

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

BOARD MEETING AGENDA

April 13, 2017

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, April 13, 2017, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under Public Comment.

Any action requiring more than a majority vote for passage will be so noted.

Items placed under “consent calendar” are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), and via email (https://public.govdelivery.com/accounts/CATRANBART/subscriber/new?topic_id=CATRANBART_1904) or via regular mail upon request submitted to the District Secretary. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Patricia K. Williams
Assistant District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

The purpose of the Board Meeting is to consider and take such action as the Board may desire in connection with:

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
Eileen Loughran, Syringe Programs Coordinator, HIV Prevention Section, San Francisco Department of Public Health; and Laura Thomas, MPH, MPP, Deputy State Director, California Drug Policy Alliance. (Director Dufty's request.)

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of March 23, 2017.* Board requested to authorize.
- B. BART Accessibility Task Force Membership Appointment.* Board requested to authorize.

3. PUBLIC COMMENT – 15 Minutes

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda. An additional period for Public Comment is provided at the end of the Meeting.)

4. ADMINISTRATION, WORKFORCE, AND LEGISLATION ITEMS

Director McPartland, Chairperson
NO ITEMS.

5. FINANCE, BUDGET, AND BOND OVERSIGHT ITEMS

Director Josefowitz, Chairperson

- A. Review Other Post-Employment Benefits (OPEB) and Pension Liabilities.* For information.
- B. Fiscal Year 2018 Preliminary Budget Overview.* For information.

6. OPERATIONS AND SAFETY ITEMS

Director Keller, Chairperson

- A. Change Order to Contract No. 15QH-160, Site Improvements at Various Stations – Phase IV, with Golden Bay Construction, Inc., for Daly City Bus Canopy Replacement (C.O. No. 1).* Board requested to authorize.
- B. Aggressive Panhandling Policy Revision.* For information.

7. PLANNING ITEMS

Director Raburn, Chairperson

- A. Special Entrance and Elevator Agreement for 19th Street Oakland Station.* Board requested to authorize.

8. GENERAL MANAGER'S REPORT

- A. Report of Activities, including Updates of Operational, Administrative, and Roll Call for Introductions Items.

9. INDEPENDENT POLICE AUDITOR'S REPORT

- A. Quarterly Report of the Office of the Independent Police Auditor. For information.

10. BOARD MATTERS

- A. Board Member Reports.
(Board member reports as required by Government Code Section 53232.3(d) are available through the Office of the District Secretary. An opportunity for Board members to report on their District activities and observations since last Board Meeting.)
- B. Roll Call for Introductions.
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)
- C. In Memoriam.
(An opportunity for Board members to introduce individuals to be commemorated.)

11. PUBLIC COMMENT

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

12. CLOSED SESSION (Room 303, Board Conference Room)

- A. CONFERENCE WITH LABOR NEGOTIATORS:
- Designated representatives: Grace Crunican, General Manager; Michael Jones, Assistant General Manager, Employee Relations; and Carol Isen, Chief Employee Relations Officer
- Employee Organizations: (1) Amalgamated Transit Union, Local 1555;
(2) American Federation of State, County and Municipal Employees, Local 3993;
(3) BART Police Officers Association;
(4) BART Police Managers Association;
(5) Service Employees International Union, Local 1021;
and
(6) Service Employees International Union, Local 1021, BART Professional Chapter
(7) Unrepresented employees (Positions: all)
- Government Code Section: 54957.6

13. OPEN SESSION

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,784th Meeting
March 23, 2017

A regular meeting of the Board of Directors was held March 23, 2017, convening at 9:00 a.m. in the Board Room, 344 20th Street, Oakland, California. President Saltzman presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Allen, Blalock, Keller, McPartland, Raburn, and Saltzman.

Absent: None. Directors Dufty, Josefowitz, and Simon entered the Meeting later.

Director Blalock extended an invitation to the opening celebration for the Warm Springs Extension and Warm Springs/South Fremont Station, to be held on March 24, 2017.

Directors Dufty and Simon entered the Meeting.

General Manager Grace Crunican recognized retiring Deputy Chief of Police, Benson Fairrow, noting this would be his last meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of March 9, 2017.
2. Revision to Succession Resolution.
3. Procurement of Smart Cards to Support San Francisco Airline Employee, San Francisco Airport Employee, and Oakland Airport Employee Discount Programs.

