

BOARD OF DIRECTORS ORDINANCE NO. FE2018-01
AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY RELATING TO
THE ADMINISTRATION OF TOLLS AND
THE ENFORCEMENT OF TOLL VIOLATIONS ON THE
FOOTHILL AND EASTERN TRANSPORTATION CORRIDORS

WHEREAS, the Foothill/Eastern Transportation Corridor Agency (the "Agency") is authorized, pursuant to California Government Code Section 66484.3(f) and California Streets and Highways Code Section 31121, to fix the rate of tolls and other charges to be collected from users of the Foothill and Eastern Transportation Corridors, designated State Routes 133, 241 and 261 (the "Corridor") and to do such acts as are necessary or desirable in connection with the duties and powers conferred on it, including the establishment of penalties for violations of the toll requirements; and

WHEREAS, Section 23302.5 of the California Vehicle Code ("Code") provides that it is unlawful for a person to evade or attempt to evade the payment of tolls or other charges on any vehicular crossing or toll highway, and provides that such acts are subject to civil penalties; and

WHEREAS, subpart (d) of Section 23302 of the Code provides that for toll highways where the issuing agency, as defined in Section 40250, permits pay-by-plate payment of tolls and other charges in accordance with the policies adopted by the issuing agency, and where electronic toll collection is the only other method of paying tolls or other charges, it is prima facie evidence of a violation of Section 23302 for a driver to drive a vehicle onto the toll highway without either a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification Account with a balance sufficient to pay those tolls or valid vehicle license plates properly attached to the vehicle, and pursuant to subpart (e) of Section 23302 of the Code, "pay-by-plate toll payment" means an issuing agency's use of on-road vehicle license plate identification policies adopted by the issuing agency; and

WHEREAS, Sections 40250, et seq. of Chapter 1 of Division 17 of the Code provide for enforcement of civil penalties for violation of a statute, regulation, or ordinance governing the evasion of tolls under the Code, including Code Section 23302.5 and under a federal or state statute or regulation, and under an ordinance enacted by a local authority including a joint powers authority in accordance with administrative procedures set forth in Article 4 of Chapter 1 of Division 17 of the Code; and

WHEREAS, on August 8, 1996 the Agency adopted ordinance F96-01 making the passing through a Corridor toll collection facility without payment of the proper toll a civil violation, and establishing Penalties for such violation and the procedures for issuance of violation notices and enforcement to be consistent with the new provisions of the code; and

WHEREAS, the Agency's Toll Enforcement Ordinance was subsequently amended by the adoption of Ordinance FE2013-01 to adjust Agency's policies and procedures for

administration of tolls along with the Toll Evasion Penalty and the Delinquent Toll Evasion Penalty in the Schedule of Penalties, Schedule A; and

WHEREAS, the availability of new technologies and the institution of nationwide toll interoperability standards have made it necessary and desirable for the Agency to amend Ordinance FE2013-01 to reflect the Agency's deployment of such new and improved technologies and business practices; and

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE AGENCY DOES HEREBY ORDAIN THAT ORDINANCE FE2013-01 AS ADOPTED APRIL 11, 2013 RELATING TO ADMINISTRATION OF TOLLS AND THE ENFORCEMENT OF TOLL VIOLATIONS FOR THE FOOTHILL AND EASTERN TRANSPORTATION CORRIDORS IS REPLACED IN ITS ENTIRETY ON JUNE 30, 2019 by the following:

Section 1. Definitions. The following terms shall have the meanings as set forth below:

