

Ordinance No. 2017- 2

AN ORDINANCE OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT TO REQUIRE PERSONS INSIDE THE PAID AREA OF BART TO PROVIDE PROOF OF PAYMENT

WHEREAS, the San Francisco Bay Area Rapid Transit District has a substantial interest in collecting fares from riders utilizing BART as a means of transportation; and

WHEREAS, fare evasion constitutes a significant annual financial loss to the San Francisco Bay Area Rapid Transit District; and

WHEREAS, payment is collected from riders as they exit the system; and

WHEREAS, once inside there is currently no means to determine if riders have lawfully entered the transit system; and

WHEREAS, Public Utilities Code Section 28793 authorizes the Board to pass ordinances; and

WHEREAS, Public Utilities Code Section 28793 authorizes the Board to do any and all things necessary to carry out the purposes of the District; and

WHEREAS, the Board has determined that the adoption of this ordinance is necessary to maintain the financial stability of the District;

NOW THEREFORE, be it enacted by the Board of Directors of the San Francisco Bay Area Rapid Transit District: (Public Utilities Code Section 29795)

SECTION I. Ordinance No. 2017-2 of the San Francisco Bay Area Rapid Transit District is hereby adopted and made a law of the District as follows:

Section 1. Findings and declaration.

The San Francisco Bay Area Rapid Transit District Board of Directors finds :

The annual loss of revenue due to evasion of the payment of a fare while riding BART justifies the adoption of reasonable regulations to ensure compliance with fare payment requirements. It is the intention of this ordinance to reduce fare evasion and the revenue loss due to fare evasion, which causes a financial burden to the District that otherwise must be addressed through other revenue sources. If voluntary fare compliance fails, this ordinance authorizes BART Police to act to fulfill this ordinance's objectives.

## Section 2. Definitions.

The following words and phrases, whenever used within this ordinance and this chapter, shall be construed as defined in this section:

**Exit coded:** The term "exit coded" means a ticket programmed with sufficient value for the minimum BART fare and which has been used in a BART fare gate to enter the BART system. Exit coded tickets remain valid for a limited period of time as designated by the BART fare schedule.

**Fare:** The term "fare" as used herein means the current passenger fare structure as approved by the Board of Directors.

**Ticket:** The term "ticket" as used herein is intended to include Clipper Cards, BART magnetic stripe tickets, BART-issued voucher or pass, or other fare media as otherwise authorized by BART.

**Paid Area:** The demarcated areas within the BART system accessible only to people with a valid ticket (or other approved fare media) processed for entry via a fare gate or by a station agent. The "paid area" includes; the area of the station concourse enclosed by barrier walls and fare gates, any concourse to platform elevators which access train platforms, the train platforms, and train cars.

**Proof of Payment:** The term "proof of payment" means the valid ticket medium that may be requested from any individual upon entry to, or anywhere within the paid area.

**Section 3. Prohibition on being in the paid area or on a train without a valid exit-coded ticket.**

No individual may enter into or exit from the paid area of a BART Station other than through the use of a BART ticket at the fare gates.

- (a) Individuals in the paid area of the station or on a BART train are required to present a valid exit-coded BART ticket when requested by the District. Individuals who fail to present proof of payment shall be in violation of this ordinance. This violation is an infraction.
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance. This violation is an infraction.

## Section 4. Preemption.

Nothing in this ordinance shall be interpreted or applied so as to create any power, duty, or obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by Federal or State law, the provisions of this ordinance shall not apply if the Federal or State

law is more restrictive toward the practices, activities, and/or uses banned herein. If it is determined that a provision included herein becomes preempted by Federal or State law, that preempted provision shall be automatically rescinded from this ordinance. Such rescission shall not affect the validity of the remaining portions of this ordinance.