Director Raburn made the following motions as a unit. Director Blalock seconded the motions, which carried by unanimous acclamation. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0. Absent – 1: Director Josefowitz.

1. That the Minutes of the Meeting of March 9, 2017, be approved.
2. Adoption of Resolution No. 5336, In the Matter of Designating an Alternate for the General Manager and Authorizing Certain District Officers to Use Facsimile Signatures on District Warrant-Checks.
3. That the procurement of 20,000 On Track Innovation smart cards be authorized.

President Saltzman called for Public Comment. No comments were received.

Director McPartland, Chairperson of the Administration, Workforce, and Legislation Committee, brought the matter of Amendment to Lease for Downtown Berkeley Station Bicycle Facility before the Board. Ms. Susan Shaffer, Principal Right-of-Way Officer, presented the item. President Saltzman moved that the General Manager or her designee be authorized to execute an amendment for a six-month extension to the existing lease, with an additional three-month option term, with HSR Berkeley Investments, LLC, for approximately 4,000 square feet of commercial space at 2208 Shattuck Avenue, Berkeley, for the Downtown Berkeley Bike Station, in the amount of \$114,300.00. Director Raburn seconded the motion, which carried by unanimous acclamation. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0. Absent – 1: Director Josefowitz.

Director McPartland brought the matter of Agreements for Temporary Staff Services before the Board. Mr. Michael Jones, Assistant General Manager, Employee Services, presented the item. The item was discussed.

Director Josefowitz entered the Meeting.

Mr. Clarence Hunt, HR Management, addressed the Board.

Director Raburn moved that the General Manager be authorized to award Agreement No. 6M4516 to HR Management Inc.; Agreement No. 6M4517 to Search Pros Staffing; and Agreement No. 6M4518 to Wollborg Michelson Personnel Service, Inc. to provide temporary staff services, in an amount not to exceed \$3,000,000.00 for each Agreement, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures. Director Dufty seconded the motion. Discussion continued. The motion carried by electronic vote. Ayes – 8: Directors Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes – 1: Director Allen.

Director Josefowitz, Chairperson of the Finance, Budget, and Bond Oversight Committee, brought the matters of Issuance and Sale of General Obligation Bonds (Election of 2004), 2017 Refunding Series E; Issuance and Sale of General Obligation Bonds (Election of 2016), 2017 Series A; and Selection of Underwriting Pool from Which Senior Manager and Co-Managers Will Be Designated for the Issuance and Sale of the District's Bonds, before the Board. Ms. Rosemarie Poblete, Controller/Treasurer, presented the items. Director Blalock moved adoption of Resolution No. 5337, Authorizing and Approving the Issuance and Sale of Not to Exceed \$110 Million Aggregate Principal Amount of San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2004), 2017 Refunding Series E; Authorizing the Execution and Delivery of a Trust Agreement Pursuant to which Such Bonds Are to Be Issued, a Bond Purchase Agreement Pursuant to which Such Bonds Are to Be Sold by Negotiated Sale; Approving an Official Statement Relating to Such Bonds; Authorizing Execution and Delivery of the Official Statement and Certain Documents in Connection with the Issuance and Sale of Such Bonds, Including a Continuing Disclosure Agreement and an Escrow Agreement; Delegating to the Controller/Treasurer of the District Power to Determine Final Terms of Such Bonds and Complete Said Documents and Authorizing Certain Other Matters Relating Thereto; and adoption of Resolution No. 5338, Authorizing and Approving the Issuance and Sale of Not to Exceed \$300 Million Aggregate Principal Amount of San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2016), 2017 Series A; Authorizing the Execution and Delivery of a Trust Agreement Pursuant to which Such Bonds Are to Be Issued, a Bond

Purchase Agreement Pursuant to which Such Bonds Are to Be Sold by Negotiated Sale; Approving an Official Statement Relating to Such Bonds; Authorizing Execution and Delivery of the Official Statement and Certain Documents in Connection with the Issuance and Sale of Such Bonds, Including a Continuing Disclosure Agreement; Delegating to the Controller/Treasurer of the District Power to Determine Underwriters and Final Terms of Such Bonds and Complete Said Documents and Authorizing Certain Other Matters Relating Thereto. Director Raburn seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0.

