

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors  
Minutes of the 1,856th Meeting  
January 23, 2020

A regular meeting of the Board of Directors was held on January 23, 2020, convening at 9:01 a.m. in the BART Board Room, 2040 Webster Street, Oakland, California. President Simon presided; Patricia K. Williams, District Secretary.

Present: Directors Ames, Dufty, Foley, Li, Raburn, Saltzman and Simon.

Absent: Director McPartland. Director Allen entered the Meeting later.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of January 9, 2020.
2. District Base Pay Schedule.
3. Reject All Bids for Contract No. 11FE-110, Construction of Embarcadero Station Platform Elevator Capacity and Redundancy Project.
4. Amendment to Advertising Content Guidelines.

Director Dufty made the following motions as a unit. Director Saltzman seconded the motions, which carried by unanimous electronic vote. Ayes: 7 – Directors Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 2 – Directors Allen and McPartland.

1. That the Minutes of the Meeting of January 9, 2020 be approved.
2. That the base pay schedule in effect January 1, 2020 be approved.
3. That all Bids for Contract No. 11FE-110, Embarcadero Station Platform Elevator Capacity and Redundancy Project, be rejected and the General Manager be authorized to re-advertise the Contract.
4. That the restriction in the BART Advertising Content Guidelines that prohibits advertisements that are “supporting or opposing a policy or policies of a named or identified governmental, business, or nonprofit entity other than the policies of the advertiser itself,” be deleted. (The revised Guidelines are attached and hereby made a part of these Minutes.)

President Simon called for Public Comment. Randall Glock and Elgin Rose addressed the Board.

Director Allen entered the Meeting.

Kate Bernier addressed the Board.

President Simon brought the matter of Quarterly Report of the Controller/Treasurer for the Period Ending September 30, 2019 before the Board. Ms. Rosemarie Poblete, Controller/Treasurer, and Mr. Christopher Gan, Assistant Controller, presented the item.

Director Allen asked clarifying questions regarding the characterization of reserves in the report.

Director Foley indicated that the Insurance Calamity Reserve figure should be updated to reflect current conditions.

Director Ames asked for clarification of the strategy to address decreases in sales tax and property tax revenue and information about handling an economic downturn and using reserves.

Director Raburn asked for information about quarterly voucher payments and the electronic payment program.

Director Li asked for information about the quarterly voucher payments, including the completion date of the work performed by a third-party consultant and implementation of any recommendations from the consultant.

Director Dufty asked for information about the firms that are not receiving payment within 30 days and suggested meeting with firms to discuss their experiences.

President Simon asked when the fourth quarter investment reports will be available to the public and the Board and commented on reviewing BART's investments.

President Simon brought the matter of Report of the Inspector General for the Period August – December 2019 before the Board. Ms. Harriet Richardson, Inspector General, presented the item.

Margina Wade addressed the Board.

Director Ames commented on the function of the Office of the Inspector General and asked questions regarding the revenues collected to fund the Office and staffing for the Office.

Director Raburn commented on budgeting and staffing for the Office, the M-Line lighting project, and the project's contractors.

Director Allen asked for clarification of the 20% overhead fee for the Office of the Inspector General and commented on the costs associated with the Office, the overhead fee, funding, and support for the Office. Director Allen asked for information regarding a contractor's claim for additional money due to the termination for convenience, the entitlements provided to a contractor filing a claim, and termination for convenience; who brought the lighting issue forward, the reason why the contract was not completed using a different product, payment of the material cost, whether there was a benefit from the Inspector General's investigation, and the Inspector General's recommendation regarding improvement of service to contractors; and requested that the Inspector General continue to follow the case and provide an update.

Director Dufty commented on the Board's permitted interaction with the Inspector General.

Director Allen asked when the District-wide assessment would be complete.

Director Saltzman commented on funding for the Office of the Inspector General and suggested that the Board submit a letter to the Bay Area Toll Authority (BATA) asking for additional funding for the Office.

Director Foley commented on the function of the Office of the Inspector General; welcomed the Inspector General's feedback; asked how the Inspector General utilizes subject matter experts to inform her decision-making; and recommended that BART use an online form instead of a downloadable form.

President Simon commented on the role of the Inspector General and thanked Ms. Richardson, management, and the Board for their participation in discussing the Inspector General's first report.

Director Li, Vice Chairperson of the Administration Committee, brought the matter of Title VI Civil Rights Program 2017-2019 Triennial Update before the Board.

