



**Massachusetts Bay
Transportation Authority**

Fare Evasion Regulation

Board of Directors

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Background

Current Need to Support Fare Compliance

- **Fulfill legal obligations to enact regulations and to maximize fare revenue collection** *MGL c. 159, § 101(d); c. 161A, §5(q)*
- **MBTA is taking steps in multiple areas to support fare payment compliance**
 - New Commuter Rail fare gates at North Station went live on October 1 and have led to an observable increase in mTicket activations
 - This improvement is part of the Commuter Rail's fare gate program that will ultimately add gates at South Station and Back Bay Station
- **But without establishing penalties for non-payment, we cannot enforce fare policies**
 - Keolis has no remedy for CR riders who refuse to comply with fare gates
 - Recent operational changes due to GLX also highlight the need for these tools
- **Fare enforcement will prevent erosion of fare payment norms over time**
 - Peer agencies across the country are seeing increasing fare evasion. Some estimates include:
 - **DC:** 14% 2019, 29% 2022; **NY:** 18% 2019, 34% 2022
 - We have engaged researchers at UMASS to study existing non-payment and to develop methodologies for ongoing analysis.



Legal History & Framework

- Prior to January 2021, fine levels were set by statute:
 - **\$100 for a first offense, \$200 for a second offense, and \$600 dollars thereafter**
 - There were no warnings and fines remained outstanding indefinitely
 - One unpaid citation was grounds to mark an individual's license for non-renewal with RMV
- At the MBTA's request, the law was amended in 2020 (effective Jan. '21) to:
 - **Require the MBTA to enact regulations** setting fine levels, addressing penalties for failure to pay fines, providing for alternative methods of resolution, and establishing an appeal process
 - **Reduce** the range of possible fines to **\$10-\$250**
- **Legal change: Removed the possibility of arrest for fare evasion**
 - Under the **prior statute**, any passenger who “refuses to make oneself known by personal identification or any other means upon demand by a Massachusetts Bay Transportation Authority police officer for the purposes of issuing a noncriminal citation **shall be subject to arrest for fare evasion**”.
 - The **2021 amendment** removed the arrest language and added, “Notwithstanding any general or special law to the contrary, **no person shall be subject to arrest for fare evasion** on the transit system operated by the Massachusetts Bay Transportation Authority.”



Legal & Operational Changes

Legal Framework

Past (Pre-January 2021)

- Citation Amounts set by Statute
- Fare Evasion could lead to Arrest

Today, we are between these two frameworks

If Regulations are adopted

- Citation Amounts set by MBTA Board through regulations
- Decriminalized fare evasion

Operational Framework

Past (Pre-January 2021)

- Transit Police would issue citations and conduct fare enforcement checks

Resulting, in no ability to enforce our fare policies

If Regulations are adopted

- Transit Police can again issue citations

Why Do We Need a Regulation?

- MBTA is currently **not issuing any citations for fare evasion** in the absence of regulatory clarity or enacted fine levels
 - Transit Police have lost the ability to issue citations for fare evasion until the MBTA Board approves Regulations
- Staff conducted public engagement & presented regulations to the FMCB for a vote in Spring 2021, however the FMCB did not vote on the regulation during its term
- Staff conducted additional public engagement in June 2022 and has affirmed the fine level analysis
- Today, MBTA staff is seeking a Board vote to adopt the Regulation



Fare Enforcement in the Near Term

- By adopting the regulation, the MBTA will fill legal vacuum and return to baseline level of authority provided to Transit Police to issue warnings and citations
- Transit Police will again be authorized to issue citations
- MBTA is not currently planning to designate civilian fare inspectors prior to the launch of proof-of-payment
- In practical terms:
 - TPD will be issued new citation booklets with approved lower fine amounts
 - MBTA will take advantage of new online portal, called the *Citation Management Engine*, to track warnings and citations, and to allow riders to virtually manage payments and appeals
 - MBTA will begin issuing annual report on warning and citations
- The regulation establishes the basic legal framework upon which the MBTA can operationalize fare enforcement, now and in the future





