|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item No.:** | 7 & 8 | **Date:** | June 21, 2016 |
| **Proposed No.:** | 2016-02382016-0237 | **Prepared by:** | Scarlett Aldebot-Green |

**SUBJECT**

Proposed Motion 2016-0238 would accept a report, including a work plan, on options and recommendations on how to implement transit-related policies in response to Motion 14441. Proposed Motion 2016-0238 additionally specifies that acceptance of the report and work plan would constitute an agreement by the Council that following the recommendations contained in the report and work plan will: 1) implement Council policy direction related to the penalty for juvenile fare evasion and 2) implement policies and practices related to Metro Transit’s suspension of use process and the process to appeal suspensions issued for nonviolent violations of the Metro Transit Code of Conduct that align with the county’s equity and social justice principles in both intent and effect.

Proposed Ordinance 2016-0237 would amend Ordinance 11950, Section 14, as amended, and K.C.C. 28.96.010 and prescribe penalties in line with the recommendations in the report and work plan that Proposed Motion 2016-0238 would approve.

**SUMMARY**

Motion 14441 established four transit-related policies and requested that the Executive develop and transmit to the Council a report, including a work plan, that would provide options and recommendations on how to implement the transit-related policies established in Motion 14441 and any legislation, including appropriation ordinances, needed to implement the policies outlined in Motion 14441.

The “Transit Safety and Equity Report” (the Report) and the work plan contained therein, transmitted as Attachment A to Proposed Motion 2016-0238, as well as the process through which the Report was developed, meet the requirements set forth in Motion 14441. Proposed Motion 2016-0238 would accept this report. Proposed Motion 2016-0238 additionally specifies that acceptance of the report and work plan would constitute an agreement by the Council that following the recommendations contained in the report and work plan will: 1) implement Council policy direction related to the penalty for juvenile fare evasion and 2) implement policies and practices related to Metro Transit’s suspension of use process and the process to appeal suspensions issued for nonviolent violations of the Metro Transit Code of Conduct that align with the county’s equity and social justice principles in both intent and effect.

Proposed Ordinance 2016-0237 would make the necessary changes to the County Code to implement one of the policies established in Motion 14441 as recommended by the work group that generated the “Transit Safety and Equity Report” –that juveniles should not be charged criminally for fare evasion. It also makes a person guilty of a misdemeanor for “knowingly entering or remaining unlawfully on transit property.”

The work plan in the report indicates that additional legislation required to implement the other transit-related policies in Motion 14441 is in development and will be transmitted as needed.

**BACKGROUND**

K.C.C. 28.96 governs the regulation of conduct on transit property including setting forth the behaviors that can give rise to civil infractions and criminal misdemeanors, the behaviors that can give rise to an immediate expulsion and the behaviors that can result in a suspension of use privileges. The King County Department of Transportation, Metro Transit Division (Metro), sets forth administrative policies and procedures pursuant to the King County Code. The Metro Transit Police (Transit Police), a unit of the Sheriff's Office, administers some of these policies. The Metro Transit Police establishes standard operating procedures regarding administering Metro Transit Policies in their purview. Metro contracts with Securitas, a private contractor, to provide Fare Enforcement Officers (FEOs) to conduct fare enforcement activities. FEOs are directed to follow King County Metro Fare Enforcement Standard Operating Procedures.[[1]](#footnote-1)

Motion 14441 was passed by the King County Council in the fall of 2015. It established four transit-related policies as follows:

*“A. It is the policy of the county that juveniles should not be charged criminally*

*for fare evasion on Metro buses. Juveniles may still be issued civil citations for failure to pay appropriate fare on Metro buses, but failure to respond to these civil citations or to pay fines associated with these citations should not give rise to criminal charges.*

*B. It is also the policy of the county that both Metro's suspension of use process and the process to appeal any suspensions of use for violations of the Metro Transit Code of Conduct, infractions or criminal charges that do not involve violence should align with the county's equity and social justice principles in both intent and impact, and provide due process protections. Further, in considering more equitable processes, the potential impact of a suspension of use privileges on that individual's ability to attend school, to work, to comply with court-mandated appointments, to take part in mental health or substance abuse treatment or to engage in other activities that may benefit the individual's development or well-being should be considered. Whenever possible, the impact of a suspension of use privilege should be mitigated by creating reasonable and reasonably enforceable exemptions, including when a suspension of use becomes effective, and by reasonably calculating the length of the suspension to achieve its desired impact.*

