

## **San Joaquin Regional Rail Commission**

### **Ordinance No. 2324 - 01**

#### **AN ORDINANCE REPEALING AND REENACTING ORDINANCE NO. 09-02, PASSENGER CODE OF CONDUCT FOR THE ALTAMONT COMMUTER EXPRESS (ACE) RAIL SERVICE OF THE SAN JOAQUIN REGIONAL RAIL COMMISSION**

---

The San Joaquin Regional Rail Commission ordains as follows:

**ARTICLE 1.** Ordinance No. 09-02 is hereby repealed and reenacted to read as follows:

#### **Passenger Code of Conduct for ACE Train Service**

##### **Section 100 Authorization and Purpose**

The San Joaquin Regional Rail Commission ("SJRRRC") finds and determines the following:

**100.1** The SJRRRC is a Joint Powers Authority whose Member Agencies are the County of San Joaquin, and the Cities of Escalon, Lathrop, Lodi, Manteca, Stockton, Ripon, and Tracy, and is the owner and operator of the Altamont Corridor Express (ACE) train service. SJRRRC has the same powers as its Member Agencies to adopt ordinances related to its powers.

**100.2** SJRRRC provides commuter rail service to the general public by operating the ACE Train passenger service in San Joaquin, Alameda, and Santa Clara Counties between Stockton and San Jose.

**100.3** SJRRRC has the authority to make rules by ordinance governing the conduct and safety of the public utilizing the ACE Train passenger service and all related SJRRRC Facilities.

**100.4** The following rules are established by SJRRRC to promote public safety, to facilitate the proper use of the passenger train Facilities, to protect those Facilities and rail passengers, to assure the payment of fares and other charges, and to promote passenger comfort and protection from inappropriate conduct by other passengers.

**100.5** This Ordinance, referred to as the “Passenger Code of Conduct” may be amended or added to, from time to time, at the sole discretion of the SJRRC, in accordance with law.

## **Section 101 Definitions**

**101.1** “ACE” or “ACE Train” means the Altamont Corridor Express rail passenger service currently operated between the cities of Stockton and San Jose with intermediate stops at Manteca-Lathrop, Tracy, Livermore Vasco Road, Livermore Downtown, Pleasanton, Fremont, Santa Clara, and Great America, as well as future expansions north to Natomas and south to Merced and various intermediate stops (commonly known as Valley Rail), including, but limited to, all of its Facilities.

**101.2** “Code Enforcement Official” and “Passenger Services Representative” means any SJRRC Train Attendant, Passenger Service Representative, Conductor, Security Personnel, or any other person designated by the SJRRC Board of Directors or Executive Director in writing as authorized to issue Notices of Violation for the violation of any provision of this Ordinance or applicable state or federal laws.

**101.3** “Facilities” or “SJRRC Facilities” includes all property and equipment, including but not limited to, locomotives, passenger rail cars, trains, stations, platforms, terminals, depots, rights-of-way and related trackage, yards, maintenance facilities, offices, vehicles, and all other real estate or personal property used or held for or incidental to the operation of any rail or transit line or service of SJRRC including, but not limited to, connecting shuttle bus services provided by contractors of SJRRC.

**101.4** “Fare” means the lawful charges established by SJRRC for the use of its Facilities.

**101.5** “Fare Media” means the various instruments issued by or on behalf of the SJRRC to use for the payment or partial payment of a fare, including but not limited to, passes, coupons, transfers, tickets, vouchers, or tokens which may be in use from time to time.

**101.6** “Hazardous Material” means any substance, material, or device posing an unreasonable risk to health, safety, or property during transportation, including explosives and hazardous wastes, or substances that have the capacity to produce personal injury or illness through ingestion, inhalation, or absorption through any body surface.

**101.7** “Unlawful Conduct” means any conduct that violates any local, State of California, or Federal ordinance, statute, regulation, or constitution, including this Ordinance.

**101.8** “Notice of Violation” means a citation issued by a Passenger Services Representative to an individual in response to the individual’s violation of any provision of this Ordinance, or applicable state or federal law, and imposing fines for violations thereof.