Proposed Regulation

Regulatory Process & Timeline

- ✓ MBTA has filed draft regulation with the Secretary of State's office
 - ✓ MBTA held a public hearing and accepted public comment in April 2021
 - ✓ MBTA again accepted public comment and held a second hearing in June 2022
 - ✓ MBTA has incorporated public feedback into final draft of proposed regulation
 - ✓ Executive Office of Administration and Finance has approved the regulation
 - ✓ Presented to Subcommittee on Audit and Finance in November 2022
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- Once approved by the board, the final regulation is filed with the Secretary of State and will take effect after publication in the *Massachusetts Register*
 - With Board approval, the MBTA staff can update these regulations at any time



Citation Fine Levels

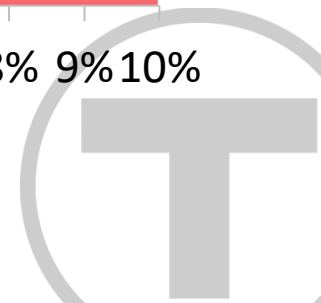
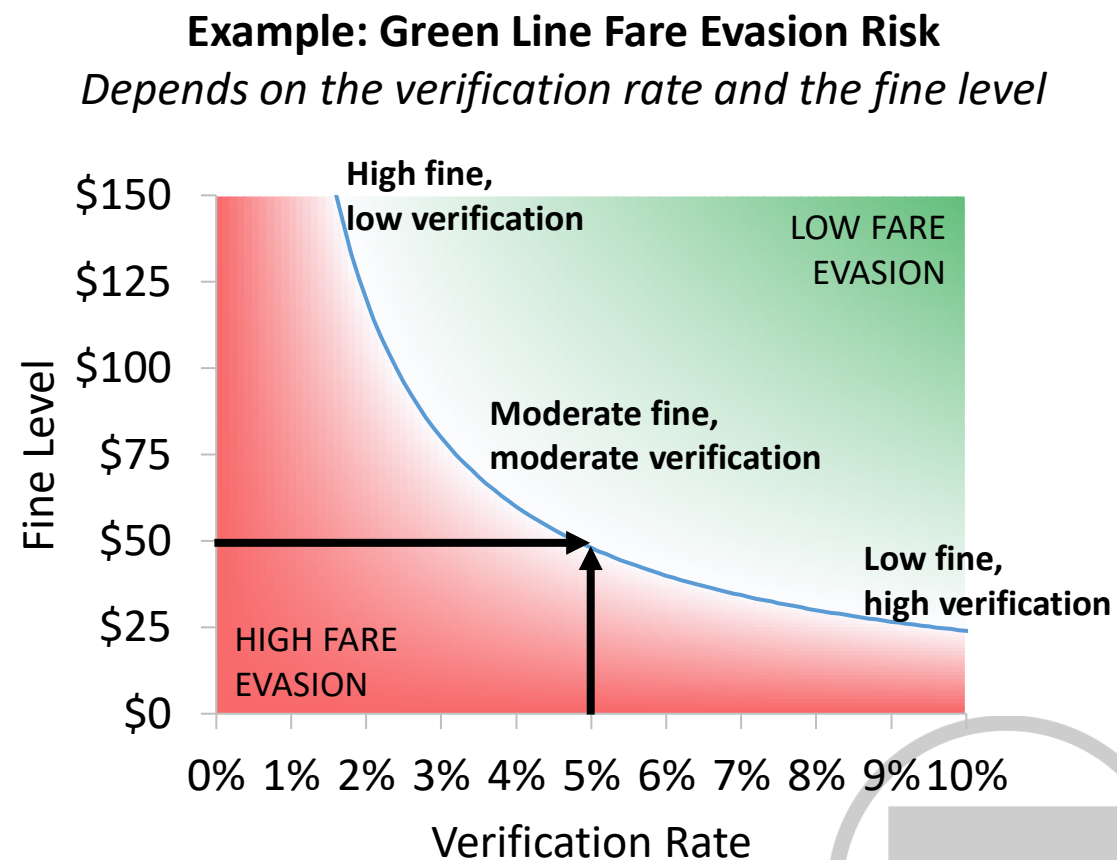
- We are proposing to cut fare evasion citation levels by more than half previous levels
 - ***Formal written warning prior to a citation****
 - First, second, and third citation would be \$50
 - Fourth and subsequent citation would be \$100
 - ***3 year reset period (rolling from date of warning/citation)****
- Fraudulent misuse of a reduced fare credential is a separate citation
 - ***Formal written warning prior to a citation****
 - First, second, and third citation would be ***\$75****
 - Fourth and subsequent citation would be ***\$150****
 - ***3 year reset period (rolling from date of warning/citation)****

