

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.3
FOR THE MEETING OF: May 10, 2018**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION: Approval of updated Board Policy No. 016, Advertising Policy.

EXPLANATION:

Public transportation agencies frequently make available certain areas of facilities, equipment, and property for advertising in order to generate revenue to support the fundamental transit purposes of the agencies. It is common for agencies to adopt advertising policies setting forth the guidelines and requirements for such advertising.

In 2010, the TJPA Board adopted Board Policy No. 016, Advertising Policy, to regulate advertising on TJPA property. The existing policy is attached. TJPA developed its policy based on review of advertising policies adopted or under consideration AC Transit, BART, Golden Gate Transportation District, San Francisco Municipal Transportation Authority (SFMTA), and Santa Clara Valley Transportation Authority at that time. The TJPA has applied its policy to the advertising program at the Temporary Terminal for the last 8 years.

In 2017, the TJPA Board approved the Asset Management Agreement with Lincoln Property Company. Part of the scope under that agreement contemplates that TJPA will have a “promotional platform” at the new transit center, which includes print, electronic, digital, and other forms of advertisements (such as sponsorship, promotions, live advertisement, and experiential advertisement). The purpose of the promotional platform is to fully activate the new transit center including the park for maximum public enjoyment and generate revenue for the operations of the new transit center, reducing the amount of public funds that are required to support the operations of the facility.

As TJPA prepares for the opening of the new transit center, including the activation of the promotional platform, and given the period of time since the Board adopted the advertising policy, staff recommends certain amendments and updates to the policy. The proposed form of amended policy is attached. The proposed amendments are consistent with and support TJPA’s objectives as described in the existing policy for advertising on TJPA property, which are:

- (1) Maximize revenue for the Transbay Program.
- (2) Promote the Transbay Program and ridership on the public transportation systems that partner with TJPA.
- (3) Maintain a safe and welcoming environment for passengers, particularly minors, using TJPA property and riding the public transportation systems at the facility.
- (4) Maintain TJPA’s position of neutrality on issues not directly related to the Transbay Program.
- (5) Not promote illegal activity.

The proposed amendments are also consistent with TJPA’s position that, in keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend by accepting advertising to convert TJPA property into an open public forum for public discourse, debate, or expressive activity. Rather, TJPA’s fundamental purpose is to provide a public

transportation facility, and TJPA accepts advertising as a means of generating revenue to support its primary functions.

As explained in more detail below, the proposed amendments are similar to some (but not all) amendments that the San Francisco Municipal Transportation Agency (SFMTA) made to its own advertising policy in 2017.

Some of the key proposed amendments are summarized as follows:

- All forms of advertising covered. While TJPA's existing policy explains that it applies to "other forms of advertisements", the proposed amendments would make clearer that the policy applies to traditional and non-traditional forms of advertising such as sponsorship, promotions, live advertisement, and experiential advertisement, all of which are expected to be included in TJPA's promotional platform at the new transit center.
- Only certain types of advertising permitted. TJPA's existing policy identifies the categories of advertising that are prohibited, but does not expressly define the categories of advertising that are permitted. The proposed amendments would define both permitted and prohibited advertising. The permitted categories of advertising would be limited to (1) commercial and promotional advertising, (2) governmental advertising, and (3) public service announcements by certain kinds of entities and on a limited set of topics (not all topics would be permitted). This set of permitted advertising is consistent with SFMTA's 2017 amendments to its advertising policy.
- Revised categories of prohibited advertising. TJPA's existing policy identifies 12 categories of prohibited advertising. The proposed amendments would remove the existing prohibition on graffiti style in advertising content, and would remove the existing prohibition on nudity, relying instead on the existing prohibition on obscene or pornographic content.

The proposed amendments would prohibit advertising expressing an opinion, position or viewpoint on a matter of public debate about economic, political, religious, or social issues; prohibit advertising of tobacco, firearms, or cannabis products or services; prohibit advertising adverse to TJPA and its public agency partners; and prohibit advertising that may promote unsafe transit behavior.

The above set of revisions to the categories of prohibited advertising is consistent with SFMTA's 2017 amendments to its advertising policy. SFMTA explained that the amendments were made in response to other large U.S. transit agencies deciding to restrict the type of content permitted in their advertising space. Like SFMTA, TJPA staff anticipates that these amendments will help TJPA fulfill its fundamental purpose to provide a public transportation facility. SFMTA also explained that it consulted with certain community groups that had previously expressed interest regarding SFMTA's advertising policy, and that SFMTA revised its policy in response to feedback and comments from these groups. SFMTA also explained that it contacted the ACLU of Northern California regarding the proposed revisions, but did not receive a response. To the extent that TJPA's edits to its advertising policy are consistent with changes SFMTA made to its policy, TJPA expects that the feedback would be the same.