**101.9** “SJRRRC” means the San Joaquin Regional Rail Commission, a Joint Powers Authority

## **Section 102 Construction**

In interpreting or applying the provisions of this Ordinance, the following apply:

**102.1** Rules will apply with equal force to any person assisting, aiding or abetting another in the avoidance of any of the requirements of this Ordinance.

**102.2** Any order or judgment of a court or other tribunal of competent jurisdiction that any provision of this Ordinance is invalid will be limited to the individual rule or portion of a rule deemed invalid and will not affect or invalidate any other rule or provision which was not the subject of controversy.

**102.3** The singular will mean and include the plural; the masculine gender will include the feminine and neuter genders, and vice versa.

## **Section 103 Payment of Fare**

**103.1** No person will use or board an ACE Train, for any purpose, without the payment of the proper, designated fare, or tender of other valid fare media including, but not limited to, a valid pass, coupon, transfer, or other authorized substitute for fare or proof of payment, used in accordance with any conditions or restrictions imposed upon the respective fare media by SJRRRC.

**103.2** All passengers will pay the appropriate fare designation for which they qualify, and no passenger will attempt to avoid paying the appropriate fare by misrepresenting their qualifications for fares or purchasing or using fare media for which they are not qualified.

**103.3** Except for employees of SJRRRC acting within the scope of their employment, or other expressly authorized agents of SJRRRC, no person will sell, provide, create, produce, reproduce or copy any fare media or otherwise provide access to the use of SJRRRC Facilities or services without the payment of the appropriate fare.

**103.4** No person will attach or attempt to attach or handout any paper, article, or item at or on the SJRRC Facilities. Any such paper, article, item may be confiscated by the SJRRC and used as evidence in prosecution of the fare violation.

**103.5** All persons will display a valid ticket, fare media, or other authorized proof of payment of fare upon request while aboard an ACE Train.

## **Section 104 SJRRC Property and Equipment**

**104.1** No person will destroy, deface, scratch, mark, paint, draw, inscribe, write, spray paint, or place graffiti upon any part of SJRRC's Facilities.

**104.2** No person will remove, injure, or tamper with any sign, advertisement, notice, electronic media, or other SJRRC Facilities.

**104.3** No person will post, distribute, or display any sign, poster, notice, advertisement, or other print or written matter in or on any SJRRC Facility.

## **Section 105 General Use of the Transit System**

**105.1** No person may perform any act or engage in any behavior which interferes with or has the potential to interfere with the provision of ACE Train service; obstructs the flow of traffic on or in the Facilities; interferes with or has the potential to interfere with the safe and efficient operation of the Facilities or cooperating shuttle services; or interferes with passenger safety.

**105.2** Unless expressly authorized by SJRRC, no person will engage in any commercial activity in or upon SJRRC Facilities. Commercial activities include but are not limited to: (1) the advertising, display, sale, lease, offer for sale or lease, or distribution of food, goods, services, or entertainment, including the free distribution of promotional goods or materials; (2) the solicitation of money or payment for food, goods, services, or entertainment; and (3) the solicitation of money for charitable or any other purpose.

**105.3** No person will accost another in public to panhandle, beg, or otherwise solicit monetary or other donations on or in any SJRRC Facility.

**105.4** No person may occupy more than one seat or use additional seats for the storage of personal belongings when to do so would interfere with the seating, comfort of, and space available to, other passengers. All personal belongings must be stowed in the designated storage area.

No person may occupy/block another seat by extending their legs under or over another passenger's seat.

**105.5** No person will refuse or fail to relinquish a seat or vacate a space which has been designated as seating reserved for use by the disabled or to accommodate wheelchairs, if requested to do so by or on behalf of a person with a disability or a Passenger Services Representative.

**105.6** Children 12 years of age and under must be accompanied by an adult at all times at SJRRC facilities.

**105.7** Pets and other animals are not permitted in or on SJRRC Facilities, except for service animals allowed by law, animals being trained as service animals by a trainer, and animals used in law enforcement. Service animals and service animals in training must at all times be leashed or harnessed.

