

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
5	09/22/14	Open	Action	8/28/14

Subject: Amending and Restating Title XI and Title XII of the Sacramento Regional Transit District's Administrative Code Pertaining to Smoking Control to include Electronic Smoking Devices

ISSUE

Whether or not to: (1) repeal Ordinance 08-09-01; (2) repeal and restate Title XI of the Sacramento Regional Transit District Administrative Code Pertaining to Smoking Control; and (3) amend and restate Title XII of the Regional Transit Administrative Code Pertaining to the Laws and Rules for use of Light Rail, Bus Vehicles and Facilities to include Electronic Smoking Devices.

RECOMMENDED ACTION

- A. Adopt Resolution No. 14-09-____, Repealing Ordinance 08-09-01 and Amending and Restating Title XI of the Sacramento Regional Transit District's Administrative Code Pertaining to Smoking Control; and
- B. Adopt Resolution No. 14-09-____, Amending and Restating Title XII of the Regional Transit District's Administrative Code Pertaining to the Laws and Rules for Use of Light Rail, Bus Vehicles and Facilities.

FISCAL IMPACT

No fiscal impact as a result of this action.

DISCUSSION

Regional Transit has two existing policies pertaining to smoking: Title XI of RT's Administrative Code, which prohibits smoking by employees in the workplace, and Title XII of the Administrative Code, which prohibits smoking in vehicles, at stations, and at certain bus stops.

Neither policy address electronic smoking devices (also known as e-cigarettes). Although electronic smoking devices are considered less harmful to the users, the effects of the secondhand vapors are undetermined at this time. In RT's efforts to ensure a healthy environment for its employees and the public, changes to Title XI and Title XII are needed.

Staff is recommending that definitions of "Electronic Smoking Device," "Smoke," and "Smoking" be added to both Title XI and Title XII. The definitions would make clear that e-cigarettes are not permitted at RT workplaces, vehicles, stations, and certain bus stops.

Until 2008, Title XI of RT's Administrative Code was adopted and enforced through a resolution. For unknown reasons, when the policy was updated in 2008, it was adopted through an ordinance. Because Title XI applies only to employees and consequences of a violation are

Approved:

Presented:

Final 09/12/14

General Manager/CEO

Director, Facilities

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disciplinary in nature rather than an administrative penalty or criminal citation, Staff is recommending that the Ordinance be repealed and that Title XI be readopted through a resolution. Title XII has always been adopted through a resolution.

RESOLUTION NO. 14-09-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

September 22, 2014

**REPEALING ORDINANCE 08-09-01 AND AMENDING AND RESTATING TITLE XI OF
THE SACRAMENTO REGIONAL TRANSIT DISTRICT ADMINISTRATIVE CODE
PERTAINING TO SMOKING CONTROL**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, Ordinance 08-09-01 is hereby repealed.

THAT, Title XI of the Sacramento Regional Transit District Administrative Code,
Pertaining to Smoking Pollution Control is hereby approved as set forth in Exhibit A.

THAT, the General Manager /CEO is hereby authorized and directed to enforce the
rules set out in Title XI.

PHILLIP R. SERNA, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

**SACRAMENTO REGIONAL TRANSIT DISTRICT
ADMINISTRATIVE CODE**

TITLE XI – SMOKING POLLUTION CONTROL

CHAPTER 1

GUIDELINES

§11.101 Purpose

This Title is enacted pursuant to the provisions of the California Indoor Clean Air Act of 1976 (California Health & Safety Code § 118875 et seq.) and the California Smoke-Free Workplace Act of 1994 (California Labor Code § 6404.5) for the purpose of restricting and regulating smoking in places of employment under RT's control to reduce the hazards smoking causes to those involuntarily exposed thereto, and to prohibit smoking within the workplace for the protection of employees who are involuntarily exposed to secondhand smoke.

§ 11.102 Definitions

- a. **RT Employment** – “RT Employment” means the carrying on of any trade, enterprise, project, industry, business, occupation, or work, or any process or operation in any way related thereto while in the employ of RT.

- b. **Electronic Smoking Device** - The term "Electronic Smoking Device" means an electronic or battery operated device that delivers vapors for inhalation. This term includes every variation and type of such device whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.

