

**ORDINANCE NO. 2020-01**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
ORANGE COUNTY TRANSPORTATION AUTHORITY  
AMENDING ORDINANCE NO. 2010-01 RELATING TO  
THE ADMINISTRATION OF TOLLS AND  
THE ENFORCEMENT OF TOLL VIOLATIONS FOR THE  
ORANGE COUNTY TRANSPORTATION AUTHORITY**

**WHEREAS**, Sections 23302, 23302.5 and 40254 of the California Vehicle Code ("Code") provide 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. Sections 23302.5 and 40254 provide that such acts are subject to civil penalties; and

**WHEREAS**, Section 40250, et seq. of Chapter 1 of Division 17 of the Code provides for enforcement of civil penalties for toll evasion violations under a statute, regulation, or duly adopted local ordinance; and

**WHEREAS**, the Riverside Freeway/State Route 91 toll facility ("91 Express Lanes"), which is owned, maintained and operated by the Orange County Transportation Authority ("Authority") constitutes a "toll highway" for the purpose of sections 23302, 23302.5 and 40254 of the Code; and

**WHEREAS**, the 405 toll facility, located on the portion of the San Diego Freeway/State Route 405 between the State Route 73 Freeway in Costa Mesa to the south and the Interstate 605 near the Los Angeles County line to the north ("405 Express Lanes"), will be operated and maintained by the Authority, and will constitute a "toll highway" for the purpose of sections 23302, 23302.5 and 40254 of the Code when it opens in approximately 2023; and

**WHEREAS**, on December 13, 2004, the Authority adopted Ordinance No. 2004-01 establishing penalties for passing through the 91 Express Lanes toll facility without payment of the proper toll, pursuant to sections 23302.5 and 40250, et seq. of the Code and establishing the procedures for issuance of violation notices and enforcement of penalties, consistent with sections 40250, et seq. of the Code; and

**WHEREAS**, the Toll Enforcement Ordinance was amended in April 2010 by Ordinance 2010-04; and

**WHEREAS**, the Authority deems it appropriate to modify the penalties and procedures established by Ordinance No. 2010-04.

**NOW, THEREFORE**, THE BOARD OF DIRECTORS OF THE AUTHORITY DOES HEREBY ORDAIN THAT ORDINANCE NO. 2010-01 RELATING TO THE ADMINISTRATION OF TOLLS AND THE ENFORCEMENT OF TOLL POLICIES FOR

THE ORANGE COUNTY TRANSPORTATION AUTHORITY IS HEREBY AMENDED TO READ AS FOLLOWS:

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

- (a) "Authority" shall mean the Orange County Transportation Authority.
- (b) "Code" shall mean the California Vehicle Code.
- (c) "91 Express Lanes" shall mean the toll facility on the Riverside Freeway/ State Route 91, between the Orange/Riverside County line and the State Route 55 freeway.
- (d) "405 Express Lanes" shall mean, upon completion of construction and opening of the toll facility, the toll facility on the San Diego Freeway/State Route 405 between the State Route 73 Freeway in Costa Mesa to the south and the Interstate 605 near the Los Angeles County line to the north ("405 Express Lanes").
- (e) "Department" shall mean the California Department of Motor Vehicles.
- (f) "Motorist" shall mean and include the registered owner, rentee, lessee and driver of a Vehicle.
- (g) "Toll Enforcement Officer" shall mean any member of the California Highway Patrol or any employee or contractor of Authority whose duty includes the enforcement of the payment of tolls.
- (h) "Vehicle" shall mean any vehicle as defined in California Vehicle Code Section 670.
- (i) "Violation" shall mean the commission of an activity proscribed in Section 2(a) hereof.
- (j) "Toll Evasion Penalty" or "Penalty" shall have the same meaning as set forth in Vehicle Code Section 40252 subdivision (b).

Section 2. Liability for Failure to Pay Toll.

- (a) No person shall cause a Vehicle to pass through or attempt to pass through the 91 Express Lanes or 405 Express Lanes without payment of the proper toll for the Vehicle.
- (b) Except as provided herein, the registered owners 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 3(d) or 4(d) 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) The driver, rentee or lessee of a Vehicle who is not the owner thereof 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, pursuant to section 23302.5 subdivision (a) of the Code.