**105.8** Passengers are required to wear shirts, pants, or skirts, or other appropriate attire and shoes at all times at SJRRC Facilities.

**105.9** All beverages or other liquids must be in lidded containers. Alcoholic beverages in open or unsealed containers are not permitted at SJRRC Facilities.

**105.10** No person may carry on or bring into any SJRRC Facility, any item that:

**105.10.1** Is so long as to extend into aisleways or outside the window or door of an ACE train or shuttle bus; or

**105.10.2** Constitutes a hazard to the operation of ACE trains, interferes with passenger traffic, or impedes service; or

**105.10.3** Constitutes a danger, hazard, or major inconvenience to other persons.

This Section 105.10 does not apply to the use of wheelchairs, crutches, canes, or other physical assistance devices.

**105.11** Bicycles must be properly stored in the designated bicycle areas.

**105.12** Except as authorized by SJRRC, no person will enter or attempt to enter into any area of the SJRRC Facilities not open to the public, including, but not limited to, locomotives, train operator's cabs, station booths, mechanical or equipment rooms, closed-off areas, tracks or railways, or any area marked with a sign restricting access or indicating a dangerous environment.

105.13 Passengers will comply with any Transportation Health Guidelines mandated by applicable Federal, State, and Local Jurisdictions while aboard the ACE Train and at SJRRC Facilities.

105.14 No person may engage in Unlawful Conduct while on SJRRC Facilities, including the ACE Train.

## **Section 106 Use of “Quiet Car”**

“Quiet Cars” are specially designated quiet passenger cars that are designed to allow passengers to rest or sleep during their trip. The following rules apply to the use of Quiet Cars:

**106.1** All cellphones, pagers, and Personal Data Assistants or other hand-held communications devices will be turned off or have all ringtones and alerts set to “silent” or “vibrate.”

106.2 All electronic devices will have all external sounds muted or turned off or only audible through headphones and not to surrounding passengers.

**106.3** Passengers are prohibited from engaging in loud, noisy, or boisterous behavior, including engaging in cell phone conversations or conversations with fellow passengers and other activities that interfere with the ability to rest or sleep, or the reasonable comfort and wellbeing of fellow Quiet Car passengers.

**106.4** Group activities including, but not limited to, card or other games are prohibited in Quiet Cars.

## **Section 107 Disorderly Conduct**

The following activities are deemed “Disorderly Conduct,” and are prohibited in or on all ACE Trains and SJRRC Facilities:

**107.1** Littering, dumping garbage, liquids, hazardous materials, or other matter; creating a health hazard or unsanitary condition including, but not limited to, spitting, urinating or defecating anywhere other than in the restrooms provided (unless the person cannot comply as the result of disability, age, or medical condition (Penal Code section 640(d)(3))).

**107.2** Smoking tobacco, cannabis, or any other substance, onboard the train including use of e-cigarettes and vaping pens, carrying an open flame or lighted match, cigar, cigarette, pipe, or torch.

**107.3** Engaging in any form of gambling or games of chance for money or other valuable consideration.

**107.4** The creation of any sound using any sound production device, including but not limited to, radios, personal stereos, digital music devices, or microphones. Use of personal music devices listened to through headphones or earphones, and which are inaudible to surrounding passengers are permitted.

**107.5** Throwing, purposely dropping, or causing to be propelled, any projectile or other article at, from, upon, or in a SJRRC Facility or ACE Train.

**107.6** Drinking any alcoholic beverage or possessing any opened or unsealed container of alcoholic beverage in an SJRRC Facility or ACE Train.

**107.7** Consuming or possessing any illegal or controlled substance.

**107.8** Entering or remaining in a SJRRC Facility when one's ability to function safely in the Facilities is impaired by the consumption of alcohol or controlled substances.

**107.9** Placing feet on passenger seats, arm rests, cupholders, or any other part of the passenger seats.

**107.10** Riding of bicycles, skateboards, scooters, rollerblades or other means of motorized scooter or similar device, as defined in Vehicle Code section 407.5, in or on SJRRC Facilities, including, but not limited to, train platforms. This section does not apply to the proper use of wheelchairs or motorized devices to assist the disabled.