- c. **Enclosed Area** – “Enclosed Area” means all space between a floor and ceiling that is served by a common heating, venting and air conditioning system and is enclosed on all sides by solid walls or windows (exclusive of door, bays, or passageways) that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling or are not solid, “office landscaping,” or similar structures.

- d. Place of Employment – “Place of Employment” means any place and the premises appurtenant thereto, where RT Employment as defined herein is carried on.
- e. Office – “Office” means an area enclosed by four walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building leased or owned by RT containing such enclosures, whether or not the building is used primarily for other RT purposes, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures.
- f. Members of the General Public – “Members of the General Public” means patrons and other invitees of RT; and excludes RT employees, sales representatives, service repair persons, and persons delivering goods, merchandise or services to RT.
- g. Smoke – “Smoke” means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.
- h. Smoking – “Smoking” means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette or an operating electronic smoking device; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

§ 11.103 Smoking Prohibited

- a. Smoking is prohibited in all hallways, stairways, elevators, escalators, restrooms, lobbies, reception areas, offices, and waiting rooms within RT Offices or Enclosed Areas that are occupied by one or more employees, whether or not Members of the General Public are admitted to, pass through, congregate, or are served in said areas.
- b. Smoking is prohibited in all cars, trucks, buses, light rail cars, or other motor vehicles owned, operated or controlled by RT and used by RT Employees in the course of RT Employment.

- c. In outdoor areas owned or controlled by RT, smoking is prohibited within 20 feet of any entrance, exit, or air intake vent to any Place of Employment or Office, except if the individual is passing on the way to another destination. For purposes of this section, entrance or exit means an opening into a building from a contiguous street, sidewalk, alley, and walkway or parking area and “air intake vent” means an opening into a building that draws air from the outside as part of a building ventilation system.

- d. In outdoor areas not owned or controlled by RT, RT Employees should refrain from smoking within 20 feet of any entrance, exit or air intake vent to any Place of Employment, except if the individual is passing on the way to another destination. For purposes of this section, entrance or exit means an opening into a building from a contiguous street, sidewalk, alley, and walkway or parking area and “air intake vent” means an opening into a building that draws air from the outside as part of a building ventilation system.

§11.104 Posting

Smoking is prohibited in the locations specified in Sections 11.103(a) – (d) hereinabove, regardless of whether such locations have a “No Smoking” sign posted. Smoking is prohibited at the locations specified in Section 11.103(e) only if the outdoor location is posted with a “No Smoking” sign with letters not less than one inch in height or with the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

All persons are presumed to know the prohibitions contained herein respecting smoking. Thus, the absence of any “No Smoking” sign or alternative symbol required under this Title does not excuse a violation of this Title perpetuated by smoking or otherwise constitute a defense to any proceeding commenced for the purpose of enforcing the provisions of this Title against prohibited smoking.

RESOLUTION NO. 14-09-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

September 22, 2014

**AMENDING AND RESTATING TITLE XII OF THE REGIONAL TRANSIT DISTRICT'S
ADMINISTRATIVE CODE PERTAINING TO THE LAWS AND RULES FOR USE OF
LIGHT RAIL, BUS VEHICLES AND FACILITIES**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, Title XII of the Regional Transit Administrative Code Pertaining to the Laws
and Rules for use of Light Rail, Bus Vehicles and Facilities is hereby approved as set forth
in Exhibit A.

THAT, the General Manager /CEO is hereby authorized and directed to enforce the
laws and rules set out in Title XII.

PHILLIP R. SERNA, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

**TITLE XII OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT
ADMINISTRATIVE CODE**

**LAWS AND RULES
FOR USE OF LIGHT RAIL AND BUS
VEHICLES AND FACILITIES**

12.111 General

Permission to use the Sacramento Regional Transit District's light rail and bus vehicles and facilities shall be deemed to be conditioned on observance and compliance with these Laws and Rules, as amended from time to time, in addition to any other rules and regulations hereafter promulgated by RT pertaining to use of light rail and bus vehicles and facilities. All rights and privileges, expressed or implied, for use of said vehicles and facilities are revocable and cancelable by and upon the breach of these Laws and Rules, or of the violation of other applicable federal, state and local laws and ordinances while in or upon said vehicles or facilities.

