

7. Fare Evasion Fine Structure

- **The civil penalty for fare evasion is a \$50 administrative fine for adults, and a criminal penalty costing up to \$123.97 for juveniles, including court fees. Neither fine is escalated for repeat offenders. As of July 2009, the cost of an adult fine will be lower than the cost of a monthly Muni Adult Fast Pass. Further, a Budget Analyst survey and a Federal Transit Administration study both reveal that the \$50 adult fine is low compared to most other systems, particularly with regard to repeat offenders.**
- **The San Francisco Municipal Transportation Agency (SFMTA) decriminalized fare evasion for adults in February 2008 in order to reduce fare evasion citations on traffic court dockets and to increase SFMTA fine revenue collections. Prior to the transition, the adult fine, with court fees, totaled \$123.97, and the bulk of the fine was kept by the court. By instituting a \$50 administrative fine in its place, the SFMTA keeps 100 percent of all citation revenue. The change also effectively lowered the penalty for adult fare evasion by up to 60 percent.**
- **The SFMTA has received increased fine revenue due to the transition to a civil adult penalty and increased Transit Fare Inspector (TFI) staffing. Although the increased staffing has increased the POP program's citation issuance, the average citation per TFI is relatively unchanged. SFMTA data actually suggests that the overall fare evasion rate has increased since the decriminalization, despite the simultaneous increase in TFI staffing. Therefore, increases in fine revenue are likely being offset by decreases in fare revenue.**
- **The SFMTA should improve its fare evasion fine structure. The SFMTA should first consider recriminalizing fare evasion to reinstate a more meaningful disincentive to fare evaders. Otherwise, if adult fare evasion is to remain an administrative penalty, then the SFMTA should increase the fine and implement a graduated fine schedule for repeat offenders. Furthermore, the SFMTA should develop a policy and program for prohibiting habitual offenders using the transit system, allow cited offenders of limited means to participate in the "Project 20" community service alternative sentencing program, and direct TFIs to issue written warnings instead of verbal warnings in order to better track fare evasion rates.**

Fine Structure Considerations

When a TFI, police officer, or other SFMTA-designated staff member issues a citation for failure to provide proof of payment, the cited individual receives a fine. According to the Federal Transit Administration's Transit Cooperative Research Program (TCRP), the primary purpose of the fine should be "to deter fare evasion; however, an agency may also benefit by receiving a portion of the fine revenue." They recommend that proof-of-payment transit systems developing a fine structure should consider five main criteria: basic fine strategy, treatment of evaders, agency image, implementation/administration, and the judicial environment:

1. **Basic Fine Strategy.** The size of the fine, coupled with the expectation of possibly being caught, are the major deterrents to evading the fare. Given the limited inspection rates of most SSFC (Self-Service, Barrier-Free Fare Collection) systems ... an individual offender may, in fact, evade numerous times before being apprehended. This suggests that the fine should be set with a goal of discouraging not only a single violation but really a series of violations. Therefore, it is tempting to maximize the fine—and thus its deterrent value. On the other hand, this must be balanced against the negative image impact of a high initial fine (see below), as well as possible inspector and/or court reluctance to assess high fines.
2. **Treatment of Evaders.** Most SSFC systems give their inspection personnel significant leeway in the treatment of individual evaders. Most citations written (and thus most of the evaders apprehended) are for first-time offenders. ... the fine these evaders face is invariably a large multiple of the fare. An inspector may, therefore, be reluctant to issue a citation that carries a particularly high fine because of the lack of proportionality.
3. **Image of Agency.** Because SSFC systems are largely self-policing, they depend not just on the fear of being fined, but also on the riders' good will, to function effectively. The perception that enforcement is fair and just is, therefore, an important ingredient in maintaining a positive public image. If the penalties assessed are seen as out of proportion to the crime committed, the agency could be perceived as unreasonably punitive.
4. **Ease of Implementation and Administration.** This comprises two issues: (1) how simple (or complex) is the fine structure for inspection personnel to administer and for riders to understand and (2) how much record-keeping does the fine structure require of the agency.
5. **Judicial Environment.** The unavoidable connection between the fine structure and the judicial environment is that penalties may be appealed and courts may negate or reduce them. Both the inspection personnel and judges are likely to distinguish among different circumstances, but they may have different standards. For instance, a judge may be reluctant to impose the fine called for in the fine structure because of the lack of proportionality. Requiring an evader to appear in court is itself (i.e., apart from the verdict) a form of punishment.

