



**Metropolitan
Transit
System**

Refusal of Service Policy

I. Introduction

San Diego Metropolitan Transit System (MTS) aims to provide safe, reliable, and efficient public transit service. Behavior or conduct that poses safety risks to passengers, employees, or the public that could cause serious injury or death to others or has significant impacts to MTS's operations will not be tolerated. MTS also understands that many of its riders are transit dependent and to refuse service to individuals from MTS's property and/or services should be done only in the rare circumstances when no other corrective action can resolve MTS's public safety or operational concerns. The goal of this Refusal of Service Policy is to explain what circumstances MTS may refuse to provide service and what actions MTS will take when refusing service.

This Refusal of Service Policy has been drafted to be consistent with Department of Transportation (DOT) Americans with Disabilities Act (ADA) Regulations at 49 CFR Part 37, Section 37.5 (h), as well as interpreting guidance documents (e.g. Federal Transit Administration (FTA) ADA Circular 4710.1) which permits transit agencies to refuse to provide service to an individual with disabilities in circumstances in which that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others.

II. General Policy

MTS may refuse to provide service for incidents on the spot, or may refuse service for an extended period of time, when an individual engages in one (1) or more of the following behaviors:

- **violent,**
- **seriously disruptive,**
- **illegal conduct, and/or**
- **represents a direct threat to the health or safety of others.**

Definitions of these four (4) behaviors are further defined in Section III. Overlap among these four (4) thresholds may occur. Rarely is violent behavior such as physical assault, for example, not also seriously disruptive, illegal, and a direct threat. Likewise, a verbal outburst directed at a driver or other passengers may start out as seriously disruptive but become so threatening as to prevent a driver from safely operating the vehicle and, therefore, rises to a direct threat as well.

III. Conduct that may result in Refusal of Service



In determining whether an individual is engaging in one (1) or more of the above behaviors, MTS must make an individual assessment, based on reasonable judgment, that relies on current knowledge or on the best available objective evidence. The following is provided only as guidance to staff and is not meant to be an exhaustive or exclusive description of the four (4) behaviors or conduct that may result in refusal of service. It is to be used for illustrative purposes only.

a. Violent behavior

Violent behavior may involve the threat of or use of physical force or a weapon that is intended to hurt, injure, or kill someone; or the threat or use of physical force or a weapon to damage or destroy MTS or MTS contractor's property or facilities. Most common examples of violent behavior include: an assault or battery on a passenger or MTS staff (e.g. MTS bus or trolley operator); brandishing a weapon with the intent to hurt a passenger or MTS staff; or kicking, punching or other use of force to damage MTS trolley, bus, or other property/equipment.

b. Seriously disruptive conduct

Seriously disruptive conduct may involve conduct that markedly interrupts or severely impedes the operation of MTS services or the safe boarding or de-boarding of passengers. Most common examples of seriously disruptive conduct include: aggressive behavior towards passengers or MTS staff; passenger with oversized/excessive cargo (e.g. mattress, grill, etc.) or prohibited items (e.g. propane tank, gas can, etc.); or passenger wearing significantly soiled clothing that it would require the vehicle to be taken out of service immediately for cleaning if the individual sat on a seat.

c. Illegal conduct

Illegal conduct may involve conduct that is in violation of a law, such as a criminal law or MTS Ordinance. The fact that an individual is not charged or convicted of an incident of illegal conduct does not bar refusal of service under this Policy. Most common examples of illegal conduct include: refusal to stop actively smoking or actively using drug paraphernalia.

d. Direct threat to the health or safety of others

In determining whether an individual poses a direct threat to the health or safety of others, MTS should attempt to ascertain the following: the nature, duration, and severity of the risk posed by the behavior, the probability that potential injury will actually occur, and whether reasonable modifications of procedures or services will mitigate the risk of potential injury. The definition of direct threat generally refers to a direct threat to other individuals and not to the individual themselves. Most common examples of direct threat to the health or safety of others includes: makeshift mobility device that does not meet ADA DOT definitions for a mobility device or using mobility device for the purpose of transporting

large amounts of cargo that could topple over on passengers or block the aisles which must be kept clear; out of control or aggressive service animal; standing on seats while vehicle is in motion; or refusal to comply with health and safety protocols.

IV. Refusal of Service – Temporary

MTS staff may temporarily refuse service for incidents, on the spot, if one (1) or more of the above four (4) thresholds are met. Refusal of service may include: instructions to deboard an MTS vehicle and/or leave MTS property.

a. Procedure before Refusing Service Temporarily

Prior to temporarily refusing service, MTS will make reasonable attempts to resolve issues with the passenger, which may include but is not limited to: explaining and assisting the passenger so they can comply with order or request; or providing a warning that not complying with the order will result in refusal of service, MTS citation and/or requesting law enforcement assistance.