President Saltzman moved that the Controller/Treasurer be authorized to designate the firms listed in Exhibit A as members of BART's Underwriters Pool, from which the Controller/Treasurer is authorized from time to time to select members and enter into agreements with underwriters relating to the issuance of bonds. Director Keller seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0. (Exhibit A is attached and hereby made a part of these Minutes.)

Director Keller, Chairperson of the Operations and Safety Committee, brought the matter of Award of Contract No. 20CE-220, Train Control Trailable Switch Machines, before the Board. Mr. Cary Pereira, Principal Train Control Engineer, presented the item. Director Dufty moved that the General Manager be authorized to award Contract No. 20CE-220, Procurement of Trailable Switch Machines, to Alstom Signaling, Inc., for the not-to-exceed price of \$4,303,025.00 plus applicable taxes, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures and the Federal Transit Administration's requirements related to protest procedures. Director Blalock seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0.

Director Keller brought the matter of Agreements with Public and/or Private Bus Operators and Vendors for Temporary Bus Bridge Services before the Board. Ms. Teresa Tapia, Bus Bridge Manager, presented the item. President Saltzman moved that the General Manager be authorized to enter into agreements with public and/or private bus operators and vendors, including but not limited to AC Transit, to provide temporary bus transportation services and related support expenses in a total amount not to exceed \$200,000.00 per day for each day that the District is unable to provide complete train service due to maintenance projects; with the authorizations to expire on December 31, 2017; and that private bus operators will not be used unless public operators are unable to provide the bus bridge services. Director Simon seconded the motion. The item was discussed. The motion carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0.

Director Keller brought the matter of Change Order to Contract No. 15IJ-110, Fire Alarm Renovation Phase 1 – M-Line, with Blocka Construction Inc., for Increase in Allowance for Firewatch Services (C.O. No. 13), before the Board. Ms. Tracy Johnson, Group Manager, Civil, Structural, and Construction Engineering, presented the item. The item was discussed. Director McPartland moved that the General Manager be authorized to execute Change Order No. 13, Increase in Allowance for Firewatch Services, for an amount not to exceed \$551,508.46, to Contract No. 15IJ-110, Fire Alarm Renovation, Phase I, M Line, with Blocka Construction, Inc.

Director Dufty seconded the motion, which carried by electronic vote. Ayes – 8: Directors Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes – 1: Director Allen.

Director Raburn, Chairperson of the Planning Committee, brought the matter of Pleasant Hill Bike Station Tenant Improvements before the Board. Mr. Steve Beroldo, Manager of Access Programs, presented the item. Director Allen moved that the General Manager or her designee be authorized to increase the tenant improvement budget by \$180,000.00 for the Pleasant Hill Bike Station, from the current authorization of \$250,000.00 to \$430,000.00. President Saltzman seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman. Noes - 0.

Director Raburn brought the matter of Late Night Bus Service Ridership and Funding Update before the Board. Mr. Bob Franklin, Department Manager, Customer Access, presented the item. The item was discussed.

The following individuals addressed the Board.

Jerry Grace
Clarence Fischer

President Saltzman called for the General Manager's Report. Ms. Crunican reminded the Board of the Warm Springs Station opening ceremony tomorrow, and reported on steps she had taken and activities and meetings she had participated in and outstanding Roll Call for Introductions items.

Mr. Paul Oversier, Assistant General Manager, Operations, gave a report on upcoming work to rebuild the A-15 interlocking, between Lake Merritt Station and Fruitvale Station, and how the work would affect service.

President Saltzman called for the Controller/Treasurer's Report. Ms. Poblete presented the report. The report was discussed.

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

Director Raburn reported he and Director Allen had attended the American Public Transportation Association's Legislative Conference in Washington, D.C.

Director Allen reported on her trip to the American Public Transportation Association's Legislative Conference in Washington, D.C.

Director Simon reported she had been awarded a scholarship to Transit Center and would attend a training session in Minneapolis.

President Saltzman reported she had attended a SPUR meeting about a second transbay crossing.