San Francisco's Fare Evasion Fine Structure

When the SFMTA first implemented the POP program in San Francisco, fare evasion was a criminal offense. As of February 3, 2008, the last day before the offense was decriminalized in San Francisco, the fine for the criminal penalty, plus court fees, totaled \$123.97. However, the court had discretion to lower the fine and fees for individuals. Conversely, if an individual failed to pay the fine or appear in court, the court could issue a \$300 late penalty or warrant. An expanded legal history of Proof of Payment can be found in the Appendix to this report.

Decriminalized Adult Fine

The POP program began issuing its first decriminalized citations in San Francisco on February 4, 2008. Fare evasion is now considered an administrative penalty, as defined by the State of California Public Utilities Code. The intent of decriminalizing proof-of-payment citations was twofold: to lessen the burden of POP citations on traffic court dockets, and to increase the SFMTA's share of citation revenue. The SFMTA now process adult fare evasion fines in a manner similar to parking tickets.

The San Francisco Board of Supervisors amended Traffic Code Section 127, *Fare Evasion Regulations*, Section 128, *Passenger Conduct Regulations*, and related *Penalty and Other Fare Evasion and Passenger Conduct* regulations in September 2007.¹ The amendments clarified the definition of *Proof of Payment* and, for offenders at least 18 years of age, replaced the fare evasion and passenger misconduct criminal penalties with administrative penalties and fees, in accordance with the authority provided by the State of California Public Utilities Code. The amended legislation set a fine of \$50 for the first offense and \$75 and \$100 for the second and subsequent offenses committed within one year of the date of the first offense, respectively. The amended legislation also authorized the SFMTA Board of Directors to set the amounts for the administrative penalty, late payment penalty, and collection recovery fee by resolution, and at an amount not to exceed the highest parking citation amount authorized by the California Vehicle Code (\$300.00).²

The SFMTA Board of Directors enacted Division II of the Transportation Code on July 1, 2008, which included an administrative penalty for violations of fare evasion and passenger conduct regulations of \$50. The penalty does not provide for the above-noted authorized escalated fines of \$75 and \$100 for second and subsequent offenses. Setting the penalty for adult fare evasion to \$50 effectively lowered the penalty 60 percent from the former fine-plus-court-fees total of \$123.97. Late fees can add up to \$60 to the fine.³

¹ Ordinance No. 224-07, File No. 070680.

² As of April 2009, the highest parking citation fine authorized by the California Vehicle Code was \$300 for illegally parking in a disabled parking area. (Section 22507.8).

³ A cited adult fare evader incurs additional financial penalties for late payment: \$25 for failure to pay the fine by the first due date affixed to the notice of violation and an additional \$35 for failure to pay by the

TFIs are not authorized to exclude offenders or repeat offenders from the system, and fare evaders may present a citation as proof of payment for that transit trip.

Appeals and Alternative Sentencing

The SFMTA provides citation recipients with three levels of review for protesting a fare evasion: an initial administrative review, an administrative hearing, and ultimately a San Francisco Superior Court de novo hearing. These processes are modeled after the SFMTA's parking ticket review process. Unlike parking ticket recipients, however, cited fare evaders are not able to participate in San Francisco's Project 20 Alternative Sentencing program, which allows individuals to work off a portion of parking fines through local volunteer opportunities.

Juvenile Fine

State law does not permit the decriminalization of fare evasion penalties for juveniles. The juvenile court continues to handle juvenile fare evasion citations. If cited, a juvenile faces a fine, plus court fees, currently totaling \$123.97. Cited juveniles are required to attend a Court session with a parent or guardian. The judge has discretion to lower the penalty, and the current average penalty in fines and fees for a fare evasion or passenger conduct citation is \$107.97—more than double the financial penalty for an adult citation.

