
Exclusion (Prohibition) Orders

417.1 PURPOSE AND SCOPE

The Bay Area Rapid Transit (BART) District Board of Directors have received increasing complaints from transit riders and employees regarding safety on BART trains, in parking lots, and passenger waiting areas. In an effort to better protect its riders and employees, California State Assembly Bill 716 (Dickinson) was enacted into law in 2012 and allows BART to issue exclusion or "prohibition" orders to people who are cited or arrested for certain offenses, thus reducing the number of crime-related disruptions. By excluding passengers cited or arrested for certain offenses, as outlined in the bill, BART seeks to reduce the number of passenger disruptions and improve overall service. This policy does not target or adversely impact any particular group of individuals.

417.2 OBJECTIVES

The purpose of this policy is to enhance safety and system security. This policy allows BART to exclude passengers from using transit for limited periods of time, depending on the nature and the frequency of offenses committed while on transit district property and for which they have been cited.

An oversight committee comprised of local residents with experience in the areas of mental health, homelessness, public safety, and cultural awareness will monitor the number of citations and exclusions issued by BART and oversee the training of transit personnel to deal with special needs passengers.

Training of transit personnel is mandated in order to recognize and facilitate the special needs of homeless and those who may have psychiatric disabilities.

This security effort to exclude specific individuals also requires that an appeals process be established for those who believe they have been mistakenly cited or are transit-dependent.

Prohibition orders should not be issued to subjects who have only committed fare evasion or to non-violent protesters.

417.3 DISTRICT ADMINISTRATIVE RULES

417.3.1 ISSUANCE AND PROCESSING OF EXCLUSIONS

The following Administrative Rules shall govern the issuance and processing of prohibition orders by BART, in accordance with Public Utilities Code (PUC) §99171.

Nothing in these Rules or the existence of these Rules shall prevent BART from taking any lawful steps to protect its employees, passengers and the BART Transit System. Specifically, nothing in these Rules affects the right of BART or law enforcement to request the immediate departure of any person posing a safety threat to system users, BART personnel or any other persons, or is in violation of any provision of criminal law or BART's administrative rules or procedures. Further,

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nothing in these Rules affects the right of law enforcement to accomplish the forceful removal of any person posing an imminent threat, so long as the law authorizes such action.

417.4 DEFINITIONS

As used in these Rules, the following terms shall mean:

Business Day. The term "business day" shall mean Monday through Friday, with the exception of BART Holidays: Christmas Day, New Years Day, Martin Luther King Jr.'s birthday, Thanksgiving Day, Labor Day, Memorial Day and Independence Day. When the last business day of any time period set forth in these Rules falls on a BART Holiday, an additional day shall be added to any time provisions set forth by virtue of the holiday, excluding all weekend days.

Calendar Day. The term "calendar day" shall include all week days. When a calendar day falls on the following holidays: Christmas Day, New Years Day, Martin Luther King Jr.'s birthday, Thanksgiving Day, Labor Day, Memorial Day and Independence Day an additional day shall be added to any time provisions set forth in these Rules by virtue of the holiday.

Exclusion Administrator. The term "Exclusion Administrator" shall include all BART employees appointed by the General Manager to conduct an initial review of a Prohibition Order issued pursuant to these Rules.

Exclusion Officer. The term "Exclusion Officer" includes all BART officers authorized to issue Prohibition Orders under these Rules.

Transit Dependent. The term "Transit Dependent" means a person who has no independent source of transportation and relies solely on public transit for trips of necessity, including but not limited to, travel to and from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing and necessary household items.

BART System. The term "BART System" shall include the property, vehicles, equipment and improvements of whatever nature, owned, leased, maintained, controlled or operated by BART to provide mass transportation for passengers or to provide for the movement of people, and includes any BART vehicle, bus stop on District property, parking facility, track way and BART right of way.

Hearing Officer: The term "Hearing Officer" shall include those persons appointed by the General Manager to conduct an Administrative Hearing following an initial review of a Prohibition Order issued pursuant to these Rules. Hearing Officers may be a BART employee or agents; however, the Hearing Officer's continued service, performance, evaluation, compensation, and benefits, as applicable, shall not be directly linked to his or her findings related to the number of prohibition orders upheld by the Hearing Officer.