**107.11** Holding train doors open, impeding the closure of train doors with any item or device, impeding the safe boarding, or alighting of passengers, or interfering with the operator or operation of the ACE Train.

**107.12** Blocking aisleways with personal belongings; blocking foot traffic by standing, sitting, or lying in aisleways, stairwells, or on train platforms.

**107.13** Threatening, harassing, or following another person, or engaging in a willful and knowing course of conduct directed at a specific person that alarms or seriously annoys that person and that serves no legitimate purpose.

**107.14** Any activity which is prohibited in a public transportation facility pursuant to California Penal Code section 640.

**107.15** Engaging in any Unlawful Conduct as defined herein.

**107.16** Violating or failing to follow a posted notice, prohibition, instruction, or direction that is intended to provide for the safety and security of ACE train passengers, or the safe and secure operation of the ACE Train.

## **Section 108 Transportation of Weapons and Other Dangerous Materials Prohibited**

**108.1** No person will carry any weapon, dangerous instrument, or any other item which can be intended for use as a weapon in or on SJRRC Facilities. For the purposes of this section, a weapon or dangerous item will include, but is not limited to, firearms, switchblade knife, gravity knife, box-cutter, axe, straight razor, razor blade or other uncovered or unprotected blade or knife of any type; and lengths of pipe or other blunt instruments intended for use as a weapon. This section does not apply to law enforcement personnel, and persons to whom a license for such weapon has been duly issued and is in force..

**108.2** No person will carry explosives, highly combustible or volatile materials, radioactive materials, or hazardous materials in or on any SJRRC Facility.

## **Section 109 Authorized Code Enforcement Officials**

Any SJRRC Conductor, Passenger Services Representative, Security Personnel, or any other person designated in writing by SJRRC, is authorized to issue Notices of Violation for the violation of any provision of this Ordinance.

## **Section 110 Fines, Penalties, Suspension**

**110.1** Any violation of any provision of this Ordinance will constitute an infraction, punishable pursuant to the California Penal Code, and prosecuted in the superior court of the county in which the Notice of Violation was issued, or where the violation occurred.

**110.2** Alternatively, the SJRRC, in its sole discretion, may prosecute violations of this Ordinance administratively pursuant to this Section 110 or Section 111

**110.2.1** SJRRC will adopt a "Schedule of Fines" by Resolution, which may be amended from time to time, setting forth the fines associated with violations of this and other applicable codes or ordinances.

**110.2.2** A Code Enforcement Official may issue a Notice of Violation to any person found violating any provision of this Ordinance or applicable sections of the state or federal codes. A single Notice of Violation may be issued for



multiple code violations committed by the same individual as part of the same or related incident.

**110.2.3** A Notice of Violation will include the following information:

**110.2.3.1** Name and mailing address of person committing the violation(s);

**110.2.3.2** The code section(s) of this Ordinance violated and a brief description of the nature of the violation(s);

**110.2.3.3** The date and time the violation(s) occurred;

**110.2.3.4** Train number, car number, and closest station where violation(s) occurred;

**110.2.3.5** Name of the designated enforcement official issuing the Notice of Violation;

**110.2.3.6** The total amount of fines associated with the violation(s); and

**110.3.3.7** Signature of violator or notation on the notice that the violator has refused to sign.

Failure by the person committing the violation to provide a mailing address or signature will not invalidate the issuance of the Notice of Violation.

**110.2.4** Persons receiving a Notice of Violation have thirty (30) days from the date of issuance to pay to SJRRC the fines associated with the Notice of Violation. Failure to pay fines within the time allowed will result in the imposition of a late fee in the amount of twenty-five dollars (\$25.00) per month for each month the fine remains unpaid.

**110.2.5** Fines that remain unpaid after ninety (90) days of issuance of a Notice of Violation will be forwarded to the District Attorney's office in the county where the underlying violation occurred or was observed for prosecution as an infraction under the California Penal Code.