Warnings

The POP program allows TFIs the discretion to issue a verbal warning in lieu of a citation. POP program management cites customer service benefits in issuing discretionary warnings to some individuals who lack proof of payment. TFIs issuing a warning instead of a citation will often request that a passenger pay if they have money, and may accompany a passenger to a fare box or turnstile. Although TFIs do not issue written warnings, the POP program requests that TFIs note the number, time, and location of all warnings issued in their log books.

second due date affixed to the notice of violation. Therefore the total additional late fees are \$60. (SF Transportation Code, Article 300, Section 301).

San Francisco's Adult Fine Is Low Relative to Benchmarks

The \$50 adult fine for fare evasion in San Francisco is lower than, or low relative to, a number of benchmarks.

- It is 11 percent higher than the \$45 cost of a monthly Muni Adult Fast Pass, as of April 2009.
- It will be 9 percent less than the \$55 cost of a Fast Pass, as of July 2009.
- It will be 17 percent lower than the \$60 cost of a Fast Pass, as of January 2010.
- It is 60 percent less than the former cost of a \$123.97 adult citation, including court fees.
- It is 60 percent less than the current cost of a juvenile citation, including court fees.
- The base penalty is lower than many other POP systems surveyed, as shown in Table 7.1, below.
- The maximum penalty is lower than all other POP systems surveyed, as shown in Table 7.1, below.

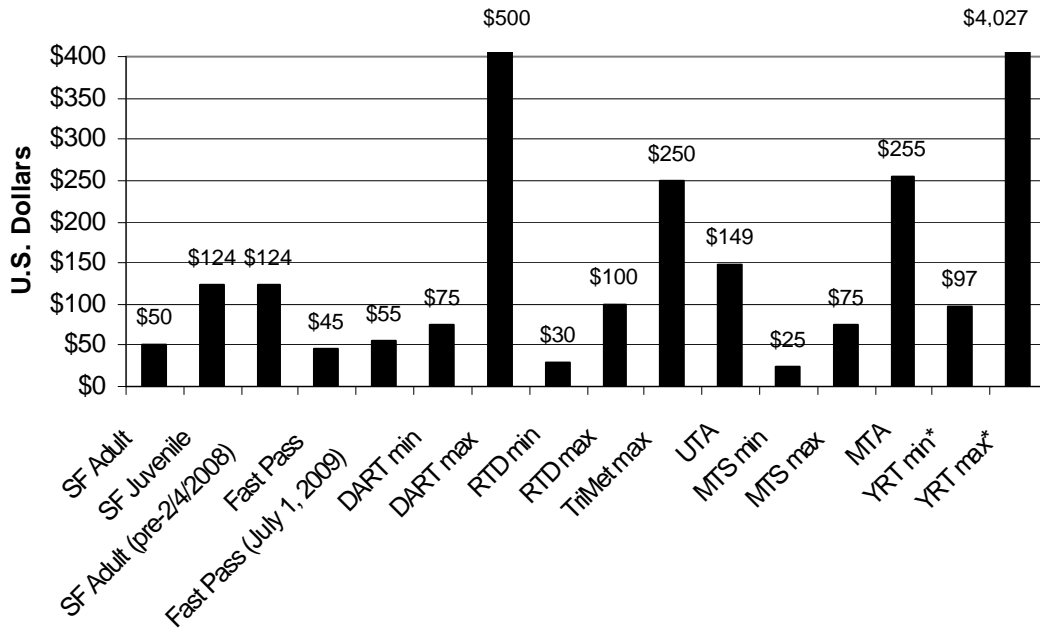
POP Program's Fare Evasion Penalty Is More Lenient than Comparable Systems

The Budget Analyst surveyed five light rail POP programs and two bus POP programs. Five out of the seven programs carried a base fine greater than San Francisco's \$50 adult fine, and all seven systems had a maximum fine greater than San Francisco's \$50 adult fine. The SFMTA's prescribed late fee total of \$60 lags as well. The two systems that listed specific fines for nonpayment issue maximum penalties ranging from \$271 to \$4,027. Five of the seven systems surveyed have additional non-fine penalties for nonpayment, including system exclusion and arrest.