*C. It is also the policy of the county to improve geographic equity of access to court for individuals living throughout King County who are cited with civil infractions for fare evasion.*

*D. It is also the policy of the county to ensure that relevant transit personnel achieve developmental competence in relation to working with juveniles through appropriate training.”*

Motion 14441 also requested that the Executive develop and transmit to the Council by March 1, 2016[[2]](#footnote-2) the following products:

1. A report and work plan that:
	1. Provides options and recommendations on how to implement the transit-related policies set forth in Motion 14441;
	2. Provides for an option to implement the policy in subsection B. of Motion 14441 on suspensions of use through court-issued orders;
	3. Outlines the estimated costs or savings associated with implementing the policies established in Motion 14441;
	4. Outlines an examination of the impacts on public safety of recommended changes to implement the Motion 14441 policies; and
	5. Summarizes the equity and social justice implications of the new approaches recommended.
2. Any legislation, including appropriation ordinances, needed to implement the Motion 14441 policies.

Motion 14441 also asked the executive to develop the plan, report, legislation and the amount of any proposed appropriation in consultation with county staff including, but not limited to representatives from The Sheriff’s Office (KCSO), the Prosecuting Attorney’s Office (PAO), the Superior Court, the Transit Division, the District Court, the Department of Public Defense (DPD), and the Office of Performance, Strategy and Budget (PSB). Motion 14441 also noted that community organizations focused on juvenile rights should be consulted.

**Analysis**

**Proposed Motion 2016-0238.** PM 2016-0238 would accept the “Transit Safety and Equity Report” (the Report), Attachment A to the proposed motion. Proposed Motion 2016-0238 additionally specifies that acceptance of the report and work plan would constitute an agreement by the Council that following the recommendations contained in the report and work plan will: 1) implement Council policy direction related to the penalty for juvenile fare evasion and 2) implement policies and practices related to Metro Transit’s suspension of use process and the process to appeal suspensions issued for nonviolent violations of the Metro Transit Code of Conduct that align with the county’s equity and social justice principles in both intent and effect. As directed in Motion 14441, the Report and work plan in the report were developed in consultation with a work group that included the requested representatives. Appendix B to the Report lists work group participants.

The report addresses implementation of all four policies established in Motion 14441, estimates the costs or savings associated with implementation of each of these policies, examines impacts on public safety of the proposed changes, and summarizes the equity and social justice implications of the policies set forth in Motion 14441.

Decriminalization of Juvenile Fare Evasion

Currently, under K.C.C. 28.96.010.B, failure to pay transit fare is a misdemeanor criminal offence, punishable by up to 90 days in jail and a $1,000 fine. Under state law, fare evasion is a civil infraction. According to the Report, no juveniles have been charged criminally for fare evasion in recent years.[[3]](#footnote-3) The Report notes that this is the case because the King County Prosecutor’s current filing standard, which can change at the discretion of the King County Prosecutor, an independent elected public official with sole discretion over charging decisions, is consistent with the policy direction of Motion 14441.

*Proposal.* The Report recommends that implementation of this policy be effectuated through the Council adopting legislation amending K.C.C. 28.96.010, decriminalizing juvenile fare evasion, so that whether criminal charges are filed is not dependent on prosecutorial discretion. The report notes that members of the work group generally agreed on this recommendation. Proposed Ordinance 2016-0237, discussed later in this staff report, was transmitted as a companion to this proposal.

*Cost.* The Report notes that the cost to implement this proposal are *de minimis.*

*Potential Issues.* Staff has not identified any issues with this proposal. Issues identified in relation to Proposed Ordinance 2016-0237 will be discussed in the portion of the analysis addressing the PO.

Suspension of Use Process

KCC 28.96.430 authorizes the suspension of a person’s transit use privileges for violations of the Metro Transit Code of Conduct or local, state or federal law. Under the current system, Transit Police issue a suspension of use notice, typically in conjunction with other enforcement action resulting from a violation, for a specifically prescribed term of 7, 14, 30, 60, or 365 days. Presently, suspensions of use are effective when they are issued; they can be appealed.

