



AGENDA
EXECUTIVE COMMITTEE MEETING
FRIDAY, NOVEMBER 2, 2018 – 9:00 A.M.
OMNITRANS
1700 WEST FIFTH STREET
SAN BERNARDINO, CA 92411

The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or Limited English Proficiency services are needed in order to participate in the public meeting, requests should be made through the Board Secretary at least three (3) business days prior to the Committee Meeting. The Board Secretary’s telephone number is 909-379-7110 (voice) or 909-384-9351 (TTY). If you have comments about items on the agenda or other general concerns and are not able to attend the meeting, please mail them to Omnitrans at 1700 West Fifth Street, San Bernardino, California, Attention Board Secretary. Comments may also be submitted by email to BoardSecretary@omnitrans.org.

THIS MEETING IS AVAILABLE BY TELECONFERENCE AT THE FOLLOWING LOCATION AND WILL BE CONDUCTED IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54953(B).

CITY OF ONTARIO, 303 EAST B STREET, ONTARIO, CA 91764

THIS LOCATION IS ACCESSIBLE TO THE PUBLIC AND MEMBERS OF THE PUBLIC MAY ADDRESS THE COMMITTEE FROM THIS TELECONFERENCE LOCATION

A. CALL TO ORDER

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: December 7, 2018 – 9:00 a.m.
Omnitrans Metro Facility

C. COMMUNICATIONS FROM THE PUBLIC

This is the time and place for the general public to address the Board for items that are not on the agenda. In accordance with rules applicable to meetings of the Executive Committee, comments on items not on the agenda and on items on the agenda are to be limited to a total of three (3) minutes per individual.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

N/A

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – September 7, 2018 2
2. Adopt Calendar Year 2019 Committee Meeting Schedule – *Araceli Barajas* 6
3. Recommend to the Board of Directors, Approval of the Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency Assets, Effective Date January 1, 2019 – *Haviva Shane* 7
4. CEO/General Manager’s Report – (Verbal Report) - *P. Scott Graham*

F. BOARD BUSINESS

There is no Closed Session scheduled.

G. REMARKS AND ANNOUNCEMENTS

H. ADJOURNMENT

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – August 3, 2018

M/S (Spagnolo/Roberts) to approve the Executive Committee Minutes of August 3, 2018. Roll call vote was taken and the motion was passed unanimously by Members present.

Chairman Dailey requested that Item E3 be moved up on the agenda.

3. Review and Comment on Updated Draft Legislation, and Related Memorandum of Understanding (MOU) with San Bernardino County Transportation Authority (SBCTA)

General Counsel, Haviva Shane, provided some background information by stating that this item was last presented to the Executive Committee at their June 1, 2018 meeting and to the Board of Directors on June 6, 2018. She stated that staff is requesting the Committee's review of the draft legislation, which includes the most recent changes requested by the Board and SBCTA staff. Ms. Shane explained that the idea is to forward the final draft of the legislation to the member agency City Managers and County CEO and to the respective Board Members prior to presenting the final draft to the Board for approval.

Member Wapner joined the meeting via teleconference during the discussion on Item #E3.

Ms. Shane reviewed some of the changes made to legislation as listed below.

- Change to §108400(a) to better track the language contained in the JPA related to distribution of assets in the event of a dissolution of Omnitrans.
- Addition of paragraph (b) to §108073 regarding transit facilities to require that Omnitrans staff meet and confer with SBCTA staff regarding proposed transit works or facilities to avoid duplication of efforts.

Ms. Shane also reviewed the draft MOU between Omnitrans and SBCTA related to §108080 of the draft legislation, which provides Omnitrans the power to seek a transit district tax ordinance. Ms. Shane explained that the MOU sets forth the process Omnitrans would adhere to in order to bring forth a potential measure, including obtaining SBCTA Board approval. The MOU also details the process SBCTA will follow with regards to seeking Omnitrans input related to any upcoming, concurrent or future SBCTA tax measure.

