

**Date:** December 7, 2017

**To:** Neil McFarlane  
General Manager

**From:** Erik Van Hagen  
Senior Deputy General Counsel

**Subject:** Recommendations for Administrative Resolution of Fare Evasion Citations

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In advance of the TriMet Board of Directors December 13 briefing, this memorandum outlines recommendations for the Board as it considers upcoming changes to fare evasion penalties based on the newly enacted administrative option for citations as provided for in HB 2777.

This memorandum is intended to provide both the Board of Directors and the public an opportunity to understand the rationale for the recommendations and allow the public to offer feedback to the Board in advance of the January 24, 2018, first reading of an ordinance to adopt administrative penalties for fare evasion.

**SUMMARY**

Following extensive outreach and planning, and for the reasons outlined in greater detail below, the following four recommendations are offered as administrative penalties for adult fare evasion in the forthcoming administrative process authorized by HB 2777:

**1. Fines.** If paid during the ninety (90)-day stay period, the presumptive fine should be reduced to the following amounts:

- First offense: \$75
- Second offense: \$100
- Third offense: \$150
- Fourth offense and beyond: \$175 (no reduction)

**2. Community Service.** In lieu of a fine payment, the cited party should be allowed to complete community service as follows:

- First offense: 4 hours
- Second offense: 7 hours
- Third offense: 12 hours
- Fourth offense and beyond: 15 hours

**3. Low income/Honored Citizen Option.** For those customers cited for fare evasion who: (1) are eligible for (but not enrolled in) TriMet's Low Income Fare or Honored Citizen programs; (2) successfully enroll in the Low Income Fare or Honored Citizen program during the 90-day stay period; and (3) load a minimum of \$10 on their reloadable fare card during the 90-day stay period, TriMet will reduce the citation to \$0 following verification of the above.

**4. Hearings.** TriMet will offer written and possibly limited in-person hearings to resolve certain citations where valid proof of payment can be documented following the incident. This would include, for example, situations where an honored citizen forgets the required qualifying identification, but can furnish it later and therefore demonstrate proper fare. Limited hearings will allow for the resolution of the citations administratively without having to appear in court.

At this time, resolution through the administrative process would only be available where the sole violation is fare evasion, and not for any other violations of the TriMet Code.

### **CURRENT PROCESS FOR FARE EVASION CITATIONS**

TriMet issues approximately 20,000 fare evasion citations per year. Presently, fare evasion is a violation under ORS Chapter 153. The presumptive fine is \$175 under the TriMet Code. Citations are adjudicated in Multnomah, Clackamas, and Washington County courts. Upon issuance, a first court appearance date is provided to the customer at the time of citation. Up to the date of the first appearance, the customer can pay a fine to resolve the citation. Individuals cited in Multnomah County are generally offered a reduction of the fine to \$90 up to the date of the first appearance if the person shows up at the courthouse and pays the penalty at the payment window or at the time set for the first appearance.

### **BACKGROUND ON HB 2777**

With the passage of HB 2777 in the 2017 legislative session, TriMet committed to offer an administrative option for citations. Broadly speaking, the bill authorizes the Board to enact an ordinance that would offer customers the ability to administratively resolve a citation directly with TriMet, avoiding the court system entirely. Under this new system, the citation will be stayed for 90 days after issuance, during which time the citation is not sent to the court and the customer has options to resolve the citation, including payment of a fine directly to TriMet, completing community service, or requesting a hearing with TriMet. If the customer successfully resolves the citation with TriMet through one of these methods, the citation is never filed with the court. If the customer does not resolve the citation by the conclusion of the 90-day period, then it is forwarded to the court, consistent with current practice.

### **TRIMET'S FARE EVASION RATE**

Each year, TriMet conducts a survey to measure the rate of fare evasion on the system. The survey is completed on board MAX trains throughout the system at different times and on different days of the week. Customers are asked to show proof of payment, but also informed that they will not be given a citation, just asked to complete a survey. Below are the fare evasion rates for the last 6 years (TriMet moved from a biannual fare evasion survey to an annual survey in 2014).

<b>Year</b>	<b>Fare Evasion Rate</b>
2017	13.1%
2016	14.5%
2015	9%
2014	9.8%
2013 (Fall)	9.6%
2013 (Spring)	10.3%
2012 (Fall)	15.7%
2012 (Spring)	15.3%
2011 (Fall)	17.8%
2011 (Spring)	20.2%

In 2011, TriMet moved away from a system of warnings for first time offenses to citations.

