## *REVISED* STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Clifton Curry |
| **Proposed No**.: | 2018-0377 | **Date:** | September 5, 2018 |

**COMMITTEE ACTION**

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| ***Proposed Ordinance 2018-0377, passed out of committee on September 5th with a no recommendation. The ordinance was amended in Committee with Striking Amendment S-1. The amendment made technical changes recommended by legal counsel and also added reporting language to the ordinance to provide for annual Council oversight of the new fare enforcement programs. Additionally, the Committee adopted a Title Amendment that reflects the changes adopted in the Striking Amendment.***  |

**SUBJECT**

AN ORDINANCE creating an alternative resolution process for transit fare enforcement; and adding a new section to K.C.C. chapter 28.96.

**SUMMARY**

Proposed Ordinance 2018-0377 would amend the King County Code to replace the existing criminal infraction system for those who evade fares on County buses and replace it with an alternative resolution process. Currently, those found to have not properly paid a transit fare on certain bus routes are issued a warning or an infraction. An infraction, along with the attendant civil penalty is processed through King County District Court. According to the Executive, the existing process was intended to provide a deterrent to fare evasion, however, a recent King County Auditor’s Office report found that most infractions go unresolved. In addition, the Auditor found that the current system has negative unintended consequences on marginalized communities, including those who are homeless and other very low income riders who may be unable to pay a fare, have little access to alternatives, and have no financial ability to pay an infraction.

This proposed ordinance would add a section to KCC 28.96 that gives Metro authority to discontinue the current process that relies on the court adjudication of citations. The ordinance would replace the current process with an internal Metro process where customers will have several options for resolution of any fare violation, all of which are exclusive of any court involvement. The intent of this ordinance is to provide offenders an option to resolve the citation outside a court of law and no longer subject to debt collection and subsequent penalties.

**BACKGROUND**

Metro provides a wide range of transportation options and choices for King County. In addition to the region’s largest bus network, Metro operates vanpools, paratransit services and many new forms of transportation solutions such as RapidRide. Metro also operates Sound Transit’s regional Express bus service and Link light rail in King County, along with the Seattle Streetcar.

RapidRide is King County’s bus rapid transit system. A common feature of bus rapid transit is off-board fare payment, which allows riders to pay their fare before getting on the bus. According to Metro, off-board fare payment speeds up service by allowing riders to board using any door on the bus, not just the front door. While this feature decreases the time buses spend loading and unloading passengers, it also may increase the risk of riders deliberately boarding without paying a valid fare. As a result, the difference in fare acceptance between RapidRide and regular buses is that RapidRide fare enforcement officers can issue citations, leading to direct contact with the criminal justice system. On regular buses, operators may ask for proof of payment, but do not enforce payment and do not issue “tickets” for evasion. If there is a safety issue on a regular bus, like a threat against the driver or passengers, the driver could notify law enforcement, but the lack of payment alone would not lead to contact with the criminal justice system.

Metro reports that RapidRide is set to grow significantly in the coming years—from six lines in 2017 to 19 lines by 2025, and reaching 26 lines by 2040. In addition, fare enforcement on non-RapidRide routes could also grow, as Transit is planning for all-door boarding on Third Avenue in downtown Seattle in 2019.

**Fare Evasion Enforcement.** To mitigate the risks of fare evasion on RapidRide buses, Metro uses inspection personnel who check riders for proof of payment and issue warnings or citations to riders without a valid ticket or pass. Metro contracts with a private company, Securitas, to provide fare enforcement officers and adopted the same fare enforcement practices used on Sound Transit’s light rail system for the RapidRide system.[[1]](#footnote-1)

Metro estimates the RapidRide fare evasion rate based on data collected by its fare enforcement officers. According to these estimates, between 2010 and 2016, the fare evasion rate on the RapidRide system ranged from 0.9 percent on the B line to 3.0 percent on the A and F lines.

According to data from Metro, fare enforcement officers checked almost 300,000 passengers in 2016, or about 1.4 percent of RapidRide ridership. Of those 300,000 checks, officers encountered 9,352 instances where riders could not show proof of payment. Depending on the number of times a person has been encountered by officers without valid proof of payment or deceitful behavior, officers can issue a verbal warning, a citation with a $124 fine, or recommend a misdemeanor charge to Metro Transit Police. Cited individuals, therefore, can become involved with the County’s criminal justice system as the District Court processes and attempts to collect the fines related to infractions (that can also result in turning over fines to collections agencies if not paid), and makes decisions on misdemeanors along with the Prosecuting Attorney’s Office (which can result in criminal sentence with possible jail time or a fine).[[2]](#footnote-2)

**Audit Report on Fare Evasion.** In April 2018, the King County Auditor’s Office released their report “RapidRide Fare Enforcement: Efforts Needed to Ensure Efficiency and Address Equity Issues.”[[3]](#footnote-3) The auditors found that Metro cannot adequately evaluate the cost-effectiveness and outcomes of fare enforcement on RapidRide. In addition, the auditors determined that some of Metro’s current fare evasion enforcement outcomes are in conflict with King County’s equity and social justice goals, where they can create negative impacts for people experiencing housing instability.