TJPA's existing advertising policy, adopted in 2010, does not prohibit advertising related to alcohol. TJPA has not received any negative feedback from the community regarding this aspect of TJPA's existing advertising program and no change is proposed.

RECOMMENDATION:

Adopt amendments to TJPA's Advertising Policy (Board Policy No. 016) in the form attached.

ENCLOSURES:

1. Resolution
2. Existing Advertising Policy (Board Policy No. 016)
3. Proposed amendments to Advertising Policy

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California to design, build, and operate the Transbay Transit Center Program (“Transbay Program”); and

WHEREAS, Pursuant to the Joint Powers Agreement creating TJPA, dated April 4, 2001 (the "Agreement"), TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Agreement; and

WHEREAS, The primary purpose of TJPA property is to provide a public transportation facility; and

WHEREAS, TJPA expects to generate significant revenue to pay for the operations of the Transbay Program through commercial/retail leasing on TJPA property. Fostering an environment that enhances commercial/retail leasing activity can minimize the need for public funds to subsidize the cost of operations; and

WHEREAS, TJPA plans to maintain a safe and welcoming environment for passengers, particularly minors, using TJPA property. TJPA expects that most passengers will use TJPA property to commute to and from home, work, and school; to engage in retail, professional services, and other commercial transactions; and to engage in leisure and recreation. TJPA expects that many passengers that will use TJPA property may have limited alternative methods of transportation. TJPA expects that many passengers that will use TJPA property will be minors. Should passengers deem TJPA property unsafe or unwelcoming, it could adversely affect ridership and revenue generation for the Program; and

WHEREAS, TJPA maintains a position of neutrality on issues not directly related to the Transbay Program. Should TJPA’s neutral position be compromised, it could adversely affect ridership and revenue generation for the Program; and

WHEREAS, In December 2010, the TJPA adopted an Advertising Policy (Board Policy No. 016) for the TJPA property; and

WHEREAS, As TJPA prepares for the opening of the new transit center, including the activation of the promotional platform, and given the period of time since the Board adopted the Advertising Policy, staff has recommended certain amendments and updates to the policy; and

WHEREAS, In keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend by accepting advertising to convert TJPA property into an open public forum for public discourse, debate, or expressive activity; now, therefore, be it

RESOLVED, That the TJPA Board adopts amendments to the Advertising Policy (Board Policy No. 016).

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 10, 2018.

Secretary, Transbay Joint Powers Authority

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 016

Category: Financial Matters

ADVERTISING POLICY

I. Introduction

The TJPA may from time to time chose to make limited, designated TJPA property ("Advertising Space") available for posting of print, electronic, or other forms of advertisements ("Advertising"). All such Advertising Space is a nonpublic forum. All Advertising must strictly comply with the terms and conditions of this Policy.

The primary purpose of TJPA property is to provide public transportation services to paying passengers. Most passengers use TJPA property to commute to and from home, work, and school, and to engage in retail, professional services, and other commercial transactions. Many passengers that use TJPA property have limited alternative methods of transportation. Many passengers that use TJPA property are minors.

II. Objectives

The purposes and objectives of this Policy are to:

- (1) Maximize revenue for the Transbay Program. The class and consumer friendliness of Advertising directly relates to the goal of maximizing revenue.
- (2) Promote the Transbay Program and ridership on the public transportation systems that partner with the TJPA.
- (3) Maintain a safe and welcoming environment for passengers, particularly minors, using TJPA property and riding the public transportation systems that use TJPA property by encouraging a minimum level of decorum.
- (4) Maintain the TJPA's position of neutrality on issues not directly related to the Transbay Program.
- (5) Not promote illegal activity.

III. General Policy

In order to advance the above purposes and objectives, Advertising shall not:

- (1) concern a political campaign or candidate, ballot measure, initiative, or other legislation;
- (2) contain false, misleading, or deceptive commercial speech;
- (3) contain profanity;

- (4) be libelous, slanderous, or defamatory;
- (5) contain nude, obscene, or pornographic images, by community standards;
- (6) advocate or promote the use of illegal goods or services, or unlawful conduct;
- (7) depict graphic violence;
- (8) contain or use a graffiti style to convey a message;
- (9) infringe on any copyright, trademark, or other protected intellectual property;
- (10) demean or disparage an individual or group;
- (11) conflict with the requirements of the TJPA's funding partners, including the US Department of Transportation, or any applicable federal, state, or local law;
- (12) contain, imply, or declare an endorsement by the TJPA, except as expressly permitted by the TJPA.