Ms. Sharon Moore, Senior Manager, Workforce Policy Compliance, Office of Civil Rights, and Mr. Maceo Wiggins, Director of the Office of Civil Rights, presented the item.

Director Raburn asked whether the Limited English Proficiency (LEP) standard applies to all documents produced by BART or only to a subset of documents considered as the most important and how the documents are selected; commented on the most popular documents at BART booths; asked whether hard copy documents are provided online, whether transit amenities include equipment, and whether the Office of Civil Rights evaluates uniform distribution of the Fleet of the Future.

Director Raburn moved that (1) the District's Title VI Civil Rights Program 2019 Triennial Update be approved; and (2) the District's updated Services Standards and Policies for the Subsequent Reporting Period be approved. President Simon seconded the motion, which carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Li brought the matter of Title VI Fare Equity Analysis and Public Participation Report for the Proposed Discontinuance of Sales of Magnetic-Stripe Tickets before the Board. Ms. Jennella Sambour-Wallace, Manager of Title VI and Environmental Justice, Office of Civil Rights, and Ms. Pamela Herhold, Assistant General Manager, Performance and Budget, presented the item.

Gena Alexander addressed the Board.

Director Li asked for clarification of the sale of magnetic-stripe tickets.

Director Allen commented on customer feedback regarding purchasing discounted Clipper® cards; suggested that discounted Clipper cards be sold at other locations in each district; and requested that discounted Clipper cards be distributed at booths during the summer.

Director Saltzman asked for information about people who are not using Clipper cards and the mobile application for virtual Clipper cards. She commented on Clipper-only stations; providing clear information about purchasing Clipper cards; posting information about obtaining discounted Clipper cards on ticket vending machines; complaints from constituents about Clipper; and responding to customers.

Director Foley asked clarifying questions regarding whether a Title VI fare analysis would be necessary if Clipper did not charge a fee for Clipper cards, the focus of the analysis if the cards were free of charge,

and the need for the analysis if BART were to present a substitute media of its own; commented on the Clipper card fee; and expressed concern about the mitigation efforts presented by staff.

President Simon expressed support for all Directors' comments; shared her experience with trying to obtain a discounted ticket; commented on availability for protected populations, providing clear instructions about how protected populations can receive discounts, facilitating access to discounted Clipper cards, and the disparate impact of the location at which a customer can receive discounted paper tickets and Clipper cards; expressed support for BART's method of addressing disparate impact issues that arise; and indicated that BART needs to ensure that discounted populations have clean and clear access to Clipper cards.

Director Dufty asked whether Station Agents could be provided with 50 Clipper cards to distribute as necessary.

Gena Alexander addressed the Board.

Director Li noted that she had requested Clipper cards to distribute when one of her stations was transitioning to Clipper-only and staff refused her request.

Director Raburn commented that members of the Alameda-Contra Costa Transit District (AC Transit) Board of Directors carry Clipper cards for distribution; noted that he was provided with a small stack of Clipper cards at the Chinatown Street Festival; shared his experience with distributing Clipper cards; supported improving the fairness of Clipper card distribution; addressed the availability of fare media; indicated that he would introduce a Roll Call for Introductions (RCI) request to extend the hours of the Customer Services Center at Lake Merritt Station; commented on customer feedback outlined in the report, the California Integrated Travel Project, and mobile ticketing; asked for information about eliminating refunds for paper tickets; suggested that BART implement a three month program for customers to obtain refunds for paper tickets; and asked for an explanation of the process for refunds of paper tickets and whether providing instant refunds is difficult.

Director Ames asked for clarification of customer feedback from disabled and youth responders, analyzing customer feedback, developing mitigation efforts, and whether the mitigation efforts presented are the only mitigation efforts that can be implemented if the Board approved the report; commented on her experience with transit in Sydney, Australia, and developing simpler, easier options for customers; requested that BART provide a monthly pass and alternate methods of payment; asked whether discounts can be obtained at BART stations; requested more public outreach; and asked whether ticket machines in San Jose would display multiple languages and about the timeline for implementing multiple language machines throughout the system.

Director Li asked for clarification of the process to implement mitigation efforts; commented on the sample size of the magnetic-stripe users in the analysis, demographic information for non-Clipper users, and accessibility of Clipper cards; noted that BART should consider those who are left behind; expressed that she would support the analysis report although it would be irresponsible for her to support a policy that could leave the most marginalized riders behind; highlighted her disagreement with the report's finding regarding impact on low income riders; commented on the insufficient analysis due to small sample sizes; indicated that BART cannot utilize only Clipper cards with the current version of Clipper system, noting the benefits of an account-based system; commented on the Clipper® Executive Board (CEB) and Metropolitan Transportation Commission (MTC) understanding the issues within the current version of Clipper and urgently advancing improvements to achieve Next Generation Clipper, the adverse effect of the current Clipper system on her willingness to support Clipper-only ticket sales, and

the need to understand why non-Clipper users are not using Clipper; and suggested more extensive outreach efforts.