- (a) "Account" shall mean an Automatic Vehicle Identification Account established with Agency.
- (b) "Agency" shall mean the Foothill/Eastern Transportation Corridor Agency.
- (c) "Automatic Vehicle Identification Account" shall mean an account for the electronic payment of tolls incurred by vehicles registered to this account and automatically identified by the Agency' electronic toll collection system, that is established by the patron with Agency, or that is established by the patron with another operator of a toll facility who has an agreement with Agency for the interoperable processing of tolls incurred by their customers with registered accounts for the payment of tolls.
- (d) "Code" shall mean the California Vehicle Code.
- (e) "Corridor" shall mean the Foothill and Eastern Transportation Corridors.
- (f) "Department" shall mean the California Department of Motor Vehicles.
- (g) "Electronic Toll collection" shall mean the collection of tolls through the use of a valid Automatic Vehicle Identification account or an online toll pre-payment or post-payment, as provided in Section 2, below.
- (h) "Motorist" shall mean the registered owner, rentee, lessee and/or driver of a Vehicle
- (i) "Notice of Violation" shall mean the notice of toll evasion issued by Agency if a Violation is detected by any means (including automated device, video image, visual observation, or otherwise) and the subject Vehicle is not stopped.

- (j) "Toll Enforcement Officer" shall mean any member of the California Highway Patrol or any employee or contractor of Agency whose duty is to enforce the payment of tolls.
- (k) "Vehicle" shall mean any vehicle as defined in California Vehicle Code Section 670.
- (l) "Violation" means the commission of an activity proscribed in Section 3(a) hereof.
- (m) "Toll Evasion Penalty" or "Penalty" shall have the same meaning as set forth in Vehicle Code Section 40252 subdivision (b).
- (n) "Toll Payment Procedures" means the written procedures for implementing Electronic Toll Collection issued by the Agency's Chief Toll Operations Officer as set forth in the Agency's Business Rules and/or Standard Operating Procedures.

Section 2. Electronic Toll Collection. The Chief Toll Operations Officer is authorized to issue written procedures for implementing the system for Electronic Toll Collection for the payment of Corridor tolls consistent with this Ordinance and such Board direction as may be given from time to time. The Toll Payment Procedures shall establish the methods by which Corridor toll payment can be made automatically via a valid Automatic Vehicle Identification Account, including the types of registered electronic toll payment accounts and options available to Motorists through the Agency.

Additionally, Motorists may make toll pre-payments or post-payments in order to avoid receiving a Notice of Violation pursuant to Section 4(c) of this Ordinance.

- (a) FasTrak Account. To establish an Account with Agency, a Motorist must register for a FasTrak Account prior to traveling the Corridor or within the grace period afforded for toll post-payments pursuant to the Toll Payment Procedures. An applicant for an Account shall execute an application and License Agreement providing for the terms and conditions of use of the Account and establishing a customer credit, cash or invoice Account with the Agency. The Account holder will be supplied a sticker tag/transponder and must properly mount the sticker tag/transponder on the Vehicle in order for tolls to be deducted from the Account when passing through a toll point. Account holders will have the option to purchase a switchable transponder for use in declaring occupancy counts on applicable facilities.
- (b) Account Payment Types. FasTrak Accounts include the following three methods of toll payment:
 - (i) Prepaid Payment Method. The Prepaid Account customer must make a credit card, cash or check payment to open and replenish the

Prepaid Account. The payment and replenishment rules for such accounts, including opening balance, replenishment threshold and replenishment amount shall be set forth in the Toll Payment Procedures.

- (ii) Charge Payment Method. The Charge Account customer is not required to have a prepaid balance but is required to maintain a valid credit card or bank account number on file with the Agency. The Agency will regularly charge the credit card account or debit the bank account as toll trips are taken in accordance with the Toll Payment Procedures.
- (iii) Invoice Account Method. The Invoice Account customer is not required to have prepaid balance nor a credit card or bank account on file with the Agency. The Agency will invoice the holder of an Invoice Account periodically for all tolls incurred during the invoice period. Invoices are due immediately upon receipt and are past due if not paid within the time period set forth in the Toll Payment Procedures.

- (c) Toll Pre-payment – Post-payment. A customer who enters the Corridor without a valid Automatic Vehicle Identification Account may cure a Violation by making payment within a five-day grace period after incurring a toll by contacting the Agency to make a payment, in accordance with the Toll Payment Procedures. Establishment of a Automatic Vehicle Identification Account is not required to make pre-payment or post-payments.

Section 3. Liability for Failure to Pay Toll.

