



MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Michael J. O'Brien, Presiding Judge
Nadine Robinson, Court Manager

RE: 16th Annual Report from Tigard Municipal Court

DATE: February 17, 2015

We are pleased to present our 16th annual review of Tigard Municipal Court (TMC) operations and policies to Council and the City Manager. In addition to our annual review of caseload and other court activities, this year's report will focus on our continuing evaluation of court-supervised diversion programs and their possible expansion.

1. 2014 Caseload (Table 1): Last year the court adjudicated 6,675 violations, about 16% less than the average of the previous four years.

2014	6,675
2013	7,180
2012	9,105
2011	8,349
2010	7,028

Monthly fluctuations in court filings, from a high of 707 in July to a low of 426 in February, can have substantial impacts on case processing and scheduling by court staff. However, relatively slow months allow staff to catch up with trial dockets and case processing.

As in past years, the vast majority of the court's caseload consists of minor traffic violations under Chapter 811 of the Oregon Revised Statutes and Tigard ordinances. However, 2014 saw a significant shift in the three most common categories of violations compared to previous years:

Table 2 – Three most common violations (2013-14)		
Violation	2013 (%)	2014(%)
Speeding	3,048 (43)	2,369 (36)
Cellphone	545 (8)	1,044 (16)
Traffic control devices	860 (12)	712 (11)

While the number of speeding citations declined markedly in 2014, and the number of citations for traffic control devices remained roughly the same; cellphone violations nearly doubled. Other common violations included: Following too closely, Careless driving, Obstructing cross traffic, Safety belts, Turn and Passing lane violations, Expired registration, Insurance violations and Driver’s License offenses.

The large increase in cellphone violations appears to reflect evolving enforcement priorities and a growing focus on the impacts of distracted driving in Tigard and elsewhere, though statewide caseload data for 2014 is not currently available.

3. Disposition of cases by percentage in 2014:

Guilty by judge:	33%
Guilty by clerk:	35
Guilty by default:	14
Acquitted or dismissed:	5
Bond forfeiture:	2
Deferred/diversion:	9
Other:	2

4. Distracted Driver Diversion Program (DDDP): As stated in last year’s annual report, a major court goal for CY 2014 was to work with the Tigard Police Department in establishing and administering the DDDP to provide safety education for defendants who plead no contest or are convicted of cellphone violations and other offenses arising from inattentive driving.

The DDD program has been in operation for approximately six months and appears to be making a positive contribution to safety education. With a doubling in the number of cellphone violations during CY 2014, court referrals to the new program began and continued at a brisk pace through the last months of the year.

The court requirements for successful completion of the DDD program are strictly enforced. They include:

- A personal appearance at either arraignment or at the court counter to verify eligibility; the program is not offered by mail.
- No convictions for any moving violations for the previous two years.

- Payment of a court diversion fee of \$120 (an amount equal to the minimum fine under court rules) within 90 days.
- Proof of attendance at one of the monthly classes, taught by Tigard police officers, within 90 days.
- Payment of the police department's \$25 class fee within 90 days.

Upon completion of all requirements, the citation is dismissed and the record of a conviction is not forwarded to DMV. The two-year "lookback" rule was requested by TPD; it reflects a substantial reduction below our usual five-year lookback for diversion eligibility.

As of December 2014, 223 drivers had attended Tigard's DDDP. Of those, 83% were referred by the court. The attendance rate (95%) was impressively high. Based on our attendance at a recent class, the presentation by two Traffic Safety officers was quite effective and the large audience was attentive.

5. Existing diversion programs: In last year's report, we addressed the policy basis for diversion programs that have been offered to a small percentage (7% in 2014) of defendants who meet strict requirements similar to those described above. [Background information on policy issues from last year's report is provided in the attachment.] Before the creation of the DDDP last summer, diversion programs were aimed at those who could most clearly benefit from traffic safety education: teens, seniors, and safety-belt offenders. Classes for teens may reduce some of the effects of inexperience, while classes for seniors can enhance awareness of the effects of aging.

Unfortunately, we could find no recent large-scale studies that assess the long-term effectiveness of traffic safety programs in reducing recidivism and the overall number of collisions.