The 2017 fare evasion survey also asked respondents why they did not have valid proof of payment. The reasons given were as follows:

<b>Reason provided</b>	<b>Percent</b>
Chanced it	32.7%
Forgot to validate mobile app ticket	27.0%
No ID (youth or honored Citizen)	15.3%
Thought it was valid	6.5%
Forgot to validate paper ticket	6.1%
I lost my fare	4.3%
I couldn't afford to purchase a fare	2.1%
I forgot my TriMet fare	3.7%
Didn't have time to purchase a fare	1.4%
The ticket machine was out of order	0.6%
Other	0.3%

### **REPEAT OFFENDERS**

According to Portland State University's 2016 review of two years of TriMet citation data (2014-2016), about 25.5% of enforcement incidents involved a repeat offender, which means there appeared to be another offender on record during the two year period with the exact same first name, last name, and date of birth. Approximately one third of this group were caught three or more times in the two-year review period. As noted by Professor Renauer in his review, the "seemingly high proportion of repeat fare evasion violators on the MAX is an unexpected finding and represents a unique challenge for TriMet fare enforcement."

### **OUTREACH AND PUBLIC PROCESS TO DEVELOP RECOMMENDATIONS**

Since passage of HB 2777, TriMet has engaged in extensive community and stakeholder feedback regarding the establishment of appropriate administrative penalties for fare evasion. The bill intentionally left important questions open for the TriMet Board to determine, and

TriMet committed to a period of community engagement to assist in the development of recommendations on the appropriate consequences.

The outreach efforts included:

- (1) TriMet conducted a survey that was available online and to customers on the system. The survey asked for opinions on the appropriate penalties for fare evasion, including a fine amount, the appropriate number of community service hours, and any other suggestions.
- (2) TriMet committed to obtaining input from a community work group while HB 2777 was under consideration in the legislature. The work group membership is described more fully in a letter to the Senate Judiciary Committee.<sup>1</sup>
- (3) TriMet held community meetings with partner organizations and open houses, as well as individual meetings with groups, including TEAC and OPAL.
- (4) TriMet engaged Portland State University’s Criminal Justice Policy Research Institute to review other penalties in other transit systems and provide a recommendation on the fine amount.

### **SURVEY RESPONSES**

TriMet conducted a survey over several weeks to gather feedback on the fine amount and community service option. A total of 4,221 responses were received, about 91% of which were from the online survey with the balance from on-board surveys and responses from open house events.

The first question in the survey asked what the consequence for fare evasion should be and permitted multiple responses. The responses were:

- 54% Fine
- 72% Community service for those unable to pay a fine
- 27% Other
- 2% Don’t know

It should be noted that there was evidence of a social media effort to encourage people to respond to the survey and oppose a fine as a penalty for fare evasion.

Among those who offered “other” responses, the top answers were as follows:

- 5% No fine
- 5% First time warning
- 3% TriMet should be free
- 2% Increasing fines with repeat offenses
- 2% Leniency/resources for low income/youth/seniors
- 2% Exclusion/expulsion
- 1% Allow to explain circumstances

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<sup>1</sup> The entire letter is available at: <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/131324>

Among those who responded that a fine should be assessed for fare evasion, the median penalty proposed was \$75.

If you include both: (1) those who said a fine should be assessed in response to the first question and (2) those that did not respond that a fine should be assessed in response to the first question but still offered a fine amount in response to this question, the median was \$50.

For community service, the median hours recommended was 8.

The survey included open ended questions for other steps that should be taken to address fare evasion. The top responses were:

- 20% More fare enforcement
- 13% Low income fare/lower the fare
- 10% Safety/Security measures
- 9% Issues with enforcement and treatment of riders/profiling
- 8% Leniency/resources for low income/disabled/vulnerable riders
- 7% Turnstiles/barriers
- 7% TriMet should be free
- 6% Graduated: increased penalties for repeat offenders
- 6% Allow person to explain circumstances
- 4% Community service
- 4% Warnings

## **COMMUNITY PARTNER EVENTS**

In November and December, TriMet hosted three separate community partner events to discuss the Low Income Fare program, HOP Fastpass, and fare evasion penalties. These forums targeted partner agencies who serve transit dependent communities. Following an explanation of HB 2777 and an opportunity for questions, the participants answered a series of questions similar to those provided in the survey.

Among the community partner responses, the median fine recommended was \$65 and the median number of hours of community service was 9.9.