The San Francisco POP program is more lenient to repeat offenders than other systems surveyed. Although the State of California grants the SFMTA the authority to increase the fine for repeat offenders, the SFMTA has not developed policies or practices to identify repeat fare evaders, nor an escalated fine schedule. Although two of the surveyed systems do not have escalating penalties, both have much higher flat fines than the SFMTA (UTA: \$149; MTA Orange Line: \$255).

Figure 7.1

SFMTA Adult Citation Fine Compared to Other Costs or Fines



* U.S. Dollars, based on currency conversion rate of 1 Canadian dollar = 0.805412 U.S. dollars as of 2/24/09.

Sources: SFMTA; Budget Analyst Survey.

The POP Program's Fare Evasion Penalty Eludes Best Practices

In its analysis of proof of payment programs, the Federal Transit Administration's Transit Cooperative Research Program (TCRP) developed the following recommendation for creating or modifying a base fine: "The base fine should be high enough to represent a deterrent to fare evasion, but not so high that (1) the inspectors will be hesitant to issue citations in most cases, (2) the courts may decide in many cases that the fine is too high, and/or (3) the agency seems unreasonably punitive." The TCRP study found an average fine of \$73 in 2002. With regard to repeat offenders, it found that most agencies levied a higher fine for repeat offenders, "generally at least twice the initial fine."

For transportation agencies implementing a new POP system, the TCRP recommended a \$50 first offense, \$100 second offense, and \$200 third or higher offense. It found the benefits of escalating fines include allowing for a lower initial fine for first offenses, increasing the likelihood of transit officers issuing fines instead of warnings, and improving the public's viewpoint. It noted, however, that such a system is more difficult to implement than a flat fine. Where implementing an escalated fine is not possible, the TCRP recommended having a higher initial fine.

The TCRP also recommended that systems consider excluding repeat offenders from the transit system. It found that excluding repeat offenders may be a more effective deterrent than a fine, can improve a system's image by excluding problem riders from the system, and may enjoy a public perception of being fairer than a high fine. It noted that implementing an exclusion penalty involves similar complexities to a graduated fine. The Budget Analyst's survey of other POP systems found that Portland, Oregon's Tri-County Metro Transportation District and Salt Lake City's Utah Transit Authority both exclude fare evaders that are found to have failed to pay outstanding fare evasion fines.

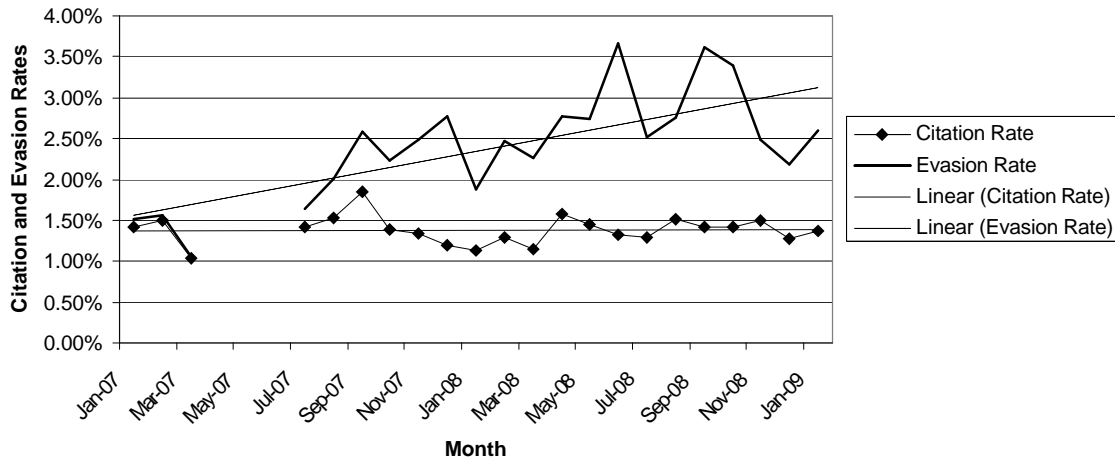
The TCRP found that approximately one third of the transit systems it studied received no share of fine revenue. Of the systems that did receive fine revenue, the share ranged from 50 percent to 100 percent of the fine amount. Further, most North American transit agencies collected \$50,000 or less. The TCRP cautioned transit agencies from expecting significant revenue from fines.