President Saltzman called for Public Comment. The following individuals addressed the Board.
Jerry Grace

Clarence Fischer

President Saltzman announced that the Board would enter into closed session under Item 12-A (Conference with Labor Negotiators) of the regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 11:30 a.m.

The Board Meeting reconvened in closed session at 11:43 a.m.

Directors present: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, Simon, and Saltzman.

Absent: None.

The Board Meeting recessed at 1:26 p.m.

The Board Meeting reconvened in open session at 1:27 p.m.

Directors present: Director Saltzman.

Absent: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Raburn, and Simon.

President Saltzman announced that the Board had concluded its closed session and that there were no announcements to be made.

The Meeting was adjourned at 1:27 p.m.

Kenneth A. Duron
District Secretary

San Francisco Bay Area Rapid Transit District

Exhibit A

Underwriting Pool

As of March 15, 2017

Senior Manager Pool

Barclays Capital

Citigroup/Siebert Cisneros Shank Joint Venture (MBE/WBE)**

Goldman Sachs

JP Morgan

Morgan Stanley

Stifel Financial Corp.

Co-Manager Pool

Alamo Capital (WBE/SB)

Backstrom McCarley Berry & Co. LLC (MBE)

Bank of America Merrill Lynch

Blaylock Beal Van, LLC (MBE/SB)

Fidelity Capital Markets

Raymond James

**** Siebert Cisneros Shank is a MBE/WBE firm**

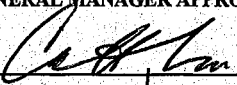
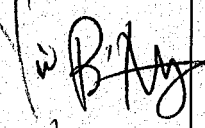
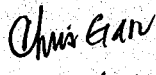
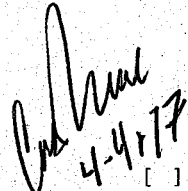
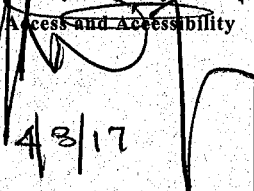
MBE *Minority-Owned Business Enterprise*

SB *Certified Small Business*

WBE *Women-Owned Business Enterprise*



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/21/2017 <i>for GM</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ike Nnaji Dept: Customer Access and Accessibility Department.	General Counsel 	Controller/Treasurer 	District Secretary	BARC 
Signature/Date:  4/3/17	9/3/17 []	4/4/17 []	[]	4-4-17 []

BART Accessibility Task Force New Members Appointment

PURPOSE:

For the BART Board of Directors to consider appointing newly nominated members, Valerie Buell and Christopher Mullin to the BART Accessibility Task Force (BATF).

DISCUSSION:

The BATF has been in existence since 1975, its purpose is to advise the BART Board and BART staff on accessibility issues at BART. The BATF by-laws provide that the committee shall be composed of up to eighteen members who live or work in the BART service area. The BATF by-laws also require that an interested applicant for the committee must attend three out of four consecutive meetings and then apply for membership. If the applicant is endorsed by a majority of the members of the BATF, then the recommendation for membership is submitted to the BART Board of Directors for final approval.

Candidates for BATF Membership:

Valerie Buell and Christopher Mullin are candidates for membership to the BATF. They were endorsed by an unanimous vote of the members of the BATF that were present at the March 23, 2017 BATF Committee meeting. The BATF's membership recommendations are now being submitted to the BART Board for consideration. If the BART Board appoints the candidates, the BATF will have 18 members. The prospective candidates, if approved by the BART Board for BATF membership, will be officially seated on April 27, 2017 as a member of the BATF for a term of one year, or until the BART Board announces appointments and/or reappointments for a new term, whichever occurs later.

FISCAL IMPACT:

There is a \$15 monthly stipend for travel for each regularly scheduled monthly meeting that members attend. Additionally, members are eligible to be reimbursed for the actual cost of travel for additional, pre-approved meetings. The funding source is the operating budget of the Customer Access and Accessibility Department.

ALTERNATIVES:

Do not make the appointment. **RECOMMENDATION:** Appoint Valerie Buell and Christopher Mullin to the BATF.

MOTION:

The BART Board accepts the recommendation of the BATF and appoints the nominated candidates, Valerie Buell and Christopher Mullin for membership to the BATF for a term beginning April 27, 2017 for one year, or until the Board makes new appointments and/or reappointments for a new term, whichever occurs later.