417.5 ISSUANCE OF PROHIBITION ORDER

417.5.1 AUTHORITY FOR PROHIBITION ORDER

BART may exclude an individual from any or all parts of the BART system, as permitted by Public Utilities Code (PUC) §99171 or other applicable law. In accordance with this authority, a person

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subject to a prohibition order may not during the period of exclusion, enter or remain upon any part of the BART system from which the person is excluded, except as permitted by the terms of the prohibition order or by applicable law.

[An on-duty BART employee shall not be issued a Notice of Prohibition Order. If an employee is arrested or convicted for a violation eligible for issuance of a Prohibition Order, notification shall be made to the on-duty Watch Commander.](#)

A Notice of Prohibition Order may be issued by any authorized person that has received training from BART, as required by PUC §99171; including, but not limited to, law enforcement officers, and BART Police Officers.

417.5.2 DESIGNATION OF VIOLATIONS ELIGIBLE FOR PROHIBITION ORDER

The violations eligible for a Prohibition Order and the corresponding length of exclusion is established by PUC §99171. A Prohibition Order may be issued to any person who:

- (a) On at least three (3) separate occasions within a period of ninety (90) consecutive days, is cited for a crime committed in or on a transit system for any act that constitutes a violation of any of the following:
 - 1. Penal Code §640(d) (1) - Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.
 - 2. Penal Code §640(d) (2) ,“ Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a public transit facility or vehicle.
 - 3. Penal Code §640(d) (3) ,“ Urinating or defecating in a system facility or vehicle, except in a lavatory. (This section does not apply to a person who cannot comply with this section as the result of a disability, age or medical condition.).
 - 4. Penal Code §640(d) (4) ,“ Willfully blocking the free movement of another person in a system facility or vehicle.
 - 5. Penal Code §640.5(a) (1) ,“ Defacing with graffiti or other inscribed material the interior or exterior of the facilities or vehicles of a public transit system.
 - 6. Public Utilities Code 99170(a) (2) ,“ Interfering with the operator or operation of a transit vehicle, or impeding the safe boarding or alighting of passengers.
 - 7. Public Utilities Code 99170(a) (5) ,“ Committing an act or engaging in a behavior that may, with reasonable foresee ability, cause harm or injury to any person or property.
- (b) Or: The person is placed under arrest or convicted for a misdemeanor or felony committed on BART property for acts involving violence or threats of violence upon passengers and transit employees, lewd or lascivious behavior, or possession for sale of a controlled substance.

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- Persons arrested for acts involving violence or threats of violence upon BART personnel on BART property will be booked unless there are mitigating circumstances that support the release of the subject on a citation, field interview, or reprimand. Any exception to booking shall be approved by the Watch Commander.

(c) Or: The person is convicted of a violation of one of the following offenses:

(1) Health and Safety Code §11532(a) ,“ Loitering in a public place in a manner and under circumstances manifesting an intent to engage in drug-related activity.

(2) Penal Code §653.22(a) ,“ Loitering in a public place with the intent to commit prostitution.

417.5.3 LENGTH AND SCOPE OF EXCLUSIONS

The length of any Prohibition Order shall be no greater than those permitted under PUC §99171(a) (2).

- (a) ~~(A)~~ If issued pursuant to section [417.5.2](#). ~~(a A)~~ above, the period of exclusion shall be:
 - 1. ~~(1)~~ For a period not to exceed thirty (30) days for the first prohibition order,
 - 2. ~~(2)~~ For a period not to exceed 90 days for the second prohibition order issued within a one year period from the date of the first prohibition order; and
 - 3. ~~(3)~~ For a period not to exceed 180 days for a third or subsequent prohibition order issued within a one year period from the date of the first prohibition order.
- (b) ~~(B)~~ If issued pursuant to section [417.5.2](#). ~~(b B)~~ or [417.5.2](#). ~~(c C)~~ above, the period of exclusion shall be:
 - 1. ~~(1)~~ For a period not to exceed thirty (30) days if issued pursuant to an arrest.
 - 2. ~~(2)~~ Upon conviction of a misdemeanor, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order shall not exceed 180 days.
 - 3. ~~(3)~~ Upon conviction of a felony, duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial shall not exceed one year.