Issuing a citation by MTS Security may not be possible in all circumstances (e.g. if security officers are not present and the incident requires immediate action by an MTS bus operator). In addition, issuing a citation may potentially escalate the situation unnecessarily. Refusing service temporarily, on the spot, can be used by MTS staff as a de-escalation tactic. It may also help achieve MTS's goal of reducing the chance a passenger may be put into the criminal court system. Based on the circumstances of the incident, reasonable discretion should be used in deciding how best to resolve the incident that may be violent, seriously disruptive, involve illegal conduct or represent a direct threat to the health or safety of others.

b. Documentation of the Incident

To refuse service temporarily on the spot, MTS will do the following:

i. If by MTS bus operator

Call in the refusal of service to dispatch and fill out an incident report after their shift. MTS supervisory staff can either decide to allow the bus operator to refuse service, send a supervisor to the incident, or request MTS Security be deployed. As necessary, MTS supervisory staff can review whether the refusal of service is appropriate by reviewing the incident report, or reviewing vehicle and/or station CCTV footage, depending on the location of the incident.

ii. If by MTS Contractor bus operator

Call in the refusal of service to dispatch. MTS Contractor supervisory staff can either decide to allow the bus operator to refuse service, send a supervisor to the incident or

request MTS security be deployed. MTS Contractor supervisory staff will document the incident in a report. As necessary, MTS Contractor supervisory staff can review whether the refusal of service was appropriate by reviewing the incident report, or reviewing vehicle and/or station CCTV footage, depending on the location of the incident.

iii. If by MTS trolley operator

Call in the refusal of service to dispatch. As appropriate, dispatch supervisory staff may request MTS security to be deployed and/or request the trolley operator document the incident in a report. As necessary, MTS supervisory staff can review whether the refusal of service was appropriate by reviewing the incident report, or reviewing vehicle and/or station CCTV footage, depending on the location of the incident.

iv. If by MTS Security

Document the incident in their daily activity report, which is submitted to their supervisor at the end of their shift. If the incident results in the individual refusing to leave, if so directed, or causing another incident that triggers this Policy, then Security Communications Center will be contacted. As necessary, MTS supervisory staff can review whether the refusal of service is appropriate by reviewing the daily activity report, body camera footage and/or station CCTV footage, depending on the location of the incident.

v. If by any other MTS staff or MTS Contractor that is not described above:

Examples include administrative staff or operations/maintenance staff in instances when interacting with the public. Facility footage, depending on the location of the incident, may be available for review by MTS staff.

c. Right of Individual to Request that MTS Review the Incident

MTS will provide the opportunity to those who have been refused service for an individual incident to submit a complaint in order for MTS to investigate the incident and determine whether MTS's policies and procedures were followed, as trained. Information on how to submit a complaint to MTS can be found at MTS's website: <https://www.sdmts.com/about-mts-customer-service/customer-feedback>.

V. Refusal of Service – For an Extended Period of Time

MTS staff may refuse service for an extended period of time, if: there is a history of repeated incidents meeting one (1) or more of the above four (4) thresholds; or one (1) incident meeting one (1) or more of the above four (4) thresholds so long as it is of such severity that it merits refusal of service for an extended period of time.

a. Procedure before Refusing Service for an Extended Period of Time

Prior to refusal of service for an extended period of time, to the extent practicable, MTS should make reasonable attempts to resolve issues with the individual or, if appropriate, their caregivers, guardians, local disability organizations, social service agencies, or advocates.

b. Reviewed by MTS Legal Department

To refuse service for an extended period of time, prior approval from MTS Legal Department is required. The MTS Legal Department will determine the most appropriate MTS staff to be the initial decisionmaker on the Refusal of Service, and the makeup of the MTS Appeals Panel.

c. Processing a Refusal of Service for an Extended Period of Time

To refuse service for an extended period of time, MTS will deliver by personal service a letter that includes the following information:

i. Documentation of the Incident(s)

MTS will document the repeated incidents or the incident leading to the service denial, substantiating how such an incident rises to the level of violent behavior, seriously disruptive conduct, illegal conduct and/or a direct threat to the health and safety of others. This will include: a description of the conduct underlying the violation or violations giving rise to the refusal of service, including reference to the applicable statutory provision, ordinance, or transit district rule violated, the approximate dates/times or frequency of the violation, and the location where the violations occurred.

ii. Period and Scope of Refusal of Service

MTS will explain the time period and the scope of the refusal of service. There may be instances when a conditional refusal of service letter may be issued. For conditional refusal of service letters, MTS will specify the conditions or restrictions that the individual must comply with. Service refusals should not be permanent unless an individual's actions continue to reach the level of violent behavior, seriously disruptive conduct, illegal conduct and/or a direct threat to the health and safety of others. Pursuant to Section V(d), the individual will have the opportunity to present evidence that they no longer meet one (1) or more of these thresholds, as applicable.