Despite Reducing the Adult Fare Evasion Fine, the Citation Rate Has Not Increased

As noted above, the Ordinance authorizing the SFMTA to set the penalties for fare evasion at \$50 for a first offense, \$75 for a second offense within a year of the first offense, and \$100 for third and subsequent offenses within a year of the first offense. The Ordinance allows for additional late fees, collections costs, and CPI increases. The San Francisco Transportation Code, however, does not prescribe an increased fine for repeat offenders. All adult fare evaders, first-time or chronic, face a \$50 fine.

As is also noted above, decreasing fare evasion was not the motivation behind the shift from a criminal penalty to an administrative penalty. Instead, the SFMTA saw the shift as a way to remove POP citations from the traffic court docket and increase the agency's fine receipts. The SFMTA has seen its share of fine revenue increase since the change was implemented in February 2008 (see Section 8, *Citation Processing and Collection*).

Although research suggests that fare enforcement officers are more likely to issue citations when the fine is lower, information provided by the SFMTA and summarized in Figure 7.2, below, shows that the POP program's citation rate (number of citations per passenger contact) has been fairly constant for the past two years. In other words, although the fine decreased 60 percent, TFIs have issued more warnings but are issuing approximately the same number of citations per POP shift. Furthermore, the fare evasion rate (citations and warnings per passenger contact) has increased since the fine was effectively reduced, despite an increase in TFI positions during this time period. These observations suggest that since the adult fine was reduced, TFIs are issuing the same number of citations per shift, are issuing more warnings, and, therefore, more people may be taking their chances and not paying to ride Muni. Further, additional fine revenue may be offset by increased fare evasion and reduced fare payment.

Figure 7.2.**Citation and Evasion Rates, January 2007 through January 2009***

* Data for April, May, and June 2007 was not available; data through January 14, 2009.
Source: Budget Analyst calculations based on SFMTA POP program data.

The SFMTA POP Program Cannot Easily Identify Repeat Offenders

As noted above, most POP programs have devised ways of identifying repeat offenders and issuing graduated fines for repeat offenses. One of the SFMTA's stated reasons for not issuing graduated fines for repeat offenders is that the SFMTA has difficulty identifying repeat offenders. TFIs do not currently have the technical capability to identify repeat offenders in the field, as they do not have radio or portable access to the fare evader database. Also, because TFIs do not require a driver's license number, passport ID number, or social security number when writing a citation, the SFMTA's citation processing vendor database does not automatically recognize repeat offenders. It is worth noting, however, that experienced TFIs are often able to identify some repeat offenders, as well as known pickpockets, on sight alone.

The SFMTA could take at least two approaches to enabling a graduated fine for repeat offenses. The POP program anticipates transitioning from citation books to hand-held units in Calendar Year 2009. If synchronized to a SFMTA fare evasion database, the units could potentially identify repeat offenders in the field. TFIs could issue a graduated fine at the time of citation issuance. Such technology would also enable TFIs to exclude habitual offenders from the system, if the SFMTA enacted such a policy.

A second option is on the citation processing side. The citation processing vendor automatically issues letters to cited individuals apprising them of the fine. Their database does currently recognize some repeat offenders when identifying-information, such as name and address, is consistent. Therefore, the vendor could issue letters to repeat offenders advising them of a graduated fine.

