

Memo

December 3, 2020

To:	Kent Keel, Board Chair
From:	Peter Rogoff, Chief Executive Officer
Subject:	Analysis of McDermott Motion on Planned Fare Engagement Activities

This memorandum responds to your request that staff analyze Board Member McDermott's draft motion to amend/alter the Fare Enforcement Action Plan as outlined in our presentation to the Sound Transit Board in October.

At the Board's October 22 meeting, staff provided a detailed briefing on the status of our [Fare Enforcement Action Plan](#). The development of that plan followed many months of surveying best practices and envisions significant changes to our fare collection system to create a more equitable program to ensure the success of all passengers to connect to more places. As explained at the October meeting, staff now will follow up on our commitment to community to vet our findings and plans and initiate a year-long pilot program that will implement a dramatically different approach, as informed by our continuing community engagement. During the pilot program, we will continue our existing policy of suspending the use of citations for lack of compliance.

As explained in October, staff was not anticipating Board action until after community conversations have taken place and the pilot program is underway. This will allow for the gathering and testing of ideas, allowing for a more informed set of recommendations for more permanent reforms and policy changes for the Board to consider. More recently, however, Board Member McDermott has distributed a draft motion for consideration by the Executive Committee and potentially the full Board in December.

Summary of analysis:

While the staff's detailed concerns are discussed in the section-by-section analysis below, our observations and concerns can be summarized as follows:

- Staff sees no problem with the requirement that our current suspension of the use of citations continue through the pilot program and until the Board can vote on their future use.
- The majority of Board Member McDermott's motion captures accurately Sound Transit's work thus far to transform our fare engagement process to one that advances equity while maintaining compliance. This includes our stated plans to continue to engage community, launch a pilot program where alternative approaches can be explored, and report findings and recommendations back to the Board for you to establish permanent policy changes.
- Most importantly, the staff is concerned with directives in section 3 that seek to predetermine the outcome of our community engagement and pilot program by dictating the measures staff "must" recommend to the Board at the conclusion of the process. Rather than specifying details that the future recommended policy must include, staff suggests in section 3 to replace "must" with "should consider." This will ensure that we investigate and provide a full set of findings for each of the specific policy changes identified by the Motion in section 3 and that the Board has all the

information necessary to make its policy decisions. A different approach that would also address this concern would be to direct the CEO to recommend to the Board a series of alternative approaches, one of which “must” include the remedies articulated in section 3. This would ensure that the Board, in making its policy decisions, considers each of the remedies articulated in section 3 as well as any additional or alternative remedies the staff recommends as a result of their engagement with community and the findings emanating from the pilot project.

- Staff believes that the “whereas” clauses would benefit from further context setting to accurately capture the agency’s past and current practices and our work to advance equitable approaches.

Section-by-section analysis:

The “Background” discussion in Mr. McDermott’s motion is an accurate description of Sound Transit’s accomplishments to date as well as the details of our Fare Enforcement Action Plan.

“Whereas” clauses: Staff suggests providing additional context to provide a more complete picture of the agency’s work in the area of fare enforcement, or withholding all “whereas” until the Board’s later work on the policy itself. Examples could include:

- WHEREAS, RCW 81.112.210 provides regional transit authorities with the power to require proof of payment; and Sound Transit has implemented for many years a fare checking process of systematically checking all passengers in a manner intended to reduce any potential for profiling by inspectors.
- WHEREAS, Sound Transit found that in 2019, that reasons for non-payment are complex and require multiple solutions to reduce disparities and ensure that everyone has valid fare media to get to where they need to go.
- WHEREAS, surveys found that, of Sound Transit train riders found to be without fare, four percent identified the inability to pay as their primary reason for being without fare but that percentage grew to 8 percent for passengers in the lower income bracket.
- WHEREAS, Sound Transit will continue a robust community engagement process to help shape the pilot program and to help inform future board policy decisions.

Section 1 of the motion directs the CEO to provide the Board with a fare enforcement plan and engagement reports detailing our findings and recommendations from the pilot program, including a series of cost-benefit and equity analyses. This section is fully aligned with staff’s plans and is either anticipated to occur or can occur within the pilot program.

Section 2 of the motion directs the CEO to provide the Board with recommendations for a new fare enforcement/engagement program and an accompanying implementation plan. The recommendation must address seven specific aspects of the new program and include proposed timelines and identify any required legislation, budget, or Board policy changes associated with those recommendations. This section is also fully aligned with staff’s plans and is either anticipated to occur or can occur within the pilot program.

Section 3 of the motion directs the CEO to provide the Board with draft language updating the Board’s Fare Enforcement Policy. The section states that the draft policy “*must*” include six discrete policy changes that are spelled out in the motion, including the lowering of the fine amount, the removal of court

adjudication for fare evasion-only case, an increase in the number of warnings, changes to our suspension policy, and restrictions on the use of law enforcement officers.

Many of these proposals align with concepts that will be explored as part of the pilot program, and staff intends to use the pilot program and engagement with communities to develop creative solutions to construct a system that advances equity while maintaining compliance. Replacing “must” with “should consider” would provide the Board with the benefit of community input and options to address each of the six policy changes. A different approach that would also address this concern would be to direct the CEO to recommend a series of alternative approaches, one of which “must” include the remedies articulated in section 3. This would ensure that the Board, in making its policy decisions, considers each of the remedies articulated in section 3 as well as any additional or alternative remedies the staff recommends as a result of their engagement with community and the findings emanating from the pilot project.

Section 4 establishes a deadline of January 2022 for staff to submit recommended policy changes to the Board. The section also states that Sound Transit must continue to suspend the issuance of civil infractions for the entire length of the pilot program and until the Board can vote on an updated fare enforcement policy.

Staff shares the goal of advancing recommendations by January 2022 with the caveat that a worsening of conditions brought on by the COVID-19 pandemic could potentially delay our ability to complete the pilot program and recommendations within that time frame. The CEO recognized that it was a significant decision when he suspended the use of citations in March of this year because of the emerging pandemic, and it is certainly the Board’s prerogative, as the agency’s policy making body, to take ownership of any decision regarding their future use.