- (a) No person shall cause a Vehicle to pass through or attempt to pass through a Corridor toll collection facility without payment of the proper toll for the Vehicle.
- (b) If the payment method for a toll incurred by an Account holder fails (cash balance is overdrawn, credit card declines, bank account debit is not honored, or invoice is past-due), the outstanding transactions will immediately escalate to Violations. If an invoice issued to an Invoice Account holder is past-due, all transactions billed on the past-due invoice will be identified in a single Violation Notice, with each separate transaction carrying its own Violation penalty pursuant to Section 4 of this Ordinance.
- (b) Except as provided herein, the registered owner(s) and the driver, rentee or lessee of a Vehicle which is the subject of any Violation shall be jointly and severally liable for the Penalties imposed under this Ordinance, unless the registered owner can demonstrate, as provided in Section 5 hereof, that the

Vehicle was used without the express or implied consent of the registered owner. A registered owner who pays any Penalty pursuant to this Ordinance shall have the right to recover the same from the driver, rentee or lessee.

- (c) A Motorist who is not the owner of the Vehicle may contest the Notice of Violation in accordance with this Ordinance.
- (d) Any Motorist assessed a Penalty for a Violation shall be deemed to be charged with a non-criminal civil violation.

Section 4. Penalties and Enforcement of Violations.

- (a) The Penalties for a Violation of this Ordinance shall be the amounts set forth in the Schedule of Penalties, attached hereto as Schedule A and incorporated by reference herein. The Schedule of Penalties may, in the discretion of the Agency's Chief Executive Officer, be amended, from time to time by the Agency, but may not be greater than the amounts established under Code Section 40258 as the maximum Penalties for civil toll evasion violations. Subject to the limitations stated above, the Agency's Board of Directors may establish late payment Penalties and other related charges for Violations, except in the event the driver is arrested pursuant to Article 1 (commencing with Section 40300) of Chapter 2 of the Code, in which case the civil procedure for enforcement of violations that is established by this Ordinance shall not apply. Penalties assessed and paid pursuant to this subsection shall be remitted to the Agency.
- (b) The Agency may designate certain of its employees or contractors as Toll Enforcement Officers. Training and qualifications of the employees or contractors for such designation shall be determined by the Agency. Designation as a Toll Enforcement Officer does not provide the Toll Enforcement Officer with the power of arrest. Any member of the California Highway Patrol patrolling the Corridor shall be deemed to be a Toll Enforcement Officer for purposes of enforcing the payment of tolls.
- (c) If a Violation is detected by any means (including automated device, video image, visual observation, or otherwise) and the subject Vehicle is not stopped, a notice of toll violation shall be delivered to the registered owner by first-class mail addressed to the registered owner as shown on the records of the Department within 10 days after the Violation is determined by the Agency in its normal course of business. In the event of computer/systems failures or interruption, either within the Agency's system or externally (E.g., within the Department's system), the time for mailing notice will be tolled during the failure or interruption period. The Agency shall have an additional three days to mail first notices for violations occurring within three business days of a major holiday that results in office closures of more than two days that would otherwise be considered working days. This ten-

day notice requirement shall not apply if the Vehicle is registered outside California, or if accurate information concerning the identity and address of the registered owner is not available to the Agency within 5 days following the Agency's determination that a violation occurred, or, under circumstances described in the second sentence of Section 40254 (a) of the Code.

- (d) In the case of joint ownership of a Vehicle, the Notice of Violation shall be issued to the first name appearing in the registration. If a Notice of Violation is issued in person to the driver of a Vehicle, the driver of the Vehicle shall be deemed the agent of the registered owner for purposes of delivery of the Notice of Violation. The Notice of Violation shall contain:
 - (i) The date and time of issuance.
 - (ii) The name and address of the person to whom the Notice of Violation is issued.
 - (iii) The date, time and location of the alleged Violation.
 - (iv) The alphanumeric designation of the license plate on the Vehicle that was used in the alleged Violation(s) and, if applicable, the registration expiration date and the make of the Vehicle.
 - (v) The Section of the California Vehicle Code alleged to have been violated.
 - (vi) The procedure and deadline for the Motorist to follow in order to pay the penalty or to contest the Notice of Violation (and to appeal an adverse decision), including the time and place for appearance by the registered owner.
 - (vii) The amount of the applicable Penalty for the Violation and the further Penalty to be paid in the event the Penalty imposed with the Notice of Violation is not paid timely.
 - (viii) A statement that there will be additional court costs and fees incurred by the Motorist according to the local jurisdiction rules if collection is pursued through court action.
- (e) If the description of the Vehicle in the Notice of Violation does not match the corresponding information on the registration card for that Vehicle, the

Additional information may be included in the Notice of Violation in the discretion of the Chief Executive Officer of the Agency.