A Notice of Prohibition Order shall identify the violation supporting the exclusion and must state the length of exclusion. No person is permitted to vary the length of exclusion, except:

- (a) ~~a~~. In accordance with the findings of the Exclusion Administrator or the Hearing Officer who may vary the length or scope of exclusion in accordance with his or her authority.
- (b) ~~b~~. In response to changed conditions, the Exclusion Administrator or the Hearing Officer may modify a prohibition order.
- (c) ~~c~~. In response to a finding by the Exclusion Administrator or the Hearing Officer, that exclusion is not warranted or does not comport with BART policy, the Exclusion Administrator or the Hearing Officer may invalidate or modify a prohibition order, based upon a review of all the facts and circumstances, as provided in these Rules.

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417.6 ENFORCEMENT REQUIREMENTS

417.6.1 SUFFICIENCY OF FACTS AND CAUSE FOR CITATION OR EXCLUSION

All citations and exclusions issued for prohibited conduct must be based upon probable cause. In determining whether there is enough evidence to justify a prohibition order or citation, peace officers and exclusion officers may rely upon facts resulting from their own personal observations or reliable facts provided by witnesses or others.

417.6.2 NOTICE OF EXCLUSION

Every person alleged to have engaged in conduct prohibited by PUC §99171(a) (1) (A)-(C) and sought to be excluded for such a violation(s), shall be issued a Notice of Prohibition Order. The Notice of Prohibition Order to be used for exclusions is incorporated by reference.

The exclusion officer alleging the violation shall complete the Notice of Prohibition Order in its entirety and provide a copy of the notice to the individual sought to be excluded.

In order to be deemed valid, the Notice of Prohibition Order must accurately denote the violating conduct and reference the applicable provision or statute that was violated, in accordance with PUC §99171(a).

The Notice of Prohibition Order may be issued to the person sought to be excluded contemporaneously with the course of conduct supporting the exclusion or at some time period after the violating conduct has occurred. When the Notice of Prohibition Order is issued to the person sought to be excluded at some time period after the violating conduct has occurred, the Notice of Prohibition Order must be personally served upon the person sought to be excluded as set forth in PUC §99171 (b)(2)(A)-(C). Service may be accomplished by in-person delivery, registered mail, overnight delivery (with confirmation of delivery) or any other means agreed to in writing by BART and the person being served.

At no time may a Notice of Prohibition Order be served to a person sought to be excluded more than six (6) months after the violating conduct has occurred, unless agreed to in writing by the person being served.

Service of the Notice of Prohibition Order shall be deemed to be complete on one of the following dates:

- On the date of delivery, if delivered in person.
- On the date of confirmed delivery, for any delivery by mail.
- For any alternative method of service, as provided in writing specifying the alternative method.

Proof of service shall be filed with the BART Exclusion Administrator.

417.7 MULTIPLE PENALTIES

An exclusion will not be issued for the same act or omission committed by a single person during a single interaction. However, multiple citations, or a citation and a prohibition order, may be issued

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to a single person who during a single interaction engages in multiple acts or omissions that constitute violations of those provisions delineated in PUC §99171(a)(1)(A)-(C). The issuance of a citation or Notice of Prohibition Order to a person shall not prevent the arrest, prosecution or conviction of that person for violation of criminal laws for the same or different act or omission.

417.8 STAY OF PROHIBITION ORDER

In accordance with PUC 99171(b) (6), all prohibition orders will be subject to an automatic stay of ten (10) calendar days following the date of service. Thus, exclusions will not take effect until the eleventh (11th) calendar day following the date of issuance, or if review has been requested, the date on which the Exclusion Administrator or Hearing Officer's final order takes effect in accordance with review process set forth in these Rules, but no less than eleven (11) calendar days after service of the final order.

417.9 VIOLATION OF PROHIBITION ORDER

Any person in violation of an active prohibition order shall be placed under arrest per Penal Code 369i(b): "Any person who enters or remains upon any transit-related property without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility is guilty of a misdemeanor."

