

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
10	11/14/16	Open	Action	11/08/16

Subject: Waiving First Reading of Ordinance 16-12-01, Establishing an Administrative Penalty for Juvenile Fare Evasion

## ISSUE

Whether to Waive the First Reading of Ordinance 16-12-01, Establishing an Administrative Penalty for Juvenile Fare Evasion.

## RECOMMENDED ACTION

Motion: Waive the First Reading of Ordinance 16-12-01, Establishing an Administrative Penalty for Juvenile Fare Evasion

## FISCAL IMPACT

RT will incur costs associated with the administrative process, primarily for Notice of Fare Evasion tracking and for conducting hearings for challenges to Notice of Fare Evasions. Under Public Utilities Code Section 99580(c)(5), all fare evasion penalties must be deposited in the general fund of the county in which the Notice of Fare Evasion was issued. Consequently, the costs of the administrative process must be paid out of RT's operating revenues, unless RT can negotiate an agreement with the County for revenue sharing.

However, the alternative would be that RT has no avenue to penalize juvenile for failure to pay fare, with the likely result that fare evasion would increase among those under 18.

## DISCUSSION

Senate Bill 882, signed by the Governor and effective January 1, 2017, adds a new subsection (g) to Penal Code Section 640, specifying that minors may not be charged with either an infraction or misdemeanor for: (1) evasion of the payment of a fare; (2) misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare; or (3) 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.

The section permits transit agencies to adopt an administrative penalty for fare evasion by minors under the terms and conditions specified in Public Utilities Code section 99580.

Consequently, Staff is recommending that the Board adopt an ordinance providing for administrative enforcement of juvenile fare evasion. The penalty amount would initially be set at \$35, subject to later modification by the Board (the statutory maximum is \$250 for a first or second violation, \$450 for a third or subsequent violation.) As required by statute, the ordinance specifies the manner and method for challenging an administrative Notice of Fare Evasion.

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Approved:

Presented:

Final 11/09/16

General Manager/CEO

Norm Leong, Chief of Police Services

J:\Board Meeting Documents\2016\19 November 14, 2016\Juvenile Fare Citation.docx

ORDINANCE NO. 16-12-01

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

December 12, 2016

**ESTABLISHING AN ADMINISTRATIVE PENALTY FOR JUVENILE FARE EVASION**

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT DO ORDAIN AS FOLLOWS:

**SECTION 1: Intent and Authority.**

This Ordinance establishes an administrative penalty for the following fare evasion acts by Minors:

- (1) Evasion of the payment of a fare of the system.
- (2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.
- (3) Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155, and posted system identification policies when entering or exiting a system station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

This Ordinance authorizes RT staff, security contractors, and other designated persons to issue a Notice of Fare Evasion for the above violations, and establishes administrative procedures for contesting the issuance of an administrative Notice of Fare Evasion.

This Ordinance is adopted pursuant to California Public Utilities Code Section 99580 and following, which provides for civil penalties and the establishment of administrative procedures for fare evasion and passenger conduct violations.

**SECTION 2: Definitions.**

The following definitions pertain to terms utilized in this Ordinance:

- A. Administrative Hearing means a hearing process with respect to a Notice of Fare Evasion, conducted in accordance with the procedures specified herein, initiated by a timely written request of a person dissatisfied with the results of the Initial Review.
- B. Appeal means the action taken by a person seeking review of a Notice of Fare Evasion by the Superior Court.
- C. Challenger means a person contesting the validity or accuracy of a Notice of

Fare Evasion.

- D. Initial Review means the initial Notice of Fare Evasion review process, initiated by a timely request, and conducted by the Issuing Agency staff.
- D. Issuing Agency - means the agency that issues a Notice of Fare Evasion pursuant to this Ordinance.
- E. Minor – means an individual who has not reached his or her 18<sup>th</sup> birthday at the time a Notice of Fare Evasion is issued.
- F. Processing Agency means either of the following: (A) the agency issuing the notice of fare evasion and the notice of delinquent fare evasion penalty; or (B) the party responsible for processing the notice of fare evasion and the notice of delinquent violation, if RT enters into a contract for a third party to process Notices of Fare Evasion.
- G. RT - means the Sacramento Regional Transit District.

