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Title: BILL (for introduction) - Amending Sections 5-302, 5-303, 5-304, 5-305, 5-307, 5-308, and adding Sections 5-309 and 5-310 to Article 3 of Chapter 5 of the Fresno Municipal Code, relating to fare evasion and enforcement

Sponsors: Department of Transportation

Indexes:

Code sections:

Attachments: 1. Ordinance Re Fare Evasion.pdf, 2. California Penal Code § 640.pdf, 3. Public Utilities Code §§ 99580 and 995801.pdf

Date	Ver.	Action By	Action	Result
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REPORT TO THE CITY COUNCIL

February 8, 2018

THROUGH: BRUCE RUDD, Interim Assistant City Manager
Office of the Mayor & City Manager

FROM: JIM SCHAAD, Director
Department of Transportation

SUBJECT

BILL (for introduction) - Amending Sections 5-302, 5-303, 5-304, 5-305, 5-307, 5-308, and adding Sections 5-309 and 5-310 to Article 3 of Chapter 5 of the Fresno Municipal Code, relating to fare evasion and enforcement

RECOMMENDATION

Staff recommends Council adopt the amendments and additions to the Fresno Municipal Code (FMC) relating to various violations consistent with State of California Penal Code 640 and Public Utilities Commission sections 99580 and 99581.

EXECUTIVE SUMMARY

On April 27, 2017, the Department of Transportation brought forth proposed changes to the Fresno Municipal Code related to fare evasion in anticipation of Bus Rapid Transit (BRT), which is scheduled to begin service on February 19, 2018. This item was never enacted due to concerns conveyed by the Council related to a number of issues ranging from the type of citation being issued to the manner in which an alleged violation

could be appealed.

Since that time, it has been determined that State of California Penal Code 640 and Public Utilities Code (PUC) sections 99580 and 995801 (see attached) already provide the level and type of citations that a transit agency can impose, the type of behavior/misconduct that could result in the issuance of a citation, the administrative process in which a citation can be appealed, as well as providing an individual the option of performing community service in lieu of paying a fine.

While the proposed changes were in anticipation of BRT, the proposed changes to the FMC would also apply to traditional fixed route services in accordance with Penal Code 640 and PUC Sections 99580 and 99581.

BACKGROUND

On April 27, 2017, and in anticipation of the implementation of BRT, the Department of Transportation brought forward proposed changes to the FMC related to how fare evasion would be treated. The proposed changes were due in large part because of the differences in how BRT operates compared to traditional fixed route service. In the case of traditional fixed route service, all boarding, and subsequent payment of fares, occurs at the front door of the vehicle, which makes it easier for the Bus Operator to know if a passenger has paid the fare and how to handle any fare evasion attempts based on the circumstances at the time. In contrast, on BRT passengers may enter the bus from both the front and rear doors of the vehicles in order to expedite the boarding of passengers and reduce overall travel times. Fare payments would be collected through ticket vending machines that have been installed at every BRT stop/location, rather than when the passenger boards the bus. Random service/fare audits of passengers would be used to enforce the payment of fares.

At the time of introduction, the Council was concerned with the level and type of penalties being proposed, the process in which violations could be disputed, and an individual's ability to actually pay a fine. As such, staff was directed to research the issue further and to return to Council with further revisions based on the comments received from the Council.

After further review, it was determined that California Penal Code Section 640, which is further codified in PUC sections 99580 and 99581, currently allows a public transportation agency to enact and enforce an ordinance related to a wide range of violations ranging from smoking and eating while on board a bus to fare evasion. Penal Code Section 640 limits the level and type of citations and fines that can be imposed by a transit agency (e.g. civil, criminal) and provides violators the option of performing community service in lieu of payment for fare evasion and/or for passenger misconduct. Any fines collected pursuant to this section must also be deposited with the public transportation agency that issued the citation (FAX). Finally, Penal Code Section 640 precludes a minor from being charged with a misdemeanor for applicable violations pursuant to this section. California PUC Section 99580 995801 reiterate the type of behavior that could result in the issuance of a citation, as well as the administrative process, including but not limited to:

- The manner in which a notice of violation is issued and the information that must be contained
- The process by which a notice may be amended by the issuing officer
- Subsequent noticing of the alleged violation, as well as the administrative process that is used by an individual to dispute the alleged violation
- A requirement in the second and fifth years after the enactment of the ordinance to provide information to the Senate Committee on Transportation and Housing and Assembly Committee on Transportation that describes the ordinance, as well as the circumstances under which an alleged violation is afforded the opportunity to complete the administrative process, the number of administrative penalties assessed, and the number and type of citations processed

The proposed changes to Fresno Municipal Code Chapter 5, Article 3, subsections 5-302, 5-303.5-304, 5-305, 5-307, 5-308, and the addition of 5-309, are consistent with the provisions contained in Penal Code 640, as well as PUC Codes 99580 and 99581. The proposed changes apply to both BRT and fixed route services, and include, but are not limited to:

- Establishes an administrative process in which an appeal may be heard pursuant to Article 4, Chapter 1 of the FMC
- Provides for a civil penalty of \$50 and/or eight hours of community service for the first violation
- A second penalty within a twelve month period of the first penalty is subject to a \$100 fine and/or 16 hours of community service
- For a third violation within the a twelve-month period, a civil penalty of \$250 and/or forty hours of community service
- A fourth violation within a twelve-month period, or failure to pay a fine or perform community service within 60 days of imposition of a penalty, may be prosecuted as a misdemeanor.

ENVIRONMENTAL FINDING

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this item is not a “project.”

LOCAL PREFERENCE

Local preference was not considered because this ordinance does not include a bid or award of a construction or services contract.

FISCAL IMPACT

There is no direct fiscal impact from passing this ordinance.

Attachments:

- Ordinance
- California Penal Code § 640
- Public Utilities Code §§ 99580 and 995801