Because suspensions of use take effect at issuance, the Report notes that individuals appealing a suspension for a shorter term may end up serving the full term of their suspension before having the opportunity to meet with the appeals panel. Currently, the appeals panel does not consider the validity of a suspension but focuses on mitigation, issuing a rider contract that reinstitutes some or all privileges under certain conditions.

*Proposal.* The Report proposes a range of changes to the present practice as follows:

* Establishing a Written Warning Notice process for those issued with an infraction or citation for non-violent crimes. Individuals receiving a warning would be able to continue to use Metro. The notice will remain on file for 24 months and, should the individual commit another violation during that time, the person would be issued a suspension for the new violation.
* Changing suspension term lengths to 30, 60, or 365 days.
	+ Infractions noted in K.C.C. 28.96.010 will warrant a 30-day suspension.
	+ Criminal offenses as noted in K.C.C. 28.96.010 or RCW 9.91.025 will warrant a 60-day suspension.
	+ Violent Crimes and other serious crimes against persons as noted in RCW 9.94A.411 (plus Assault 4, Harassment, Bomb and Hoax Bomb crimes, and Indecent Exposure) will result in a suspension of 365-days.
* Suspended individuals, whether they have a Written Warning Notice or not on file, would retain the right to appeal the validity of the suspension or to request a mitigation hearing, which could result in the issuance of a rider contract.
* Suspensions would be served concurrently rather than consecutively.

Appendix A to the report illustrates the proposed administrative procedure. The Report indicates that this proposal reflects a balance between the articulated views of social justice advocates and those of Metro Transit in terms of the preference for a warning process and the belief that warnings are perishable respectively.

*Cost.* The Report notes that the cost to implement this proposal are determined to be is *de minimis.*

*Equity and Social Justice.* The Report notes that the proposed changes align with these principles by simplifying suspension term lengths, preserving riding privilege for lesser first offences through the warning process and eliminating consecutive suspensions.

*Due Process.* The Report notes that providing for a warning period for minor violations that do not implicate public safety allows Metro to address problematic behavior while increasing due process, which is additionally addressed in the proposed recommendation on the appeals process.

*Potential Issues.* Staff has not identified any potential issues with this proposal.

Suspension of Use Appeals Process

As indicated in the prior section, KCC 28.96.430 allows for the suspension of a person’s use privilege for certain violations. The Code also provides that an individual who has had their use privileges suspended is entitled to appeal the suspension to an individual designated by the Metro Director who may affirm, modify or terminate the suspension. The Code provides that the decision of this individual is final.

Presently, Metro has a single person consider an appeal over the phone for suspensions of less than 60 days. The Report notes that Metro Transit Police Criminal Investigations Unit has facilitated this process and that relief for appealing individuals (a modification of the suspension order) has been “immediate”. For suspensions of 60 days or longer, Metro has a Suspension Appeal Panel made up of an individual from Metro Transit Police, Operations and Customer Services. The Report notes that the rationale for establishing this panel process, not required under the Code, was to have a more equitable and impartial process.

*Proposal.* The Report proposes revising its administrative appeal process and procedures in light of concerns expressed by work group members about fairness and due process. The proposed process would create two review processes: 1) an appeal hearing and a 2) mitigation hearing.

* Appeal Hearing: Under the proposed process individuals that have been suspended from Metro will be able to appeal the validity of a suspension to the King County Hearing Examiner, an independent third party, who would be able to invalidate the suspension.
	+ Details of this process, cost, timeline, and mechanics have not yet been developed. The Report notes that this would be a formal process and would include written notice of the allegations, an opportunity to present evidence, cross-examine witnesses, and would result in a written decision.
	+ Individuals who lose an appeal hearing, would be able to request a mitigation hearing.
* Mitigation Hearing: For individuals not seeking to challenge the validity of their suspension, a mitigation hearing would allow the opportunity to seek relief from the terms of a suspension such as allowing individuals to ride for specific purposes.
	+ A designee or a panel would conduct the hearing, depending on the circumstances surrounding the case.
	+ For suspensions for less than one year for individuals who do not already have a Rider Contract, Metro Transit would conduct the mitigation hearing over the phone.
	+ For full panel hearings, the proposal suggests the removal of a Metro Transit Police representative from the panel.
	+ The proposal suggests Metro Transit Security Program Manager as the administrator of the Mitigation Panel activities.
	+ The proposed panel would have five individuals who may include representatives from Metro’s Diversity & Inclusion Office, Customer Communications & Services, Ride Share/Accessible Services, and Transit Security.
	+ Mitigation would, like now, typically include the issuance of a Rider Contract that would restore all or partial ability to ride so long as riders comply with all rules under the contract.