The Committee engaged in a lengthy discussion and stressed the importance of continued collaboration between Omnitrans and SBCTA. Dr. Ray Wolfe, Executive Director, SBCTA participated in the discussion. Dr. Wolfe explained SBCTA's position that the requirement for Omnitrans to obtain SBCTA Board approval of an Omnitrans tax measure should be in the legislation, and not just in the MOU.

Member Lilburn left the room at 9:45 a.m. and returned at 9:48 a.m.

Chair Dailey requested that detailed information on how the ad hoc committee will be constituted be included in the legislation. Ms. Shane responded that more information on the ad hoc formation will be included in the MOU.

Ms. Shane pointed out two additional changes that will be made following today's meeting.

- §108050 - (v) will be stricken from the legislation.
- §108090 - the word "comparable" will be changed to "the same."

M/S (Spagnolo/Roberts) that:

1. Accepted the redline changes in the current draft, and addition of the change to §108080 requested by SBCTA related to SBCTA approval of any Omnitrans tax measure.
 2. Directed staff to move forward with circulating the legislation to the member agencies and to bring back the legislation to the Board for consideration/approval in October.
 3. Authorized the CEO/General Manager to negotiate any potential revisions to the MOU related to the ad hoc committee, and other changes required to finalize the MOU.
2. Recommend to the Board of Directors Proposed Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency Assets with an Effective Date of January 1, 2019

General Counsel, Haviva Shane, provided some background by stating that the issue of advertising on Omnitrans transit assets was last discussed by the Executive Committee at the July 6, 2018 meeting and the Board on July 11, 2018, in relation to the Lamar agreement and political advertisements. At the Board Meeting, there was some discussion on whether the advertisement restrictions were contained in the Lamar agreement only, or if the Agency has an actual policy. It was clarified that the Agency does not have its own stand-alone policy regarding advertising on transit properties. It was recommended that such a policy be considered, therefore the CEO/General Manager directed staff and legal counsel to work on creating a policy, which is being presented at today's meeting.

The Committee engaged in a discussion regarding the different types of political advertisements, the other restrictions contained in the policy, and the importance of careful administration of the proposed policy.

Member Roberts left the room at 10:32 a.m. and returned at 10:33 a.m.

M/S (Lilburn/Roberts) that recommended the Board of Directors approve the proposed Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency Assets with an Effective Date of January 1, 2019. Roll call vote was taken and the motion was passed unanimously by Members present.

F. BOARD BUSINESS

There was no Closed Session.

G. REMARKS AND ANNOUNCEMENTS

There were no remarks and announcements.

H. ADJOURNMENT

The Committee adjourned at 10:38 a.m. The next Executive Committee Meeting is scheduled Friday, October 5, 2018, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Araceli Barajas, Executive Staff Assistant



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ITEM # E2

DATE: November 2, 2018
TO: Board Chair Ron Dailey and Members of the Executive Committee
FROM: P. Scott Graham, CEO/General Manager
SUBJECT: PROPOSED EXECUTIVE COMMITTEE MEETING SCHEDULE FOR 2019

FORM MOTION

Adopt Calendar Year 2019 Executive Committee Schedule, set for 9:00 a.m., the first Friday of each month:

- January 4, 2019
- February 1, 2019
- March 1, 2019
- April 5, 2019
- May 3, 2019
- June 7, 2019
- July 5, 2019
- August 2, 2019
- September 6, 2019
- October 4, 2019
- November 1, 2019
- December 6, 2019

PSG:JV

ITEM # E3

DATE: November 2, 2018

TO: Board Chair Ron Dailey and Members of the Executive Committee

FROM: P. Scott Graham, CEO/General Manager

**SUBJECT: AMENDMENTS TO PROPOSED OMNITRANS SYSTEM
COMMERCIAL ADVERTISING POLICY AND CONTENT
GUIDELINES TO ADDRESS 9TH CIRCUIT DECISION IN AFDI V.
KING COUNTY**

FORM MOTION

Recommend to the Board of Directors approval of the Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency assets with an effective date of January 1, 2019, as amended by the Executive Committee on November 2, 2018.