## **PSU CRIMINAL JUSTICE POLICY RESEARCH INSTITUTE**

As part of the process for evaluating a fare evasion penalty, TriMet engaged Dr. Brian Renauer of Portland State University's Criminal Justice Policy Research Institute. Professor Renauer previously analyzed racial and ethnic disparities in fare enforcement on the MAX system, and, as a result, was familiar with TriMet's fare enforcement and proof of payment activities.

Professor Renauer examined violation amounts for fare evasion and similar offenses in other jurisdictions, which is discussed in greater detail in the following section. His research revealed that adoption of administrative processes for fare evasion by transit districts is a growing trend. Additionally, at least nine transit properties consider repeat offenders in determining a penalty, though not necessarily by increasing fines but often repeat offenses trigger other penalties like exclusion or arrest. Professor Renauer also discussed a 2002 report from the FTA's Transit Cooperative Research Program (TCRP) that found an average fine of \$73 among transit districts

surveyed. Adjusted for inflation, that amount would be \$101.67 in 2017. That same 2002 TCRP report proposed that a “reasonable fine structure...might ” consist of \$50 for a first offense, \$100 for a second offense, and \$200 for a third or higher offense. A \$50 fine in 2002, adjusted for inflation, would be \$69.64 in 2017.

Professor Renauer also was asked to recommend a citation amount or a range that would adequately deter violations. His review concluded that “The optimal fine range for actual payment and lower repeat fare evasion appears to be less than \$100. Such a fine amount is not inconsistent with other similar proof of payment light rail transportation systems around the U.S.”

In reaching his conclusion, Professor Renauer noted growing research that questions the efficacy of “get tough” approaches to deterrence:

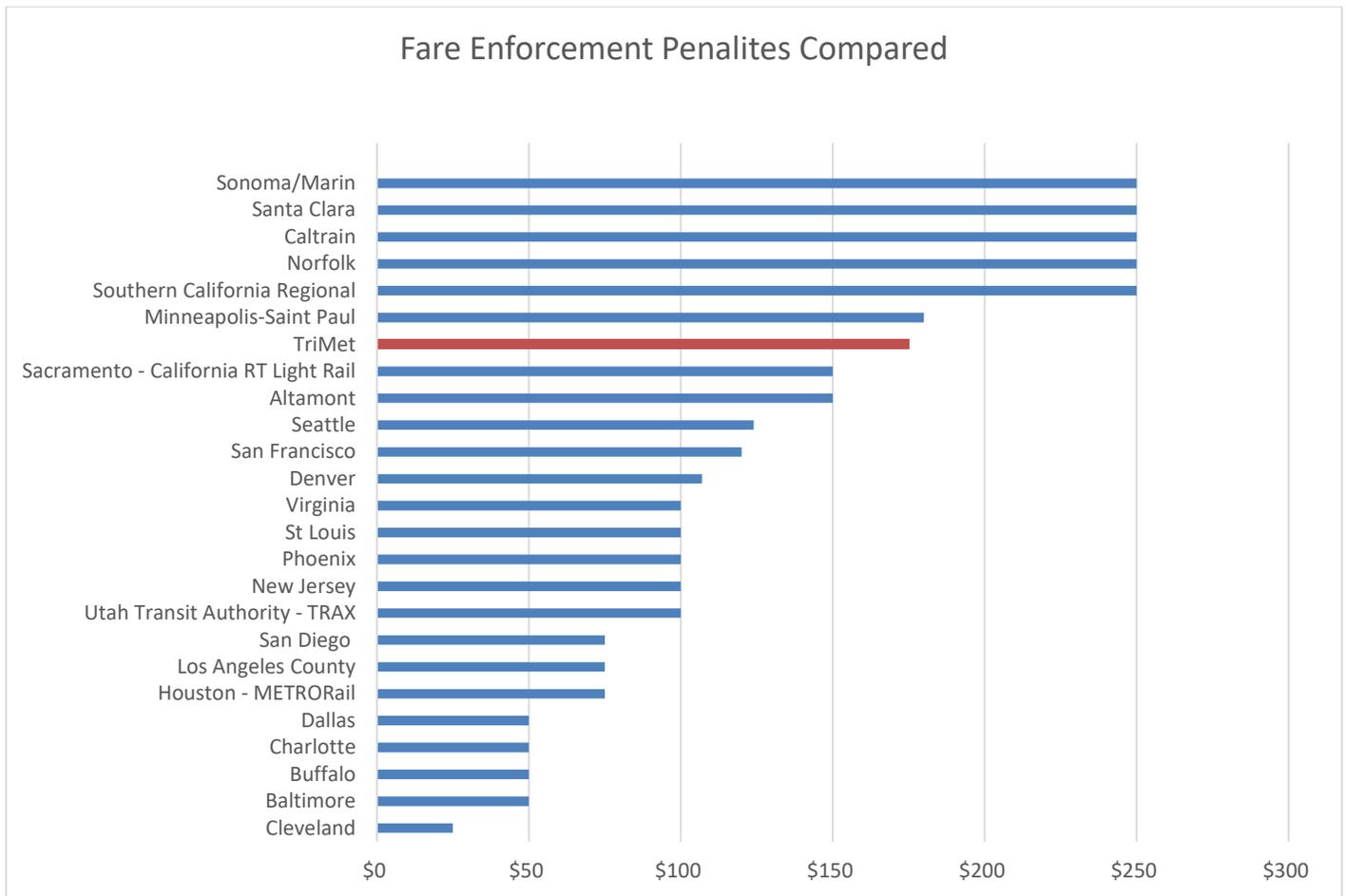
“Recent theorizing and strong empirical research has called into question the popularity of increasing costs or ‘getting tough’ as the best approach for enhancing deterrence. Reviews of deterrence research generally do not find support for inferring that increasing the severity of punishment enhances deterrent effects. Similarly, research has consistently shown that punishment certainty is far more consistently found to deter crime than punishment severity. There is also growing interest and empirical support for the importance of ‘legitimacy’ and ‘trust’ for deterrence to work. Legitimacy refers to the public’s acceptance of those in authority to issue commands and hold one accountable for perceived or adjudicated violations of the law. According to this perspective one obeys the law and court rulings out of a normative motivation or sense of obligation and belief that it is the ‘right thing to do’ and not out of fear.” (Citations and emphasis omitted).