Persons arrested should be booked unless there are mitigating circumstances that support the release of the subject on a citation, field interview, or reprimand. Notification to the Watch Commander is required for any such violator not taken into custody.

417.10 REVIEW AND APPEAL PROCEDURES

417.10.1 INITIAL REVIEW OF NOTICE OF PROHIBITION ORDER

An initial review may be requested by the person issued a Notice of Prohibition Order within ten (10) days after personal service to a BART Exclusion Administrator. There shall be no charge for the initial review. The request may be made by telephone (510)464-6730, in writing to PO Box 12688, Oakland CA, 94604, or in person at: 2150 Webster Street, Oakland CA, 94612. If an initial review is requested, the Notice of Prohibition Order shall be reviewed by a BART Exclusion Administrator. The Exclusion Administrator shall determine:

- (a) Whether the prohibition order meets the requirements of PUC §99171; and
- (b) Unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence.
- (c) Whether the exclusion has been issued to a person not eligible for a complete exclusion under the circumstance outlined in Section 9. Circumstances Affecting Applicability of Exclusion.

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If the Exclusion Administrator determines, based on the initial review, that the prohibition order is not adequately supported or that extenuating circumstances make dismissal of the Prohibition Order appropriate in the interests of justice, the Exclusion Administrator shall cancel the notice. The Exclusion Administrator shall cancel a prohibition order if it determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. The cancellation of a Prohibition Order shall be effective immediately and the excluded person may continue to use the BART system subject all rules and regulations regarding its use.

If the Exclusion Administrator determines that the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the Exclusion Administrator shall modify the Prohibition Order to reasonably allow for those trips under the conditions established by the Exclusion Administrator. Any person entitled to such a modification of the prohibition order shall remain subject to all applicable laws, rules and regulations regarding the use of the transit system, including but not limited to, providing proof of fare payment.

If the Exclusion Administrator determines that the Prohibition Order is valid, either in whole or in part, the Exclusion Administrator shall issue a written statement to that effect and may include any modification to the period or scope of the Prohibition Order.

The burden of proof to establish the conditions for cancellation or modification, as provided above, is on the party seeking the cancellation or modification. The party seeking to establish the qualifying circumstances must do so by a preponderance of the evidence.

The Exclusion Administrator shall serve the results of the initial review to the person contesting the notice by personal service. This decision shall become final after the expiration of ten (10) days after service, unless the person is dissatisfied with the results of the initial review and requests an administrative hearing within the ten (10) days. If an administrative hearing is requested, the excluded individual shall be entitled to further review in the form of a hearing as provided below.

417.10.2 RIGHT TO AN APPEAL HEARING FOLLOWING THE INITIAL REVIEW

Every person issued a Notice of Prohibition Order is entitled to a hearing as a matter of right upon issuance of the results of the initial review. The purpose of the hearing is: (a) to review and determine whether the Prohibition Order meets the requirements of PUC 99171; (b) unless the person has been convicted of the offense or offenses, to determine whether the offense or offenses for which the person was cited or arrested are proven by the preponderance of the evidence; (c) to determine whether the length and scope of the exclusion is commensurate with the nature of the violation; (d) to consider any mitigating and aggravating factors relevant to the scope and length of the exclusion; and (e) issue a final decision to sustain, modify, or set aside a Notice of Prohibition Order. All persons receiving a prohibition order shall receive notice of their right to a hearing on the Notice of Prohibition Order.

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417.10.3 INITIATION OF HEARING PROCEEDINGS

An individual who has received a Notice of Prohibition Order following an initial review, must contact BART by 5:00 p.m. no later than the tenth (10th) calendar day following service of the Exclusion Administrator's decision in order to request a hearing. The Exclusion Administrator may be reached by phone at (510)464-6730; in writing to P.O. Box 12688, Oakland, CA 94604-2688; or in person at 2150 Webster Street, Oakland CA, 94612.

The request may be made by phone, in writing or in-person, but must be received by the Exclusion Administrator by the tenth (10th) calendar day following the date of personal service of the Administrator's decision. An individual requesting a hearing need not demonstrate cause for the hearing, and the Administrator shall immediately forward a copy of the Notice of Prohibition Order and any supporting documentation to the designated Hearing Officer.