### **SECTION 3:            Process for Issuance of Notice of Fare Evasion**

#### **3.01    Persons Authorized to Issue a Notice of Fare Evasion.**

The General Manager/CEO may designate persons, including agents and employees of RT, who are authorized to issue Notices of Fare Evasion pursuant to this Ordinance. RT may contract with a third party, including another public agency, to issue and/or process a Notice of Fare Evasion, provided that RT will continue to process Notice of Fare Evasion appeals.

#### **3.02    Issuance of Notice of Fare Evasion**

A. A Notice of Fare Evasion must include:

- (1) the violation, including reference to the ordinance setting forth the administrative penalty,
- (2) the date of the violation,
- (3) the approximate time the violation occurred;
- (4) the location where the violation occurred;
- (5) a printed statement indicating the date payment is required to be made; and
- (6) the procedure for contesting the notice.

B. The notice must be served by personal service upon the violator. When a notice of fare evasion has been served, the person issuing the notice must file the notice with the processing agency.

C. If, after a notice of fare evasion is issued pursuant to this section, the issuing officer determines that there is incorrect data on the notice, including, but not limited to, the date or time, the issuing officer may indicate in writing on a form attached to the original notice the necessary correction to allow for the timely entry of the corrected notice on the processing agency's data system. A copy of the correction must be mailed to the

address provided by the person cited at the time the original notice of fare evasion was served.

## **SECTION 4: Notice of Fare Evasion Enforcement Procedures**

### **4.01 Schedule of Penalties**

Notice of Fare Evasion	<b>\$ 35.00</b>
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Late payment penalties of ten dollars for each thirty (30) days of delinquency will apply.

The Schedule of Penalties may be amended by Resolution of the RT Board of Directors.

### **4.02 Administrative Adjudication Procedure**

#### **A. Purpose**

The purpose of the procedures specified below is to provide a fair and thorough process for review, both at the administrative level and in the form of a hearing when requested, of a Notice of Fare Evasion issued by RT.

#### **B. Application of Time Limitations**

Within this procedure there are various time limitations established for presentation of certain requests, including but not limited to requests for initial review, requests for administrative hearing, and requests for copies of documents. For purposes of this procedure, the specified time limitations are jurisdictional. Untimely requests will be rejected. Waivers will not be issued. No person has authority to waive, or otherwise grant exceptions to a specified time limitation.

#### **C. Procedures.**

The Administrative Adjudication Procedure encompasses two sequential stages of review available to a person wishing to contest a Notice of Fare Evasion:

1. Initial Review; and
2. Administrative Hearing.

### **4.03 Initial Administrative Review**

#### **A. Initiating Initial Review**

1. Timeliness. A request for Initial Review must be made within 21 days from the issuance of the Notice of Fare Evasion.

2. **Manner of Making Request.** The request for an Initial Review may be made by written request, telephone, or in person.

**B. Written Statement of Reasons**

A Challenger must provide RT a written statement of the reasons for contesting the Notice of Fare Evasion. The statement of reasons must be made on a form provided by RT. If the request for an Initial Review is made by telephone, RT staff may transcribe the reasons on to the form based on the telephone conversation. If the statement of reasons is not timely provided by the Challenger within 21 days, the request for an Initial Review will be rejected, and the Challenger will have no further rights to an Administrative Hearing or any further review.

**C. Investigation**

Upon receipt of a timely request for an Initial Review and the required statement of reasons, RT will commence an investigation of the Notice of Fare Evasion and the circumstances surrounding its issuance. If, following the Initial Review, RT is satisfied that the violation did not occur or that extenuating circumstances make dismissal of the administrative penalty appropriate in the interest of justice, RT will cancel the notice. RT will advise the Processing Agency, if any, of the cancellation.

**D. Notification to Challenger**

RT or the Processing Agency will mail the results of the Initial Review to the Challenger. If, following the Initial Review, cancellation of the notice does not occur, the agency mailing the results must include a reason for that denial, notification of the ability to request an administrative hearing, and notice of the procedure for requesting a waiver of prepayment of the penalty based upon inability to pay. Service of the results will be complete upon placement of the results in the United States mail, postage paid.

**4.04 Administrative Hearing**

**A. Initiating the Administrative Hearing Process**

1. **Timeliness.** A Challenger dissatisfied with the results of the Initial Review may then request an Administrative Hearing. A request for an Administrative Hearing must be made within 21 days of mailing the results of the Initial Review.