6. Diversion expansion option: Based on the success of the DDDP's expansion of eligibility standards and the policy considerations set forth in the attachment, the court recommends that Council consider a resolution formally adopting an expanded diversion program effective July 1, 2015. The program could have the following features:

- Any licensed driver with no moving violations or participation in a court diversion program for the previous five years would be eligible to participate. The criterion for the existing DDDP would remain unchanged at two years. Please note that holders of a commercial drivers' license are ineligible for diversion under state and federal law.
- Defendants would be required to appear at the scheduled arraignment and enter a "no contest" plea but the court would not enter a conviction or judgment unless the defendant failed to complete all diversion requirements within 90 days.
- Court diversion fee: Equal to 75% of the Presumptive Fine (the amount on the front of a citation) established by statute.
- Class: The court will refer defendants to a suitable program in its sole discretion, and the fee for that program must be timely paid to the provider.
- If a defendant fails to satisfy all requirements, the court will enter a "guilty" finding

and enter a judgment equal to the 75% of the Presumptive Fine. Any court diversion fee paid by the defendant will be converted into a judgment when a “guilty” finding is entered and the \$61 statutory assessment¹ will be forwarded to the Oregon Department of Revenue (ODR) as it is under existing practices.

5. Fiscal impact of expanded diversion programs: Based on a recent sampling, we assume that about 35-40% of our current traffic caseload will be eligible for an offer of diversion. Since fines are based on the four classes of violations (A-D) under Oregon law, the fiscal impacts will depend on the proportions of those classes in our caseload.

The administration of an expanded diversion program will require additional staff time to monitor compliance, though it could also reduce some costs (such as preparation of conviction abstracts for submission to DMV). The COT may recoup these costs by retaining the \$61 assessment as a court diversion fee. The full state assessment would be imposed and forwarded to the ODR if the diversion fee is converted to a judgment for noncomplying defendants.

By retaining the statutory assessment as part of the court diversion fee, the COT will realize additional revenue beyond the process currently in place. If 2,300 defendants complete diversion, for example, the court fee may generate about \$140,000 in additional revenue compared to the existing model.

If Council would like to proceed with the expanded diversion program, we can schedule another meeting to discuss a resolution well in advance of the projected implementation date of July 1st. The feasibility of continuing such a program from month-to-month will depend on such factors as caseload, administrative burdens, budgetary considerations, and any changes in relevant statutes during the current legislative session. The expanded program could easily be revised or discontinued at any time.

6. 2014 budget highlights: The court imposed fines and assessments totaling \$1,209,617; an 8% increase over 2013. Total collections for the year were \$1,083,821 with \$373,696 being paid to the state and county for mandatory assessments. A number of factors affect collection rates, including continuing installment payments for fines imposed in prior years, and ongoing monthly payments for fines imposed in 2014. For defendants who fail to appear for arraignment or trial, the court imposes the full presumptive fine and an additional 25% surcharge. If a case is sent to a collection agency, an additional 18% is added as permitted by state statute. Collection rates for defendants who are in default or fail to appear tend to be relatively low in all courts, distorting collection rates considerably.

7. New legislation: Several legislative measures that could affect municipal courts are under consideration early in the session, including one (Legislative Concept 2242) that would impose potentially burdensome reporting and auditing requirements relating to “caseload, fine revenue and other information.” Proposed Senate Bill 363 could limit nonstatutory fees

¹ The \$61 assessment or “replacement fine” appears to be comparable to a “user fee” reflecting an estimate of the cost of services provided to cities by state agencies such as DMV and the Department of Public Safety Standards and Training.

charged by courts. A third proposal would require all judges to be licensed members of the Oregon State Bar, but it would affect few jurisdictions because membership is already required by most city codes or charters (including Tigard's). The Oregon Municipal Judges Association (OMJA) will propose legislation and present testimony during the session in cooperation with the League of Oregon Cities and representatives of Oregon cities.

8. **Public information programs:** The court continues to actively provide public information on Oregon's legal system, court processes and traffic safety. The court has participated in the City's recent upgrade of its website by providing greater public access to extensive information about court rules and procedures. The judge's monthly "Rules of the Road" column in Cityscape is now in its 9th year, and it is regularly reposted on the court's website.

9. **Staff development:** The judge and Court Clerk Brenda Annis attended the Oregon Department of Transportation's Judicial Education Program in March. The judge also attended the annual conference of the OMJA in September, where he was elected to serve on its Board of Directors. Court clerks Chris Snodgrass and Morgan McFadden attended the annual conference of the Oregon Association for Court Administration.