### Section 3. 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 is proscribed under Schedule A, which may be amended from time to time by the Authority's Chief Executive Officer. The Authority's Chief Executive Officer 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. Revenues received from the Penalties assessed pursuant to this Ordinance shall be returned to the Authority.

(b) The Authority 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 Authority. 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 91 Express Lanes or 405 Express Lanes 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 Evasion Violation shall be forwarded 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 it is determined, in its normal course of business, to be a Violation. If accurate information concerning the identity and address of the registered owner is not available within 5 days following the Violation, the Authority shall have an additional 45 calendar days to obtain such information and forward the Notice of Violation. In the case of joint ownership, the Notice of Toll Evasion Violation shall be issued to the first name appearing in the registration. If a Notice of Toll Evasion 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 Toll Evasion Violation. The Notice of Toll Evasion

Violation shall contain (1) sufficient information to enable the recipient thereof to determine the date, time and location of the alleged Violation, (2) the section of the Vehicle Code allegedly violated, (3) the Penalty due for that Violation, (4) the procedure to follow for payment of the Penalty, (5) a clear and concise explanation of the procedures for contesting the alleged Violation and/or the assessed Penalty and appealing an adverse decision, (6) the date and time within which the Penalty must be paid, (7) the Penalties in the event the amount is not timely paid, (8) a statement in bold print that payments of the Penalty may be sent through the mail, (9) the address and to whom payments may be sent through the mail, (10) the Vehicle license plate number, (11) if practicable, the registration expiration date and the make of the vehicle, and (12) such other information determined to be necessary and appropriate by the Authority. The Authority's Chief Executive Officer shall establish the procedure for issuance of Notices of Violation and the form of such Notice.

(d) The Notice of Toll Evasion Violation shall contain, or be accompanied with, an Affidavit of Non-liability and information of what constitutes non-liability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the Authority. If the Affidavit of Non-liability is returned to the Authority within 30 days of the mailing of the Notice of Toll Evasion 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 as evidenced by a stolen vehicle police report, 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 Authority is satisfied with such proof and has obtained verification from the Department, then the Authority 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. If the Affidavit of Non-liability is returned to the Authority within 30 days of the mailing of the Notice of Toll Evasion Violation together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer which identifies the rentee or lessee and provides the driver's license number, name, and address of the rentee or lessee, the Authority shall serve or mail to the rentee or lessee identified in the Affidavit of Non-liability a Notice of Toll Evasion Violation. If payment is not received within 30 days of the mailing of the Notice of Toll Evasion Violation, the Authority shall deliver by personal service or first-class mail a Notice of Delinquent Toll Evasion Violation.

(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 Authority may, on written request of the Motorist, cancel the Notice of Toll Evasion Violation without the necessity of appearance by that person.

(f) If, after a copy of the Notice of Toll Evasion Violation has been sent to the Motorist, the Authority determines that, in the interest of justice, the Notice of Toll Evasion Violation should be dismissed, the Authority 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 payment of the Penalty within 30 days of the Notice of Toll Evasion Violation date and there is no contest as to that Violation and/or the associated Penalty, proceedings under this Ordinance shall terminate.

(h) The 10-day time period as described under Section 3(c) will not apply in the event of computer/systems failures, either within the Authority's systems or externally. In the event of such failure, the time for mailing the Notice (and any accompanying escalation of Penalties) will be tolled during the failure period. The Authority shall have an additional 3 days to mail the Notice of Toll Evasion Violation for violations occurring within 3 business days of a major holiday that results in office closures of more than 2 days that would otherwise be considered working days.

#### Section 4. Failure to Pay Toll Evasion Penalties.

(a) If the payment of the Penalty is not received by the person authorized to receive the Penalty amount by the time and date fixed on the Notice of Toll Evasion Violation under Section 3 above, the Authority shall deliver by personal service or first-class mail to the registered owner of the Vehicle a Notice of Delinquent Toll Evasion Violation.