Director Li moved that the “Title VI Fare Equity Analysis for the Proposed Discontinuance of Sales of Magnetic-Stripe Tickets” be approved. Director Raburn seconded the motion. The motion carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Dufty, Chairperson of the Engineering and Operations Committee, brought the matters of Award of Contract No. 15CQ-125, A65 and A75 Interlocking Renewal; and Change Order to Contract No. 54RR-420, Coverboard Enhancement, L-Line, with L.C. General Engineering, Inc., for Additional Pin Assemblies (C.O. No. 001), before the Board. Ms. Tamar Allen, Assistant General Manager, Operations, briefly presented the item.

Director Dufty made the following motions as a unit. Director Saltzman seconded the motions.

1. That the General Manager be authorized to award Contract No. 15CQ-125, A65 and A75 Interlocking Renewal, to ProVen Management Inc. of Oakland, California for the Bid Price of \$16,883,964.00, pursuant to notification to be issued by the General Manager, and subject to compliance with the District’s Protest Procedures.
2. That the General Manager be authorized to execute Change Order Number 001 to Contract No. 54RR-420, Coverboard Enhancement, L-Line, in the amount of \$670,054.00.

Director Foley asked whether Contract No. 15CQ-125 allows BART to inform the contractor that work cannot be performed over the weekend; commented on flexibility for weekend events; requested that staff develop strategies to avoid safety and scheduling conflicts and publish weekend work schedules as far in advance as possible, with repeated notices issued as the weekend approaches, to inform the public.

Director Allen asked staff to coordinate current delay information on the BART mobile application.

The motions brought by Director Dufty and seconded by Director Saltzman carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Dufty brought the matter of Award of Contract No. 15LK-140, Market Street Entry Canopies, before the Board. Ms. Shirley Ng, Group Manager, Capital Projects, Extensions, and Mr. Carl Holmes, Assistant General Manager, Design and Construction, presented the item.

Director Ames asked for an explanation of the additional \$20,000,000 cost, the approval process for the canopies, and the collaboration with San Francisco.

Director Raburn commented on former Director James Fang’s comments regarding elevator unavailability along Market Street in San Francisco and the development of canopies at other stations, and expressed his support for the project.

Director Raburn moved that (1) the General Manager be authorized to award Contract No. 15LK-140, Market Street Entry Canopies, to Shimmick Construction Company, Inc., for the Total Base Bid price of \$64,565,000.00, pursuant to notification to be issued by the General Manager and subject to the District’s Protest Procedures; and (2) in addition, that the General Manager be authorized to exercise Bid

Option No. 1 for \$3,160,000.00, Bid Option No. 2 for \$2,600,000.00, and Bid Option No. 3 for \$855,000.00, all subject to certification by the Controller/Treasurer that funding is available.

Director Li commented on her and her constituents' preference for arrival time screens to be installed at the front of the station entrances, rather than the back side, and requested that staff return to the Board if there is an additional cost for installation of arrival time screens at the front of the station entrances, or include the preferred placement of the screens in the design.

Director Dufty indicated that Contract Nos. 15CQ-125 and 15LK-140 had positive Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) participation; commended the bidders for their work; and commented on the Board's consideration of front-line employees' experiences and safety.

Director Foley expressed support for the project and Director Li's comments regarding the location of arrival time screens.

John Arantes and Jerry Grace addressed the Board.

Director Dufty seconded the motion brought by Director Raburn, which carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Saltzman, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Agreement with the Tri-Valley San Joaquin Valley Regional Rail Authority (TVSJVRRA) to Provide Funding to BART for Review of the Valley Link Project before the Board. Mr. Val Menotti, Chief Planning and Development Officer, presented the item.

Director Ames asked whether BART staff is commenting on the project plans or providing feedback on possible changes to the design; requested clarification of how BART conveys information, such as a desire for an all-electric train, to the TVSJVRRA; commented on providing feedback; and requested information about the express bus system, network, and design.

Director Saltzman suggested that the Board request that the TVSJVRRA provide an informational presentation to the Board.

Director Allen noted that the Board was provided with an update on the project in September 2019.