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
MEMORANDUM**

TO: Board of Directors

DATE: April 7, 2017

FROM: General Manager

RE: Item 5A, Review Other Post-Employment Benefits (OPEB) and Pension Liabilities

Attached is the Pension and Retiree Medical Update that will be presented to the Board at the April 13, 2017 meeting as an informational item.

If you have any questions about the document, please contact Carter Mau, Assistant General Manager, Administration and Budget, at 510-464-6194.


Grace Crunican

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
MEMORANDUM**

TO: Board of Directors

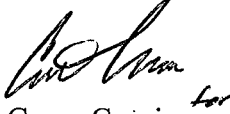
DATE: April 7, 2017

FROM: General Manager

RE: Item 5B, Fiscal Year 2018 Preliminary Budget Overview

Attached is the FY18 Budget Overview presentation that will be presented to the Board at the April 13, 2017 meeting as an informational item.

If you have any questions about the document, please contact Carter Mau, Assistant General Manager, Administration and Budget, at 510-464-6194.


Grace Crunican

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to April 13, O&S Committee		
DATE: 4/4/2017		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Hamed Tafaghodi Dept: Maintenance and Engineering Signature/Date: 4/5/17	General Counsel 4/5/17 []	Controller/Treasurer 4/6/17 []	District Secretary []	BARC FOR PMU OVERSIGHT 4/6/17 []

AUTHORIZE EXECUTION OF CHANGE ORDER NO.1, DALY CITY STATION BUS CANOPY REPLACEMENT TO CONTRACT No.15QH-160, SITE IMPROVEMENTS AT VARIOUS STATIONS -PHASE IV.

PURPOSE: To obtain Board authorization for the General Manager to execute Change Order No. 1, Daly City Bus Canopy Replacement, to Contract No. 15QH-160, Site Improvements at Various Stations -Phase IV.

DISCUSSION: On August 11, 2016, the Board of Directors authorized the General Manager to award Contract No. 15QH-160, Site Improvements at Various Stations -Phase IV, to Golden Bay Construction, Inc. for the Bid amount of \$1,346,869.00. Proposed Change Order No.1, Daly City Station Bus Canopy Replacement, is to add additional improvements to the Contract scope of work, in the amount not to exceed \$600,000 and to extend the Contract duration by 100 calendar days.

This work was originally planned, but was not included in the scope of the original Contract No. 15QH-160 because construction funds were not available at that time. Funding for this work became available in January 2017. Because the original Contract encountered weather delays due to a wet rainy season, BART staff decided to use this opportunity to add this work as a Change Order to this Contract and provide increased time as a result of the weather delays.

The Daly City BART Station has one of the busiest intermodal facilities within the BART System and connects thousands of daily riders via Muni, SamTrans and the San Francisco State University Shuttle. BART's patrons have long complained about the uncomfortable experiences of using this intermodal facility, which is cold, windy, unattractive, unfriendly and dark, especially for those waiting for their buses at night. These

AUTHORIZE EXECUTION OF CHANGE ORDER NO.1, DALY CITY STATION BUS CANOPY REPLACEMENT TO CONTRACT No.15 (cont.)

issues, among many other access issues, prompted BART staff to secure Caltrans funding in 2011 to conduct a comprehensive assessment of shortcomings and challenges, as well as to identify opportunities for improving station layout, transit operations, bicycle and pedestrian access, enhanced safety, and the patron experience. The assessment led to the development of a plan to improve the Station. The Assessment recommended short-term, mid-term, and long-term alternatives to improving transit, pedestrian, bike, and auto access and patron experience.

BART staff has worked with partner agencies, San Mateo County Transit District, San Francisco Municipal Transportation Agency, and San Francisco County Transportation Authority, on developing near-term transit improvements that could be supported and jointly funded by all parties. The near-term scope includes new bus layover space (part of original Contract), replacement of the aging canopy with bus shelters, new LED lighting, attractive railings, and seating and a new, ADA compliant, cross walk (added as Change Order No.1). The partner agencies have committed up to \$1.5M to deliver these improvements that will greatly enhance the experiences of BART's patrons. By integrating the work of Change Order No.1 with the existing Contract, BART will only disrupt its customers once instead of multiple times and will implement the entire work scope as originally conceived, resulting in time and cost savings.

Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board Approval. The Office of General Counsel will review and approve the Change Order as to form prior to execution. The Procurement Department will review the Change Order prior to execution for compliance with Procurement guidelines.

FISCAL IMPACT: Funding of the not to exceed amount of \$600,000 for Change Order No.1 for Contract No. 15QH-160 is included in total project budget for FMS #15QH000 – Repair Sidewalks SWD. The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation. The following table depicts funding assigned to the referenced project and is included in totality to track funding history against spending authority. Funds needed to meet this request will be expended from a combination of these sources as listed.

As of March 31, 2017, \$18,935,845 is available for this project from the following sources:

Fund Group	Amounts
Various State & Local Grand Sources	\$2,386,407
BART Operating Allocation to Capital	\$16,549,438
Total	\$18,935,845

BART has expended \$8,904,059 committed \$2,879,418 and reserved \$2,776,131 to date for other action. This action will commit \$600,000 leaving an available fund balance of \$3,776,237 for this project. There is no fiscal impact on available unprogrammed District

AUTHORIZE EXECUTION OF CHANGE ORDER NO.1, DALY CITY STATION BUS CANOPY REPLACEMENT TO CONTRACT No.15 (cont.)

Reserves

ALTERNATIVES: Do not authorize the General Manager to execute Change Order No.1, Daly City Bus Canopy Replacement, which will delay performance of the work.

Alternatively, staff could be directed to execute the work of this Change Order under a separate public works contract. This will also delay the work, cause inconvenience to the public and may cost more than the amount of the Change Order.

RECOMMENDATION: Adoption of the following motion.

MOTION: The General Manager is authorized to execute Change Order No.1, Daly City Bus Canopy Replacement, in the amount of not to exceed \$600,000 and extend the Contract duration by 100 calendar days for Contract No. 15QH-160, Site Improvement at Various Stations Phase IV.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Memorandum

TO: Operations and Safety Committee **DATE:** April 7, 2017
FROM: Independent Police Auditor
SUBJECT: Informational Item - Aggressive Panhandling Policy Revision

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. In accordance with this section of the Model, OIPA has developed a recommendation with regard to *BPD Policy 453 – Aggressive Panhandling*.

California Penal Code (PC) section 647(c) provides that anyone who accosts others in any public place for the purpose of begging or soliciting alms is guilty of disorderly conduct, a misdemeanor. Notably, it is the required element of “accosting” that elevates the solicitation of alms from Constitutionally protected activity to criminal conduct. Existing BPD policy includes language intended to clarify the meaning of “accosting” to provide guidance to BPD officers in the enforcement of PC 647(c), but the examples provided are in some cases ambiguous, unclear, or confusing which creates the potential for negative results. Such negative results include, but are not limited to, the detention and citation of individuals on the basis of mere panhandling, which is a protected activity under the First Amendment to the US Constitution.

In an effort to provide a recommendation for policy revision that would eliminate unnecessarily ambiguous examples and misstatements of the elements required for violation of the Penal Code section, OIPA consulted with District Attorneys from San Francisco, Alameda, San Mateo, Santa Clara, and Contra Costa Counties, all of whom concurred that the existing policy included examples of conduct that could not reasonably be described as elements of the crime of aggressive panhandling.

Importantly, the recommended policy revision includes a requirement for associated training, which will provide a venue for clarification of the legal requirements for enforcement of PC 647(c), as well as an opportunity for officers to learn about and discuss the difficulties and nuances of appropriately enforcing the law while protecting BART ridership from harassment, intimidation, and threats.

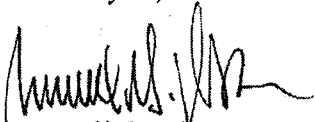
OIPA also consulted with a number of advocates and scholars including the San Francisco-based Coalition on Homelessness, and integrated suggestions regarding the elimination of existing policy language that was overly subjective, that limited personal expression, or was unnecessarily judgmental with regard to the very activity of panhandling as a means of support.

Opportunities for review and comment were also provided to the BART Police Citizen Review Board (BPCRB), BPD command staff, the BART Police Officer's Association, and the BART Police Manager's Association. Suggestions for revisions submitted by the BPD Internal Affairs Division were also received by OIPA and integrated into the final recommendation.