The audit report indicates that fare evasion rates on the RapidRide system are similar to rates on other systems that use off-board fare payment, including light rail. The auditors noted in their review of 31 transit systems in 2012 showed an average fare evasion rate of 2.7 percent, and that Sound Transit reported monthly fare evasion rates of between 2.7 and 3.6 percent on Link light rail in 2016. The auditor noted that conducting fare enforcement on RapidRide costs at “least $1.7 million a year, which is equivalent to over 500,000 King County Metro Transit bus tickets. This means that it cost Transit about $6 to check one passenger—almost twice as much as the most expensive RapidRide fare.”

The Audit Report also notes that “one fifth of fare enforcement costs are for District Court, which processes fines that largely go unpaid.” The auditors reported that in 2016, District Court processed 3,515 citations, and only 94 were paid outright. “According to District Court, compared to other types of citations, this is a very low payment rate.”[[4]](#footnote-4) The auditor noted that since very few people are willing or able to pay their fines, only a small fraction of District Court’s work is offset by the fines. District Court estimated that processing fare evasion citations cost over $343,760 in staff time in 2016, yet only $4,338—about 1.3 percent—was returned to the County.

**Other Impacts of Current Fare Evasion Enforcement Practices.** The auditors reported that bus and rail systems that allow off-board fare payment generally have some type of fare enforcement. However, they noted that research has not found a correlation between fare enforcement and fare evasion: systems that have a lot of fare enforcement report fare evasion rates that are similar to those that have more limited coverage. The audit report noted that research has also shown that there are certain transit riders that will evade fares no matter what the consequences. This means that no matter how many resources are deployed or fares checked, the fare evasion rate will never be zero. In addition, there are several variables that may be impacting the evasion rate that have nothing to do with fare enforcement. These include a low unemployment rate and the availability of employer-sponsored transit benefits.

The auditors noted that, of the fare evasion cases they reviewed, nearly 25 percent of all citations and 30 percent of misdemeanors are given to people who are homeless or experiencing housing instability, potentially creating debt and interactions with the criminal justice system. Those experiencing housing instability may have difficulty paying the fare or fine, which could create additional negative impacts beyond the citation. For example, the fines for individuals experiencing housing instability totaled just over $290,000 from 2015-2017. These fines, when unpaid, go into collections, which can then impact a person’s ability to obtain housing. Additionally, the auditors’ analysis showed that as the penalty increases in severity, people experiencing housing instability make up a larger percentage of the total.[[5]](#footnote-5) As a consequence, the auditor made several recommendations to improve fare evasion enforcement practices, including that Metro should review its fare enforcement model for alignment with county and agency goals and equity principles and use the results to update its model and the fare enforcement contract. The Executive in its response to the audit report concurred with the auditor’s recommendations and noted it would be working to significantly reorient its fare evasion enforcement practices and its contract with its private security company.

Metro reports that, based on the audit findings and input from enforcement program staff and other key stakeholders, Metro has already taken the following actions:

* Temporarily suspend criminal referrals for adults (juveniles are not at risk);
* Increase the warning level for juveniles;
* Institute new equity training requirements for enforcement officers related to working with youth;
* Create a Quality Assurance Supervisor position;
* Submit technology project for Fare Enforcement Officer (FEO) equipment and software to KCIT process;
* Submit budget requested for fare evasion study to collect better information about fare evasion rates, warning/infraction rates, impacts, and demographics in 2019-20 biennium; and,
* Allow fare evasion warnings and infractions to expire after one year.

In addition, Metro worked with stakeholders to develop a new fare evasion enforcement code changes.

**ANALYSIS**

Proposed Ordinance 2018-0377 would amend the King County Code to replace the existing criminal infraction system for those who evade fares on County buses and replace it with an alternative resolution process. Currently, those found to have not properly paid a transit fare on certain bus routes are issued a warning or an infraction. An infraction, along with the attendant civil penalty is processed through King County District Court. According to the Executive, the existing process was intended to provide a deterrent to fare evasion, however, a recent King County Auditor’s Office report found that most infractions go unresolved. In addition, the Auditor found that the current system has negative unintended consequences on marginalized communities, including those who are homeless and other very low income riders who may be unable to pay a fare, have little access to alternatives, and have no financial ability to pay an infraction.