Director Ames expressed hope that BART can facilitate a better design.

Director Raburn commented on the number of potential new BART riders entering the system at Dublin/Pleasanton Station and the associated additional BART resources required; asked whether the additional resources would be funded by the \$400,000,000 Alameda County Transportation Commission (ACTC) allocation to the Tri-Valley area; and suggested that the Castro Valley, West Dublin, and Dublin/Pleasanton stations be considered for the ACTC allocation for faregate improvements.

Director Allen recognized Mr. Michael Tree, Executive Director, TVSJVRRA, and asked him about the progress of the project.

Mr. Tree addressed the Board.

Director Allen expressed support for the continued negotiation between BART and TVSJVRRRA/Valley Link for the reimbursement program and ongoing work.

Director Li requested a roadmap for all the decisions that need to be made prior to the Board's decisions regarding Dublin/Pleasanton Station.

Director Foley asked clarifying questions regarding the scope of the contract.

Director Saltzman expressed a desire for additional information, a timeline, and subsequent presentations, and requested that the timeline show when decisions regarding funding for BART costs will be made and outline the funding plan and multiple decisions.

President Simon moved that the General Manager or his designee be authorized to enter into an agreement with the Tri-Valley San Joaquin Valley Regional Rail Authority (TVSJVRRRA) for the TVSJVRRRA to provide funding to BART for BART to review the development of the TVSJVRRRA's proposed Valley Link Project. Director Allen seconded the motion, which carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Saltzman brought the matter of Grant Application Agreements for Affordable Housing and Sustainable Communities for Fiscal Year 2018-2019 before the Board. Mr. Menotti presented the item.

Director Raburn moved that the General Manager or his designee be authorized to enter into agreements required to apply for the Fiscal Year (FY) 2018-2019 Affordable Housing and Sustainable Communities grant program, including Memoranda of Understanding and Pass-Through Agreements to receive funds; the agreements will be with the following parties: City of Oakland with BRIDGE Housing and the Spanish Speaking Unity Council, City of Oakland with China Harbour Engineering Corp. and Strategic Urban Development Alliance, City of San Francisco with the Related Companies of California, LLC, and Mission Housing Development Corporation, City of San Francisco with Tenderloin Neighborhood Development Corporation, Satellite Affordable Housing Associates, and Resources for Community Development. Director Li seconded the motion.

Director Saltzman expressed support for the item and commented on the inclusion of rail cars.

The motion brought by Director Raburn and seconded by Director Li carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

Director Saltzman brought the matter of Update on BART and Valley Transportation Authority Phase I before the Board. Mr. Holmes presented the item.

Director Ames commented on the delayed opening for Phase I and requested information at the next Meeting regarding how to achieve a summer opening for Phase I.

President Simon called for the General Manager's Report. Mr. Robert Powers, General Manger, reported that he had met with the Executive Director of the Ed Roberts Campus and held Listening Tour sessions at the Ed Roberts Campus and Downtown Berkeley, Antioch, and Pittsburg/Bay Point stations; noted that he would be holding Listening Tour sessions at the Castro Valley and Balboa Park stations and that information for the February sessions was posted online; reported that he had met with members of the Bay Area legislative delegation at the State Capitol to discuss funding opportunities for BART,

increasing connectivity, and decreasing greenhouse gas emissions and had met with Mr. David Kim, Secretary of the California State Transportation Agency; commented on the implementation of a Train Patrol team, Clipper card utilization, active RCI requests, and the 5<sup>th</sup> Annual Martin Luther King Jr. celebration event.

Director Li requested an update on the Ambassador Program.

Director Dufty asked for discussion of mobile phone thefts at BART stations.

Mr. Powers indicated that the Ambassador Program will be implemented on February 10, 2020 and that the Program was on schedule.

Director Dufty commented on recruitment for Community Service Officers through community organizations and requested an update.

Ms. Gia Ilole, Acting Assistant General Manager, Administration, addressed Director Dufty's questions regarding recruitment.

Deputy Police Chief Lance Haight addressed Director Dufty's question regarding mobile phone thefts.