The Report indicates that work group members generally agreed on these recommendations. A draft operating process for the Mitigation Panel Process is in Appendix C to the report.

*Cost.* Costs to implement this proposal are still being studied. The Report notes that it is expected that the Mitigation Hearing process will not have new appreciable costs whereas the Appeal Hearing process may incur costs which the Report notes are not expected to be cost-prohibitive. The Report notes that an overall reduction of mitigation hearings, due in part to the new warning process, may offset the cost burden some.

*Equity and Social Justice.* The Report notes that the proposed process would increase equity, opportunity and impartiality. It notes that the new Appeals and Mitigation processes would provide a broader dialogue and allow for more diverse representation of viewpoints.

*Due Process.* The Report notes that the proposed process would allow for faster response time for mitigation requests, would allow contestation of the underlying validity of a suspension of use and would separate enforcement and adjudication roles.

*Potential Issues.* Staff has consulted with the Hearing Examiner’s Office and that office has indicated that the proposed process is feasible but that, as of yet, a work plan to implement the process has not been developed. The work plan included in the Report notes that the establishment of the necessary process would be taking place during Q2 and Q3 of 2016. Provided Council accepts the Report in early summer 2016, the timeline is not wholly out of step with the timeline in the work plan. Additionally, it is expected that code changes will need to be made to reflect the new appeal and mitigation process; these, according to the Report, would be forthcoming in the first quarter of 2017. The Report is silent on if and when Council can expect an appropriation request on this issue. Staff has identified no other potential issues.

Improving Geographic Equity of Access to Court

In the past, the King County District Court directed violations of Metro Transit Rules to Shoreline District Court. In October 2015, the District Court, noting that 80 percent of a sample batch of tickets issued to juveniles had been issued to South King County and South Seattle residents, directed juvenile fare evasion infractions to be filed in Burien District Court.

*Proposal.* The Report notes that the District Court Executive Committee approved permitting persons receiving civil infractions for all fare violations for either Sound Transit or Metro to request a hearing at any of the three traffic infraction courthouses presently in the Burien, Shoreline and Issaquah locations of District Court. The Report notes that as the Court completes the electronic case management system project, the ability to allow hearings to be held at any District Court location may become possible. The work group agreed with this process but the Report noted that administering transit infractions solely at the Shoreline Court helped the court “fulfill their responsibility with fewer resources.”

*Cost.* The Report indicates that costs to implement this proposal are *de minimis*.

Develop Competence in Working with Juveniles

Presently, Transit Security and Service Quality staff members do not undergo juvenile-specific training, although they do receive training on how to effectively interact with all people “fairly and transparently”.

*Proposal*. The Report proposes using a professionally designed curriculum to educate staff members who regularly interact with youth, specifically Transit Security, Service Quality, and bus operators.

*Cost.* Based on research on possible curricula, the Report estimates that the cost to implement this strategy would be $331,000 for an initial two-year cycle. Appendix E contains additional information on possible strategies.

*Potential Issues.* No appropriation request in relation to implementing this policy was transmitted. The work plan indicates that Metro would determine the procurement guidelines necessary to contract with a third-party provider during Q3 of 2016. An appropriation request would then be forthcoming for both the contract and the internal payroll costs for deploying the program.

Court Ordered Suspension

Motion 14441 requested that the Report include an option to implement the suspension of use policy through court-issued suspension of use orders for periods longer than 12 hours. The work group considered and analyzed this option, including taking into consideration opinions by judiciary members of the work group. These individuals indicated that the courts were not prepared to act as administrators of a non-judicial process such as the suspension of use process and that the courts were not the correct venue to make suspensions of use determinations. Further, judiciary members of the work group indicated that the time between the issuance of a citation or infraction and a suspension of use notice and a hearing could be considerable (weeks-to-months range).

*Issues.* The Report notes that a determination on the *legal ability* of the court to adjudicate these cases and include a term of suspension has not yet been determined.

