested, the review shall be conducted prior to the appeal hearing, if any.

3) Appointment of Exclusion Review Officer. All administrative reviews shall be conducted by the Exclusion Review Officer. The Exclusion Review Officer shall be the District's Security Manager or such other person as is designated by the General Manager in writing.

4) Purpose of Administrative Review. The purpose of the administrative review is to offer the excluded person an opportunity to have the Notice of Exclusion reviewed in an expeditious and informal process and to determine under what conditions the excluded person would be allowed to resume using the District Transit System. An administrative review is optional and is not a prerequisite to an appeal of a Notice of Exclusion. The validity of an exclusion may only be challenged through an appeal of the Notice of Exclusion and not through an administrative review.

5) Conduct of the Administrative Review.

(a) The excluded person shall represent himself or herself at the review, unless the excluded person is a minor or is otherwise incapable of representing himself or herself due to physical or mental disability or impairment, in which case the excluded person may be represented by a person designated by the excluded person as his or her personal representative and mutually agreed to by the Exclusion Review Officer.

(b) Upon conclusion of the review, the Exclusion Review Officer shall in his/her discretion either i) uphold the exclusion in accordance with the terms of the Notice of Exclusion; ii) modify the exclusion, or iii) terminate the exclusion.

(c) During the administrative review process, the exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance.

6) **Effect of a Failure to Request Administrative Review.** If an excluded person fails to request an administrative review as set forth herein, the exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance or appeal.

7) **Effect of Failure to Attend an Administrative Review.** If an excluded person fails to appear at an administrative review, the review proceeding shall be dismissed and the exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance or appeal.

8) **Effect of an Administrative Review on an Appeal.** An administrative review shall have no effect on the excluded person's right to appeal the exclusion; provided, however that a decision by the Exclusion Review Officer to terminate an exclusion will result in the automatic dismissal of any appeal. An administrative review does not toll the ten (10) day period to appeal an exclusion as set forth in Section II, Subsection 1 below.

SECTION II. APPEAL OF EXCLUSION.

1) **Request for Hearing.** Any person receiving a Notice of Exclusion may appeal the exclusion in writing to the District's General Manager or General Manager's designee. Such appeal must be delivered to the District General Manager or General Manager's designee within ten (10) days of receipt of the Notice of Exclusion. A person who received a Notice of Exclusion and made timely written appeal of that Notice of Exclusion to the District General Manager or General Manager's designee shall be entitled to a hearing as set forth herein.

2) **Scheduling of Hearing.** Upon receipt of a valid appeal, LTD shall schedule a hearing. The hearing shall be scheduled no sooner than five (5) business days and no later than fifteen (15) business days after the receipt of the appeal unless a hearing within the timeframe set forth above is not practicable, in which case a hearing shall be scheduled for as soon as reasonably practicable. Written notice of the hearing shall be given to the excluded person (the "appellant"). The notice shall give the time and location of the hearing and a copy of this resolution.

3) **Appointment of the Hearing's Officer.** All appeals shall be heard by the Hearing's Officer. The Hearing's Officer shall be the Assistant General Manager of the District or such other person as is designated by the General Manager in writing.

4) **Purpose of Hearing.** The purpose of the hearing shall be to determine whether or not the exclusion issued pursuant to the Notice of Exclusion is valid. The exclusion shall be found to be valid if:

(a) The conduct which is the basis for issuance of the Notice of Exclusion was conduct for which a person may be excluded pursuant to LTD Ordinance 36, Section 1.20;

(b) It is more probable than not that the excluded individual engaged in the conduct justifying an exclusion under LTD Ordinance 36, Section 1.20;

(c) The Notice of Exclusion was not otherwise prohibited by applicable law.

5) Conduct of the Hearing.

(a) The appellant shall appear at the hearing in person. The appellant may, but is not required to, have legal counsel. If the appellant does not have legal counsel, the appellant shall represent himself or herself at the hearing, unless the appellant is a minor or is otherwise incapable of representing himself or herself due to physical or mental disability or impairment in which case the appellant may be represented by a person designated by the excluded person as his or her personal representative and mutually agreed upon by the Hearing's Officer.

(b) The appellant shall have the burden of proving that the exclusion is invalid.

(c) Evidence shall be limited to that which goes to prove or disprove the validity of the exclusion. The Hearing's Officer may rely upon any relevant evidence that a reasonable person would rely upon in making an important decision or conducting personal business.

(d) Upon conclusion of the hearing, the Hearing's Officer shall either i) deny the appeal and uphold the exclusion as valid with such modifications, if any, that the Hearing's Officer deems appropriate, or ii) grant the appeal and vacate the exclusion as invalid.

(e) During the appeal process, the exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance or administrative review.

6) Effect of a Failure to Appeal. If an excluded person fails to appeal a Notice of Exclusion as set forth herein, the exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance or administrative review.

7) Effect of Failure to Attend a Hearing. If an excluded person fails to appear at a scheduled hearing, the appeal proceeding shall be dismissed and the Notice of Exclusion shall remain in effect in accordance with the terms of the Notice of Exclusion except as otherwise modified by a variance or administrative review.

8) Affect on Appeal Requested Prior to Adoption of Resolution. If a person has been issued a Notice of Exclusion prior to the adoption of this resolution and has requested an appeal but has not yet had a hearing, that person shall be entitled to a hearing as set forth herein upon adoption of this resolution. For purposes of scheduling a hearing, the appeal shall be deemed received upon adoption of this resolution.

SECTION III. MISCELLANEOUS

1) Request for Variance of Exclusion. At any time during the period of exclusion, a person who has received a Notice of Exclusion may apply to the District General Manager or designee for a variance to allow the person to enter upon the District Transit System pursuant to LTD Ordinance 36, Section 1.20(3).

2) Prorated Refund for Paid Pass. Any person who purchased a pass directly from the District and received a Notice of Exclusion shall be entitled to a prorated refund of the purchase price

for the unused portion of the pass by presenting the Notice of Exclusion and surrendering the pass to the District's customer service office within 10 days of receiving the Notice of Exclusion. No refunds shall be given for tokens, free passes or group passes.

3) **Construction.** Nothing herein is intended to compromise or waive the right to enforce concurrently, or in the alternative, other remedies available pursuant to LTD Ordinance 36 or the Oregon Criminal Codes.

Effective Date: This resolution shall be effective immediately upon adoption.