



MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Michael J. O'Brien, Presiding Judge
Nadine Robinson, Central Services Director

RE: Proposed expansion of court-ordered traffic diversions

DATE: August 10, 2015

After presenting our 2015 Annual Report in February, we have continued to evaluate the court's limited diversion program for minor traffic violations while exploring possible options for expansion. Based on our findings, we propose that Council consider broadening the court's existing programs as outlined below.

1: FY 2014-15 diversions: Of the 6,126 violations filed with the court, about 10% of defendants were offered diversion programs, including the Tigard Police Department's Distracted Driver Diversion Program (DDDP) for cellphone violations. This represents a small increase over previous years, reflecting the court's less restrictive eligibility requirements for the DDDP. The results show that a large majority of the 621 participants successfully completed all program requirements:

Completed successfully	80%
Noncompliant	14%
Pending	6%

Depending on the nature of each violation, defendants are referred to one of five traffic-safety classes, including the DDDP. Success rates are roughly comparable for all five programs.

The court dismisses the citations of those who successfully complete all conditions of diversion within the time permitted. A record of the conviction will not appear on a DMV driving record.

2. Tigard's DDDP: A large majority (62%) of all diversion participants were referred to the DDDP. The high participation rate reflects the less restrictive criteria for eligibility compared to other programs.

3. Current diversion program eligibility standards:

- Plea of "no contest"
- Ages under 18 or over 60, or cited for safety-belt or cellphone violations
- No convictions for any moving violations for the previous five years (two years for the DDDP)
- Payment of court diversion fee equal to 75% of the presumptive fine set by state law (\$120 for the DDDP)
- Class attendance and payment of the fee required by the provider (\$25 for the DDDP)
- All requirements completed within 90 days with no exceptions

4. Proposed expansion of eligibility for diversion:

- All defendants with no convictions for the previous five years (two years for the DDDP), regardless of age or the type of violation
- Most serious violations (Class A under state statute) excluded
- Certification that defendant has not participated in any other court-ordered diversion program during the past five years
- Payment of a court diversion fee based on the following matrix:

Class B	\$130 fee
Class C	\$80
Class D	\$55
- All requirements completed within 90 days with no exceptions

5. Administrative impacts: By our estimate, approximately 35-40% of all defendants would be eligible for an offer of diversion. We anticipate that a large majority of those defendants will choose to participate, requiring additional staff time to monitor compliance. At current caseload levels, the number of diversion cases could increase from 621 to approximately 2,200.

If increases in the court's overall caseload impose unsustainable workloads on staff, diversion criteria could be tightened by appropriate revisions to court rules. For example, the court could disqualify all defendants who committed work or school safety zone violations.

5. Fiscal impacts: The current diversion program is designed to be revenue-neutral in that all defendants pay the same amount to the court whether they participate in diversion or not. In addition, they must pay the costs required by the third-party provider of the classes.

The proposed fee matrix (above) reflects both the cost of administrative services and a proportionate sanction based on the level of violations.

As in the past, revenues from fines and diversion fees can vary substantially based on total caseload and the mix of violation types, which are subject to different presumptive fines by statute.

6. Effect of noncompliance with all requirements of diversion:

- A "guilty" finding and judgment (fine) will be entered
- Defendants will be required to pay the full presumptive fine for the violation class
- A record of the conviction will be forwarded to DMV for entry on defendant's driving record.

Example: A defendant who fails to complete Tigard's DDDP will be required to pay a judgment equal to the full presumptive fine (\$160) for a Class C violation, even if that defendant would have been eligible for a reduction at arraignment. The sanction will therefore be double the court's \$80 administrative fee for the DDDP program. We believe this structure will provide an additional incentive for defendants to timely complete all diversion requirements.

A draft resolution authorizing an expansion of the court's diversion programs has been prepared for Council's consideration.