## **Section 111 Issuance, Notice, and Enforcement of a Exclusion Order**

### **111.1 Authority for Exclusion Order**

SJRRC may exclude any individual from all ACE Trains and its rail service and Facilities in accordance with this Section 111. Any person subject to an Exclusion Order may not, during the period of exclusion, enter or remain upon any ACE Train or

Facilities from which the person is excluded, except as permitted by the terms of the Exclusion Order or by applicable law.

An Exclusion Order may be issued by any authorized person including, but not limited to, law enforcement officers, and Passenger Services Representatives as defined in this Ordinance.

### **111.2 Designation of Violations Eligible for an Exclusion Order**

An Exclusion Order may be issued to any person who:

**111.2.1** Within a period of 90 days, receives three (3) separate Notices of Violation committed in or on the ACE Train or Facilities for any act that constitutes Disorderly Conduct or violates this Ordinance; OR

**111.2.2** The person is arrested or has been convicted of a misdemeanor or felony committed in or on an ACE Train or Facility for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance; OR

**111.2.3** The person is convicted of a violation of Health and Safety Code Section 11532 for loitering in an ACE Train, Facility, or SJRRC-controlled public place and under circumstances manifesting an intent to engage in drug-related activity.

### **111.3 Length of Exclusions**

A person subject to an Exclusion Order may not board an ACE Train, or enter the property, Facilities, or vehicles of the SJRRC for a period deemed appropriate by SJRRC, provided that the duration of an Exclusion Order shall not exceed the following, as applicable:

**111.3.1** 30 days if issued pursuant to Section 111.2.1. A second Exclusion Order within one year may not exceed 90 days, and a third or subsequent Exclusion Order within one year may not exceed 180 days.

**111.3.2** 30 days if issued pursuant to Section 111.2.2 or 111.2.3 herein, provided upon conviction of a misdemeanor, the Exclusion Order may be extended for an additional period up to 180 days when added to the initial period of exclusion, and upon conviction of a felony, the Exclusion Order may be extended for a period up to one year, when added to the initial period of exclusion.

### **111.4 Scope of Exclusion Orders**

A Exclusion 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 other than the Exclusion Administrator as set forth herein.

### **111.5 Enforcement Requirements**

### **111.5.1 Sufficiency of Facts and Cause for Citation or Violation**

All citations and exclusions must be based upon probable cause. To determine whether there is enough evidence to justify an Exclusion Order or citation, Code Enforcement Officials, Passenger Services Representative, peace officers and authorized SJRRC employees (hereinafter collectively "Exclusion Officers") may rely upon facts resulting from their own personal observations or reliable facts provided by witnesses or others.

### **111.5.2 Exclusion Order**

Every person alleged to have engaged in conduct prohibited by Section 111.2 and sought to be excluded from ACE Trains and/or Facilities for such a violation(s), shall be issued a Exclusion Order.

The Exclusion Officer alleging the violation shall complete the Exclusion Order in its entirety and must provide a copy of the notice to the individual sought to be excluded.

In order to be deemed valid, the Exclusion Order must accurately denote the violating conduct and reference the applicable policy, provision, or statute that was violated.

The Exclusion Order shall be issued to the person sought to be excluded at some time period after the violating conduct has occurred. The Exclusion Order must be served upon the person sought to be excluded. Service may be accomplished by in-person delivery, any form of mail providing for delivery confirmation, overnight delivery (with confirmation of delivery), or any other means agreed to by SJRRC and the person being served.

At no time may an Exclusion 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.

### **111.5.3 Service of the Exclusion Order**

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

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

### **111.6 Multiple Penalties**

No more than one Exclusion Order will be issued for the same violation committed by a single person during a single interaction. However, multiple Notices of Violation may be issued to a single person who during a single interaction engages in multiple acts that constitute violations of this Ordinance. The issuance or non-issuance of a Notice of Violation or Exclusion 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.