d. Appeal and/or Contest Service Denial

MTS will provide an opportunity to contest the decision and correct the situation. Those issued a Refusal of Service Order must have the opportunity to present information to MTS demonstrating that issues have been resolved or presenting options to mitigate any problems, to have service reinstated.

i. Notice of Right to Appeal and/or Contest Service Denial

In any letter refusing service for an extended period of time, it will include a clear and conspicuous statement indicating the procedures and timelines for contesting/appealing the refusal of service. The individual may request an informal hearing within 30 days of personal delivery of the Refusal of Service Letter.

ii. Appeal Hearing

If an appeal is received, MTS may provide a forum either in-person or virtually. To the extent practicable, the informal hearing should be scheduled within 30 days from the date of the request. The individual has the right to represent themselves or to bring a representative, such as an advocate, legal counsel or other representative. The individual may present evidence. Reasonable requests to examine MTS parties may be considered on a case-by-case basis.

iii. MTS Appeals Panel

1. Number of Panel Members: A Panel of at least three (3) individuals will form the MTS Appeals Panel.
2. Separation of Functions: The individuals deciding appeals should not have been involved with the initial refusal of service determination or the development of the Refusal of Service Order.
3. Selecting Panel Members: Panel members may include both MTS and non-MTS employees. Members may include, but is not limited to, those with:
 - a. thorough understanding and knowledge of public transportation operations, specific to the incident(s) involved (e.g. trolley, fixed-route bus, or complementary paratransit operations);
 - b. through understanding and knowledge of maintaining security on public transportation services and/or property; and/or
 - c. high level of knowledge about disabilities similar to those of appellant, if applicable (e.g. mental health professional or social worker)

iv. Appeal Decision

Within 30 days of the informal hearing, the MTS Appeals Panel will provide its written decision to affirm; reverse; or modify the Refusal of Service Order based on whether there is sufficient evidence to support MTS's Refusal of Service Order, including consideration of whether

sufficient evidence has been presented that the individual's behavior no longer poses safety risks or significant operational issues to MTS. The written appeal decision will include the specific reasons for the decision.

v. Contest Service Denial outside the Appeal Period

When outside the appeal timeline or after receipt of the appeal being denied, the individual can also contest the service denial at any time during the refusal of service time period. Requests to reconsider the refusal of service should include evidence that their behavior has changed and that there have been no recent incidents of the prohibited behavior. Within 30 days of receipt of a request to reconsider a prior service denial, the MTS Appeals Panel will provide its written decision to affirm; reverse; or modify the Refusal of Service Order. If appropriate, the MTS Appeals Panel may schedule an in-person or virtual hearing, which may extend time for MTS Appeals Panel to issue its written decision.

e. Compliance with Refusal of Service Order

If an individual subject to a Refusal of Service Order enters an MTS vehicle, facilities and/or property before the end of the refusal of service time period listed in the letter, the individual may be subject to citation and/or arrest for trespassing.

VI. Discrimination Prohibited

MTS will not refuse to provide service solely based on protected classes enumerated in federal and state laws, which includes race, color, national origin, disability, religion, ancestry, gender identity, sex, sexual orientation and other protected categories.

a. Individuals with Disabilities

MTS will not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of MTS or other persons. For example, some persons with Tourette's syndrome may make involuntary profane exclamations. These may be very annoying or offensive to others, but would not be a ground for denial of service.

b. Passenger with Hygiene Issues

If there is a passenger with hygiene issues, it would not be appropriate to refuse service if the situation were merely unpleasant to other passengers or drivers. If the situation disrupts the provision of service, however, grounds for refusing service may exist. For example, if an individual's clothing is significantly soiled and they use a vehicle's seats or they are actively urinating or defecating on a vehicle, it would require the vehicle to immediately be taken out of service for cleaning (i.e. a serious disruption of service).

VII. Record Retention

A copy of any Refusal of Service Order will be maintained within both the MTS Legal Department and the MTS Passenger Security Records Manager for at least three (3) years after the end date listed within the Refusal of Service Order.

VIII. Exceptions to Refusal of Service Policy

a. Exceptions to Refusal of Service Policy due to Operational Constraints

This Refusal of Service Policy does not apply in the circumstances in which for various operational reasons, passengers either are unable to board or must deboard. This includes, but is not limited to, if the capacity of the vehicle has been reached, the wheelchair securement area is at capacity and cannot accept any additional wheelchair passengers, or the bus must be taken out of service due to mechanical problems or a customer incident etc. In these instances, MTS staff should take all reasonable steps to ensure passengers are offered other alternatives in order to complete their trip (e.g. sending relief vehicles, providing notice to passengers when the next scheduled vehicle will arrive).

b. Exceptions to Refusal of Service Policy regarding MTS Access

This Refusal of Service Policy does not apply in the circumstances relating to review of complementary paratransit eligibility determinations or no-show/late cancellation suspensions, which are covered under the MTS Access Appeals Policy.