## Section 5. Penalty for Violation

Violation of this ordinance shall be an infraction, which may result in the following:

### 5.1 Civil Administrative Citation

Public Utilities Code Section 28766 authorizes the BART Board of Directors to regulate its transit facilities including the fixing of charges and the making and enforcement of rules for or in connection with any transit facility owned or controlled by the District. The imposition of civil administrative penalties are a typical type of charge imposed by governments to serve a regulatory purpose and to facilitate the recovery of governmental expenses incurred as a consequence of a rule violation. A civil administrative citation shall be the preferred first option, as opposed to a criminal citation.

Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within a 12 month period, will be assessed an administrative penalty not to exceed one hundred and twenty dollars (\$120) or may be required to perform up to 8 hours of community service.

Juveniles who fail to show proof of payment in the paid area or on a train will be assessed an administrative penalty not to exceed sixty dollars (\$60) or may be required to perform up to 8 hours of community service.

Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

### 5.2. Criminal Infraction Citation

- (a) Upon a third proof of payment violation within any 12 month period for an adult, a peace officer will issue a criminal citation to the adult.
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance and are subject to a criminal citation.

Any person found to be in violation of this ordinance upon a criminal citation shall be guilty of an infraction, and may be punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment.

Section 6. Statutory Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 7. Liberal Construction

It is the intention of the Board of Directors that this Chapter shall be liberally construed to accomplish its remedial objectives and to be compatible with Federal and State enactments.

SECTION II. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared unconstitutional or invalid.

SECTION III. This ordinance shall be and the same is hereby declared to be in full force and effect on January 1, 2018 and shall be published once following said passage, with the names of the Directors voting for or against the same, in a newspaper of general circulation published in the Counties of the District.

In regular session of the Board of Directors of the San Francisco Bay Area Rapid Transit District introduced on the 12th day of October, 2017, and finally passed and adopted this 26th day of October, 2017 by the following vote:

The foregoing Ordinance was made at the motion of

Director Keller and seconded by

Director Blalock and adopted by the following votes of the Board

AYES - 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman.

NOES – 0.

ABSENT-0.

ABSTAIN-0.

WHEREUPON, the President declared the above and foregoing ordinance duly adopted and SO ORDERED.

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President, Board of Directors

ATTEST:

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Kenneth A. Duron, District Secretary

# Proof of Payment Ordinance



**BOARD OF DIRECTORS MEETING  
OCTOBER 26, 2017**

# What is Proof of Payment?

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- **Proof of Payment means that passengers must present valid fare media, anywhere in the paid area of the system, upon request by authorized transit personnel.**

# Why Proof of Payment

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- **Estimated Revenue Annual Loss: \$15M - \$25M**
  - At least \$6M loss supported by data
  - Another \$9M - \$19M likely
- **Currently, enforcement can only occur at “barrier” locations**
  - BPD must directly observe OR
  - Employee or rider must:
    - Witness and be willing to place offender under Citizens Arrest and
    - BPD must be nearby and
    - Offender must be contacted
- **In short, without proof of payment, fare evaders are only concerned at the brief moments when they are sneaking in or out**



# Who Else Uses Proof of Payment?

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## California

- SMART
- San Francisco MTA
- Santa Clara VTA
- Sacramento RTA
- Los Angeles MTA
- ACE
- Caltrain
- San Diego Trolley

## Other States

- Dallas Area Rapid Transit
- Baltimore Light Rail
- Buffalo Metro Rail
- Charlotte LYNX
- Cleveland Red Line Heavy Rail
- St. Louis Metro Link
- Seattle Sounder Commuter Rail and Central Link Light Rail
- Portland Tri-Met
- NJ Transit Hudson Bergen & River Lines
- Houston Metro Rail
- Denver RTD Rail

# Who Uses BOTH Proof of Payment & Station Barriers?

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- SEPTA Philadelphia City Center stations
- Los Angeles MTA Purple and Red Lines
- Greater Cleveland RTA Red Line
- Montreal Metro
- BC Transit, Vancouver SkyTrain

# Proof of Payment Protocol

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- Inspections will be fair and non-biased.
- Police Officers and/or CSO's will perform inspections within the paid area of the stations and on board non-crowded trains.
- Inspections will progress from one person to the next closest person, not skipping any persons in between.
- Officers will activate mobile video recorders to record proof of payment inspections.