#### **111.7 Stay of Notice of Violation**

A Exclusion Order will not take effect until the latest of the following: eleven (11th) calendar day following the date of delivery of the Exclusion Order; or, if review, has been requested, eleven (11) calendar days after delivery of the results of the review; or, if an administrative hearing is timely requested, the date of delivery of the resulting decision.

#### **111.8 Mandatory Appeal Opportunity**

An Exclusion Order issued pursuant to Section 111 shall not be effective unless the SJRRC first affords the person an opportunity to contest its proposed action in accordance with procedures adopted by the SJRRC for this purpose as set forth below.

#### **111.9 No Limitation on SJRRC Rights or Duties**

The Exclusion Order process is an alternative and cumulative remedy available to SJRRC and shall not limit or prejudice any other right of power available to SJRRC under this Ordinance, including, without limitation, the authority to remove a passenger from the ACE Train immediately for violation of this Ordinance or the authority to seek judicial relief against a passenger violating this Ordinance, including, without limitation, injunctive relief or a restraining order.

### **Section 112 Review Procedures for Exclusion Order**

#### **112.1 Review of Exclusion Order**

Every Exclusion Order issued by a Code Enforcement Officer or Passenger Services Representative shall be subject to the review of an SJRRC Exclusion Administrator. An Exclusion Administrator shall review each Exclusion Order upon receipt of a timely request by the person issued the Exclusion Order to determine whether (a) the Exclusion Order is filled out completely and in a manner that permits a determination of validity; (b) whether the Exclusion Order conforms to this Ordinance and in particular Section 111; (c) whether the report submitted by the issuing officer is sufficient and warrants further review; and (d) whether the Exclusion Order has been issued to a person not eligible for a complete exclusion under special circumstances (see Section 113.8 of this Ordinance to see who does not qualify for full exclusions).

Review of an Exclusion Order by the SJRRC Exclusion Administrator may be requested by the person issued an Exclusion Order within ten (10) days after service of the Exclusion Order. The request must be made in writing to, or made in person at, the Robert J. Cabral Station, 949 E. Channel St., Stockton, CA 95202. Failure to timely request a review of an Exclusion Order by the SJRRC Exclusion Administrator will result in the Exclusion Order becoming final.

### **112.2 Exclusion Administrator Determination**

Upon receipt of a timely request for review, the SJRRC Exclusion Administrator shall determine the following:

**112.2.1** Whether the Exclusion Order meets the requirements of Section 111.2 herein; and

**112.2.2** 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.

### **112.3 Effects of Determination by Exclusion Administrator**

If the Exclusion Administrator determines that the Exclusion Order is not adequately supported by a preponderance of the evidence presented or that extenuating circumstances exist, the Exclusion Administrator may withdraw the Exclusion Order and dismiss the Notice of Violation in the interest of justice. The dismissal of a Notice of Violation shall be effective immediately and the excluded person may continue to use the ACE Train system subject to all rules and regulations regarding its use.

If the Exclusion Administrator determines that the Exclusion 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 Exclusion Order.

### **112.4 Burden of Proof to Obtain an Exclusion Order Modification**

The party seeking to obtain a modification to their Exclusion Order bears the burden of proof to establish that they have a qualifying circumstance, such that they are dependent on the transit system. The party seeking to establish the qualifying circumstances must do so by a preponderance of the evidence.

### **112.5 Results of Exclusion Administrator's Review**

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

## **Section 113 Appeal Procedures for Exclusion Order**

### **113.1 Right to an Appeal Hearing following Exclusion Administrators' Review**

Every person issued an Exclusion Order who has timely requested a review of the Exclusion Order by the Exclusion Administrator as set forth in Section 112, is entitled to a hearing upon a timely request for hearing as set forth herein. The purpose of the hearing is:

(a) to review and determine whether the evidentiary basis for issuance of the Exclusion Order is sufficient as a matter of law;

(b) to determine whether the length and scope of the exclusion is commensurate with the nature of the violation;

(c) to render a finding on whether it is more probable than not that the individual engaged in conduct justifying the exclusion;

(d) consider any mitigating and aggravating factors relevant to the scope and length of the exclusion; and

(e) and issue a final decision to sustain, modify, or set aside a Exclusion Order. All persons issued an Exclusion Order shall receive notice of their right to a hearing on the Exclusion Order.