### **COMPARISON TO OTHER TRANSIT SYSTEMS**

As noted, Professor Renauer examined the fare evasion penalties for other transit systems. To ensure an accurate comparison, he examined other open transit systems where proof of payment was shown by the display of a fare instrument to a fare inspector during a random check, as opposed to closed systems with barriers that require a ticket to access the system via a turnstile or similar device.

The amount of information about fare evasion penalties for certain properties was difficult to find, and attempts were made to speak with individuals at properties to ensure the most accurate data. Still, there is no guarantee that the information in the following chart is totally current.

The best available data that could be compiled is reflected in the following chart:



Transit systems varied in how they communicated their fine. Some describe the fine as “up to” an amount and some described the fine as within a range. Others listed the amount while also noting that fines may be reduced pursuant to judicial discretion. The chart reflects the high end of the range, but does not consider repeat offenders.

As reflected above, TriMet’s current presumptive fine of \$175 is higher than many jurisdictions. TriMet’s fine is 19<sup>th</sup> out of the 25 jurisdictions examined, and the average fine among these other transit properties surveyed was \$111.

### COMMUNITY WORK GROUP

TriMet convened a community work group designed to offer additional feedback and suggestions on fare evasion penalties. Members included representatives from a variety of organizations and community members.

The work group considered a proposal of an initial fine of \$50 for the first offense, with escalation of fines to \$90/\$150/\$175 for second, third and fourth offenses. Several work group members supported this proposal. Others supported the \$50 fine range for a first offense fine, but thought that the penalties increased too much for repeat offenders. Several work group members abstained or did not vote on the proposal.

The work group generally supported the idea of allowing people who register for Low Income or Honored Citizen fares to have the citation eliminated. The proposal considered by the work group for community service is consistent with the recommendations in this memorandum: 4 hours for the first offense, 7 hours for the second, 12 for the third, and 15 for fourth offenses and beyond.

## **RECOMMENDATIONS**

As demonstrated by the above chart comparing fare evasion penalties, transit systems have taken a range of approaches to establish fines for fare evasion. The recommendation of \$75 for first time offenses would certainly place TriMet in the lower range, but it would also not be an outlier. The proposal escalates fines for repeat offenders, and while the fines for third and fourth time offenders are higher than average, those fines are limited to situations where an individual continues to evade fare and not respond to the initial penalties. The TCRP in 2002 proposed even more significant escalation of fines from \$50 for a first offense, to \$100 for a second offense, and \$200 for a third or higher offense. TriMet's proposed escalation rates are less than proposed by the TCRP in 2002. Professor Renauer suggested that a fine of less than \$100 should adequately discourage repeat offenses. That supports setting a first offense at \$75, while also leaving in place the more severe penalties for those who continue to offend. Professor Renauer has been made aware of the fine recommendation amounts, including escalation, and he stated that such penalties are consistent with his recommendation.