On February 13, 2017 the BPCRB voted unanimously to accept the revision to the policy. The proposed revisions were forwarded to BPD on February 22, 2017 for further action.

Please contact me at (510) 874-7477 or oipa@bart.gov at your convenience if you have any questions about this matter.

Thank you,



Russell G. Bloom

Attachments

cc: Board of Directors
Board Appointed Officers
Deputy General Manager

BART PD POLICY #453

Aggressive Panhandling

BART OFFICE OF THE INDEPENDENT POLICE AUDITOR
MARCH 14, 2017

1

California Penal Code Section 647(c)

“Anyone who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms is guilty of disorderly conduct, a misdemeanor”

2

Current Policy

- In place to regulate **aggressive panhandling** and to ameliorate the negative impact surrounding aggressive panhandling activities
 - Lessen the negative impact on ridership
- BPD policy includes language that seeks to specify the meaning of “accost” as provided in PC647(c)
 - Lists “elements” which may be ambiguous or otherwise **unclear or confusing**
- Gray areas and ambiguities in policy language create potential for **negative results**

3

Practical Concerns

- Officers are **unclear** about the application of PC647(c)
- Officers **mistakenly believe** that panhandling is a penal code violation
- Officers initiate contacts for mere panhandling **without accosting or aggression**
- Officers are **not properly trained** in the application of PC647(c) or BPD Policy 453

4

“...I was in full BART Police uniform...dispatch advised there was a male subject pan handling at the...19th Street station. **Pan handling is a violation for 647(C)PC.** ”
“...I asked what he was doing and he said ‘I’m asking people for money so I can get on BART and go home’”

5

Practical Concerns

- Law abiding individuals may become **enmeshed in the criminal justice system** despite having broken no law
 - Limits opportunities for **access to social services**
- Officers may contact a panhandler without any reasonable suspicion of required aggressive conduct
 - This **contact may escalate** to a use of force
 - Any use of force has the potential to escalate and result in **serious injury** to:
 - **Subject**
 - **Officer(s)**
 - **Bystanders**

6

Practical Concerns

- Unjustified uses of force may lead to
 - **Diminished community trust**
 - **Complaints against officers**
 - **Complaints against BPD**
 - **Lawsuits against the District**

7

Recommended Revisions

- Require appropriate officer **training**
 - **Clarification** of law and policy
 - Reinforce understanding of illegal conduct vs. constitutionally protected conduct

- Report Writing Requirements
 - Require **specific description** of aggressive conduct and source of description

8

Benefits of Policy Revision

- **Protect** vulnerable population from denial of constitutional protections
- **Prevent** unnecessary contact with law enforcement
 - Increase potential for availment of social services
- **Provide** officers with knowledge of law and tools to legally address activity that negatively impacts District and customer experience
- **Reduce** complaints against individual officers and BPD
- **Protect** subjects and officers from **physical and legal consequences** of an unjustified use of force resulting in serious injury.
- **Protect** District from **liability**
 - Unlawful detention, Unlawful Arrest, Civil Rights Violations, Unjustified Uses of Force



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 4/5/2017 <i>for Grace Crumian</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Voix Dept: Planning Development & Construction <i>Paul Voix</i> 4/6/17 Signature/Date:	General Counsel <i>[Signature]</i> 4/6/17 []	Controller/Treasurer <i>Chris Gow</i> 4/7/17 []	District Secretary []	BARC <i>[Signature]</i> 4-7-17 []

APPROVAL OF 19th STREET/OAKLAND BART STATION SPECIAL ENTRANCE AND ELEVATOR AGREEMENT

PURPOSE: To obtain Board authorization to enter into a 50-year Special Entrance and Elevator Agreement (“Special Entrance Agreement”) with Zwuschen, LLC, a subsidiary of Uber Technologies, Inc. (“Zwuschen”) for:

- 1) the reopening of a special entrance from the concourse level of the 19th Street/Oakland BART Station (“Station”) to the subgrade basement level of the adjacent building located 1945 Broadway/1954 Telegraph (the “Uptown Station Building” or “Building”);
- 2) the District’s shared use of a new elevator for passenger access between the street level and the Station concourse level to be located within the Uptown Station Building footprint and designed, installed, operated, and maintained by Zwuschen; and
- 3) for a one time financial contribution from Zwuschen to BART of \$500,000 to offset a portion of the cost of BART station improvements related to the new special entrance and elevator.