Agency may, on written request of the Motorist, cancel the Notice of Violation without the necessity of appearance by that person.

- (f) If after a copy of the Notice of Violation has been sent to the Motorist, the Agency determines that, in the interest of justice, the Notice of Violation should be dismissed, the Agency shall dismiss the charges and so notify the Motorist.
- (g) If the full amount of the Penalty is received by the person authorized to receive the deposit of the Penalty within 10 days of the mailing of the Notice of Violation and there is no contest as to that Violation, proceedings under this Ordinance shall terminate.

Section 5. Failure to Pay Toll Evasion Penalties.

- (a) If the payment of a Penalty is not received by the Agency as specified in the Notice of Violation by the time and date fixed on the Notice of Violation under Section 4, above the Agency shall deliver by personal service or first-class mail to the registered owner of the Vehicle a Notice of Delinquent Violation.
- (b) The Agency shall establish a procedure for providing, upon request, a photo static copy of the original Notice of Violation or an electronically produced facsimile of the original Notice of Violation. The Agency may charge a fee sufficient to recover the actual cost of providing the copy, to be established by the Chief Executive Officer, not to exceed two dollars (\$2).
- (c) The Notice of Delinquent Violation shall contain the information required to be contained in the original Notice of Violation and, additionally shall contain a notice to the registered owner that, unless the registered owner pays the Penalties or contests the citation pursuant to the procedure set forth in the Notice of Violation within 15 days after mailing of the Notice of Delinquent Toll Violation, or completes and files an Affidavit of Non-liability in compliance with this Section and Section 4(d), the Violation shall be considered to be a debt due and owing the Agency, and the Agency may seek recovery in any lawful manner, including non-renewal action against the Vehicle's registration.
- (d) The Notice of Delinquent Violation shall contain, or be accompanied with, an Affidavit of Non-liability and information regarding what constitutes non-liability, information as to the effect of executing the Affidavit, and instructions for returning the Affidavit to the Agency. If the Affidavit of Non-liability is returned to the Agency within 15 days of the mailing of the Notice of Violation or Notice of Delinquent Toll Violation together with proof that either (i) the driver at the time of the Violation did not possess express or implied authority to drive the Vehicle, or (ii) the registered owner

served has made a bona fide sale or transfer of the Vehicle and has delivered possession thereof to the purchaser prior to the date of the alleged Violation in compliance with Section 5602 of the Code, and the Agency is satisfied with such proof, the Agency may terminate proceedings against the originally served Motorist and proceed against the unauthorized driver at the time of the Violation, or the new owner of the Vehicle. To establish the defense enumerated in clause (i), above, the registered owner must provide a stolen vehicle police report.

Section 6. Payment After Notice of Delinquent Violation.

- (a) If a Motorist, or agent of a Motorist who was served with a Notice of Delinquent Violation pursuant to Section 5, deposits the demanded Penalties with the Agency, after the Notice of Delinquent Violation is issued for delivery, the Agency shall follow the procedures set forth in Section 40266 of the Code.

Section 7. Contest of Notice of Violation or Delinquent Violation.