Juvenile Fines Are More Punitive than Adult Fines

When the State of California allowed San Francisco to decriminalize fare evasion, it did so only for adults. As noted above, one effect of this dichotomy is that juveniles face a greater penalty for fare evasion: they must appear in court with a guardian, and the fine, plus court fees, is more than twice the adult administrative fine. TFIs are more reluctant to cite juveniles for fare evasion, in part because the penalty for juveniles is more severe. In such cases, TFIs may issue verbal warnings to juveniles, with or without requiring fare payment (\$0.50 for juveniles, as of April 2009). A number of SFMTA managers have observed that reducing fare evasion in San Francisco requires a cultural shift. Creating this shift will be difficult if the City is regularly allowing juveniles to avoid penalty, even when they are caught.

San Francisco's Transportation Code Needs to Be Corrected and Updated

In the process of conducting this management audit of the SFMTA POP program, we encountered errors and omissions in the San Francisco Transportation Code.

Cross-references in Section 302 of the Transportation Code Need to be Corrected

Division II, Article 300, Section 302 of the Transportation Code, *Transportation Code Penalty Schedule*, includes a four-column table that provides the fine amount and other information for violations of *Off-Street Parking*, *Transit Violations*, and four other violation categories. The *Transit Violations* segment is replicated in Table 7.1, below.

Most, if not all, of the "Transportation Code Section" cross-references in Table 7.1 are incorrect. For example, the correct Transportation Code reference for *Fare Evasion* is Div 1 10.2.49. However, as shown, the reference in Transportation Code Section 302 is Div 1 10.2.101, which section does not exist in the Transportation Code.

Table 7.1
San Francisco Transportation Code Section 302 Cross-references

| Former Code Section | Transportation Code Section | Description | Fine Amount |
|---------------------|-----------------------------|--------------------------|-------------|
| TC 127 | Div 1 10.2.101 | Fare Evasion | \$50.00 |
| TC 128 | Div 1 10.2.102 | Passenger Misconduct | \$50.00 |
| TC 128.5 | Div 1 10.2.103 | Conversing with Operator | \$50.00 |

Source: San Francisco Transportation Code, Section 302.

Erroneous cross-references in the Transportation Code could lead to confusion among users of the Code, and possibly could lead to an erroneous charging on a Notice of Violation. The City Attorney's Office has advised the Budget Analyst that their Office would coordinate with the SFMTA to correct the cross-reference numbers on an expedited basis.

Provisions for Processing Youth Who Violate Fare Evasion and Passenger Conduct Should be Included in the Transportation Code

Section 640 of the California Penal Code establishes maximum penalties for violations of fare evasion and passenger conduct regulations by youth. Section 128.1, (f), of the San Francisco Traffic Code, predecessor to the San Francisco Transportation Code, which became effective July 2, 2008, included provisions for imposing and enforcing penalties as governed by the California Penal Code, as follows:

Any person under the age of eighteen who violates either Section 127 [fare evasion] or 128 [passenger conduct] shall be guilty of an infraction.

If charged and found guilty of an infraction, the penalty shall be as follows: For the first offense, a fine of \$50; for the second offense within a one year period or one year from the date of the first offense, a fine of \$75; for a third and each additional offense committed within a one year period from the date of the first offense, a fine of \$100.

The San Francisco Transportation Code, which replaced the San Francisco Traffic Code in its entirety, does not contain provisions for processing youth, and thus relies on the California Penal Code for governing such cases. This condition is not consistent with the previous practice of including all of the regulations governing violations of fare evasion and violations of passenger conduct regulations in the San Francisco Traffic Code, and could result in inconvenience to users or cause a user to act on less than complete information.