Director Dufty asked for clarification of fix post shifts and Deputy Chief Haight addressed his question. Director Dufty asked that Mr. Rodd Lee, Assistant General Manager, External Affairs, arrange a meeting with Police Lieutenant Gina Galetti, San Francisco Supervisor Ahsha Safai, himself, and Director Li. Director Dufty suggested that Lieutenant Giletti and Director Dufty or Director Li speak at neighborhood organizations surrounding Balboa Park Station; asked if Lieutenant Giletti is responsible for Glen Park Station; indicated a desire for outreach around Glen Park Station, as he suggested with Balboa Park Station; expressed appreciation for Director Allen's sharing information about an assault at Glen Park Station and BART's proactive response; requested information regarding the disposition of theft cases; commented on utilizing partners, such as District Attorney offices, his experience with automobile break-ins in his District, the Community Justice Center, a meeting involving the San Francisco County District Attorney, Mr. Powers, Deputy Chief Haight, Police Chief Ed Alvarez, and the San Francisco Directors; thanked Chief Alvarez for his allocation of resources; indicated that elected representatives of cities and counties will reach out to BART when incidents occur and BART should be proactive in reaching out to the representatives; and highlighted that BART is not going to accept responsibility for statistics if sister agencies are not helping to break the crime cycle.

Deputy Chief Haight offered additional comments.

Director Dufty expressed appreciation for Police Lieutenants Galetti and Angela Averiett's relationships with colleagues.

President Simon asked for confirmation that a meeting with the San Francisco County District Attorney would be arranged.

Mr. Robert Padgette, Managing Director of the Capitol Corridor Joint Powers Authority, presented the Review of Draft Agenda for Capitol Corridor Joint Powers Board Meeting of February 12, 2020 to the Board.

Director Ames asked for information about the regional conversation regarding protecting infrastructure and capital investments; commented on the Business Plan; and expressed a desire for a regional climate change approach.

President Simon brought the matter of Resolution in Support of a Bus-Only Lane on the Bay Bridge before the Board.

Director Saltzman commented on the development of the Resolution; current consideration of supporting a Bus-Only lane Resolution among other agencies; reasons for supporting the Resolution; her hope for support from the Board; and a desire for the Board to consider legislation regarding this issue.

Director Saltzman moved that Resolution No. 5432, In the Matter of Support of Bus-Only Lane on the Bay Bridge, be adopted. Director Ames seconded the motion.

Director Raburn commented on his experience with transbay bus service during the rebuilding of the M-15 and Transbay Tube closure and his involvement with issues regarding the Bay Bridge as a bicyclist; reminded the Board that there is currently an incomplete path halfway across the Bridge; and asked Director Saltzman to amend the Resolution to include completion of the pathway.

Director Saltzman responded that she would prefer to keep the Resolution limited to the bus-only lane and expressed that she would support a future Resolution regarding completion of the pathway.

Director Ames shared her experience as a bus rider; expressed support for the Resolution; commented on riders' motivation to take a bus; indicated a desire for more legislation regarding cycling and buses using the shoulder, and the implementation of express buses.

The motion brought by Director Saltzman and seconded by Director Ames carried by electronic vote. Ayes: 7 – Directors Allen, Ames, Dufty, Foley, Li, Saltzman, and Simon. Noes: 1 – Director Raburn. Absent: 1 – Director McPartland.

President Simon brought the matter of Resolution in Support of Proposition B in the City and County of San Francisco before the Board.

Director Dufty noted that Proposition B would not increase property taxes and the funds would reinforce police, fire, and other emergency services during a seismic event; and that he had not heard of any opposition to Proposition B.

Director Dufty moved that Resolution No. 5433, In the Matter of Support of 2020 Earthquake Safety and Emergency Response Bond (ESER), be adopted. Director Li seconded the motion, which carried by unanimous electronic vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Saltzman, and Simon. Noes: 0. Absent: 1 – Director McPartland.

President Simon called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Saltzman requested that the Meeting be adjourned in honor of Ms. Mae Z. Meidav, former BART employee and theater luminary.

Director Foley thanked Mr. Powers for appearing in East Contra Costa County for his Listening Tour and reported that he had attended the Contra Costa Mayors Conference; met with Mr. Greg Enholm,

Member of the Governing Board of the Contra Costa Community College District, to discuss developing a pipeline from the District's Administration of Justice program into BART's Community Service Officer and Ambassador positions; provided a presentation about the state of BART to the Oakley City Council; and attended the Contra Costa Transportation Authority (CCTA) meeting.

President Simon requested that the Meeting be adjourned in honor of The Honorable Robert S. Allen, former Member of the San Francisco Bay Area Rapid Transit District Board of Directors, representing District 5.

President Simon announced and commented on the applications and open vacancies for the Transit Security Advisory Committee (TSAC).

President Simon reported that she had attended the following events: the Contra Costa County Mayors Conference; a conference for African-American elected officials in Contra Costa County hosted by the Safe Return Project; the announcement event for Chief Alvarez's appointment as Police Chief; and the Martin Luther King Jr. breakfast event hosted by the San Francisco Labor Council.

