

Fare Evasion and Proof of Payment

419.1 PURPOSE AND SCOPE

The purpose of this policy is to establish uniform procedures for the legal detention of individuals suspected of fare evasion and proof of payment violations on the BART system.

419.2 POLICY

It shall be the policy of the BART Police Department to vigorously enforce transit specific crimes including fare evasion and proof of payment violations. Violators should be ejected from the paid area after being contacted for fare evasion or proof of payment violations.

419.2.1 APPLICABLE LAWS

California Civil Code 2188: A passenger who refuses to pay his fare or to confirm to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. All fare persons in the BART system without valid fare are subject to ejection from the system under this authority.

California Penal Code 640(c)(1): 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.

Upon a first or second violation, this offense is an infraction. ~~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 his or her hours of school attendance or employment.~~

Upon a third or subsequent violation, this offense may be charged as a misdemeanor. ~~punishable by a fine of not more than \$400 or by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment.~~

For adult proof of payment violations:

BART Ordinance 2017-2.5.1: An adult's failure to present a valid exit-coded ticket when requested by a BART police employee is an infraction.

~~Upon a first or second violation, within a 12-month period, this offense is punishable by a civil administrative citation and fine of not more than \$120 or 8 hours of community service.~~

BART Ordinance 2017-2.5.2: Upon a third violation, within a 12-month period, this offense is punishable by a criminal infraction citation. ~~and a fine of not more than \$250 and up to 48 hours of community service.~~

BART Ordinance 2017-2.5.1: Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

For juvenile fare evasion violations:

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Pursuant to California Penal Code 640(g), a minor may not be charged with an infraction or misdemeanor violation of PC 640(c)(1).

BART Ordinance 2017-3: Minors who are observed entering or exiting the system without using a valid ticket may be assessed an administrative penalty. ~~not to exceed \$60.~~

BART Ordinance 2017-3.5: Minors who are observed entering or exiting the BART system without using a valid ticket may be subject to ejection from the BART system.

In lieu of an administrative citation being issued for a violation of this ordinance, a warning may be given to the minor. Record of any previous warning will be retained by the Bay Area Rapid Transit police department.

For juvenile proof of payment violations:

BART Ordinance 2017-2.5.1: A juvenile's failure to present a valid exit-coded ticket when requested by a BART police employee is an infraction. ~~punishable by a civil administrative citation and fine of not more than \$60 or up to 8 hours of community service.~~

BART Ordinance 2017-2.5.1: Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

For all proof of payment violations:

BART Ordinance 2017-2.3(a): Individuals in the paid area of the station or on a BART train are required to present a valid exit-coded 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.

BART Ordinance 2017-2.3(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. Officers should issue criminal infraction citations for these violations when summoned to assist Fare Inspection Officers with a person in violation of BART Ordinance 2017-2.3(b).

419.2.2 FARE EVASION DEFINED

Fare evasion violations occur when an individual is seen illegally entering or exiting the paid area.

Fare evasion citations and arrests require witnessing the illegal entry / exit. When a person has been seen illegally entering or exiting the paid area, an officer should detain the person for a fare evasion violation and not a proof of payment violation.

Examples of illegal entry / exit of the paid areas of the BART system include, but are not limited to, the following:

- Climbing over or crawling under a closed fare gate or barrier
- Forcing a fare gate barrier to open
- Entering or exiting through an emergency exit door or service gate

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- Entering or exiting a fare gate without using a ticket (piggybacking)
- Using an elevator without processing a valid ticket immediately before entering or after exiting the paid area

Officers should conduct a thorough investigation surrounding the circumstances of any apparent fare evasion violations in order to determine if a defense against prosecution exists. Although a person detained for fare evasion may decline to provide answers to the officer's questions regarding the circumstances leading to the observed violation(s), the officer should ask questions to assist in determining if a violation has occurred. Questions may include the following;

- Did the person attempt to process a ticket or Clipper card to enter or exit?
- Did a station agent or other authorized BART employee give the person permission to enter or exit the system without processing a ticket?
- Did the person attempt to resolve any ticket issues with the on-duty station agent? The officer may also consider whether a station agent was present in the station to assist passengers at the time of the observed violation.
- Did an emergency condition exist that required the person to enter or leave the station without processing a ticket?
- Does the person have prior contacts for fare evasion?
- Does the person have any other lawful reason for entering or exiting the system without processing a ticket?

The answers to the officer's questions may require verification of the information provided. The officer should take all the circumstances uncovered during the investigation into consideration when determining whether a violation has occurred and/or the most appropriate disposition. Specific intent is not required to establish the elements of California Penal Code 640(c)(1).