(b) The Authority shall establish a procedure for providing, upon request, a photostatic copy of the original Notice of Toll Evasion Violation or an electronically produced facsimile of the original Notice of Toll Evasion Violation. The Authority 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 Toll Evasion Violation shall contain the information required to be contained in the original Notice of Toll Evasion Violation and, additionally, shall contain a notice to the registered owner that, unless the registered owner pays the Penalties or contests the Violation and/or assessed Penalty pursuant to the procedure set forth in the Notice of Toll Evasion Violation within 60 days after mailing of the Notice of Delinquent Toll Evasion Violation, or completes and files an Affidavit of Non-liability which complies with Section 4(d), the Penalties shall be considered to be a debt due and owing the Authority, and the Authority may seek recovery in any lawful manner, including non-renewal action against the Vehicle's registration.

(d) The Notice of Delinquent Toll Evasion Violation shall contain, or be accompanied with, an Affidavit of Non-liability and information of what constitutes non-liability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the Authority. If the Affidavit of Non-liability is returned to the Authority within 60 days of the mailing of the Notice of Delinquent Toll Evasion 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 as evidenced by a stolen vehicle police report, 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 Authority is satisfied with such proof and has obtained verification from the Department, then the Authority 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. If the Affidavit of Non-liability is returned to the Authority within 60 days of the mailing of the Notice of Delinquent Toll Evasion Violation together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer which identifies the rentee or lessee and provides the driver's license number, name, and address of the rentee or lessee, the Authority shall serve or mail to the rentee or lessee identified in the Affidavit of Non-liability a Notice of Delinquent Toll Evasion Violation. If payment is not received within 60 days of the mailing of the Notice of Delinquent Toll Evasion Violation, the Authority may proceed against the rentee or lessee pursuant to Section 40267 of the Code.

Section 5. Payment After Notice of Delinquent Toll Evasion Violation.

(a) If a Motorist or agent of a Motorist who was served with a Notice of Delinquent Toll Evasion Violation pursuant to Section 4, deposits the demanded Penalties with a person authorized to receive it then the Authority shall follow the procedures set forth in Section 40266 of the Code.

Section 6. Contest of Toll Evasion Violation, Delinquent Violation, and/or Penalties.

(a) A person may contest a Notice of Toll Evasion Violation, a Notice of Delinquent Toll Evasion Violation, and/or any Penalties associated with such Notice(s), within 30 days from the issuance of the Notice of Toll Evasion Violation, or within 60 days from the mailing of the Notice of Delinquent Toll Evasion Violation, whichever occurs later.

(b) The Authority shall establish a fair and impartial investigation process to investigate the circumstances of the notice with respect to the contestant's written explanation of reasons for contesting a toll evasion violation. The investigation process shall be implemented by the Authority's Chief Executive Officer who shall have the authority to update and revise such process from time to time, as he deems necessary.

(c) A person who contested a Notice of Toll Evasion Violation, a Notice of Delinquent Toll Evasion Violation, and/or any Penalties associated with such Notice(s), and is not satisfied with the results of the investigation may, until 30 days after a notice of intent to enter a judgment is mailed, request an administrative review. Except as otherwise tolled by law, a properly requested administrative review shall be held within 90 calendar days following the receipt of a request for administrative review, the required deposit amount, and the hearing administrative fee.

(d) The deposit for invoking the second level administrative review shall be as follows:

- (i) Except as provided herein, an individual seeking an administrative review shall deposit the full amount of the toll and Penalty.
- (ii) For Violations and/or Penalty arising out of the same set of operative facts, the maximum amount of tolls plus Penalty to be deposited shall be \$250 for toll account patrons. For non-patrons, the maximum amount of tolls plus Penalty to be deposited shall be the tolls, plus either (a) \$250 or (b) \$250 plus 10 percent of Penalty above \$1,000, whichever is greater.
- (iii) Individuals unable to pay the required deposit may apply for a hardship exception.

Section 7. Collection of Unpaid Penalties.