Conclusions

If the primary purpose of the proof of payment citation is to discourage fare evasion, the current adult administrative fine is inadequate. The \$50 adult penalty is 60 percent less than the maximum cost of a juvenile citation, and starting in July 2009 the fine will be 9 percent less than the cost of a standard monthly Muni pass. The fine lags systems that the Budget Analyst surveyed in 2008-2009, as well as systems analyzed by the Federal Transit Administration's Transit Cooperative Research Program (TCRP) in 2002. Repeat and habitual offenders are not fined or otherwise penalized more harshly than first-time offenders. Finally, POP program data suggests that the reduced fine has not changed the rate of citation issuance, but may have led to increased fare evasion. Therefore, the only positive effect of the transition from a criminal penalty to a civil penalty, from the SFMTA's perspective, is an increase in fine revenue—revenue that may be offset by fare revenue lost to increased evasion.

The higher penalty for juvenile offenders is one reason that TFIs are more likely to issue verbal warnings to juveniles than adults. The reluctance to issue a citation is understandable. However, the practice of issuing verbal warnings may send a message to young people that fare evasion is tolerated in San Francisco. Furthermore, because warnings are verbal, not written, the SFMTA misses an opportunity to collect descriptive data on where, when, and to whom TFIs are issuing warnings.

In light of the above findings, the SFMTA should improve Muni's fare evasion fine structure. Increasing the fine to a level that it is proximate to the juvenile penalty would ease the inequity between the penalties. A base fine of over \$100 would be well within the range of fines issued in other POP systems. As the TCRP advises, the fine and the expectation of being caught are the biggest disincentives to not paying for Muni, and the fine should be set to discourage not only one evasion, but multiple evasions. The fine should also escalate, and eventually lead to system expulsion. As noted above, the TCRP found that excluding repeat offenders can be a more effective deterrent than a fine and improve a system's image by excluding problem riders from the system. Although an increased fine may be more burdensome for some, TFIs will continue to have discretion to issue warnings instead of citations, and cited individuals will continue to be able to protest a citation that they believe is unwarranted or that they are unable to pay. For those who have difficulty paying a fine, the SFMTA should allow those who have difficulty paying their fine to participate in Project 20.

Additionally, the SFMTA should work with the City Attorney's Office to update, correct, and maintain the San Francisco Transportation Code as it pertains to the POP program.

Recommendations

In order to create a greater disincentive for fare evasion in San Francisco and decrease the gap between an adult and juvenile penalty, the Board of Supervisors should:

7.1 Revert fare evasion to a criminal citation;

OR

Increase the base fine for adult fare evasion closer or equal to that of a juvenile fine, including court fees;

AND

Create an escalating penalty for repeat offenders at an amount at least twice the base fare evasion fine, as recommended by the Federal Transit Administration's Transit Cooperative Research Program.

In order to create a greater disincentive for fare evasion in San Francisco, the SFMTA Board of Directors should:

- 7.2 Develop a policy and program for excluding habitual offenders from the Muni transit system.
- 7.3 Allow fare evaders to participate in the SFMTA's Project 20 community service alternative sentencing program.

In order to help track habitual fare evasion while discouraging fare evasion in adults and juveniles, the Deputy Director of Security and Enforcement and the POP Operations and Investigations Manager should:

- 7.4 Direct and enable TFIs to issue written warnings to adults and juveniles instead of verbal warnings and track written warnings in the same customer service database as written citations.

In order to avoid confusion and employ consistency with the San Francisco Transportation Code, the Director of Security and Enforcement, in coordination with the City Attorney's Office, should:

- 7.5 Correct Section 302 cross references in the Transportation Code.
- 7.6 Include provisions for processing juvenile fare evaders in the San Francisco Transportation Code.

Costs and Benefits

Implementation of these recommendations would increase fare revenues by creating greater disincentives to evasion. The recommendations would have a differing impact on citation revenue, however. Recriminalizing fare evasion would lower SFMTA's citation revenue. Increasing the fine and implementing a graduated penalty would increase the SFMTA's adult citation fine revenue, at least until such time that the POP program is able to achieve significant reductions in fare evasion among Muni passengers. Allowing fare evasion recipients to participate in Project 20 would lower citation revenue.

Tracking repeat offenders would involve some administrative costs in time required to update polices and train staff, as well as ongoing administrative time for reviewing the fare evader database.