

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
ORDINANCE NO. 17**

**AN ORDINANCE ESTABLISHING ADMINISTRATIVE PENALTIES, FEES AND HEARING
PROCEDURES FOR PASSENGERS RIDING ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
BUS SERVICES WITHOUT PROPER FARES AND PROOF OF PAYMENT**

WHEREAS, the Alameda-Contra Costa Transit District (District) has a substantial interest in collecting fares from riders utilizing District bus services as a means of transportation and fare evasion may result in a significant annual financial loss to the District; 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 Public Utilities Code Section 99580 permits the District Board of Directors to enact an ordinance to impose administrative penalties for fare evasion; and

WHEREAS, the District Board of Directors has found that the administrative process is efficient for handling bus stop tickets and anticipates that it will be an efficient way to enforce fare evasion violations; and

WHEREAS, the District will enter into a contract with a private vendor or governmental agency for the processing of notices of fare evasion violations and notices of delinquent fare evasion pursuant to California Public Utilities Code Section 99580. If any provision of this ordinance conflicts with California Public Utilities Code, the Code sections shall prevail; and

WHEREAS, Ordinance No. 17 was introduced at a regular meeting of the Board of Directors on January 8, 2020.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT HEREBY ORDAINS AS FOLLOWS:

SECTION 1. STATEMENT OF PURPOSE

The District Board of Directors finds that there is a need for an administrative method of enforcement for violations of the District's fare requirements, also known as "fare evasion," as authorized by California Penal Code Section 640(e) and California Public Utilities Code Section 99580.

SECTION 2. DEFINITIONS

- A. **“Adult”** means a person aged 18 years old or older
- B. **“Board”** means Alameda-Contra Costa Transit District Board of Directors
- C. **“Days”** means calendar days unless specified otherwise.
- D. **“District”** means Alameda-Contra Costa Transit District
- E. **“District facility”** means all District properties, including buses.
- F. **“Fare”** means the monetary amount established by the Board to ride the bus.
- G. **“Fare Media”** means the methods by which fares are paid, issued by or on behalf of District for the payment of fare. Refers to District issued tickets, Clipper Cards, District magnetic strip passes, District issued voucher or pass, paper District ticket vending machine tickets, or other fare media as otherwise authorized by the District.
- H. **“Minor”** means a person aged 17 years old or younger.
- I. **“Passenger”, “patron”, “customer”, and “rider”** means any person in, on, using, or attempting to access a District facility or vehicle.
- J. **“Person”** means an individual, firm, partnership, corporation, association, or company.
- K. **“Processing Agency”** means either the agency issuing the notice of fare evasion violation and the notice of delinquent fare evasion or the party responsible for processing the notice of fare evasion and the notice of delinquent violation.
- L. **“Proof-of-Payment”** means:
 - 1. A District-approved fare media (ticket) that is currently valid for the date and time; *or*
 - 2. For a passenger riding with a discounted fare, a District-approved fare media that is currently valid for the date and time, *and* a District-approved form of current eligibility identification (e.g., Medicare card, Regional Transit Connection (RTC) Discount ID Card etc.); *or*
 - 3. A ticket or inter-agency transfer from another transit system with which the District has a reciprocal agreement that is currently valid for the date, time and line, as per District Board Policy No.333; *or*
 - 4. A currently valid employee/dependent/retiree pass issued by the District; *or*
 - 5. Police officers and firefighters, in uniform; *or*
 - 6. Any other fare instrument and any other fare identification or documentation as determined by the District.

SECTION 3. FARE RULES

3.1 Required Fares. Patrons who ride District buses must pay all applicable fares for each trip, as established by the Board.

3.2 Proof of Payment. Patrons must carry and show appropriate proof of payment on District Bus Rapid Transit (BRT) vehicles upon request by a representative of

the District or peace officer.

SECTION 4. ENFORCEMENT

4.1 Fare Evasion. Evading payment of fares is prohibited under California Penal Code Section 640(c) and this Ordinance. Fare evasion includes the following:

- A. Entering a District vehicle without valid fare.
- B. Misuse of District fare media, with the intent to evade the payment of a fare.
- C. Duplicating, counterfeiting, altering, or transferring any nontransferable District fare media without District's authorization.
- D. Obtaining fare media by making a false or misleading representation.
- E. Unauthorized use of a discount ticket or failure to present, upon request by District representatives or peace officers, acceptable proof of eligibility to use a discount ticket. In accordance with Section 99155 of the California Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle.

4.2 Violations - Adults. An adult patron who evades fares in violation of this Ordinance is subject to a Notice of Violation.

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

4.4 Administrative Penalties for Violations:

First or Second Violation: \$50 for a first or second violation.

Third or More Violations: \$100 upon a third or subsequent violation.