Except as otherwise provided in Sections 40268 and 40269 of the Code, the Authority and/or its designated contractor or subcontractor shall be authorized to proceed under one or more of the following options for the collection of unpaid Penalties:

(a) Contract with a collection agency to collect unpaid tolls and Penalties.

(b) File an itemization of unpaid Penalties, together with any filing fee, with the Department for collection with the registration of the Vehicle pursuant to Section 4770 of the Code. If a Department hold is placed before a judgment is sought, and the violator seeks administrative review, that review will be expedited to take place within 30 days provided that the violator cooperates in setting the hearing within that time frame.

(c) If more than four hundred dollars (\$400) in unpaid Penalties have been accrued by any person or registered owner, 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. A notice shall be sent by first-class mail to the person 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 effect as an entry of judgment against a judgment debtor. The notice shall include all information required by Section 40267 of the Code. The filing fee and any costs of collection shall be added to the judgment amount.

(d) 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, 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.

(e) Submit a request to the California State Controller for an offset of unpaid Penalties owing by a Motorist against any amount owing the person or entity by a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Law or from winnings in the California State Lottery, as authorized by California Government Code Section 12419.10. A minimum of 45 days prior written notice of intent to file a Franchise Tax Board intercept shall be provided. The notice will provide a process for seeking an administrative review, including notification that if the violator wishes to ensure that an administrative hearing can be held before the intercept is filed, the request for administrative review must be made within 15 days of the date of the notice.

Section 8. Termination of Proceedings.

The Authority or its designated agent shall terminate proceedings on the Notice of Delinquent Violations upon the occurrence of the circumstances specified in Section 40269 of the Code.

Section 9. Other Notices.

Nothing herein shall prohibit the Authority from establishing informal methods of notifying Motorists of Violations and from collecting Penalties for Violations through such means.

Section 10. Implementation.

The Chief Executive Officer of the Authority is hereby authorized and directed to develop such procedures, forms, documents and directives which may be necessary to implement the terms of this Ordinance and may delegate his authority, duties and obligations under this Ordinance to the General Manager of the Express Lanes.



Section 11. 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 ORANGE COUNTY TRANSPORTATION AUTHORITY ON  
December 14, 2020.

SIGNED AND APPROVED ON December 14, 2020.

ORANGE COUNTY TRANSPORTATION AUTHORITY

A handwritten signature in black ink, appearing to read "Steve Jones", written over a horizontal line.

Steve Jones  
Chairman  
Orange County Transportation Authority

ATTEST:



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Andrea West  
Interim Clerk of the Board  
Orange County Transportation Authority

VOTE:

AYES: Chairman Jones and Directors Bartlett, Chaffee, Delgleize, Hennessey, Hernandez, Muller, Mark Murphy, Richard Murphy, Shaw, Sidhu, Steel, and Wagner

NOES: None.

ABSTAIN: None

ABSENT: Vice Chairman Do



## Schedule "A"

### Schedule of Penalties

Violation Stage	Current Penalty	Penalty effective 1/1/2021
Notice of Toll Evasion Violation (NTEV)	\$25.00	\$25.00
Notice of Delinquent Toll Evasion (NDTEV)  Assessed if the registered owner, by appearance or mail, fails to make payment to the Authority within 15 days of the mailing of the NDTEV	\$55.00*	\$55.00*

\*Includes the \$25.00 NTEV penalty.

If the registered owner's address cannot be found, or if there is no response to the Notice of Delinquent Toll Evasion Violation within 60 days of the mailing of the Notice of Delinquent Toll Evasion Violation, the delinquent penalties shall be considered to be a debt due and owing the Authority, and the Authority may seek recovery in any lawful manner, pursuant to Section 40267 of the Code.

Collections Stage	Current Penalty	Penalty effective 1/1/2021
Notice of Toll Evasion Assignment/DMV Hold	\$80.00	\$80.00
Subsequent Demand Notices	\$100.00 for the first violation within one year, \$150 for the second violation within one year, and up to 20 times the highest toll in effect for the third and subsequent violation within one year.	\$100.00

(1) Penalties are paid in addition to the toll amount