2. **Requirements for Perfecting Administrative Hearing.** A request for an Administrative Hearing may be initiated by phone, mail or in person. In addition, the following requirements must be satisfied within the 21-day time period:

- a. The Challenger must deposit with Customer Advocacy the full amount of the fare evasion penalty or submit a request for waiver of the deposit requirement due to inability to pay.

b. The Challenger must indicate the Challenger's preference for a hearing by mail or in person.

c. The Challenger must provide a written statement specifying the reasons for contesting the Notice of Fare Evasion. If the request for an Administrative Hearing is made by phone, RT staff may transcribe the statement of reasons from the verbal explanation provided by the Challenger.

d. If different than the record address contained in RT's records, the Challenger must specify the address of the Challenger for purposes of mailing notices of hearing and other documents in connection with the appeal.

If the Challenger fails to satisfy any one or more of the above requirements within 21 days of mailing of the results of the Initial Review, the request for an Administrative Hearing will be rejected as untimely.

### **3. Exceptions to Penalty Deposit Requirement**

a. Inability to pay. Pursuant to Public Utilities Code Section 99581, RT is required to establish a procedure for Challengers desiring to establish their inability to deposit the full amount of the fare evasion penalties. A Challenger must provide verifiable and substantial proof of his or her inability to deposit the full amount of the penalty.

## **B. Notice of Hearing**

Within 21 days from the Challenger making a timely request for an Administrative Hearing, RT will send the Challenger a notice of hearing by first class mail. The notice will specify the date and time of hearing, and the place where the hearing will take place,. An Administrative Hearing will be held within 90 calendar days following the receipt of a request for an Administrative Hearing (unless a continuance is requested by the Challenger).

## **C. Continuances**

### **1. Requests Made Prior to Date of Hearing**

A Challenger may, in writing or otherwise, request that RT reschedule the hearing if the request is made at least 24 hours prior to the hearing. RT will grant one continuance not to exceed 21 calendar days.

## **D. Hearing Procedures**

### **1. Procedural Matters.**

a. Appearances. The person issuing the Notice of Fare Evasion is not

required to appear at the hearing. The Challenger should appear at the hearing, unless a hearing by mail has been requested. If the Challenger does not appear at the hearing, the matter will be decided by the hearing officer based on the Notice of Fare Evasion, the record of the Initial Review, and any other relevant material in the record, taking into account the reasons specified by the Challenger in the appeal request form.

b. Hearing Officers. The hearing will be conducted by a fair and impartial hearing officer(s) appointed by RT's General Manager/CEO to act in that capacity. In addition to any other requirements of employment, a hearing officer must demonstrate those qualifications, training, and objectivity prescribed by the General Manager/CEO as are necessary and consistent with the duties and responsibilities set forth in this section. The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fare evasion penalties imposed by the hearing officer.

c. Hearing Record. The hearing officer will write pertinent information into the record during the in-person hearing. The hearing record, and any supporting documentation will remain with the case file. If the hearing officer's decision is appealed to the Superior Court, the entire case file will be forwarded to the court. The hearing records for those cases not appealed to the Superior Court will be retained by RT for one year.

d. Representation. The Challenger may, in his or her discretion, be represented by an attorney in the process, including but not limited to the contest hearing. Representation will be at the sole and exclusive cost of the Challenger. No Challenger is entitled to representation at the expense of RT, or any other public agency, irrespective of indigency status.

## **2. Conduct of the Administrative Hearing.**

a. Hearing Officer Duties. At the commencement of the hearing, the hearing officer will:

i. Make a pre-hearing statement, briefly explaining the nature of the civil proceedings, the manner of conducting the hearing and the limits on the introduction of evidence, the process of rendering a decision, the effects of the decision in terms of collection remedies available to RT, the right of the Challenger to appeal to the Superior Court for a de novo hearing, and any other matters in the hearing officer's discretion;

ii. Read the Notice of Fare Evasion into the record;

iii. Administer an oath to the Challenger and any prospective witnesses;

iv. Record the name and address of the Challenger.

b. Proof Requirements - Validity of Notice of Fare Evasion.

i. Burden of Proof. RT bears the burden of proof, by a preponderance of the evidence, that the Notice of Fare Evasion meets statutory requirements for validity.

ii. Prima Facie Case. If the Notice of Fare Evasion, or a copy thereof, contains all of the items specified in Public Utilities Code Section 99580 the Notice of Fare Evasion and such information will be prima facie evidence of the facts contained therein, and of the fare evasion violation. RT is not required to produce any other information to establish the fare evasion violation.