By escalating the fine for repeat offenders TriMet is attempting to address Professor Renauer's point that repeat offenders represent a unique challenge to TriMet's fare enforcement. These recommendations represent the first attempt I am aware of for TriMet to increase the severity of penalties for repeat offenders. The escalation reflects TriMet's emphasis on reducing evasion by changing behavior. Increasing fines for repeat offenders emphasizes to those cited the first time that there will be further consequences for continuing to ride without proof of payment. Moreover, to the extent that Professor Renauer noted that a fine of less than \$100 serves as an adequate deterrent, an escalation of fines for repeat offenses demonstrates that when the initial \$75 fine does not serve as an adequate deterrent and offenders repeat, the increase in fine reflects that the first-time fine did not, in fact, serve as an adequate deterrent.

The appropriate amount of the fine should consider the likelihood of being cited for fare evasion. A fine that is too low may encourage people to "chance it" if the risk of getting caught is low enough that paying the occasional penalty outweighs the cost of paying regular transit fare. As reflected in the 2017 fare evasion survey, taking the risk of not being inspected for valid fare was the number one reason for not paying fare (32.7%). That was followed by not activating a mobile ticket (27%), which is essentially a different method for taking the risk of not having valid fare. While additional fare inspectors will be on the system soon, the willingness of approximately 50% of those without a fare to knowingly ride without valid fare on the chance they will not be caught suggests that a fine in the lowest range makes it more likely that fare evasion could increase in response to the establishment of extremely low fines.

The recommendations also include an option that I am not aware any other transit system offers. Namely, if a customer is cited and eligible for the Low Income Fare program or Honored Citizen fare program, the fine will be waived upon showing evidence of enrollment in the reduced fare program and evidence that the customer has loaded a minimum amount of funds on their fare card. This option encourages enrollment in these reduced fare programs, reduces the burden of fare enforcement on low income and disabled riders, and facilitates compliance with fare requirements.

Further mitigating the impact on low income communities is the option of community service. The community service program will work with existing community based organizations that will provide participants with a wide range of options for completing community service, including weekend volunteer shifts, and shifts outside of normal business hours.

The four hour community service option for first time offenders is consistent with the work group proposal, but lower than what the survey recommended. The recommendation that first time offenders be required to complete four hours of community service is designed to encourage community service as an option. By making community service for first time offenders an accessible option, the goal is to capture individuals who were unlikely to be able to pay a fine and often end up being defaulted for failing to pay under the current system. Supporters for requiring four hours for first time offenders also noted that participants will have to travel to and from the community service program, making a four hour commitment a significant part of their day.

The community service option and the option to enroll in a Low Income Fare or Honored Citizen program will also increase the legitimacy or trust in the fare enforcement program, which Professor Renauer noted as being important to deterrence. These options demonstrate TriMet's commitment to fairness, but also reinforce to our customers that the goal is to change behavior, not be overly punitive.

In addition, TriMet will build additional trust with riders by implementing most of the suggestions offered in the survey response in terms of additional steps that should be taken to address fare evasion. We will be adding more fare enforcement personnel, offering a Low Income Fare program, increasing training for fare enforcement personnel, offering a community service option for fare evaders, increasing penalties for repeat offenders, and providing resources for low income/disabled riders. Again, these efforts demonstrate our commitment to a fare enforcement system designed to change behavior and decrease the rate of fare evasion.

The community work group and others have expressed support for a lower fine amount in the range of \$50 for a first offense. At half the cost of a monthly adult pass (\$100), a fine of \$50 would make TriMet's penalty among the lowest in the nation. While it is not an unreasonable suggestion, the concern would be that such a low fine will further increase the already significant percentage of fare evaders who knowingly "chance it." Supporters of lower fine amounts have noted the potential impact of the fine on low income riders. But the monetary penalty should also be viewed in the full context of the recommendations, which include both a community service option, as well as an option for fines to be waived for those who enroll in the Low Income Fare program or Honored Citizen fare program.

Several survey responders proposed having no fine for fare evasion, which would essentially create a system where TriMet collects no revenue from fares. Such a proposal is not sustainable in light of TriMet's dependence on fare revenue as part of the agency's operating budget.