BACKGROUND

On November 1, 2017, the Board approved Contract MKP18-02 (the “Agreement”) with Lamar Transit, LLC (“Lamar”) for the provision of Advertising Sales and Services – Transit Vehicles, Shelters and Stations for a period of five (5) years beginning January 1, 2018, with five one-year option terms.

The Agreement includes restrictions on advertising that conform with the standard type of advertising restrictions imposed by public transportation entities in California that utilize public property for revenue generating purposes. Such restrictions seek to maintain government neutrality, avoid any discrimination or offensive content in advertising that impacts riders of the Omnitrans system, respect First Amendment rights in accordance with established law, and maximize advertising revenues.

On July 11, 2018, the Board asked staff to develop a policy to govern advertising on Agency assets. Previously, restrictions on advertising and other terms and conditions were included in the vendor Agreement, but not contained in a policy adopted by the Board.

On September 7, 2018 the Executive Committee reviewed the draft policy, and recommended it for consideration and adoption by the Board.

Following the Executive Committee review, the U.S. Ninth Circuit Court of Appeal filed a decision on September 27, 2018 holding that King County violated the First Amendment by refusing to display an advertisement related to global terrorism on its public buses. The

advertisement was submitted by a non-profit, American Freedom Defense Initiative (AFDI), and included 16 photos of faces, with the title “Faces of Global Terrorism,” as well as information about how to report terrorists. King County rejected the ad, concluding that it violated the county’s advertising policy for including false statements, disparaging material and content that may disrupt the transit system. AFDI then corrected certain factual inaccuracies, and re-submitted the ad. King County again rejected the ad, concluding that it contained disparaging material and content that may disrupt the transit system, as it portrayed only persons of a certain race as terrorists. AFDI then sued King County, alleging that King County’s rejection of the revised ad violated AFDI’s freedom of speech under the First Amendment. The lower court granted summary judgment in favor of King County.

The appellate court held that, as a “nonpublic forum” for First Amendment purposes, King County’s ad regulations must be reasonable and viewpoint neutral. Under this standard, King County could lawfully prohibit ads that contain false statements. However, the court concluded that King County’s prohibition on disparaging content unlawfully discriminates on the basis of viewpoint, and that the prohibition of disruptive content, while valid on its face, was unreasonably applied to AFDI’s ad. This is because King County experienced no disruption at all during the three weeks in which a similar “Faces of Global Terrorism” ad, submitted by the U.S. State Department, was displayed on King County buses.

The proposed advertising policy approved by the Omnitrans Executive Committee contains a prohibition on “disparaging” content. Since the court held that this type of regulation violates the First Amendment, Omnitrans staff and legal counsel have proposed amendments to the policy to eliminate this prohibition, and other similar language in the policy that would appear to be unlawful in light of the recent decision. Additional potential changes to the policy will be discussed at the meeting.

ANALYSIS

Omnitrans permits advertising on Agency assets such as vehicles, shelters and stations to generate revenue for the agency. Additionally, under its vendor Agreement, the Agency is able to utilize a portion of the advertising space for self-promotion, co-promotion and trade purposes. Omnitrans seeks to ensure any and all advertising is in accordance with all applicable laws and regulations, including regulations governing funding Omnitrans receives from State and federal sources. Omnitrans is also cognizant of needing to balance First Amendment considerations with any advertising restrictions. Transit agency property is not considered a public forum for speech, unless the government opens the forum to speech. By allowing commercial advertising on transit property, with limitations as set forth in the regulations, Omnitrans creates what is known as a limited public forum for purposes of speech. This means Omnitrans may regulate any advertising in a reasonable and viewpoint neutral manner.