Public Safety Impacts

The Report notes that the work group believed decriminalization of juvenile fare evasion will not affect rider safety and security. Likewise, improving geographic equity of access to courts would likely have, according to the Report, no negative public safety impact. In terms of the new Mitigation and Appeals Hearings process, Metro noted in the Report that “with monitoring, this new process will not necessarily decrease the riding public’s safety”.

General Issues

Proposed Motion 2016-0238 accepts the report and work plan and specifies that by doing so Council agrees that its policy direction related to the penalty for juvenile fare evasion and Metro Transit’s suspension of use process and process to appeal suspensions issued for nonviolent violations of the Metro Transit Code of Conduct is met by following the recommendations contained in the report and work plan. Legal counsel has indicated that adoption of this motion would not preclude Council from adopting future, different policy.

While the Report and work plan identify future action and legislation expected to be transmitted that would effectuate the policy direction in Motion 14441, the response package to Motion 14441 alone does not fully implement Council’s policy direction in Motion 14441.

**Proposed Ordinance 2016-0237.** Proposed Ordinance 2016-0237 would make two changes to K.C.C. 28.96.010 and prescribe penalties. These changes would be as follows:

1. Make it a civil infraction for individuals seventeen years of age and under to fail to present a valid, unexpired pass, transfer or ticket or otherwise failing to pay the appropriate fare as required by county ordinance. For individuals eighteen years of age and older, this behavior would continue to constitute a criminal misdemeanor, and
2. Adds as a misdemeanor the crime of knowingly entering or remaining unlawfully on transit property (criminal trespass).

The changes related to fare evasion are consistent with the policy direction in Motion 14441 and with the Report. In terms of adding the trespass misdemeanor, Executive staff indicate that doing so is aimed at ensuring enforceability of suspensions of use. Under state law, transit vehicles are not consider a “building” or a “premise” for the purpose of trespass. Consequently, Metro would like to augment the enforceability of suspensions of use with the authority to charge an individual for criminal trespass on a bus should they be in violation of a suspension or a suspension as mitigated by a Rider Contract.

In terms of potential scope of individuals who may be impacted by the addition of this misdemeanor crime, no individuals were charged for criminal trespass in 2015. For the period of May 1st through December 31st, 2013, Metro Transit indicates the following:

* 14 arrests for Criminal Trespass were made[[4]](#footnote-4)
	+ 13 of the arrested individuals were male
	+ 1 of the arrested individuals was female
	+ 1 of the arrested individuals was Native American
	+ 2 of the arrested individuals were Caucasian
	+ 11 of the arrested individuals were Black
	+ None of the individuals were adolescents between the ages of 18 and 21
	+ Seven of the individuals were in their 20s, three in their 30s, one age 44, and three ages 50 and over.

Distribution data for 2014 also shows no arrested juveniles.

**INVITED**

1. Rob Gannon, Interim General Manager, Metro Transit, King County Department of Transportation
2. Dave Jutilla, Major, Metro Transit, Public Safety
3. Lance Dauber, Captain, Metro Transit, Public Safety
4. Lorinda Youngcourt, County Public Defender, Department of Public Defense
5. Anita Khandelwal, Policy Director, Department of Public Defense
6. Carla Lee, Deputy Chief of Staff, Prosecuting Attorney's Office
7. Jimmy Hung, Senior Deputy Prosecuting Attorney, Prosecuting Attorney's Office
8. Kenny McCormick, ATU 587 President
9. Judge Donna Tucker, Chief Presiding Judge, District Court
10. David Spohr, King County Hearing Examiner

**ATTACHMENTS**

1. Proposed Motion 2016-0238
	1. Attachment A: Transit Safety and Equity Report
2. Proposed Ordinance 2016-0237
3. Executive Transmittal Letter
4. Extension Letter
5. Motion 14441
1. Additional background on Metro Transit’s enforcement program is available in the background section of the July 7, 2015 staff report on Motion 14441 and its attachments. [↑](#footnote-ref-1)
2. On February 11, 2016, the Executive requested additional time via letter (Attachment 3) for the workgroup assembled to develop the Report and work plan to culminate its discussions. [↑](#footnote-ref-2)
3. Staff has not been able to independently confirm this claim. [↑](#footnote-ref-3)
4. Other than age, demographic information is based on Metro Transit or Transit Police observation rather than self-identification for a majority of individuals. [↑](#footnote-ref-4)