This proposed ordinance would add a section to KCC 28.96 that gives Metro authority to discontinue the current process that relies on the court adjudication of citations. Specifically, Metro would be authorized to develop “an internal process” for fare enforcement and that this “process shall be outside any court proceeding.”

Metro fare enforcement officers would, under the proposed new section to:

* Issue a warning or notice, or both, of a fare violation ***that would not*** be filed with the District Court;
* The warning, oral or written, would provide the violator an opportunity to correct fare evasion behavior;
* That a Notice of Violation can be issued to violators and that the Notice would be accompanied by “financial consequences” to be determined by Metro;
* That to resolve a Notice of Violation, Metro shall provide options “such that a person is incentivized to make prompt payment of the violation fee, has options to resolve the violation that do not require paying a fee and is provided opportunity to appeal the violation” to Metro;
* That a Notice of Violation must be answered within 90 days, and, if not cancelled by Metro, the person is subject to suspension for 30 days from Metro services; and,
* Upon expiration of a suspension due to a notice of violation, the violation would be considered resolved and that no further penalty would be imposed.

Adoption of this ordinance would therefore replace the current fare evasion enforcement process with an internal Metro process that results in a violator no longer becoming involved with the County’s criminal justice system. This proposed internal process could result in “potential financial consequences” for a violator. However, the ordinance would allow for Metro to develop an internal system for resolving the violations that may not involve a person having to pay a fine. Metro notes that its proposed new system would allow for several options for resolution—such as the opportunity to mitigate a fine by early payment, allow for community service in lieu of a fine, or provide for the ability to administratively cancel a fine--all of which are exclusive of any court involvement. According to Metro, the intent of this ordinance is to provide offenders an option to resolve their violation outside of a court of law and that they would no longer be subject to debt collection and subsequent penalties.

Metro reports that it would use the funding that it currently provides to the District Court for the adjudication of fare evasion cases to establish positions “in-house” to work with violators. One of two positions that Metro plans to hire for would be an “adjudicator” who would be responsible for developing the structure which will enable persons issued a notice of violation for fare evasion to appeal, request mitigation, pay, use an alternate method for resolution, or in the absence of any of those, be referred for further sanction. Further, this position will track the violations as they age and reach different benchmarks which may trigger additional actions. The other position would be a “Fare Enforcement Program Outreach Coordinator” who would be responsible for working closely with Fare Enforcement Operations to determine which avenues will yield better compliance among riders who have received warnings and violations. In addition, the position would expected to use various means to make contact with persons who may be at risk of receiving violation based on warning history, and reaching out to those with violations to assist them in riding legally. This position will also help track the violations as they age and reach different benchmarks which may trigger additional actions.

The new enforcement process that would authorized by this ordinance would only affect violators cited for evading fares on RapidRide buses. Those who are come in contact Metro Transit Police for offenses on regular bus lines or who are cited by Fare Enforcement Officers on Light Rail or Sound Transit buses would remain subject to the current system that uses the District Court and collections agencies.

This proposed ordinance has been reviewed by legal counsel.

1. While Fare Enforcement Officers issue citations to violators on Link Light Rail, Sound Transit, not Metro, manages this fare enforcement program. [↑](#footnote-ref-1)
2. King County Auditor’s Office, “RapidRide Fare Enforcement: Efforts Needed to Ensure Efficiency and Address Equity Issues,” April 4, 2018, page 3. [↑](#footnote-ref-2)
3. King County Auditor’s Office, “RapidRide Fare Enforcement: Efforts Needed to Ensure Efficiency and Address Equity Issues,” April 4, 2018, see <https://www.kingcounty.gov/~/media/depts/auditor/new-web-docs/2018/rapidride-2018/rapidride-2018.ashx?la=en> [↑](#footnote-ref-3)
4. Ibid., page 7. [↑](#footnote-ref-4)
5. Ibid., page 9. The report notes also that “ninety-nine people received at least 10 penalties each between 2015 and 2017, totaling about six percent of all penalties during that time.10 Almost 19,000 people received penalties between 2015 and 2017. Of those people, 99 individuals (0.5 percent) received a total of 1,589 penalties or six percent of all penalties in this time period. One person received 53 penalties over two years. The majority of this group are people of color, people who experienced housing instability during this time, or both.” [↑](#footnote-ref-5)