Director Dufty requested that the Meeting be adjourned in honor of The Honorable Terence Hallinan, former San Francisco Supervisor and District Attorney. Director Dufty reported he had attended a meeting with Alstom Signaling Inc. (Alstom) and Mr. Powers; and thanked Ms. Muriel Luo, Vice President and Customer Director of Alstom, and all of Alstom for standing with BART and looking long-term at the ways in which Alstom can work with BART.

Director Li thanked Ms. Tamar Allen, her team, and Mr. Leonardo Pica, Assistant Chief Mechanical Officer, Rolling Stock and Shops, for facilitating her visit to the Concord shop; reported on her visit; thanked Mr. John Arantes, President of the BART Chapter of the Service Employees International Union (SEIU), for joining her during her visit and introducing her to people at the shop; noted that she visited the e-BART shop in Antioch, met people at the e-BART shop, and rode e-BART; and expressed appreciation for BART staff's assistance with opening the shops and yards to provide tours.

Director Raburn thanked President Simon for mentioning the TSAC recruitment; commented on Director Dufty and Deputy Chief Haight's discussion of thefts and the TSAC; reported that he had attended the Oakland Chinatown New Year's Bazaar, and a Fruitvale security meeting with the Unity Council; and indicated that a follow-up event would be held for Chief Alvarez to meet the Fruitvale community.

Director Raburn requested that the Lake Merritt Customer Services Center be opened on Saturdays on a trial, ideally cost-neutral, basis to improve customer service for weekday workers and youth. He shared his experience speaking with families during the Lunar New Year and Women's March events; noted that extended hours for the Customer Services Center would provide security for Station Agents; and commented on Station Agents' vulnerability along the A-Line. President Simon seconded Director Raburn's request.

Director Raburn requested that the Meeting be adjourned in honor of The Honorable Whitney Dotson, former Member of the East Bay Regional Park District Board of Directors and environmental advocate.

Director Ames reported on her vacation in New Zealand and Sydney, Australia; commented on the double-decker train cars in Sydney and capacity issues with BART's extension into San Jose; and expressed support for Chief Alvarez's appointment and the Ambassador Program. Director Ames reported that she had met with the Bay Area Transportation Working Group to discuss express bus

service on the freeway and she expressed support for BART and AC Transit's collaboration regarding bus service on the freeways.

President Simon called for Public Comment. Jerry Grace addressed the Board.

The Meeting was adjourned at 12:57 p.m.

Patricia K. Williams  
District Secretary

## BART ADVERTISING CONTENT GUIDELINES

### OBJECTIVE

Through these guidelines, the San Francisco Bay Area Rapid Transit District ("BART"), in keeping with its primary function as a provider of public transportation, does not intend to convert its property into an open public forum for public discourse, debate, or expressive activity. In furtherance of the discrete and limited objectives described below, BART shall retain control over the nature of advertisements accepted for posting in the BART system, and maintain its advertising space as a nonpublic forum with limited content neutral subject matter restrictions. In setting its advertising standards, BART seeks to meet the following goals and objectives:

- (a) Maintain a secure and orderly operating environment;
- (b) Maintain a safe and welcoming environment for all BART passengers, including minors who use the BART system, without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or veterans' status, and avoid claims of discrimination from the public;
- (c) Maintain and increase ridership and fare revenue;
- (d) Avoiding unintentional appearance of favoritism, association with, or bias towards any group, movement, or viewpoint;
- (e) Preserve the marketing potential of the advertising space by avoiding content that the community could view as inappropriate or harmful to the public;
- (f) Increase advertising revenue to help support BART service to the public;
- (g) Avoid imposing demeaning or disparaging messages on a captive audience; and
- (h) Reduce the diversion of resources from BART objectives caused by controversy surrounding advertisements.

BART retains the unqualified right to display, on or in its facilities, advertisements and notices that pertain to BART operations and promotions, consistent with the provisions of its agreement with the Advertising Contractors. Promotional materials may include, but not be limited to, internal marketing collateral, BART branding campaigns, and co-promotional campaigns with third parties. Consistent with the status of the BART premises to which this policy pertains as a nonpublic forum, BART does not accept free public service announcements. These Guidelines shall be effective upon adoption and shall be enforced to the degree that it does not impair the obligations of any executed contract. BART reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, facilitate its primary transportation function, to ensure the safety or security of BART customers and BART facilities, or to fulfill the goals and objectives referred to herein. All provisions of these Guidelines shall be deemed severable.