12.112 Definitions

The following terms as used herein shall have the following meaning:

- A. Applicable Fare – “Applicable Fare” means the price established as set forth in the RT Fare Structure as a condition of carrying one person on any Vehicle for one ride on fixed route service.
- B. Bicycle – “Bicycle” means a non-motorized vehicle built with one or more wheels, a steering handle, at least one saddle seat, and pedals by which it is propelled.
- C. Board – “Board” means to enter any Vehicle for the purpose of being transported on fixed route service.
- D. Bus – “Bus” means a motor vehicle operated by RT for the transportation of persons with a minimum capacity of ten people, including the Operator.
- E. Citation – “Citation” means a written notice to appear at a hearing in court at the date, time and place specified in the written notice and the promise of the person signing the notice to appear at such hearing.

- F. Designated Passenger Loading Zone – “Designated Passenger Loading Zone” means the area within a seven-and-a-half foot (7.5) radius of the edge of the door opening of a Bus or Light Rail Car.
- G. Electric Personal Assistive Mobility Device – The term “Electric Personal Assistive Mobility Device” (“EPAMD”) means a self-balancing non-tandem two-wheeled device, that can turn in place, designed to transport only one person, with an electric propulsion system averaging less than 750 watts (1 horsepower), the maximum speed of which, when powered solely by a propulsion system on a paved level surface, is less than 12.5 miles per hour. This definition shall include a Segway®.
- H. Electronic Smoking Device – The term “Electronic Smoking Device” means an electronic or battery operated device that delivers vapors for inhalation. This term includes every variation and type of such device whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.
- I. Facility – “Facility” means any or all personal and real property, equipment, fixture, rights, structure or interest owned, maintained or operated by RT for the operation of RT’s bus and light rail system.
- J. Fare – “Fare” means the price charged to transport a person, including the person’s incidental baggage, as set forth in the RT Fare Structure.
- K. Fare Structure – “Fare Structure” means the charges adopted by the RT Board of Directors for RT fixed route Bus and Light Rail transit service as set forth in Resolution No. 05-08-0143 and as it may be amended or restated from time-to-time.
- L. Inspector – “Inspector” is defined as a person regularly employed by RT as a Transit Officer or Supervisor whose duties include enforcement of one or more the following: *Penal Code* Sections 640 and 640.5, *Public Utilities Code* Section 99170, *Vehicle Code* Sections 22521 and 22656, Section 4 of RT Ordinance No. 03-04-02, and, subject to approval by any city or county through which RT’s Bus or Light Rail passes, the parking provisions set out in *Vehicle Code* Section 22500 and the parking ordinances of such city or county.
- M. Light Rail or Rail Car – “Light Rail” or “Rail Car” means a passenger compartment for public transportation that is operated by RT over fixed rails, with a coupler at either end of the passenger compartment in order to allow one Rail Car to be coupled to another.

- N. Operator – “Operator” means the person who drives or is in actual physical control of a Vehicle.
- O. Proof of Fare Payment – “Proof of Fare Payment” means evidence in a person’s possession that he or she has paid the Applicable Fare before riding in a Vehicle. The evidence of payment must be valid throughout the duration of the ride pursuant to the provisions of RT’s Fare Structure.
- P. RT – “RT” means the Sacramento Regional Transit District.
- Q. Rule – “Rule” means an authoritative, prescribed direction for conduct.
- R. Smoke – “Smoke” means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is human inhalation of gases, particles or vapors. Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.
- S. Smoking – “Smoking” means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette or an operating electronic smoking device; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.
- T. Stroller/Utility Cart – “Stroller/Utility Cart” means a wheeled device designed to carry children and/or goods.
- U. Vehicle – “Vehicle” means a Bus or Light Rail owned or operated by RT, which is used to transport persons on fixed route service.

12.113 Agreement

The use of any Vehicle shall constitute an agreement by the person using the Vehicle to: (1) pay the Applicable Fare as set forth in the RT Fare Structure; (2) have evidence of payment of the Applicable Fare in his/her possession while Boarding, occupying, riding, using, or Disembarking any Rail Car; (3) exhibit Proof of Fare Payment upon demand of an RT Inspector; and (4) abide by the conditions set forth in these Rules and Regulations.

12.114 Prohibited Conduct

- A. *Laws*: Any of the following is an infraction punishable in the manner set forth in the code section or ordinance, as applicable:

1. Any act prohibited under *Penal Code* Section 640(b). For the purpose of *Penal Code* Section 640(b)(4), smoking, eating, or drinking is prohibited in a Vehicle except that a person in a Vehicle may drink a non-alcoholic beverage if that beverage is kept in a container that is designed to be spill-proof or spill-resistant when drinking from the container, and the person only drinks from the container when the spill-proof or spill-resistant feature is being used properly. Additionally, smoking is prohibited within any RT Facility where a “no smoking” sign is posted. Signs will be posted at entrances to stations (where there is a logical or natural entrance) and near other signs identifying Rules and Laws for using the transit system.
 2. Any act prohibited under *Penal Code* Section 640.5.
 3. Any act prohibited under *Public Utilities Code* Section 99170, provided that RT provides reasonable notice to the public of the activities prohibited by this Section and the penalties for violations of those prohibitions.
 4. Any act set out in RT Ordinance No. 03-04-02, Prohibiting Specified Acts Committed in or on RT Vehicles or Facilities, as amended or amended and restated from time to time.
 5. As set out in *Vehicle Code* Sections 22521 and 22656, it is unlawful for any person to park a vehicle on RT’s Light Rail track or within seven and one-half feet of the nearest rail.
 6. Parking a vehicle in violation of *Vehicle Code* Section 22500 or the parking ordinances of a city or county which has authorized RT Inspectors to enforce its parking ordinances, including but not limited to, parking a vehicle at designated bus and/or light rail loading zones or on RT property that is posted as a no-parking area, as set out in any existing or future memoranda or understanding between RT and any city or county through which RT’s Bus or Light Rail passes.
- B. *Rules:* The following activities are prohibited on or in: (a) any Vehicle, because such activities interfere with passengers’ privacy and/or with the safe, pleasant, convenient and efficient provision of transit services; and (b) the Designated Passenger Loading Area within any Facility, because such activities interfere with the safe boarding and alighting of persons into or from a Vehicle:
1. Boarding a Vehicle with an EPAMD, except in the following circumstances: (1) if the person is disabled and uses the EPAMD

as a mobility device and, in such event, the EPAMD must be stored only at the wheel chair tiedown location in the Vehicle; or (2) a non-disabled person may Board a Rail Car with an EPAMD if the person uses the steps to Board the Rail Car and stows the EPAMD in the space reserved for Bicycles.

2. Placing one's feet on the seat of a Vehicle or placing any article on such seat which would leave grease, oil, paint, dirt, or any other substances on the seat.
3. Boarding a Vehicle unless the passenger is clothed, including footwear.
4. Occupying seats designated for seniors and the disabled, unless the person meets the definition of senior or disabled person as set forth in RT's Fare Structure.
5. Transporting animals unless: (a) the animal is a guide, service, or signal animal which has been specially trained to assist persons with disabilities and is on a leash or under the control of the person transporting it; or (b) the animal is in a completely enclosed and secured cage or carrying case which is small enough to fit on the person's lap and the animal does not otherwise endanger or annoy other persons.
6. Riding in a Vehicle with a Stroller/Utility Cart unless, prior to Boarding, the children or goods are removed and the Stroller/Utility Cart is folded and/or stored so that it does not block the aisle or the areas reserved for persons in wheelchairs or who use mobility aids.
7. Soliciting money from other persons.
8. Discarding litter or trash in or upon a Vehicle or Facility unless placed in a trash receptacle.
9. Posting, distributing or displaying any sign, advertisement, circular, handbill, or other written material;
10. Exhibiting or displaying any object or merchandise for sale;
11. Offering or soliciting the sale or lease of any commercial service;
12. Performing ceremonies, or making speeches or orations;
13. Affixing a sign, placard, notice, declaration or appeal of any kind or description; or

14. Attempting to ride or riding on a Bus with a wheelchair that is capable of being secured by the securement system installed on that Bus without permitting such securement of the wheelchair.