The Hearing Officer, or his/her designee, will contact the individual by phone or mail to schedule a hearing within three (3) business days of receipt of the Notice of Exclusion. The Hearing Officer shall provide notice to the exclusion officer that issued the Notice of Prohibition Order of the date and time of the hearing in accordance with the Hearing Officer's procedures for issuing such notice.

The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted at a location selected by the Hearing Officer, within the boundaries of the BART District.

417.10.4 SCHEDULE OF HEARINGS

Hearing Date: Each hearing shall be scheduled directly with the Hearing Officer or his/her designee within thirty (30) calendar days of the request. To the extent possible, the Hearing Officer shall make every attempt to schedule each hearing at a time that is convenient for appearance by the excluded individual, BART, and any witnesses, including exclusion officers. All hearings shall be scheduled on a weekday, Monday through Friday, during normal business hours.

Continuance: The Hearing Officer may grant one continuance, on its own motion or the motion of one of the Parties, of no more than seven (7) calendar days. The Hearing Officer has the sole discretion to grant or deny a continuance. Further, the Hearing Officer has the discretion to impose a stay, pending the later hearing date.

417.10.5 TREATMENT OF EVIDENCE

In conducting a hearing and reaching a decision, the Hearing Officer may rely upon any evidence that a reasonable person would rely upon in making an important decision or conducting personal business. Hearsay is admissible, except where its admission would offend due process. The Hearing Officer shall have the authority to compel testimony or evidence deemed necessary; in the Hearing Officer's sole discretion, to a fair decision. The Hearing Officer may receive testimony concerning the interpretation of the Administrative Rules from any BART representative.

The Notice of Prohibition Order shall be prima facie evidence of the violation or violations pursuant to PUC 99171(a) establishing a rebuttable presumption affecting the burden of producing evidence. The person who issued the notice of prohibition order shall not be required to

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participate in an administrative hearing, unless their participation has been requested by the person requesting the hearing no less than five (5) calendar days prior to the hearing. Requests for such participation shall be made to the Hearing Officer by telephone, in writing or in person through the Exclusion Administrator.

417.10.6 STATEMENT OF RIGHTS BY HEARING OFFICER

The Hearing Officer shall advise all parties, through written correspondence or personally when parties appear for the hearing, of the following rights:

- Hearings shall be informal and shall be conducted so as to facilitate the parties' ability to present their respective positions to the Hearing Officer. BART shall present its reasons for the exclusion first, and then the person contesting the exclusion shall present his or her reasons in support of rescission or modification of the exclusion.
- The Hearing Officer may question the parties and witnesses, and shall review all evidence submitted by the parties.
- The hearing shall be electronically recorded.
- An aggrieved party has the right to seek Administrative Mandamus from any County Superior Court within the boundaries of the BART District in accordance with Cal. Code CIV. Proc. 10946.
- A party has the right to representation by an attorney at their sole cost.
- BART has the burden of proof, based upon a presentation of substantial evidence, to establish that it is more probable than not that the conduct justifying the exclusion occurred and that no factors are present to nevertheless warrant setting aside the exclusion.

417.10.7 LENGTH AND SCOPE OF EXCLUSIONS

The length and scope of prohibition order shall be determined in light of all the facts and circumstances giving rise to the exclusion. After consideration of the evidence presented, the Hearing Officer may sustain the exclusion, modify the exclusion or set aside the exclusion.

The Hearing Officer shall make a finding on whether it is more probable than not that the excluded individual engaged in the conduct supporting the exclusion. In addition, the Hearing Officer shall consider any mitigating or aggravating factors in determining the appropriate scope and length of the exclusion, that the Hearing Officer determines relevant, in his or her sole discretion.

If the Hearing Officer determines that the exclusion will be sustained but the scope or length of the exclusion is not commensurate with the seriousness of the violation, the Hearing Officer may modify the exclusion. An order modifying the exclusion should discuss the Hearing Officer's basis for the modification of the exclusion, including a discussion of findings related to the factors listed above.