****Updated from regulations submitted to FMCB in 2021***



Considerations in Setting Fine Levels

- Two variables can be adjusted to limit expected fare evasion:
 - **Fine Level:** Higher fines lower expected fare evasion, but also risk being **overly punitive**
 - **Verification Rate:** More frequent verification lowers expected fare evasion, but is also **costly**
- Expected fare evasion can be adjusted by changing the **balance** of these variables
 - High Fine + Low Verification
 - Moderate Fine + Moderate Verification
 - Low Fine + High Verification



Considerations in Setting Fine Levels

- Purpose of fare inspection and verification is to **support fare compliance**. The goal is to **preserve farebox revenue**, not to generate revenue from citations.
- MBTA wants to encourage fare compliance in a cost-effective manner without being overly punitive:
 - **High fine level with low cost of verification staff**: Most cost-effective way to limit fare evasion but this risks being overly punitive
 - **Low fine level with high cost of verification staff**: Requires a large verification team, which could cost more than the money saved in preserved fare revenue
 - **Proposal to strike a balance**: Fines between \$50-\$150 and a verification team with around 32 field staff
- Ultimately, these fines are among the lowest of our peer transit agencies whose fines range from \$50-\$300



Appeals and Hearings

- Person has **60 days** to:
 - **Pay the fine** as indicated, or
 - **Appeal the fine**
 - Riders may submit a **written appeal** or request a **hearing**
 - Requests may be made by mail or electronic means
 - MBTA has 60 days to respond to appeals, with explanations for denials
 - If a written appeal is denied, rider may then request a hearing
 - Hearings are informal & may be in-person or virtual
 - Decision of the Hearing Officer is final, but subject to judicial review
- MBTA Potential Dispositions:
 - MBTA may **fully grant, deny, or partially grant** an appeal
 - MBTA will create adjudication procedures; options for partially granted appeals will include **lowering the fine** level and/or providing **additional time to pay**
 - Appeal and waiver of fine may be requested on grounds of financial hardship



Annual Citation Report

- MBTA must issue an annual report concerning warnings and citations issues in the prior 12 months per statute
- MBTA will work with the Office of Performance Management and Innovation (OPMI) to develop content of the report



Public Comment & MBTA Response

Support for MBTA's removal of provision marking a driver's licenses for non-renewal

Riders emphasized the importance of the MBTA's decision to remove this provision from regulation.

A \$50 fare evasion fine is better than the previous \$100 fine but is still too high

We maintain that a \$50 fine is the best balance between reducing fine levels and maintaining an effective incentive for fare compliance. However, we have added a formal warning prior to any citation/fine, as well as a 3-year reset period for warnings and citations.

The MBTA should pursue low-income or free fares

The MBTA is exploring ways to enhance fare affordability, including options to implement a means-tested fare, should funding become available.

The MBTA should allow additional time for riders to resolve citations & alternative methods for resolution

The MBTA has increased the time to pay or appeal a citation from 30 days to 60.

The MBTA should aggressively control fare evasion

We believe our planned strategy will appropriately manage fare evasion without creating an unwelcoming environment or overly punitive set of policies.



Proposed Action

VOTED:

To approve the fare evasion regulations as presented in the document “703 CMR 5.00 MBTA Fare Evasion Regulations”.



Appendix



Fare Evasion Citation Amounts at Peer Agencies

Agency	Citation Amounts
King County Metro	\$50
BART	\$55-\$250
LA Metro	\$75
MTA	\$100
SFMTA	\$125
TriMet	\$75 - \$175
CTA	\$300



Statutory Obligations

Mass. Gen. Laws ch. 159, § 101(d): For the implementation of this section, the Massachusetts Bay Transportation Authority shall issue regulations regarding: (i) the nature and issuance of noncriminal warnings and citations; (ii) the collection of fines; (iii) fine amounts; (iv) penalties for failure to pay fines; (v) options for alternatives to resolve fines other than immediate payment in full; and (vi) the administration of appeal processes and hearings.

Mass. Gen. Laws ch. 161A, §5(q): [The Authority shall be obligated] [t]o promote, in consultation with the advisory board, maximization of fare revenue and nontransportation revenue, described herein, through reasonable and equitable fares, ridership growth, and transit-oriented development of land and air rights controlled by the authority.