For purposes of understanding the meaning of advertisements, BART may refer to information beyond the advertisement including, but not limited to, dictionaries, reviews by authoritative bodies,

or public information regarding the advertiser. BART shall assess whether an independent, reasonably prudent person, knowledgeable of BART's customer profile and using prevailing community standards, would believe that the advertisement complies with the provisions of these Guidelines. In the case of advertisements that use double entendres or multiple interpretations, all meanings of the advertisement must comply with these Guidelines. BART reserves the right, in all circumstances, to require that an advertisement in the BART system include a disclaimer indicating that such advertising is paid for by the advertiser, stating that "The views expressed in this advertisement do not reflect the views of BART," or a similar statement, and BART may set minimum size standards for the disclaimer to ensure legibility.

## ADVERTISING STANDARDS

### A. Permitted Advertising Categories

The BART system is limited to only the following categories of advertising:

1. **Commercial Advertising.** Paid communications from a for-profit entity or entities.
2. **Governmental Advertising.** Paid communications from public entities created by government action with the intent to advance a specific government purpose as well as communications from BART related to BART programs, products, services, or partnerships.
3. **Public Service Announcements.** Paid communications from any entity not described under Sections A1 or A2 of these guidelines which promotes or furnishes any of the following goods or services:
  - a. The prevention or treatment of an illness, injury, condition, or syndrome recognized by the most recent Diagnostic and Statistical Manual ("DSM") or the Centers for Disease Control ("CDC");
  - b. The recruitment or solicitation of participants for medical, psychological, or behavioral studies;
  - c. Museums, theaters, or galleries which are open to the general public;
  - d. Licensed or accredited pre-K through 12 education programs or services;
  - e. Colleges or universities that have received regional or statewide accreditation;
  - f. Vocational or trade programs;
  - g. Visual or performing arts, fairs, or festivals, provided that the venue or event is open to the general public and has a valid operating permit issued by a governmental entity;
  - h. Environmental matters;
  - i. Provision of services and programs that provide support to low income citizens, victims of abuse, families, youth, immigrants, historically disadvantaged populations, senior citizens, veterans, people identifying as LGBT, or people with disabilities;
  - j. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations;
  - k. Diet or nutrition;
  - l. Sporting events, sporting activities, or services related to sports;
  - m. Travel services, information, or promotion;
  - n. Licensed farmers markets, public botanical gardens, or public parks;
  - o. Commercial or professional trade organizations;

- p. Credit unions, investment entities, or financial services;
- q. Zoos, planetariums, or aquariums;
- r. Governmentally funded public broadcast entities; or
- s. Government-designated historic sites.

### **B. Prohibited Advertising Categories**

Notwithstanding any provisions in Section A of these Guidelines, advertising content that falls into one or more of the following categories is prohibited in the BART system based on inconsistency with the goals and objectives described above:

1. **Political or Public Issue Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
  - a. Supporting or opposing a political party;
  - b. Supporting or opposing any political or judicial office holder;
  - c. Supporting or opposing a proposed ballot measure;
  - d. Supporting or opposing a law, ordinance, regulation, or proposed legislation;
  - e. Supporting or opposing a constitutional amendment or amendments;
  - f. Supporting or opposing an active governmental investigation;
  - g. Supporting or opposing ongoing civil litigation;
  - h. Supporting or opposing ongoing criminal prosecution;
  - i. Supporting or opposing a judicial ruling or rulings;
  - j. Supporting or opposing a strike, walkout, boycott, protest, divestment, embargo, or groupings thereof;
  - k. Supporting or opposing the election of any candidate or group of candidates;
  - l. Supporting or opposing any foreign nation or group of nations or any policy of a foreign nation or group of nations other than the policies of the advertiser itself;
  - m. Depicting an image or images of one or more living political or judicial figures or depicting an image of one or more political or judicial figures that have died within the last five (5) years;
  - n. Referring to one or more living political or judicial figures or referring to one or more political or judicial figures that have died within the last five (5) years; or
  - o. Using a slogan, symbol, slogans, or symbols associated with any prohibited category of this section B1.
2. **Religious Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
  - a. Promoting or opposing any religion, atheism, spiritual beliefs, or agnosticism, inclusive of images depicting religious iconography occupying 15% or more of any advertisement frame.