- (a) The Agency shall establish a fair and impartial administrative review procedure for any Motorist who contests a Notice of Violation or a Notice of Delinquent Violation. Such procedure shall be implemented by the Agency's Chief Executive Officer who shall have the authority to update and revise such procedure from time to time as he deems necessary.
- (b) Any Motorist who wishes to contest a Notice of Violation or Notice of Delinquent Violation shall be provided with a copy of the administrative review procedure and invited to request a hearing. A properly requested hearing shall be held within 90 calendar days following the receipt of a request for administrative hearing, excluding any time tolled pursuant to Article 4 of Chapter 1 of Division 17 of the Code. In the event a hold has been placed on the renewal of a Motorist's Vehicle registration under Section 4770 of the Code, then the hearing shall be held within 30 days following a proper request, provided the Motorist requesting the hearing cooperates in its scheduling. Prior to filing any request to intercept monies due to the Motorist from the Franchise Tax Board in accordance with Government Code Sections 12419.5 et seq. the Agency shall provide 45 days' advance written notice, and the hearing on the review shall be scheduled prior to the filing of the request to intercept.

Section 8. Collection of Unpaid Penalties. Except as otherwise provided in Sections 40268 and 40269 of the Code, the Agency shall be authorized to proceed under one or more of the following options for the collection of unpaid Penalties:

- (a) The Agency may file an itemization of unpaid Penalties (including administrative and service fees) with the Department for collection with the registration of the Vehicle pursuant to Section 4770.
- (b) If more than four hundred dollars (\$400) in unpaid Penalties and other charges have been accrued by any Motorist or registered owner, the Agency may file proof of that fact with the court with the same effect as a civil judgment. Execution may be levied, and other measures may be taken for the collection of the judgment as are authorized for the collection of any unpaid civil judgment entered against a defendant in an action on a debtor. The court may assess costs against a judgment debtor to be paid upon satisfaction of the judgment. Prior to seeking entry of judgment, the Agency shall send a notice by first-class mail (and by e-mail, if known) to the Motorist or registered owner indicating that a judgment shall be entered for the unpaid Penalties and that after 30 days from the date of the mailing of the notice, the judgment shall have the same affect as an entry of judgment against a judgment debtor. The notice shall include all information required by Section 40267 of the Code and shall also advise the Motorist of the Motorist's right to request an administrative review. The filing fee and any costs of collection shall be added to the judgment amount.
- (c) If the registration of the Vehicle has not been renewed for 60 days beyond the renewal date, and the notice has not been collected by the Department pursuant to Section 4770 of the Code, the Agency may file proof of unpaid Penalties with the court with the same effect as a civil judgment as provided in subdivision (b), except that if the amount of the unpaid Penalties is not more than four hundred dollars (\$400), the filing fee shall be collectible by the court from the debtor.
- (d) The Agency may file a request to intercept a Motorist's tax refund from the Franchise Tax Board in accordance with Government Code Sections 12419.5 et seq.
- (e) The Agency may contract with a collection agency to collect unpaid Penalties and other charges.

Section 9. Termination of Proceedings. The Agency shall terminate proceedings on the Notice of Delinquent Violations upon the occurrence of the circumstances specified in Section 40269 of the Code.

Section 10. Other Notices. Nothing herein shall prohibit the Agency from establishing informal methods of notifying Motorists of Violations and from collecting Penalties for Violations through such means.

Section 11. Implementation. The Chief Executive Officer of the Agency is hereby authorized and directed to develop such procedures, forms, documents and directives which may be necessary to implement the terms of this Ordinance.

Section 12. Severability. If any provision of this Ordinance is determined to be void or invalid by any administrative or judicial tribunal, said provision shall be deemed severable and such invalidation shall not invalidate the entirety of this Ordinance or any other provision hereof.

ADOPTED BY THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY ON OCTOBER 11, 2018.

Ed Sachs, Chairman
Foothill/Eastern Transportation Corridor Agency

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ATTEST:

I, Martha Ochoa, Clerk of the Board of the Foothill/Eastern Transportation Corridor Agency hereby certify that the foregoing Ordinance FE2018-01 was duly adopted on October 11, 2018 by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency by the following vote:

Yes:

No:

Absent:

Abstain:

Martha Ochoa, Clerk of the Board
San Joaquin Hills Transportation Corridor Agency

Schedule "A"

	<u>Schedule of Penalties</u>	
Toll Evasion Penalty		\$57.50
Delinquent Toll Evasion Penalty		\$42.50