419.2.3 PROOF OF PAYMENT VIOLATION DEFINED

Proof of payment violations occur when an individual is in the paid area of the system and is subject to a ticket inspection by a Fare Inspection Officer or is detained by a Police Officer for criminal conduct. If a person is unable or unwilling to show valid proof of payment, they are in violation of the proof of payment ordinance and may be issued a citation pursuant to the Proof of Payment ordinance. Proof of payment violators shall not be issued citations for violations of PC 640(c)(1).

BART Ordinances are not currently enforceable in Santa Clara and San Mateo Counties. If a person is detained in the paid area of a station in those counties and it is determined they do not possess a valid BART ticket, they should be ejected from the paid area (California Civil Code 2188). A proof of payment citation may not be issued in this circumstance. If an officer on-views a fare evasion violation in these counties, the officer may elect to issue a citation for California Penal Code 640(c)(1). Officers may not issue citations for PC 640(c)(1) for a person who is found to be in the system without proof of payment.

In circumstances where a citation is issued for a proof of payment violation, those citations shall be submitted to the supervisor by the completion of that shift.

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419.3 PROOF OF PAYMENT ENFORCEMENT PROCEDURES BY POLICE OFFICERS

Police officers may utilize the Proof of Payment Ordinance as an enforcement tool during the normal course of their duties. Officers may not utilize the Proof of Payment Ordinance as part of a consensual contact. Requests for proof of payment require reasonable suspicion of a criminal violation before an officer requests proof of payment.

Police officers may ask a person inside the paid area of the BART system to show proof of payment under the following types of circumstances:

- (a) When an officer has reasonable suspicion to detain a person for any criminal violation, the officer may ask the involved suspect(s) to provide proof of payment.
- (b) When conducting a welfare check or other consensual contact, officers may ask routine questions to develop reasonable suspicion for a proof of payment violation. The questions may include the following when applicable:
 - What is the person's destination?
 - Does the person know their current location? Is the current location on the normal route to the stated destination?
 - Where did the person enter the system?
 - How long has the person been in the system?

Responses to these questions may assist the officer in developing reasonable suspicion that the subject may not have a valid ticket in their possession.

- (c) Any person who remains on an out of service train, after announcements are made for passengers to off-board, is in violation of PC 369i(b) and officers may ask to see proof of payment.

All persons who are found to be in the system without proof of payment should be ejected from the system.

419.3.1 ENFORCEMENT PROCEDURES BY FARE INSPECTION OFFICERS

Fare Inspection Officers shall enforce District Ordinances pertaining to proof of payment violations in compliance with the current FIO policies and procedures manual.

Fare Inspectors should request the response of a sworn officer if they have a person who is obstructing the issuance of a proof of payment citation. Obstructing can include persons who refuse to provide proof of payment, persons who refuse to identify themselves, persons who knowingly give false information, or persons who attempt to leave the area before a civil citation is issued. These are violations of section 2017-2.3(b) of BART's Proof of Payment Ordinance. This violation is a criminal infraction and can be written on a standard criminal citation form. When officers are summoned to a person obstructing the proof of payment process, they should be issuing a citation for the criminal violation of 2017-2.3(b).

Officers shall seek supervisory approval to release anyone for obstructing the proof of payment process without issuing a citation.

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419.4 FARE EVASION REPORTS BY BART EMPLOYEES

Every officer who responds to a call for service reported by any BART District employee regarding any report of a fare evasion or the misuse of a discount ticket shall contact the BART employee who reported the incident, and ask the BART employee who reported the incident whether he/she wants the subject(s) suspected of fare evasion or the misuse of a discount ticket placed under citizen's arrest for fare evasion or the misuse of a discount ticket before making a disposition of the case. This includes requesting via dispatch that the BART employee arrive at the location where the officer has the suspect(s) detained for fare evasion or the misuse of a discount ticket to in order make a positive identification before making a disposition of the case.

If the officer is unable to locate and detain the suspected fare evader and/or misuse of discount ticket user at or near the scene, then it will not be necessary to contact the BART employee.

419.5 FIRE DEPARTMENT EXEMPTIONS

- Fire Fighter Ride Privilege
 - To enhance customer safety, any fire fighter in full uniform, unobstructed by civilian clothing, is authorized to ride the system free. The fire fighter must have a permanent fire department patch / emblem or badge on the outer garment and must show their Agency ID card in order to ride BART free.

- Fire Prevention Officers (F.P.O.)
 - Fire Prevention Officers in full uniform are authorized to ride the system free. The Fire Prevention Officer uniform must have a permanent fire department patch / emblem or badge on the left breast pocket. The Fire Prevention Officer must show their Agency ID card in order to ride BART free.