iii. Rebuttal. The Challenger may introduce credible relevant rebuttal evidence relating to the validity or accuracy of the Notice of Fare Evasion.

c. Proof Requirements - challenger's Defenses.

i. Burden of Proof - Defenses. The Challenger bears the burden of proof, by a preponderance of the evidence, that although the Notice of Fare Evasion is facially valid, a viable defense exists that would preclude the Challenger's liability for the fare evasion penalty.

ii. Defenses - Merits of Notice of Fare Evasion. Defenses relating to the merits of the Notice of Fare Evasion must be established by the Challenger by credible evidence. Personal reasons, inconvenience, lack of funds, forgetfulness, failure to observe signs, lack of knowledge of the applicable restrictions, and similar or related matters are not under any circumstances a defense to liability for the fare evasion penalties.

d. Evidence.

i. Rules of Evidence. The rules of evidence for civil court proceedings do not apply in hearings conducted pursuant to this procedure. Evidence relevant to the issues raised by the Challenger's statement of reasons, and to the validity of the Notice of Fare Evasion itself will be received. Determinations of credibility of evidence are committed to the sound discretion of the hearing officer.

ii. Form of Evidence. Other than the Notice of Fare Evasion, the hearing officer will receive into the record the record from the Initial Review, together with relevant testimony, documentation and other material submitted by a party. Credibility determinations, together with determinations as to the weight to be assigned to evidence, are committed to the sound discretion of the hearing



officer. The hearing officer may, but is not required to, admit evidence in the form of declarations of witnesses, submitted by the Challenger.

e. Witnesses. The Challenger may present witnesses in support of the Challenger's contentions. The hearing officer, after conducting the preliminary procedures of the hearing, may exclude witnesses until their turn to testify occurs. The hearing officer may limit the number of witnesses in the interest of preventing cumulative or repetitive testimony.

f. Cross-Examination by Hearing Officer. The hearing officer may conduct such cross-examination of the Challenger or any witness, as in the hearing officer's sole and exclusive discretion is warranted under all of the circumstances.

### **3. Decisions.**

a. Basis for Decision. The hearing officer shall make a decision on liability for fare evasion penalties based on the testimony and other evidence in the record.

b. Following a determination by the hearing officer that a person committed the violation, the hearing officer may allow payment of the fare evasion penalty in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion penalty in full. The hearing officer may permit the performance of community service in lieu of payment of the fare evasion penalty.

c. Disposition. The hearing officer shall enter the disposition on the hearing record, and enter the total amount of the fare evasion penalties and the payment schedule, if applicable, or, alternatively, the community service requirements. The decision, including the rationale therefore, will be placed in written form.

c. Delivery of Decision to Challenger. The written decision will be sent to the Challenger via first class mail.

d. Finality. The decision will be the final decision of RT's Hearing Officer. The decision will set forth the time limits for the challenger to file for judicial review in the Sacramento County Superior Court, and a notice that if no such review is sought within the applicable time limitation, the decision will be final for all purposes.

#### **4.05 Judicial review**

Within 30 days after the mailing or personal delivery of the final decision described in Section 4.04, the Challenger may seek judicial review by filing an appeal to Sacramento County Superior Court. The review will be conducted in accordance with the provisions of California Public Utilities Code Section 99582.

#### **4.06 Copies of Notice of Fare Evasions**

Upon request, RT will provide a copy of a Notice of Fare Evasion to any person who has received a notice of delinquent fare evasion violation, or to his or her agent, upon request made by mail or in person. The copy will be provided within 15 days of the request. The copy can be one produced by any reasonable means available to RT, including printed representation of computer information.

#### **SECTION 5: Severability**

This Ordinance must be liberally construed to effectuate its purposes. The provisions of this Ordinance are severable. If any of the provisions is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such portion will be deemed, to maximum extent possible, a separate, distinct, and independent provision, so that such illegality, invalidity, unconstitutionality, or inapplicability does 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 will not affect the remaining portions of this Ordinance.

#### **SECTION 6: Effective Date**

This Ordinance shall become effective thirty (30) days after the date of its passage.

#### **SECTION 7: Ordinance Publication**

Within fifteen (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 12<sup>th</sup> day of December 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
JAY SCHNEIRER, Chair

ATTEST:

HENRY LI, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary