

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
5	10/26/15	Open	Action	10/15/15

Subject: Whether to Waive the First Reading to Ordinance 15-11-01, Amending the Prohibited Acts Ordinance (15-06-02)

## ISSUE

Whether to Waive the First Reading to Ordinance 15-11-01, Amending the Prohibited Acts Ordinance (15-06-02) to Modify the Provisions Related to Penal Code Section 640.

## RECOMMENDED ACTION

Motion: Waive the First Reading of an Ordinance Amending Ordinance No. 15-06-02, Prohibiting Specified Acts Committed in or on RT Vehicles or Facilities, to Modify the Provisions Related to Penal Code Section 640.

## FISCAL IMPACT

None as a result of this action.

## DISCUSSION

In June 2015, the Board of Directors took action to adopt a new ordinance Prohibiting Specified Acts Committed In or On RT Vehicles or Facilities (“Prohibited Acts Ordinance”). Included in the Prohibited Acts Ordinance is a list of activities prohibited under Penal Code Section 640, which fall into two categories:

- (1) Conduct that is per se criminalized, without the need for further action by the transit agency; and
- (2) Conduct that is criminalized only if the transit agency has taken the additional step of adopting a prohibition (examples would include prohibitions related, smoking, or eating and drinking). In these instances, adoption of the prohibition elevates the conduct to a criminal act.

On October 10, 2015, Governor Brown signed Senate Bill (S.B.). 413, which amended Penal Code 640. Subsection 640(b)(2), relating to sound equipment. Previously, the subsection prohibited “(2) Disturbing another person by loud or unreasonable noise.” To enforce this subsection, Police Services was required to identify another patron(s) that was “disturbed” by the noise and willing to lodge a complaint.

S.B. 413 significantly broadens the prohibition on noise so that it includes “(2) Playing unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise.”

Approved:

Presented:

Final 10/20/15

General Manager/CEO

Timothy Spangler, Chief Counsel

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In addition, S.B. 413 allows transit agencies to enforce, as an infraction, “the act of failing to yield seating reserved for an elderly or disabled person” if the Board enacts an ordinance to that effect after a public hearing on the issue.

Staff is recommending that the Board amend the Prohibited Acts ordinance to include the broadening of the prohibition on sound equipment and the criminalization of a failure to yield reserved seating.

In addition, during the process of amending the Prohibited Acts Ordinance, the prohibition on open containers of alcohol on system vehicles and facilities was inadvertently moved from the section identifying Penal Code 640 violations to the section identifying Public Utilities Code Section 99710 violations.

While RT can legally regulate open containers of alcohol under either section, Staff feels this issue is more appropriately addressed through RT’s specific authority to regulate eating and drinking under Penal Code Section 640 than under the general authority under Public Utilities Code Section 99170 to adopt prohibitions relating to the safety and security of transit passengers. Consequently, Staff is recommending that the alcohol prohibitions be relocated within the Ordinance.

## ORDINANCE NO. 15-11-01

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

November 9, 2015

### AMENDING ORDINANCE 15-06-02 PROHIBITING SPECIFIED ACTS COMMITTED IN OR ON RT VEHICLES OR FACILITIES

WHEREAS, pursuant to *Penal Code* Section 640, *Public Utilities Code* Sections 99170, 102107 and 102122 and *Vehicle Code* Section 21113, RT may prohibit specified acts in or on RT's vehicles and facilities; and

WHEREAS, on June 8, 2015 RT adopted Ordinance No. 15-06-02, Repealing Ordinance No. 07-06-01 and Adopting a New Ordinance Prohibiting Specified Acts Committed in or on RT Vehicles or Facilities ("Prohibited Acts Ordinance"); and

WHEREAS, this Board desires to amend Ordinance No. 15-06-02 to modify the provisions related to *Penal Code* Section 640.

NOW, THEREFORE, the Board of Directors of the Sacramento Regional Transit District do ordain as follows:

#### **Section 2: Authority**

This amendment to Ordinance 15-06-02 is adopted pursuant to *Public Utilities Code* Section 102122 and *Penal Code* Section 640.

#### **Section 4: Prohibited Conduct**

Subsection 4.A of Ordinance 15-06-02 is amended to read in its entirety as follows:

- A. Any act prohibited under *Penal Code* Section 640, including the following:
  1. Eating or drinking in or on a system facility or vehicle in areas where those activities are prohibited by that system. 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. Both possession and consumption of any cup, bottle, can or other receptacle containing any Alcoholic Beverage that has been opened, or a seal broken, or the contents of which have been partially removed, are prohibited in Facilities and Vehicles.
  2. Playing unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise.

3. Smoking in or on a system facility or vehicle in areas where those activities are prohibited by that system. Smoking is prohibited in all Vehicles and within any Facility where a “no smoking” sign is posted. Signs are 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.
4. Expectorating upon a system facility or vehicle.
5. Skateboarding, roller skating, Bicycle riding, roller blading, or operating a motorized scooter or similar device, as defined in Section 407.5 of the Vehicle Code in a system facility, vehicle, or parking structure. This paragraph does not apply to an activity that is necessary for utilization of the transit facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a Bicycle or transporting a Bicycle aboard a transit vehicle, if that activity is conducted with the permission of the transit agency in a manner that does not interfere with the safety of the bicyclist or other patrons of the transit facility.
6. Sale or peddling of any goods, merchandise, property, or services of any kind whatsoever on the facilities, vehicles, or property of the public transportation system, if the public transportation system has prohibited those acts and neither the public transportation system nor its duly authorized representatives have granted written consent to engage in those acts.
7. Evasion of the payment of a fare of the system. For purposes of this section, fare evasion includes entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining valid fare, in addition to entering a transit vehicle without valid fare.
8. Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.
9. Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting. In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.
10. Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.
11. Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle.

12. Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.
13. Willfully blocking the free movement of another person in a system facility or vehicle. This paragraph shall not be interpreted to affect any lawful activities permitted or First Amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.
14. Willfully tampering with, removing, displacing, injuring, or destroying any part of any facility or vehicle of a public transportation system.
15. Failing to yield seating reserved for an elderly or disabled person.

Subsections 4.C.6.b and 4.C.6.f of Ordinance 15-06-02 are hereby deleted; the remaining sections and section numbering are unaffected by this deletion.

### **Section 3: Severability**

This Ordinance shall be liberally construed to effectuate its purposes. The provisions of this Ordinance are severable. If any of the provisions, clauses, sentences, sections, subsections, words, or portions thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such portion shall be deemed, to the maximum extent possible, a separate, distinct, and independent provision, so that such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, subsections, words or portions of this Ordinance or their application to other persons or circumstances. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect the remaining portions of this Ordinance.

### **Section 4: Effective Date**

This Ordinance will become effective 30 days after the date of its passage.

### **Section 5: Ordinance Publication**

Within 15 calendar days after adoption, the Secretary is hereby directed to publish this Ordinance in full in a newspaper of general circulation published within RT's activated boundaries.

Passed and adopted at a regular meeting of the Sacramento Regional Transit District on the 9<sup>th</sup> of November, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
JAY SCHENIRER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
CINDY BROOKS, Assistant Secretary