

**ORDINANCE NO. 2
PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA**

ESTABLISHING ADMINISTRATIVE PENALTIES, FEES, AND HEARING PROCEDURES FOR PASSENGERS RIDING CALTRAIN WITHOUT PROPER FARES AND PROOF OF PAYMENT

THIS ORDINANCE is adopted with reference to the following facts and circumstances which are found and declared by the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB).

WHEREAS, Caltrain commuter rail service passengers do not pass through barriers or gates before boarding, which would require evidence of fare payment and fare validation prior to boarding, and the absence of which led to the JPB to institute a proof-of-payment (POP) fare enforcement system requiring patrons to carry a valid form of fare media to prove that they have paid their proper fares for each trip; and

WHEREAS, California Penal Code Section 640 provides that fare evasion and the misuse of any ticket or pass with the intent to evade fare payment is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and/or by community service for a total time not to exceed 48 hours for the first and second violations; and

WHEREAS, California Penal Code Section 640 further provides that fare evasion and the misuse of any ticket or pass with the intent to evade fare payment is a misdemeanor punishable by a fine not to exceed four hundred dollars (\$400) and/or by imprisonment in a county jail for a period of not more than 90 days for the third and any subsequent violations; and

WHEREAS, California Penal Code Section 830.14 permits the JPB to appoint designated persons to act as its agents in the enforcement of the fare evasion provisions of Penal Code Section 640, following required training; and

WHEREAS, pursuant to JPB Resolution 2003-35, the Executive Director designated conductors employed by Caltrain's contract operator, currently Transit America Services, Inc. (TASI), and Transit Police, provided by a contract with the San Mateo County Sheriff's Office, to act as Fare Enforcement Agents by performing random inspections for POP and issuing citations that are through the superior courts; and

WHEREAS, California Public Utilities Code Section 99580, et seq. permits the JPB to enact an ordinance to impose administrative penalties for fare evasion in addition to the criminal penalties listed above; and

WHEREAS, the JPB has found that enforcing POP violations exclusively through the superior courts creates challenges for the JPB and patrons that could be diminished by

an administrative citation process for first and second time offenses, with both administrative and criminal citations being issued only to adult patrons; and

WHEREAS, the Executive Director requests, and the Staff Coordinating Council recommends, that the Board adopt an administrative citation and civil infraction process as an additional enforcement mechanism that is an alternative to the issuance of criminal citations for first and second-time fare evasion offenses.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Peninsula Corridor Joint Powers Board as follows:

SECTION 1. GENERAL PROVISIONS

1.01 STATEMENT OF PURPOSE; FINDINGS

- (a) The Peninsula Corridor Joint Powers Board finds that there is a need for an administrative method of enforcement for violations of the Caltrain fare requirements, also known as "fare evasion," as authorized by California Penal Code Section 640(e) and California Public Utilities Code Section 99580 et seq.
- (b) The proof-of-payment (POP) fare enforcement procedures and penalties set forth in this Ordinance Establishing Administrative Penalties, Fees, And Hearing Procedures For Passengers Riding Caltrain Without Proper Fares and Proof of Payment are in addition to any other criminal, civil or other legal or equitable remedy established by law for fare evasion.
- (c) The JPB hereby finds and determines that the implementation of this Ordinance, and related enforcement of Caltrain's POP system, is a matter of safety and security for Caltrain patrons and the general public, and of financial responsibility on the part of the JPB.
- (d) Pursuant to California Penal Code Section 640(e) and California Public Utilities Code Section 99580 et seq., the JPB adopts this Ordinance to achieve the following goals:
 - 1. To supply the public with a high-quality, safe, and efficient transportation system that enhances the quality of life to Caltrain patrons;
 - 2. To increase fare compliance with and adopt procedures to identify, deter and penalize fare evasion in a timely, efficient and fair manner;
 - 3. To minimize the expense and delay where existing remedies available through the criminal court system are costly and time-consuming for all parties involved.

1.02 TITLE. This Ordinance Establishing Administrative Penalties, Fees, And Hearing Procedures For Passengers Riding Caltrain Without Proper Fares and Proof of Payment is known and cited as the "Administrative Citation Ordinance" and referred to herein as "this Ordinance."

SECTION 2. DEFINITIONS.

- (a) **Adult** means a person aged 18 years old or older
- (b) **Caltrain facility** means all Caltrain property.

- (c) **Caltrain vehicle** means all Caltrain train cars.
- (d) **Days** means calendar days unless specified otherwise.
- (e) **Fare Enforcement Agent** means a conductor, fare inspector, or other authorized Caltrain employee or contractor.
- (f) **Fare** means the monetary charges established by the JPB, detailed in the Caltrain Codified Tariff, for the use of Caltrain facilities and vehicles.
- (g) **Fare Media** means the methods by which fares are paid, issued by or on behalf of Caltrain for the payment of fare.
- (h) **JPB** means Peninsula Corridor Joint Powers Board.
- (i) **Minor** means a person aged 17 years old or younger.
- (j) **“Passenger”, “patron”, “customer”, and “rider”** mean any person in, on, using, or attempting to access a Caltrain facility or vehicle.
- (k) **Person** means an individual, firm, partnership, corporation, association, or company.
- (l) **Third-Party Processing Agent** refers to an agent designated by the JPB to process notices of violations, collect administrative penalties, administer review and appeals processes, and perform other related tasks.
- (m) **Transit America Services, Inc. (TASI)** is the JPB's current contract operator of the Caltrain commuter rail service.