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417.10.8 FINAL ORDER BY THE HEARING OFFICER

Within five (5) business days following the conclusion of a hearing, the Hearing Officer shall issue a final Order setting forth all findings and a decision on the exclusion, unless issuance of a final order within five (5) business days is not practicable. If a final order cannot be issued within five (5) business days of the hearing, the Hearing Officer shall extend the stay on the exclusion until the final order is effective. The Hearing Officer's decision following the administrative hearing shall be delivered by personal service.

The final order shall set forth the findings of the Hearing Officer and the basis for such findings. If the final order sustains or modifies the Notice of Prohibition Order, the final order shall clearly set forth the period of exclusion, including the exact starting and ending date. The final order shall notify the person excluded of the right to seek judicial review with any Superior Court within the boundaries of the BART District within 90 days of delivery by personal service, in accordance with Cal. Code Civ. Proc. 1094.6. The final order shall be effective ten (10) days after personal service.

417.11 CIRCUMSTANCES AFFECTING THE APPLICABILITY OF EXCLUSIONS

If the Hearing Officer determines that BART has established that the violation was more probable than not, and that consideration of the factors justifies sustaining the exclusion, the Hearing Officer must nevertheless modify or set aside the exclusion in the circumstances defined below. Any person asserting the right to a qualified prohibition order on the basis of the factors set forth below shall have the burden of establishing their applicability by a preponderance of the evidence.

417.11.1 EXCLUSIONS ISSUED TO PERSONS WHO DID NOT UNDERSTAND THE NATURE AND EXTENT OF ACTION OR DID NOT HAVE THE ABILITY TO CONTROL ACTIONS

The Hearing Officer shall cancel a Prohibition order if he or she determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions.

417.11.2 EXCLUSIONS ISSUED TO DISABLED PERSONS

An individual with a disability shall not be issued a complete exclusion from the BART System unless the person engaged in violent, seriously disruptive or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operation of the transit system. Absent such a finding, if a Hearing Officer determines that a violation was more probable than not, the Hearing Officer shall order a qualified Prohibition Order to permit an individual with a disability to use the system for trips of necessity (e.g., travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, or for accessing any critical services.).

417.11.3 EXCLUSIONS ISSUED TO TRANSIT DEPENDENT PERSONS

If a person issued a Prohibition Order is dependent on the BART system for trips of necessity, including, but not limited to, travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, the

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Hearing Officer shall order a qualified prohibition order to permit a transit dependent person to allow for those trips.

417.11.4 EXCLUSIONS ISSUED BASED UPON EXPRESSIVE CONDUCT PROTECTED BY THE FIRST AMENDMENT

A person issued a Notice of Exclusion for conduct determined to be expressive conduct protected by the First Amendment to the U.S. Constitution, shall not be excluded on the basis of such conduct. If the Hearing Officer finds that a violation was more probable than not, but also finds that the conduct involved expressive conduct by the First Amendment of the U.S. Constitution, the Notice of Prohibition Order shall be set aside, unless the Hearing Officer also finds that the effect of the conduct endangered public safety, disrupted service, or interfered with transit operations. For the purposes of this paragraph, the parameters of the free expression and religious protections afforded under this paragraph shall be coextensive with constitutional guarantees.

417.12 TREATMENT OF PERSON WHO DOES NOT PROVIDE A MAILING ADDRESS

If a person issued a Notice of Prohibition Order cannot, or will not, provide a mailing address at the time of issuance by an exclusion officer, a Notice Letter from an Exclusion Administrator, correspondence from the Hearing Officer, and any other documents concerning the Prohibition Order, shall be made available for pick-up at BART's administrative offices located at 2150 Webster Street, Oakland CA, 94612. If at any time during the pendency of an initial review or administrative hearing, an excluded individual, or his or her representative, designates an address for mailing, any correspondence or documents produced subsequent to the date of the request shall be mailed to the address designated by the individual. If an individual is represented by counsel in the exclusion proceedings, all written materials shall be provided to the individual's attorney, at the attorney's mailing address.

An excluded individual without a mailing address may personally appear at the BART administrative offices, to request a hearing, or any other process to which he or she is entitled.