12.115 Enforcement Procedures

- A. Procedures for the enforcement of violations of *Penal Code* Sections 640 or 640.5, *Public Utilities Code* Section 99170 or RT Ordinance 04-08-01, Prohibiting Specified Acts Committed in or on Vehicles or Facilities, as amended or amended and restated from time to time, shall be in accordance with all applicable Sections of the *Penal Code* including, without limitation, Sections 836.5, 853.5, and 640(b)(11). The General Manager/CEO may issue standard operating procedures for this purpose.
- B. Upon observing an act in violation of Section 12.114, paragraph B, the RT Inspector shall request compliance if the violation can be immediately remedied by the person. If the person refuses to comply with the directive of an RT Inspector, or if the violation cannot be immediately remedied, the RT Inspector may do any or all of the following:
 1. Ask the person to leave RT's Vehicle or Facility. If the person refuses to leave, eject the person using as little force as is necessary at the closest established Light Rail Platform or Bus Stop Boarding Area, as directed in a written policy of the General Manager/CEO. (Civil Code Section 2188).
 2. Confiscate the person's RT identification card and return to the person his or her monthly pass sticker, if any, on the card. The RT Inspector shall issue the person passes or tickets which are valid for three days or for the number of days left in the month measured from the date of confiscation of the RT identification card, whichever is less.
 3. New Identification Card – Notwithstanding the foregoing, in no event shall the petitioner be prohibited from purchasing a new RT identification card upon payment of the fee as established under the RT Fare Structure.

12.116 Posting/Publication

The General Manager/CEO is hereby authorized and directed to post in Vehicles, at appropriate RT Facilities, and in RT's Bus and Light Rail Timetable Book the provisions set out in Section 12.114, paragraphs A and B.

12.117 Hearing Procedures

If an RT Inspector confiscates a person's RT identification card, the person (petitioner) is entitled to an administrative hearing to determine whether there was sufficient cause for the confiscation in accordance with the procedures set out below.

- A. Petition for Hearing – The petitioner may request an administrative hearing in person or by telephone by contacting either RT's Director of Transportation or an RT Transportation Superintendent.

- B. Time Limitations – The petitioner may request an administrative hearing within three (3) days from the date of confiscation. Failure to request a hearing or an extension within said three-day period shall be deemed an admission that the confiscation of the person's RT identification card was proper because the person violated a provision of Section 12.114, paragraph B.

- C. Time Extension – If the petitioner is unable to appear in person at an administrative hearing within three days from the date of confiscation, then within said three-day period he or she may request an extension. An extension shall be granted if the petitioner provides sufficient reason(s) regarding his or her inability to appear or to present witnesses and/or evidence within the three day period. If the petitioner requests an extension in person and such extension is granted, the petitioner shall be entitled to receive passes or tickets which are valid until the date of the hearing or for the number of days left in the month of the confiscation, whichever is less.

- D. Location – All petitions for a hearing or a time extension shall be submitted at RT's administrative offices located at 1400 29th Street, Sacramento, California, on weekdays, excluding holidays, between the hours of 8:00 am and 4:30 pm. Hearings shall be held at the same place and times.

- E. Hearing Officer – All hearings shall be conducted by either RT's Director of Transportation, an RT Transportation Superintendent, or their designee.

- F. Time and Date of Hearing – The hearing shall be held on the day the petitioner requests a hearing if a Hearing Officer is available. If a Hearing Officer is not available, another date and time that is convenient for the petitioner shall be set for the hearing. In such event, the petitioner shall be entitled to receive passes or tickets which are valid until the day of the hearing or for the number of days left in the month of the confiscation, whichever is less.

- G. Hearing Procedures – The Hearing Officer shall meet with the petitioner and discuss the basis on which the RT Inspector confiscated the RT identification card. The RT Inspector’s Incident Report shall be submitted as evidence supporting the confiscation of the petitioner’s RT identification card. The petitioner shall be given an opportunity to present and/or witnesses supporting his or her position.

- H. Decisions – The Hearing Officer shall make a decision based on the testimony and other evidence in the record at the conclusion of the hearing. The decision of the Hearing Officer shall be final. The decision shall be made orally and the Hearing Officer shall not be required to prepare a written decision unless the petitioner requests a written decision at the end of the hearing. If the Hearing Officer finds in favor of the petitioner, his or her RT identification card shall be returned. If the petitioner’s identification card cannot be located, RT shall issue another identification card at no cost. If the Hearing Officer finds that the RT Inspector confiscated the petitioner’s RT identification card for good cause based on violation of a provision set out in Section 12.114, paragraph B, the petitioner’s RT identification card shall not be returned.

- I. New Identification Card – Notwithstanding the foregoing, in no event shall the petitioner be prohibited from purchasing a new RT identification card upon payment of the fee as established under the RT Fare Structure.