

1 [Urging the Metropolitan Transportation Commission to strengthen the privacy provisions of
2 the Clipper Card program]

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4 **Resolution urging the Metropolitan Transportation Commission to strengthen the**
5 **privacy provisions of personal information of the Clipper Card Program.**

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7 WHEREAS, The Clipper card is an electronic fare payment card for Bay Area public
8 transit agencies that is operated by the Metropolitan Transportation Commission (MTC); and

9 WHEREAS, As of September 2012, there are more than one million active Clipper
10 cards; and

11 WHEREAS, The MTC maintains the usage history for Clipper cards, such as when
12 value is added to cards and when they are used on transit systems; and

13 WHEREAS, For Bay Area Rapid Transit (BART), where fares are based on the
14 distance traveled, the Clipper usage history records users' travel routes, and

15 WHEREAS, To be able to replace Clipper cards if they are lost, stolen, or damaged,
16 Clipper users must register their cards on the Clipper website; and

17 WHEREAS, For users who register their Clipper cards, the MTC database links their
18 transit history with the users' personally identifiable information, such as their name, address,
19 credit card number, and other contact information; and

20 WHEREAS, The Clipper Privacy Policy allows the MTC to maintain all personally
21 identifiable information indefinitely for active Clipper accounts and for up to seven years after
22 accounts are closed or terminated; and

23 WHEREAS, The Clipper Privacy Policy allows the MTC to share personally identifiable
24 information only with participating transit agencies, third-party contractors, the California
25 Department of Justice, and the Better Business Bureau; and

1 WHEREAS, Clipper cards store their users' last five add value transactions and their
2 last ten transit usage transactions as unencrypted data, which for BART trips, includes the
3 source and destination stations; and

4 WHEREAS, Clipper cards do not store any of their users' personally identifiable
5 information; and

6 WHEREAS, A recently designed smartphone application provides the ability to scan
7 any Clipper card and obtain the card's stored transit usage history; and

8 WHEREAS, This smartphone application can potentially be used without the Clipper
9 card owner's permission or knowledge by placing the smartphone within a few inches of the
10 Clipper card; and

11 WHEREAS, This public availability of Clipper card users' BART transit history creates a
12 potential public safety risk by exposing users' regular travel patterns; and

13 WHEREAS, This public availability of Clipper users' BART transit history potentially
14 threatens the constitutional protections of anonymous speech and associational privacy by
15 revealing users' transit usage near First Amendment activities; and

16 WHEREAS, Clipper users can minimize the ability for others to scan their cards by
17 storing the card in a bag or other location where it would be difficult for someone to place a
18 smartphone within a few inches of the card; and

19 WHEREAS, The Clipper card uses the MIFARE DESFire microchip, which was
20 discontinued as of December 31, 2011, and has been replaced by the MIFARE DESFire EV1
21 that offers additional security enhancements; and

22 WHEREAS, NXP Semiconductor, the manufacturer of the MIFARE DESFire, has
23 acknowledged that it contains a potential security vulnerability and recommends that
24 customers migrate to the MIFARE DESFire EV1; and

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1 WHEREAS, SB 1268, authored by State Senator Joe Simitian and signed into law on
2 September 29, 2010, added Chapter 8 to Division 17 of the California Street and Highways
3 Code to limit transportation agencies ability to use, store, and retain personally identifiable
4 information obtained through electronic toll collection systems; and

5 WHEREAS, SB 1268 proscribes stricter limits on transportation agencies ability to
6 retain personally identifiable information than Clipper’s current privacy policy; and

7 WHEREAS, The Clipper Privacy Policy contains more stringent privacy protections
8 than the privacy policies of commercial cellphones, which often reserve the right to sell
9 personal information; and

10 WHEREAS, Strengthening the Clipper Privacy Policy and further explaining both how
11 the policy affects users’ privacy and how users can protect their own privacy will increase the
12 confidence of Clipper users in the Clipper program; now, therefore, be it

13 RESOLVED, That the Board of Supervisors urges the MTC to evaluate the minimum
14 length of time for which users’ transit usage history information must be retained for legal or
15 operational purposes, inform the Board of Supervisors as to the legal or operational reasons
16 requiring that duration of time, and revise the Clipper Privacy Policy to purge such information
17 after that duration of time, and, be it

18 FURTHER RESOLVED, That the Board of Supervisors urges the MTC to evaluate the
19 minimum length of time for which users’ personally identifiable information must be retained
20 for legal or operational purposes after accounts are closed or terminated, inform the Board of
21 Supervisors as to the legal or operational reasons requiring that duration of time, and to revise
22 the Clipper Privacy Policy to purge all personally identifiable information for closed or
23 terminated accounts after that duration of time; and, be it

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1 FURTHER RESOLVED, That the Board of Supervisors urges the MTC to explore the
2 feasibility of minimizing the amount of data stored on Clipper cards, encrypting the data, or
3 providing the ability for users to clear the transit data stored on their cards; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors urges the MTC to create a
5 Frequently Asked Questions document that explains the Clipper privacy policy and how
6 Clipper users can protect their transit history and personal information; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors urges the MTC to create an
8 annual transparency report to publish the number of requests for information from law
9 enforcement and other groups, and the number of those requests that were granted or
10 rejected; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors asks the MTC to report on its
12 plans to phase out the use of the MIFARE DESFire chip in Clipper cards; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors directs the Clerk of the Board
14 to transmit copies of this resolution to the MTC with a request to take all action necessary to
15 achieve the objectives of this resolution.

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