DISCUSSION: In September 29, 1966 the District entered in to a Private Special Entrance Agreement with the Emporium Capwell Company, former owners of what is now called the Uptown Station Building. The agreement served to provide BART patrons and shoppers direct access from the Station concourse level to the basement level of the Building. Over the years, ownership of the Building has changed hands several times and the special entrance has been closed in excess of a decade.

In 2014, BART developed a Station Modernization Plan for the Station. The Plan addressed

the possibility of re-opening the special entrance if the Building was occupied by an interested tenant. The Plan also contemplated the construction of two new elevators (one street-to-concourse elevator and one concourse-to-platform elevator) at the north end of the Station to improve Station access and provide redundancy to the existing south end elevators. BART plans to begin construction on Station Modernization Improvements identified in its Station Modernization Plan in early 2018.

Uptown Station Building is undergoing substantial renovation and BART has been approached by Zwuschen and its representatives seeking to reopen the special entrance to provide direct access to and from the Uptown Station Building and the Station. Zwuschen also proposed incorporating the street-to-concourse elevator contemplated by the Station Modernization Plan into the Uptown Station Building footprint instead of having a freestanding elevator that would occupy sidewalk space in front of the Building. Key provisions of the proposed new 19th Street/Oakland Station Special Entrance Agreement (“Special Entrance Agreement”) are summarized as follows:

- The special entrance will be for pedestrian use only (i.e., excluding hand truck or other delivery equipment).
- As part of its renovations, Zwuschen will install a new elevator between the street and the Station concourse level for use by BART patrons and employees during the Station’s hours of operation. The new elevator would not provide access to any other floors in the Uptown Station Building.
- Zwuschen will be responsible for opening and closing the elevator, which is to be maintained consistent with State of California and BART standards.
- Zwuschen will provide signage, consistent with applicable sections of BART’s facilities standards, to enable BART customers to easily identify the elevator and navigate between the street and the Station.
- Maintenance of the special entrance corridors and the new elevator located within the Uptown Station Building footprint will be the responsibility of Zwuschen.
- Zwuschen will contribute \$500,000 towards BART’s upcoming Station Modernization Improvements project. The project will include the installation of three new faregates at the northwest end of the Station in proximity to the special entrance that will better serve BART patron elevator users and other patrons taking advantage of the special entrance for ingress and egress.
- The term of the Special Entrance Agreement will be 30 years and include two 10-year options for renewal.

- To protect both parties, the Special Entrance Agreement will include a termination for convenience clause with the terminating party having potential limited financial responsibility to the other party. For BART this liability would be the depreciated, 30-year amortized value of Zwuschen's \$500,000 contribution to the Station Improvement Project and up to \$100,000 of the depreciated 30-year amortized value of Zwuschen's investment towards the special entrance (excluding their elevator which could continue to serve the Building even if the special entrance is closed).
- In the event of the sale of the Uptown Station Building, the Special Entrance Agreement and its obligations would be transferred to the new owner with the property.

The Office of the General Counsel will approve the Special Entrance Agreement as to form.

FISCAL IMPACT: There would be no fiscal impact associated with completing negotiations and entering into the Special Entrance Agreement other than costs for staff time. Entering into the Special Entrance Agreement would result in a contribution of \$500,000 for 19th Street Station Improvement Project No. 07EA001 and eliminate the need for that project to fund and construct a new street-to-concourse elevator at the northwest portion of the Station.

ALTERNATIVES: Not entering into a Special Entrance Agreement with Zwuschen at this time. This would result in a lost opportunity for the opening of a new indoor entrance to the 19th Street Station, including patron elevator access to the Uptown Station Building and the loss of a \$500,000 financial contribution to BART's Station enhancement project.

RECOMMENDATION: Adoption of the following motion.

MOTION: The General Manager, or her designee, is authorized to execute a Special Entrance Agreement with a term of thirty years, plus options to renew for two additional ten-year terms, with Zwuschen, LLC for the operation and maintenance of a special entrance to the 19th Street Station.