SECTION 3. FARES RULES.

3.01 Required Fares. Patrons who ride Caltrain must pay all applicable fares for each trip on Caltrain, as established by the JPB Board of Directors or its delegee, and as set forth in the Codified Tariff.

3.02 Proof of Payment. Patrons must carry and show appropriate proof of payment on Caltrain facilities and vehicles upon request by a Fare Enforcement Agent, peace officer or JPB representative.

3.03 Fare Evasion. Evading payment of fares is prohibited under California Penal Code Section 640(c), California Public Utilities Code Section 99580, et seq. and this Ordinance. Fare evasion subject to penalty hereunder includes the following:

1. Entering a Caltrain vehicle without adequate fare media.
2. Misuse of a Caltrain pass, ticket, or token with the intent to evade the payment of adequate fares.
3. Duplicating, counterfeiting, altering, or transferring any nontransferable Caltrain fare media without Caltrain's authorization.
4. Falsely representing oneself as eligible for a waiver or a special or reduced fare, or obtaining fare media by making a false or misleading representation.
5. Unauthorized use of a discount ticket or failure to present, upon request by Fare Enforcement Agents, peace officers or JPB representative or within 72 hours thereafter, acceptable proof of discount eligibility to use a discount ticket.
6. Entering a Caltrain vehicle or facility when any penalty, fees or assessments for prior fare evasion is past due.
7. Entering a Caltrain vehicle in such a way as to bypass or avoid Caltrain representatives collecting fares.

SECTION 4. ENFORCEMENT.

4.01 Violations - Adults. An adult patron who evades fares in violation of this Ordinance is subject to a Notice of Violation administrative citation and subsequent imposition of any and all applicable remedies, fines, criminal sanctions, damages, and penalties set forth in this Ordinance and otherwise available by law. The administrative citation process is not available to patrons with two prior fare evasion citations.

4.02 Exemption for Minors. This Ordinance does not apply to minors.

4.03 Notice of Violation. Upon determination that an adult has committed a violation Penal Code section 640(c)(1)-(3), and that the violation is the patron's first or second such violation, a JPB Fare Enforcement Agent or peace officer will issue a Notice of Violation. Each Notice of Violation issued under this Ordinance for administrative enforcement of Penal Code Section 640(c)(1)-(3) will include:

1. The date, approximate time, and day of the week of the violation;
2. The violation number;
3. The Caltrain patron's First Name, Middle Initial, and Last Name;
4. The Caltrain patron's Address and Date of Birth;
5. The Caltrain patron's Driver License Number or other government-issued identification;
6. Caltrain patron's descriptors;
7. A reference to this Ordinance and the section of the Ordinance violated;
8. The Administrative Penalty amount (\$75.00);
9. The location where the violation occurred, including whether the citation was issued on a train and, if so, the train number and cab number of the train ridden by the patron without the proper fare;
10. The nearest Caltrain station to where the violation occurred, and the county in which the violation occurred;
11. The name and Identification of the issuing Fare Enforcement Agent or peace officer;
12. The signature of the patron;
13. The date when payment is required;
14. Available payment options;
15. Directions on the Initial Review Process; and
16. Directions on the Administrative Hearing Process.

SECTION 5. ADMINISTRATIVE PENALTY AND FEES FOR 1st AND 2nd OFFENSES.

5.01 Administrative Penalties. Upon issuance of a Notice of Violation pursuant to Section 4.03 of this Ordinance, an administrative penalty of \$75.00 will be imposed.

5.02 Payment of Penalties. A person who is issued a Notice of Violation under this Ordinance must pay the associated administrative penalty or contest the notice within 21 days of issuance. Penalties may be paid online, in person, or by mail.

5.03 Late Payment. Failure to make a required payment, or contest a notice, within 21 days from issuance of the Notice of Violation may result in an additional penalty of \$25.00. If the JPB uses a collection service or enlists assistance from the Franchise Tax Board to collect administrative and late penalties, the person who was issued the Notice of Violation may be required to pay an additional \$30.00.

The JPB or designated Third-Party Processing Agent will mail at least one reminder notice to all patrons with late, unpaid penalties upon expiration of the 21-day payment period. The notice will demand payment for the uncollected amount and associated late penalty amounts, and provide information on payment options including addresses and methods of payment.

Patrons with unpaid penalties after 90 days from mailing of the first reminder notice will be sent a delinquency notice indicating the JPB's intent to pursue collections.

5.04 Inability to Pay. Patrons who owe \$200 or more in administrative penalties and late payments, and who provide satisfactory evidence of an inability to pay the amounts owed, may apply to pay in installments or by deferred payment, or perform community service in lieu of payment.

