

Fare Evasion / Proof of Payment Enforcement

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 FARE EVASION ENFORCEMENT

The California Penal Code for fare evasion used by officers of the BART Police Department is 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~~The 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:

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).

~~The aforementioned penal code does not, absent probable cause to suspect fare evasion, authorize police officers to ask persons to display their ticket for validation. Officers shall not use civil codes as probable cause to ask persons to display their ticket for validation.~~

419.2.2 FARE EVASION VIOLATION 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.

Illegal entry / exit of the paid areas of the BART system includes the following:

- Jumping over a fare gate or barrier
- Forcing a fare gate barrier to open
- Entering or exiting through an emergency exit door or service gate
- 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

Specific intent is not required to establish the elements of California Penal Code 640(c)(1).

~~travels or attempts to travel on the BART system without payment of the required fare. Fare evasion can be reflected in a variety of ways:~~

- ~~• A person who jumps over the fare gate.~~
- ~~• A person who walks closely behind another person, who is using a valid ticket, through a fare gate before the fare gate closes (piggybacking).~~
- ~~• A person who enters/exits the station from an elevator from the free to paid area/paid to free area with intent to avoid paying fare.~~
- ~~• A person who enters/exits through the emergency gate from the free to paid/paid to free area with intent to avoid paying fare.~~

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.

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 probable cause of a criminal violation before an officer requests proof of payment.

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

1. 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.
2. When conducting a welfare check or other consensual contact, officers may ask routine questions to develop probable cause 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.

3. 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.

419.4 FARE EVASION REPORTS FROM 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.

~~419.2.3—CONSENSUAL ENCOUNTER, REASONABLE SUSPICION, AND PROBABLE CAUSE~~

~~The following are the most common definitions of consensual encounter, reasonable suspicion, and probable cause:~~

~~(a) **Consensual Encounter:** A consensual encounter is a contact between an officer and an individual which is strictly voluntary. The key element is that the person remains~~

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~~totally free to leave or not cooperate. An officer does not need any objective reason or justification for initiating this type of contact.~~

~~(b) — **Reasonable Suspicion:** Reasonable suspicion to detain a suspect exists if officers were aware of specific facts that reasonably indicated the person was in the process of committing a crime, or was wanted for a completed crime. It is based on objective facts. Reasonable suspicion is the level of proof necessary for a temporary detention.~~

~~(c) — **Probable Cause to Arrest:** Although some courts continue to cite the old definition which requires an "honest and strong suspicion", the trend is toward incorporating the new "fair probability" standard; i.e. probable cause to arrest exists if there is a fair probability that the suspect committed the crime. Probable cause is the level of suspicion required to make an arrest.~~

~~419.2.4 FARE EVASION/MISUSE OF DISCOUNT TICKET REPORTS BY BART EMPLOYEES~~

~~Every officer who responds to a call for service by any BART District employee regarding any report of a fare evasion or the misuse of a discount ticket will 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.~~

~~419.3 — LEGAL ISSUES REGARDING FARE EVASION CONTACTS~~

~~With the exception of passes and vouchers issued by the District or other electronic payment methods, BART customers are required to have a valid ticket with at least a minimum value (currently \$1.75) to enter the paid areas of BART.~~

~~Persons obviously attempting to evade fare payment of fare such as using the emergency gate without authorization, jumping the fare gates, or piggybacking are subject to being cited for fare evasion under the Penal Code.~~

~~Aside from these obvious examples, there are other situations where a person in the paid area may be cited for fare evasion. Generally, in these contacts the person was brought to the attention of police by a station agent or in the course of an unrelated police contact. One of the key issues in less obvious cases of fare evasion is determining when a person in the paid area can be required to show that he/she has a valid ticket.~~

~~Based on recent research and review with the local District Attorney offices in the four counties in which BART serves, sections of the California Civil Code, which include 2186-2188, shall not be used as the basis for establishing reasonable suspicion to detain or probable cause to arrest~~

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~~persons within the BART system. Officers should not require persons to show their fare ticket, unless that officer has already established reasonable suspicion or probable cause regarding fare evasion or any other criminal activity.~~

~~Facts are needed to establish both reasonable suspicion and probable cause. Sometimes one fact is sufficient and sometimes it takes a combination of facts. Hunches, instincts, or unsupported conclusions are inadmissible. An officer's subjective feelings or beliefs are immaterial. Specific facts are needed to justify your suspicion and must be articulated in the police report.~~

~~Examples where a person should not be required to show his/her ticket include:~~

- ~~• Entering the paid area (without using an authorized method) to use the restroom, buy a newspaper, or use a pay phone~~
- ~~• Waiting in the paid area for an extended period of time~~
- ~~• Inspection of fare tickets during station or train sweeps~~
- ~~• Arbitrarily asking to see a person's ticket while he/she is in the paid areas~~

~~Without more facts, a crime has not occurred in the above examples. In order for the officer to develop cause to detain a person, the officer has to be patient and observe the actions of the person to gather more facts. A person who uses the emergency gate to enter the station, buys a newspaper, then proceeds directly to the platform may be detained for fare evasion.~~

~~Arbitrarily asking to see someone's ticket may give the perception of profiling. Officers should only ask to see a person's fare ticket after determining that they have reasonable suspicion or probable cause.~~

~~It is not automatically fare evasion for a person to lose his or her BART ticket. The District has policies in place which permit for the payment of fare in this type of situation. The officer would have to investigate the circumstances further to develop facts in order to make a determination that a fare evasion has occurred.~~

~~419.4.1 Officers must have reasonable suspicion or probable cause to believe that the person has committed some crime or infraction in order to detain and arrest someone and to check his or her ticket. Ultimately, officers should be guided by their training and experience in determining whether reasonable suspicion or probable cause exists for contacting an individual within the paid area.~~