4.5 Notice of Violation. If a fare evasion violation is observed by a person authorized to enforce this ordinance, a notice of fare evasion violation shall be issued. The notice shall set forth the violation, including reference to this ordinance setting forth the administrative penalty as well as:

- A. The date of the violation;
- B. The approximate time of the violation;
- C. The location where the violation occurred, including whether the citation was issued on a bus and, if so, the route and bus number ridden by the person without the proper fare;
- D. The violation number;
- E. The violator's first name, middle initial, and last name;
- F. The violator's address and date of birth;
- G. The violator's driver's license number or number on other government-issued identification;
- H. Physical description of violator;
- I. The Administrative Penalty;
- J. The nearest ACT station/stop to where the violation occurred, and the county in which the violation occurred;

- K. The name and Identification of the person issuing the Notice of Violation;
- L. The date when payment is required to be made; and
- M. The procedure for contesting the notice.

The notice shall be served by personal service upon the violator. The notice, or copy of the notice, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency, and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of producing evidence. When a notice of fare evasion has been served, the person issuing the notice shall file the notice with the processing agency.

If the violation is for the 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, and the eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for 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.

If, after a notice of fare evasion violation is issued, 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 shall be mailed to the address provided by the person cited at the time the original notice of fare evasion violation was served.

SECTION 5. Contesting the Violation Procedures

5.1 Initial Review. If a person who receives a notice of fare evasion violation contests the violation, the person has 21 calendar days from issuance of the violation to request an initial review of the violation by the issuing agency.

The request may be made by telephone, in writing or in person. There is no charge for the review.

If after the initial review the issuing agency is satisfied the violation did not occur or that extenuating circumstances make dismissal of the administrative penalty appropriate in the interest of justice, the issuing agency shall cancel the notice. The issuing agency shall also advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice.

If after the initial review, the agency denies the initial contest and does not cancel the notice, the agency shall include a reason for that denial, notification of the ability to request an administrative hearing and notice of the procedure adopted by the agency for waiving prepayment of the penalty based upon inability to pay.

5.2 Requesting an Administrative Hearing. If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review.

The request may be made by telephone, in writing or in person.

The person requesting the administrative review shall deposit with the processing agency the amount due under the notice for which the administrative hearing is requested.

The District shall adopt an Administrative Procedure setting forth a written procedure to allow a person to request an administrative hearing without payment of the amount due upon satisfactory proof of an inability to pay the amount due.

An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this ordinance. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

5.3 Holding the Administrative Hearing. The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the District, even if the District contracts with a private vendor.

The administrative hearing shall be conducted in accordance with the Administrative Regulation issued by the District's General Manager. The hearing shall provide an independent, objective, fair and impartial review of the contested violation(s).

The administrative review shall be conducted before a hearing officer designated to conduct the review by the District.

The person who issued the notice of fare evasion shall not be required to participate in the administrative hearing. The District shall not be required to produce any evidence other than the notice of fare evasion or passenger conduct violation. The documentation of the violation shall be prima facie evidence of the violation.

The hearing officer's decision following the administrative hearing may be personally delivered to the person by the hearing officer or sent by first-class mail.

5.4 Payment of Administrative Penalty. Following a determination by the hearing officer that a person committed the violation, the hearing officer may allow payment of the fare evasion in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion penalty in full.

Following a determination by the hearing officer that a person committed the violation, the hearing officer shall allow payment of the fare evasion in installments or deferred

payment if the total amount of the fines is two hundred dollars (\$200) or more and the person provides satisfactory evidence of an inability to pay the penalty(ies) in full.

Following a determination by the hearing officer that a person committed the violation, the hearing officer may permit the performance of community service in lieu of payment of the fare evasion penalty. If the person provides satisfactory evidence of an inability to pay the penalty(ies) in full, the hearing officer shall permit the performance of community service unless the person had more than three fare evasion penalties and did not complete any community service provided that they had been offered community service with ample time to perform it.

5.5 Appeal of Administrative Hearing Decision. Within 30 calendar days after the mailing or personal delivery of the administrative hearing decision, the person may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of fare evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein establishing a rebuttable presumption affecting the burden of producing evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the person filing the appeal. For purposes of computing the 30 calendar day period, California Code of Civil Procedure 1013 shall be applicable. A proceeding under this subdivision is a limited civil case.

Notwithstanding any provision of California law, the fee for filing the notice of appeal shall be as provided in California Government Code Section 70615. The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the appellant of the appearance date by mail or personal delivery. The court shall retain the fee regardless of the outcome of the appeal. If the court finds in favor of the appellant, the amount of the filing fee shall be reimbursed to the appellant by the processing agency. Any deposit of a fare evasion penalty shall be refunded by the processing agency in accordance with the judgment of the court.

If a notice of appeal of the processing agency's decision is not filed within 30 calendar days, that decision shall be deemed final.

SECTION 6. This ordinance shall become effective thirty (30) days after its adoption and shall be published once a week for two consecutive weeks following its passage in a newspaper of general circulation within the District.

Joe Wallace, President

Attest:

Linda A. Nemeroff, District Secretary

I, Linda A. Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that this ordinance was introduced at a regular meeting of the Board of Directors on January 8, 2020, and adopted at a regular meeting of the Board of Directors held on January 22, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda A. Nemeroff, District Secretary

Approved as to Form and Content:

Denise C. Standridge, General Counsel