3. **Obscene or Vulgar Content.** Any material that, when viewed as a whole, can reasonably be regarded as:
  - a. Meeting the standards for obscenity as set forth in the California Penal Code Section 311; or
  - b. Utilizing words, text, symbols, or images recognized by the community as extremely vulgar, indecent, or profane for display in a public setting that includes minors.
4. **Unlawful, Unsafe, or Disruptive Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as encouraging or promoting any of the following:
  - a. The sale, use, possession, or distribution of goods or services that are unlawful;
  - b. A contest or contests that violate applicable law;
  - c. Unlawful or unsafe behavior;
  - d. Detrimental actions to the maintenance and safe operation of public transportation; or
  - e. Graffiti or vandalism.
5. **False, Misleading, or Tortious Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as:
  - a. False or fraudulent;
  - b. Deceptive or misleading;
  - c. Copyright, trademark, or patent infringement;
  - d. Constituting a tort of libel, trade libel, public disclosure of private facts, intrusion into private matters, misappropriation of a person's name or likeness, or depiction in a false light; or
  - e. BART graphics, logos, or representations without the express written consent of BART, or which implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization by BART.
6. **Content Advertising Specified Goods or Services.** Any material that directly advertises any of the following categories of goods or services:
  - a. Alcohol, or any material that depicts the consumption of alcoholic beverages or signs of excessive alcohol intoxication;
  - b. Firearms or non-firearm weapons;
  - c. Tobacco, or depictions of tobacco-related products, e-cigarettes, products that simulate smoking, or products that resemble tobacco products; or
  - d. "Adult"-oriented goods or services, including the use of brand names, trademarks, or slogans, for goods or services rated "X" or NC-17 by the Motion Picture Association of America ("MPAA"), adult book stores, adult video stores, nude dance clubs, adult telephone services, adult internet sites, or escort services.

Notwithstanding items 6.a. and 6.c. above, depictions of tobacco products or alcohol consumption are permissible to the extent that the purposes of such depictions are non-commercial and are otherwise advancing a scientific, medical, journalistic, artistic, or public health objective.

7. **Inappropriate, Offensive, or Violent Content.** Any material that, when viewed as a whole, can reasonably be regarded as depicting or describing any of the following:
- a. A graphic or realistic dead, mutilated, or disfigured human body or bodies;
  - b. A graphic or realistic human body part or body parts in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - c. A fetus or fetuses in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - d. Human or animal excrement, vomit, or graphic depictions of blood or viscera;
  - e. An act of animal abuse as defined in California Penal Code Section 597;
  - f. The act of killing, mutilating, or disfiguring human beings or animals;
  - g. Genocide, mass-murder, or war crimes recognized under the laws and customs of war;
  - h. Weapons or violent implements, if either appear to be aimed or pointed at the viewer;
  - i. Images of firearms, non-firearm weapons, or threatening sharp-edged device in the foreground of an image or occupying 15% or more of any advertisement image or frame;
  - j. Graphic violence or graphic sexual harassment;
  - k. Denigrating public transportation or the mission of BART;
  - l. Graphic images that, under contemporary community standards, would be reasonably considered extremely frightening to minors or the elderly; or
  - m. Material that is insulting, degrading, disparaging, demeaning, or disrespectful; or material that belittles or is dismissive of genocide, war crimes, or slavery that is so objectionable under contemporary community standards as to make it reasonably foreseeable that the material will result in harm to (including loss of ridership), disruption of, or interference with the transportation system.

#### **ADVERTISING PROGRAM ADMINISTRATION**

(a) BART may, from time to time, select "Advertising Contractors" who shall be responsible for the daily administration of BART's advertising programs, in a manner consistent with these Guidelines and with the terms and conditions of their agreements with BART.

(b) BART shall designate an employee as its "Contract Administrator" to be the primary contact for the Advertising Contractors on issues related to advertising content. Questions regarding the terms, provisions, and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

(c) The Advertising Contractors shall comply with these Guidelines, and shall review all advertising with reference to them. If there is any question as to whether a proposed advertisement falls into a prohibited category--as outlined in these Guidelines--the Advertising Contractors shall refer that advertisement to the Department Manager of Marketing and Research, or their designee for review and consideration. The Department Manager of Marketing and Research or their designee shall determine whether the proposed advertising will be accepted. In the event that the advertising is rejected, the advertiser may request in writing that the decision be reconsidered. Upon such request, the Department Manager of Marketing & Research shall consult with BART's Office of the General Counsel and with the Assistant General Manager for External Affairs, or the officer designated by the General Manager for this purpose. The Assistant General Manager for External Affairs or General Manager designee, on the basis of such consultation, shall determine whether the proposed advertising will be accepted or rejected.