# Proof of Payment Citations

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## ● Citations:

- A civil administrative citation will be issued to adults for a first or second violation within any 12 month period.
- A criminal infraction citation will be issued to adults who have received two or more civil citations within the past 12 months.
- Juveniles will only receive civil administrative citations for a proof of payment violation.
- Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance and subject to a criminal citation.

# Fines and Penalties

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- Civil citations processed through existing civil parking citation process
  - Includes an appeals process.
- Civil citation fines structured to be affordable:
  - Adults = \$75 (ordinance maximum is \$120)
  - Minors = \$55 (ordinance maximum is \$60)
  - Community Service Option
    - All minors
    - Adults with household income at or below 250% of the Department of Health and Human Services Federal Poverty Guideline
- Criminal infraction citations are processed through traffic court, with the penalty limited to paying a fine or performing community service (no jail time).

# Civil Citation/Community Service Eligibility

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- Enrollment letter showing current eligibility for any federal, state, or local government assistance program:
  - CalFresh (Food Stamps)
  - CalWorks (Temporary Assistance for Needy Families)
  - Medi-Cal (State's Medicaid)
  - WIC (Special Supplemental Nutrition Program for Women, Infants, and Children)
  - SSI/SSP (Supplemental Security Income/State Supplementary Payment)
  - Head Start
  - Low-income housing assistance
- Most recent pay stubs covering one month period
- Most recent federal tax return
- Wages and tax statement (W-2 or 1099)
- Self-employment ledger documentation
- Most recent stubs from unemployment benefits, disability benefits, social security retirement benefits, etc.
- Letter from school financial aid office, displaying need-based aid

# Community Service Option Eligibility Guidelines

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	Annual Poverty Guidelines		Monthly Poverty Guidelines	
Household/ Family Size	100%	250%	100%	250%
<b>1</b>	\$12,060	\$30,150	\$1,005	\$2,513
<b>2</b>	\$16,240	\$40,600	\$1,353	\$3,383
<b>3</b>	\$20,420	\$51,050	\$1,702	\$4,254
<b>4</b>	\$24,600	\$61,500	\$2,050	\$5,125
<b>5</b>	\$28,780	\$71,950	\$2,398	\$5,996
<b>6</b>	\$32,960	\$82,400	\$2,747	\$6,867
<b>7</b>	\$37,140	\$92,850	\$3,095	\$7,738
<b>8</b>	\$41,320	\$103,300	\$3,443	\$8,608
<b>9</b>	\$45,500	\$113,750	\$3,792	\$9,479
<b>10</b>	\$49,680	\$124,200	\$4,140	\$10,350

# Enforcement Audits

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- **Quarterly audits of enforcement demographics**
  - Age
  - Gender
  - Race
  - Location
- **To ensure that enforcement activities are fair and unbiased, officer body camera videos will be randomly selected for analysis and reporting on a monthly basis.**
- **The Office of the Independent Police Auditor will have access to review and conduct spot checks.**



# Reporting to the Board of Directors

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- **Six months after implementation, BART Police will report numbers of the following:**
  - Proof of Payment contacts
  - Civil administrative citations
    - ✦ Requests for community service
    - ✦ Delinquent payments
  - Repeat offenders
  - Criminal citations

# Education & Outreach

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- **Media Events**
- **In Stations and On Train Signage**
- **Multi-lingual Station Announcements**
- **Decals and Tents on Faregates**
- **Floor Decals**
- **Platform Train Destination Sign Messaging**
- **Discuss During Rebuilding BART Presentations**

# Implementation

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- Ordinance becomes effective January 1, 2018
- One month grace period
  - Warnings in lieu of citations for first time violations.
- Initiate issuance of citations on February 1, 2018