In closing, we wish to again acknowledge the court staff's hard work and professionalism during 2014: Chris Snodgrass, Brenda Annis and Morgan McFadden.

Please let us know if you require any additional information.

Attachment: Policy basis for diversion programs

A. Overall court goals and judicial philosophy. When complaints are filed with the court by TPD or Code Enforcement officers, the court's first objective is to provide an impartial forum for adjudication in a fair, professional and efficient manner, consistently applying relevant statutes and ordinances. Where an offense has been committed, the court strives to: 1) Enter appropriate sanctions in order to deter subsequent offenses, taking into account individual circumstances to the extent allowed by law and workload constraints; and, 2) Provide education about public safety, relevant statutes and the legal process.

B. Traffic diversion programs: Oregon law confers broad authority on judges to resolve cases, including specific statutory authority under ORS 135.755 to dismiss a case "in furtherance of justice." But the court's policy towards traffic diversions is not, strictly speaking, just a legal question: it forms one component of the City's interactions with citizens and community goals in promoting traffic safety. Diversion programs could therefore be expanded or left in their present limited form.

TMC and many other Oregon courts have traditionally maintained diversion programs to educate defendants convicted of specified traffic violations. These programs generally allow citations to be dismissed upon completion of all requirements, with no record of a conviction transmitted to DMV.

Many defendants, aware of programs in other Oregon courts or other states, request "traffic school" at arraignment in order to prevent a conviction from appearing on their driving records. Under current criteria (as described in Section 5), however, the request is usually denied and the vast majority of TMC convictions are forwarded to DMV. A court offer of diversion is rarely declined.

C. Advantages of limited diversion programs currently in place:

- Complete driving histories are useful to courts in determining future sanctions and, potentially, to auto insurance companies in setting rates.
- Diversions "mask" convictions so they become, in effect, invisible to DMV's Driver Improvement Program (DIP) and to judges in other courts. The DIP restricts or suspends the driving privileges of those who receive multiple violations over an 18- to 24-month period. "Masking" convictions through multiple diversions could undermine the DIP's impact and prevent other judges from having access to a defendant's full driving history.
- By statute, participation in traffic diversion programs is not noted on DMV driving records, unlike diversions for Driving Under the Influence of Intoxicants. Defendants, in the worst case, could have multiple "invisible" convictions that do not appear on the DMV record after participation in one or more diversion programs in various courts. This risk could be greatly reduced by requiring defendants to sign declarations that they have not participated in other diversion programs during the applicable eligibility period.

D. Advantages of expanded diversion programs as proposed:

- Traffic schools like Tigard's DDDP and Legacy's "Trauma Nurses Talk Tough" are designed to educate drivers about safe driving and relevant laws that highway users are expected to obey, enhancing public safety and reducing recidivism.
- Eligible defendants pay a fee to the court equal to the fine they would otherwise pay, along with a fee for the class they will attend. If a defendant fails to successfully complete all requirements, the fee will be simply converted into a judgment, the \$61 state assessment will be imposed and the conviction will be forwarded to DMV.
- Diversion fees could be restructured by resolution to enhance general-fund revenues to compensate COT for additional costs incurred in monitoring compliance.
- Some drivers who might otherwise plead "not guilty" only to avoid having a conviction on their records may choose diversion instead, relieving pressure on the court's trial dockets.

E. Illustration of expanded diversion program: An adult defendant is cited for speeding (\$160 presumptive fine), appears for her scheduled arraignment and pleads "no contest." She is offered diversion when her record shows that she has had no moving violations for at least five years. Court staff refers her to a specific program and reviews all program requirements with her in detail. She is required to certify, by her signature, that she has not participated in any court-sponsored diversion programs for at least five years. Her citation will be dismissed if she does all of the following, with no exceptions: 1) pays a court diversion fee of \$120; 2) pays the class fee (typically \$25-75) to the provider within 90 days; and, 3) submits proof of attendance within the 90 days. If she fails to timely comply with all requirements, the \$120 diversion fee will be converted into a court judgment and the \$61 state assessment will be forwarded to the Oregon Department of Revenue. If the \$120 has not been paid in part or in full, the court can suspend defendant's right to drive and pursue the standard collections process.

(Adapted from the 2014 Annual Report)