Transit agencies have been sued for refusing to accept advertising they considered controversial; however, the courts have upheld agency actions in conformance with an adopted policy restricting non-commercial speech and imposing reasonable content guidelines, where applied in a viewpoint

neutral manner. Thus, numerous other transportation agencies in California and the nation have adopted similar advertising policies in order to minimize risk for the Agency.

Following a review of advertising policies adopted by other transportation agencies, staff prepared an advertising policy for consideration by the Board. However, in light of the Ninth Circuit decision filed at the end of September, amendments to the policy are recommended to ensure that the policy is in conformance with the First Amendment, as most recently applied by the Ninth Circuit to a transit system advertising policy. The enclosed amended policy generally conforms to the guidelines previously included in the vendor Agreement and includes, among other things, restrictions on political advertisements, religious advertisements, advertisements that promote tobacco, alcohol or marijuana, and advertisements that promote illegal activities. The amended policy removes from the regulations prohibitions on speech specifically found by the court to violate the First Amendment, and other prohibitions that would also seem problematic based on the court opinion.

CONCLUSION

Staff and legal counsel seek a recommendation from the Executive Committee to approve the amended Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency assets and recommend to the Board of Directors for approval.

PSG:WW

Attachment: A: Omnitrans System Commercial Advertising Policy and Content Guidelines

OMNITRANS SYSTEM COMMERCIAL ADVERTISING POLICY AND CONTENT GUIDELINES

Adopted by the Omnitrans Board of Directors

*Date: **October 3, 2018***

Amended

I. POLICY STATEMENT

Omnitrans' purpose in adopting this Commercial Advertising Policy and Content Guidelines ("Policy") is to promote transit ridership in a safe environment for its riders. With any advertising, Omnitrans seeks to maintain government neutrality, avoid any content that disrupts the safe enjoyment of public transit~~discrimination or offensive content in advertising that impacts its riders~~, respect First Amendment rights in accordance with established law, and maximize advertising revenues.

Omnitrans allows for advertising on its transit vehicles, shelters and stations to generate revenue for the agency in consideration of applicable laws and regulations. Omnitrans' assets with opportunities for revenue advertising include, but are not limited to, bus, paratransit and rail vehicles, shelters and stations, and the San Bernardino Transit Center.

Omnitrans may utilize a contractor to handle the sales and administration of Omnitrans' transit vehicle, shelter and stations advertising program. Any contractor is selected through a competitive procurement process and responsibilities may include soliciting, placing, administering and managing advertisements on Omnitrans' assets in accordance with applicable laws, regulations and Omnitrans policies and procedures.

Non-commercial advertisements will not be accepted unless such advertisements are considered informational material and are in compliance with the guidelines below. Omnitrans expressly reserves its proprietary right to display notices and advertisements relating to its transit operations, and transit operations of related public entities.

II. GUIDELINES

Generally, Omnitrans requires that any contractor adhere to the following guidelines:

1. Advertisements shall be of a reputable character, shall conform to recognized business standards and shall not conflict with the laws of the United States, or any state or political subdivision thereof having jurisdiction over Omnitrans or the rules and regulations of any arm, branch or agency of any such governmental bodies.
2. Advertisements objectionable to Omnitrans shall, at the request of the Project Manager, be expeditiously removed by the contractor, or if warranted be immediately removed by Omnitrans, and, after removal by Omnitrans' staff, written notice of removal shall be conveyed to contractor.
3. Contractor shall remove expired or obsolete ads within twenty-one (21) days of expiration or ten (10) days of notification by Omnitrans and at contractor's sole expense and liability.

