

Date: May 27, 2015
To: Board of Directors
From: Neil McFarlane *Neil McFarlane*

Subject: **RESOLUTION 15-05-21 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING AN ELECTION OF LIMITS FOR UNINSURED MOTORIST BENEFITS AND ELECTION OF NO PERSONAL INJURY PROTECTION, AND SUPERSEDING RESOLUTION 13-04-25**

1. Purpose of Item

The purpose of this Resolution 15-05-21 is to adopt an election of Uninsured Motorist liability limits and election of no Personal Injury Protection limits, and to supersede the Board of Director’s (“Board”) prior election set forth in Resolution 13-04-25.

Oregon insurance law provides that Uninsured Motorist (“UM”) coverage limits will be equal to bodily injury limits unless the insured elects to provide lower limits as authorized by ORS 806.070. In order to establish UM coverage in the amounts authorized by ORS 806.070, a public body must make an election of limits. The Board made that election under Resolution 13-04-25, however, a recent Oregon Court of Appeals decision determined that a public body’s stated election of lower limits should include certain statutory requirements. While Resolution 15-05-21 does not result in any substantive changes to the existing limits elected by the Board, adoption of Resolution 15-05-21 is necessary to ensure that TriMet’s election conforms to statutory requirements, as interpreted by the Oregon Court of Appeals. In addition, in order to facilitate the agency’s efficient and timely administration of the Board’s election, Resolution 15-05-21 authorizes the General Manager to administer and modify the election in accordance with applicable laws and administrative requirements.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Adopting an Election of Uninsured Motorist Limits and No Personal Injury Protection Limits, and Superseding Resolution 13-04-25

3. Reason for Board Action

As discussed in Section 5 Background, the TriMet Board by Resolution 13-04-25, adopted TriMet’s election to provide the minimum UM liability limits and election not to provide Personal Injury Protection benefits consistent with applicable law (ORS 278.215 and ORS 806.070). Resolution 15-05-21 supersedes Resolution 13-04-25, and incorporates certain statutory requirements in accordance with a recent Court of Appeals decision.

4. **Type of Action:**

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

5. **Background**

Oregon law requires that the owner or operator of a motor vehicle be financially capable of responding in damages for accidents in amounts not less than \$25,000 for bodily injury/death to a person in any one accident and a maximum of \$50,000 bodily injury/death of two or more persons in any one accident, and up to a maximum of \$20,000 in property damage in any one accident caused by an at-fault motor vehicle without insurance (known as uninsured motorist (“UM”) coverage). As a self-insured, local public body, TriMet is authorized by law to provide minimum UM limits and can elect whether to provide Personal Injury Protection (PIP) benefits, which pays for medical expenses and lost wages of a person injured in a motor vehicle accident without regard to fault. The liability limits are considered to be “excess” over other forms of insurance and only cover individuals who do not have their own motor vehicle, health or other benefits.

In 2013, by Resolution 13-04-25, the Board formally adopted TriMet’s election to meet the requirements of ORS 806.070 by providing limits of UM benefits in the amount of \$25,000 per claimant and \$50,000 per accident and TriMet’s election to not provide Personal Injury Protection benefits as authorized by ORS 278.215. As stated above, in April 2015, an Oregon Court of Appeals decision was issued that determined that a public body’s election of those limits should contain certain statements incorporating statutory requirements in order to be deemed to be in compliance with applicable law.¹

6. **Financial/Budget Impact**

This Resolution would have no financial/budget impact.

7. **Impact if Not Approved**

The Board could elect not to adopt Resolution 15-05-21. However, an election that is deemed not to meet applicable legal requirements could expose TriMet to substantial claim/damages amounts, potentially in the range of hundreds of thousands dollars. Therefore, adoption of the Resolution is the only recommended option to ensure that the election complies with Oregon statutes and current case law.

¹ *Ajir v. Buell and Clackamas County*, 270 OrApp 575 (2015).

RESOLUTION 15-05-21

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) ADOPTING AN ELECTION OF LIMITS FOR UNINSURED MOTORIST BENEFITS AND ELECTION OF NO PERSONAL INJURY PROTECTION, AND SUPERSEDING RESOLUTION 13-04-25

WHEREAS, TriMet is the insured for purposes of self-insurance created and maintained by TriMet (the self-insurer); and

WHEREAS, TriMet is obligated to respond in damages for accidents arising out of the ownership, operation, maintenance or use of motor vehicles in amounts established by Oregon Revised Statutes (ORS) 806.070; and

WHEREAS, Oregon insurance law requires Uninsured Motorist coverage with limits equal to bodily injury limits unless the insured elects Uninsured limits that are lower than the bodily injury limits, but not lower than the minimum amount established by ORS 806.070; and

WHEREAS, the TriMet Board of Directors ("Board") adopted an election of Uninsured Motorist limits and election of no Personal Injury Protection limits by Resolution 13-04-25 that the Board now desires to supersede in its entirety by this Resolution 15-05-21;

NOW, THEREFORE, BE IT RESOLVED:

1. That TriMet having been offered the option to have coverage limits equal to those for bodily injury, elects to have lower limits for Uninsured coverage than for bodily injury coverage in the amounts of \$25,000 per person, \$50,000 per accident and no more than \$20,000 for property damages and elects not to provide Personal Injury Protection benefits.
2. That the TriMet Board hereby authorizes payment by TriMet for damages arising out of the ownership, operation, maintenance or use of a motor vehicle and caused by an uninsured motorist of \$25,000 per person, per accident up to a maximum of \$50,000 for two or more people injured in the same accident, and no more than \$20,000 for any and all property damage caused by an uninsured motorist without regard to the number of claimants consistent with TriMet's election of Uninsured Motorist benefits in that same amount. The amounts payable herein are excess over any other collateral benefits to which an injured person is entitled, including, but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits. This statement shall remain in force until rescinded in writing by TriMet, the insured, or until such time as motor vehicle bodily injury liability limits are changed.
3. That the comparison of prices for coverage is as follows:
 - (a) \$0 is the cost per insured vehicle for Uninsured motorist coverage with limits equal to the named insured's bodily injury liability limits under the insured's self-insurance program; and

(b) \$0 is the cost per insured vehicle for coverage with the lower limits for Uninsured motorist coverage, which we, the named insured, have requested.

4. That the following summary of coverage is provided in accordance with ORS742.502(2)(b):

Uninsured motorist coverage insures you (the insured) and other covered individuals, for all amounts that you are legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle, or for your damages to the extent that your uninsured motorist coverage benefits are greater than the amount recovered under any other collateral benefits to which an injured person is entitled, including, but not limited to, other uninsured motorist coverage or liability coverage, insurance benefits or gratuitous benefits, subject to the terms of coverage.

5. That the General Manager or his designee is authorized to administer and modify the election adopted by this Resolution 15-05-21, in accordance with applicable laws and administrative requirements.

6. That this Resolution 15-05-21 supersedes in its entirety Resolution 13-04-25, and the provisions of all other resolutions which pertain to the matters addressed herein.

Dated: May 27, 2015

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department