### **113.2 Initiation of Hearing Proceedings**

**113.2.1** An individual who has received a Notice of Violation and been issued an Exclusion Order and received a decision by the Exclusion Administrator as set forth in Section 112, must contact SJRRC in writing or in person and must be received by the Exclusion Administrator by 5:00 p.m. no later than the tenth (10th) calendar day following service of the Exclusion Administrator's decision to request a hearing.

**113.2.2** The request for a hearing must be made in writing to the SJRRC Exclusion Administrator at the Cabral Station located at 949 E Channel St, Stockton, CA 95202.

**112.2.3** The Exclusion Administrator shall immediately forward a copy of the Exclusion Order and any supporting documentation to the designated Hearing Officer.

**112.2.4** The Hearing Officer, or designee, will contact the individual by phone or mail to schedule a hearing within three (3) business days of receipt of the request for a hearing. The Hearing Officer shall provide notice to the person who issued the Exclusion Order of the date and time of the hearing in accordance with the Hearing Officer's procedures for issuing such notice.

### **113.3 Scheduling of Hearings**

Hearing dates and continuances shall be scheduled as follows:

#### **113.3.1 Hearing Date**

Each hearing shall be scheduled directly with the Hearing Officer or their designee within thirty (30) calendar days of the request. All hearings shall be scheduled on a weekday, Monday through Friday, excluding holidays, during normal business hours.

#### **113.3.2 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 of the Exclusion Order, pending the later hearing date.

#### **113.4 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 this Ordinance from any SJRRC representative.

The Exclusion Order shall be prima facie evidence of the violation or violations pursuant to Section 111.2 of this Ordinance establishing a rebuttable presumption affecting the burden of producing evidence. The person who issued the Exclusion Order shall not be required to 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 (see Section 112.1).

#### **113.5 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. SJRRC shall present its reasons for the need of an Exclusion Order first, and then the person contesting the exclusion shall present their reasons in support of rescission or modification of the Exclusion Order.
- 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 the Superior Court of California for the county in which the Exclusion Order was issued following the hearing.
- A party has the right to be represented by an attorney at their sole cost.

- SJRRC 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.

### **113.6 Length and Scope of Exclusions**

The length and scope of the Exclusion 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, modify, 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 should be minimized, the Hearing Officer may modify the Exclusion Order. 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.

### **113.7 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 postal 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 Exclusion 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 of the right to seek judicial review with the Superior Court of California for the county in which the Exclusion Order was issued within 90 days of delivery by personal service. The Final Order shall be effective ten (10) days after personal service.

### **113.8 Special Circumstances Affecting Exclusion Order Applicability**

If the Hearing Officer determines that SJRRC 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 Exclusion Order based on the factors set forth below shall have the burden of establishing their applicability by a preponderance of the evidence.

#### **113.8.1 Exclusions Issue to a Disabled Person**

An individual with a qualifying disability under California or federal law shall not be issued a complete exclusion from the ACE Train 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 ACE 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 Exclusion 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.).

#### **113.8.2 Exclusions Issued to a Transit Dependent Person**

A transit dependent person shall not be issued a complete exclusion from the ACE transit system or Facilities 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 ACE 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 Exclusion Order to permit a transit dependent person 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.).

#### **113.8.3 Exclusions Issued Based Upon Expressive Conduct or Exercise Religious Opinion**

A person issued an Exclusion Order for conduct involving the exercise of constitutionally protected rights (e.g., First Amendment-protected speech), shall not be excluded on the basis of such exercise. If the Hearing Officer finds that a violation was more probable than not, but also finds it was based on conduct involving the exercise of protected rights, the Exclusion Order shall be set aside, unless the Hearing Officer also finds that the conduct endangered public safety, disrupted ACE service, or interfered with transit operations. For the purposes of this subsection 113.8.3, the parameters of the free expression and religious protections afforded under this subsection shall be coextensive with constitutional guarantees.