A. Permitted Advertising Content

The following classes of advertising are authorized on Omnitrans assets subject to final authorization by Omnitrans or a designated contractor:

1. Commercial and Promotional Advertising. Advertisements that promote or solicit the lawful sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for lawful commercial or noncommercial purposes or more generally promotes an entity that lawfully engages in such activities.
2. Governmental Advertising. Notices or messages from government entities, meaning public entities specifically created by government action and recognized as public agencies under California law, that advance specific government purposes.
3. Public Service Announcements. Announcements which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public or a significant segment of the public and relate to:
 - a. Prevention or treatment of illnesses;
 - b. Promotion of safety or personal well-being;
 - c. Education or training;
 - d. Art or culture;
 - e. Provision of children and family services;
 - f. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 - g. Provision of services and programs that provide support to low income citizens, senior citizens and people with disabilities.

B. Prohibited Advertising Content:

The following classes of advertising are prohibited on Omnitrans assets:

1. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement or information contained in the advertisement is false, misleading, or deceptive.
2. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Omnitrans to litigation.
3. Unlawful Goods or Services. The advertisement or material contained in it, promotes unlawful or illegal goods, services, or activities.
4. Endorsement. The advertisement or any material contained in it, implies or declares an endorsement by Omnitrans, its Directors, management, or employees of any service, product, or point of view without prior written authorization from Omnitrans.
5. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these guidelines, the term “minor” shall have the meaning contained in California Penal Code Section 313.
6. “Adult” – Oriented Goods or Services. The advertisement promotes or encourages or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or

other materials which are identifiable with, films rated “X” or “NC – 17,” adult book stores, adult video telephone services, adult internet sites, and escort services.

7. Obscenity or Nudity. The advertisement contains obscene materials or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
8. Unlawful and Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, and promotes behavior or activities which are detrimental to the maintenance and safe operations of Omnitrans.
- ~~9. Demeaning or Disparaging. The advertisement contains images or information that demeans or disparages an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age disability or sexual orientation.~~
- ~~10. Personal Attack. The advertising contains images, copy or concepts that appear to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect.~~
- ~~11.9. Violence~~. The advertisement either (a) contains images or descriptions of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal; or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage violence or violent behavior.
- ~~12.10. Firearms~~. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
- ~~13.11. Profanity~~. The advertisement contains words recognized by the community as vulgar indecent or profane for display in a public setting that includes minors.
- ~~14.12. Alcohol/Tobacco/Smoking/Marijuana~~. The advertisement promotes the use of alcohol, tobacco, smoking and/or marijuana, or related products.
- ~~15.13. Graffiti~~. The advertisement contains graphics or language that promotes, resembles, or otherwise encourages graffiti or vandalism.
- ~~16.14. Inappropriate Graphics Images~~. The advertisement contains graphic ~~images~~ recognized by the community as inappropriate, ~~offensive and~~ not promoting government neutrality, and ~~impairing~~ the safe enjoyment of public transit including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
- ~~17.15. Political Information~~. The advertisement contains political information including candidates running for elected office or local or national controversial subject or subjects not in accordance with the statutes, ordinances, and court decisions pertaining to the Omnitrans service area. This includes messages that are political in nature, including messages of political advocacy, that support or oppose any candidate or referendum, or that feature any current political office holder or candidate for public office, or take positions on issues of public debate.
- ~~18.16. Religious Information~~. The advertisement contains direct or indirect reference to religion, or to any religion, or to any deity or deities, or which includes the existence, nonexistence or other characteristics of any deity or deities, or to any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion. This prohibition shall include the depiction of text, symbols, or images commonly associated with

any religion or with any deity or deities, or any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion.

C. Omnitrans' Rights

The Omnitrans Board reserves the right to amend this Policy and at any time. Further, Omnitrans may review any advertising content to determine conformance with these guidelines. Omnitrans reserves the right to reject any advertising content submitted for display on its properties, and/or to order the removal of any advertising posted on its properties for failure to comply with this Policy. Decisions regarding the rejection or removal of advertising are made by the Director of Marketing or his or her designee based upon the criteria in this Policy.

DRAFT