SECTION 6. INITIAL REVIEW. Patrons are entitled to seek an Initial Review of any Notice of Violation administrative citation following a process including all of the following steps:

1. Within 21 calendar days from the issuance of the Notice of Violation, a person may request an initial review of the violation by the JPB or designated Third-Party Processing Agency.
2. The request may be made by telephone, in writing, online or in person.
3. There is no charge for this review.
4. If, following the initial review, the JPB is satisfied that the violation did not occur or that extenuating circumstances make dismissal of the Notice of Violation appropriate in the interests of justice, the JPB will dismiss the Notice of Violation.
5. The JPB or designated Third-Party Processing Agency will notify the patron, in writing by mail, of the results of the Initial Review.
6. If the Notice of Violation is not dismissed, the JPB or designated Third-Party Processing Agency will notify the patron of a reason for that denial, of the patron's right to request an administrative hearing, and of the procedure for waiving prepayment of a penalty (in case of an appeal) based upon inability to pay.
7. If the patron is found not liable during the Initial Review process, any amount paid will be refunded.

SECTION 7. ADMINISTRATIVE HEARING. If a person is dissatisfied with the results of an Initial Review, the person may request an administrative hearing no later than 21 calendar days following the mailing of the results of the JPB's, or Third-Party Processing Agency's, initial review. The Administrative Hearing will be held within 90 calendar days following the receipt of the request for the Administrative Hearing. The person requesting the Administrative Hearing may request one continuance, not to exceed 21 calendar days. The Administrative Hearing process includes all of the following:

1. The person requesting the Administrative Hearing has the choice of a hearing by mail or in person. An in-person hearing will be conducted within the jurisdiction of the JPB, at a location designated by the JPB.
2. The person remits payment for the full amount due on the Notice of Violation. Payment may be made by telephone, in writing, online or in person.
3. The Administrative Hearing must provide an independent, objective, fair, and impartial review of the contested violation(s) in accordance with written procedures established by the JPB.
4. The Administrative Hearing will be conducted before a hearing officer. The JPB will designate a hearing officer for the Administrative Hearing process. The hearing officer may not be an employee of the contract operator of Caltrain (currently Transit America, Inc. (TASI)). The compensation, continued employment, performance evaluation, and benefits of the hearing officer must not be directly or indirectly affected by the amount of fare evasion violation penalties imposed or upheld by the hearing officer.
5. The Fare Enforcement Agent or peace officer who issued the Notice of Violation is not required to participate in an Administrative Hearing. The JPB will not be required to produce any evidence other than the Notice of Violation. The Notice of Violation, in proper form, will be deemed prima facie evidence of the violation.
6. Following a determination by the hearing officer that a person committed the violation, the hearing officer must issue written reasons in support of the decision rendered.
7. If the patron is found to have committed the violation, the patron must be provided with the opportunity to apply to make deferred payments, pay under a payment plan or perform community service in lieu of payment as provided under Section 5.04.
8. The hearing officer's decision following the Administrative Hearing must be in writing and may be personally delivered or sent by first class mail.
9. If the person requesting the hearing is found not liable during the Administrative Hearing process, any amount paid will be refunded.

SECTION 8. APPEALS. Within 30 days after mailing of the decision of the Administrative Hearing, the patron may seek review by filing an appeal to be heard by the superior court in the county indicated on the Notice of Violation as the county where the violation occurred. This appeal will be heard de novo, except that the contents of the Administrative Hearing file will be submitted as evidence. A copy of the Notice of Violation will be admitted into evidence as prima facie evidence of the facts. The appeal will be conducted as otherwise provided by law.

SECTION 9. ENFORCEMENT FOR THIRD AND FOURTH OFFENSES. Upon determination that an adult has committed a violation of Penal Code section 640(c)(1)-(3), and that the violation is the patron's third or fourth such violation, a peace officer will issue a criminal fare evasion citation to be processed through the superior court rather than the administrative process set forth in this Ordinance. A patron issued a citation for fare evasion for the third time or any time thereafter will be subject to ejection from the train at the next stop and will be excluded from Caltrain for 90 days.

SECTION 10. EFFECTIVE DATE. This Ordinance will be effective February 1, 2018.

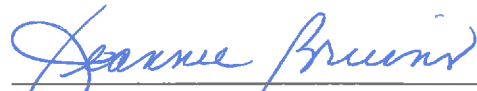
SECTION 11. PREEMPTION; SEVERABILITY. Nothing in this Ordinance shall be interpreted or applied to create any power, duty, or obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by Federal or State law, the provisions of this ordinance will not apply if the Federal 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 will be automatically rescinded from this Ordinance. Such rescission will not affect the validity of the remaining portions of this Ordinance. Furthermore, if any provision of this Ordinance, or the application thereof to any person or circumstance, is deemed invalid by a court of competent jurisdiction, such invalidity will not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are severable.

Adopted this 4th day of January, 2018, by the following vote of the Board.

AYES: Davis, Gee, Gillett, Pine, Stone, Yeager, Bruins

NOES:

ABSENT: Brinkman, Gee, Zmuda



Chair, Peninsula Corridor Joint Powers Board

ATTEST:



JPB Secretary