#### **113.9 Treatment of Persons Who Fail to Provide a Mailing Address**

If a person issued an Exclusion 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 Exclusion Order, shall be made available for pick-up at SJRRC's administrative offices: 949 E Channel St, Stockton, CA 95202 during regular business hours.

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 of record.

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

### **113.10 Appointment of a Hearing Officer**

The SJRRC Executive Director shall appoint one or more Hearing Officer(s) based on the individuals' qualifications, training, and objectivity. Hearing Officers may be SJRRC employees or agents, however, a Hearing Officer's continued service, performance, evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to their findings related to the number of Notices of Violation or Exclusion Orders upheld by the Hearing Officer

### **Section 114 Writ of Administrative Mandamus**

All decisions issued by a Hearing Officer under this Ordinance shall be subject to judicial review by the Superior Court of California with jurisdiction over the county in which the Exclusion Order was issued 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 Exclusion Order, unless so ordered by a Judge of the Superior Court with jurisdiction over the proceedings.

Any and all costs, fees, or other expenses related to judicial review shall be born by each party, unless otherwise ordered by the Superior Court.

### **Section 115 Request for Refund of Fare Media**

A person issued a Exclusion Order under Section 111 of this Ordinance 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 Exclusion Order. The request for a refund should be made in writing to the Exclusion Administrator at the address set forth in Section 112.1.

If there is a balance of usable fare media of one or more days following the period of the Exclusion 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.

### **Article 2. Severability**

If any provision of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The SJRRC hereby declares that it would have adopted this Ordinance irrespective of the validity of any particular portion thereof.

### Article 3. No Mandatory Duty

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the SJRRC or any officer or employee thereof a mandatory duty of care toward persons and property within or without the ACE Trains or Facilities so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

### Article 4. Publication

Following passage and prior to the expiration of 15 days following passage, this Ordinance will be published once in accordance with Government Code section 36933(c)(1) in three newspapers, one published in Santa Clara County, one published in Alameda County, and one published in San Joaquin County and this Ordinance will take effect 30 days after the date of the last of the three publications.


Adopted this 2<sup>nd</sup> day of March 2024.

By:   
Leo Zuber, Chair

I do hereby certify that Ordinance No. 2324-01 was introduced at a regular meeting of the San Joaquin Regional Rail Commission held on February 2, 2024, and was thereafter passed, adopted, and ordered to print at a regular meeting of the Commission held on March 1, 2024, by the following vote:

AYES: 6 – Hernandez, Craig, Nuño, Villapudua, Vice Chair Young, Chair Zuber  
NOES: 0  
ABSENT: 0  
ABSTAIN: 2 - Mei, Warmsley

I further certify that Ordinance No. 2324-01 was approved and signed by the Chair of the Commission on the date of its passage and the same has been published pursuant to law.

  
Stacey Mortensen, Secretary

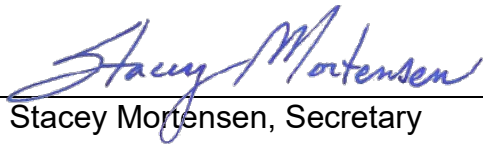
Approved as to form:

  
Janice D. Magdich  
General Counsel

## ORDINANCE No. 2324 – 01 CERTIFICATION

Stacey Mortensen, Secretary of the Board of Commissioners of the San Joaquin Regional Rail Commission, hereby certifies that the whole number of the members of the Board of Commissioners of the San Joaquin Regional Rail Commission is eight; that the above and foregoing Ordinance was passed and adopted at a regular meeting of the Board of Commissioners of the San Joaquin Regional Rail Commission, held on Friday, March 1, 2024, by the following vote:

|            |   |   |
|------------|---|---|
| AYES:      | 6 | Hernandez, Craig, Nuño, Villapudua, Vice Chair Young, Chair Zuber |
| NOES:      | 0 |   |
| ABSTAINED: | 0 |   |
| ABSENT:    | 2 | Mei, Warmesley  |

  
\_\_\_\_\_  
Stacey Mortensen, Secretary