417.12.1 AFFECT OF FAILURE TO PROVIDE AN ADDRESS

When a person receiving a Notice of Prohibition Order is not able, or refuses, to provide a mailing address at the time of issuance, the Notice of Prohibition Order shall set forth the procedure for picking up any letters, notices or orders produced by an Exclusion Administrator or Hearing Officer, in a manner that is consistent with these Rules.

417.12.2 APPOINTMENT OF HEARING OFFICER

The General Manager shall appoint one or more Exclusion Administrators and Hearing Officer(s) based on the individual's qualifications, training and objectivity. Hearing Officers may be BART employees or agents, however, the Hearing Officers continued service, performance, evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to his or her findings related to the number of prohibition orders upheld by the Hearing Officer.

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417.13 WRIT OF ADMINISTRATIVE MANDAMUS

All decisions issued by the Hearing Officer shall be subject to judicial review from any County Superior Court within the boundaries of the BART District as provided by Code of Civil Procedure §1094.6. Judicial review must be filed within 90 calendar days of the delivery of the decision of the Hearing Officer by personal service.

Any judicial review proceedings shall not stay the effective date of the Prohibition Order, unless so ordered by a Judge of the Superior Court. Any and all costs, fees or other expenses related to judicial review shall be borne by each party, unless otherwise ordered by the Superior Court.

417.14 REQUEST FOR REFUND OF FARE MEDIA

A person issued a prohibition order under PUC §99171(a) may, within ten (10) calendar days of the date the order goes into effect, request a refund for any prepaid fare media rendered unusable in whole or in part by the prohibition order. The request for refund should be made in writing to the Exclusion Administrator.

If there is a balance of useable fare media of one or more days following the period of the prohibition order, the refund shall be prorated based on the number of days the fare media will be unusable. The issuance of any refund shall be subject to the surrender of the fare media.

417.15 TRACKING AND DOCUMENTATION

417.15.1 EXCLUSION OFFICER

All Prohibition Order information for arrests pursuant to PUC §99171 shall be entered into the Alliance database by the officer. This task shall be accomplished by going into the "Case Reports-Persons & Vehicles-Alerts-Add New" section to document the excluded person's Prohibition Order information. Enter "Prob Ord" under the Hazard Code. The Prohibition Order shall be added to the report. The issuing officer will also immediately advise the on-duty watch commander whenever a Prohibition Order has been issued.

Whenever a citation has been issued pursuant to PUC §99171(A), the issuing shall enter the information in the suspect's "alert" section in the Alliance database. The information will allow dispatch to provide notification of individuals who have been cited for any crime committed on two or more separate occasions within a period of ninety (90) consecutive days in or on the BART District that constitutes a violation pursuant to PUC §99171(A).

417.15.2 EXCLUSION ADMINISTRATOR AND HEARING OFFICER

The Exclusion Administrator and/or Hearing Officer shall notify BART Police via e-mail (BPD_Users) of:

- all appeal requests
- all initial review results by the Exclusion Administrator

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- all final orders given by the Hearing Officer

417.15.3 WATCH COMMANDER

The on-duty watch commander shall make a notification on the Watch Commander's Daily Log of any incident which results in the issuance of a Prohibition Order.

The watch commander shall enter the excluded person's information into the "alert" notification of the Alliance database upon notification by the Exclusion Administrator or Hearing Officer via e-mail (BPD_Users) of:

- all appeal requests
- all initial review results by the Exclusion Administrator
- all final orders given by the Hearing Officer

417.15.4 COMMUNICATIONS CENTER

Upon request by an officer via a BART Police records check, dispatch shall provide notification of individuals who have been cited for any crime committed on two or more separate occasions within a period of ninety (90) consecutive days in or on the BART District that constitutes a violation pursuant to PUC §99171(A).

Dispatch shall also provide officers with the current status of any person believed to have an active Prohibition Order pursuant to PUC 99171.

417.15.5 CRIME ANALYST

From the CADS Alliance database, the crime analyst shall create a weekly report that lists individuals with two or more qualifying citations within a period of 90 consecutive days.