The TJPA reserves the right to require that any Advertising identify the entity posting the Advertising in clearly visible type.

The TJPA reserves the right to require that any Advertising include the following statement in clearly visible type: "The views expressed in this advertisement do not necessarily reflect the views of the Transbay Joint Powers Authority."

Any contract granting the right to advertise in the Advertising Space shall attach this Policy and require compliance with this Policy, as it may be amended from time to time. The TJPA reserves the right to review and approve all proposed Advertising prior to posting to ensure consistency with this Policy. Upon written demand by the TJPA, the contractor must promptly remove any Advertising that is in violation of this Policy at the contractor's sole expense.

The TJPA Board may amend this Policy at any time without prior written notice to any entity that purchases or sells Advertising in the Advertising Space.

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 16

Category: Financial Matters

ADVERTISING POLICY

I. Purpose

TJPA's transit center is a more than 1,250,000-square-foot public facility, spread over three city blocks, with four levels above ground and two levels below ground. The facility is designed to serve diverse purposes, including transit, recreation, commercial, and administrative purposes. More than 37,000 people are expected to visit and use the facility each week day when Phase 1 of the Transbay Program is fully operational. At completion, the Transbay Program is expected to connecting eight Bay Area counties and the State of California through 11 transit systems.

The primary purpose of TJPA property is to provide a public transportation facility. TJPA expects that TJPA property will also provide an important service for passengers, neighbors, workers, and tourists, providing retail, professional services, commercial outlets; dining; as well as leisure, recreational, and other amenities.

TJPA may choose to make limited, designated areas available for print, electronic, digital, or other forms of advertisements (such as sponsorship, promotions, live advertisement, and experiential advertisement) (collectively, "Advertising").

In keeping with its proprietary function as a provider of a public transportation facility, TJPA does not intend by accepting Advertising to convert TJPA property into an open public forum for public discourse, debate, or expressive activity. Rather, TJPA's fundamental purpose is to provide a public transportation facility, and TJPA accepts Advertising as a means of generating revenue to support its primary functions.

In furtherance of this discrete and limited objective, TJPA retains control over the nature of Advertising on TJPA property. TJPA finds that certain restrictions on Advertising will allow the TJPA property to fulfill its primary function as a public transportation facility; guard the health, safety, and security of the public; and promote revenue generation for the Transbay Program. Among other things, Advertising shall be consistent with TJPA's goals to:

- (1) Maximize revenue for the Transbay Program. TJPA expects to generate significant revenue to pay for the operations of the Transbay Program through commercial/retail leasing. Fostering an environment that enhances commercial/retail activity can help minimize the need for public transit operators to increase passenger facility charges and apply public sources to pay for

operations. Limiting messaging that is likely to depress the commercial/retail leasing opportunities in the transit center is in the public interest.

- (2) Promote the Transbay Program and ridership on the public transportation systems that partner with TJPA. Limiting messaging that promotes unsafe behaviors on transit, or that are adverse to the TJPA and its public agency partners is not in the public interest.
- (3) Maintain a safe and welcoming environment for passengers, particularly minors, using TJPA property and riding the public transportation systems that use TJPA property by encouraging a minimum level of decorum. TJPA expects that many passengers that will use TJPA property may have limited alternative methods of transportation. The transit uses of the facility dictate that certain audiences will be captive to any messaging in areas that are designed for transit passengers to queue while waiting for transit and will therefore not have a choice when using those areas in whether or not to be exposed to such messaging. TJPA expects that many passengers that will use TJPA property will be minors. TJPA is particularly concerned about protecting youth riders from intrusive or inappropriate messaging.
- (4) Maintain TJPA's position of neutrality on issues not directly related to the Transbay Program. Should TJPA's neutral position be compromised, it could adversely affect ridership and revenue generation for the Program.
- (5) Not promote illegal activity.

II. Policy

A. Permitted Advertising

Advertising is authorized on TJPA property if it meets one of the following categories and is not otherwise prohibited under subsection (B) below:

- (1) Commercial and Promotional Advertising. Material that promotes or solicits the sale, rental, distribution, or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for commercial or noncommercial purposes, or more generally promotes an entity that engages in such activities; or
- (2) Governmental Advertising. Material sponsored by a government entity and that advances specific government purposes; or
- (3) Public Service Announcements. Material (a) sponsored by either (i) a government entity, or (ii) a nonprofit corporation that is exempt from taxation under Section

501(c)(3) of the Internal Revenue Code, and (b) which is directed to the general public or a significant segment of the public, and (c) relates to:

- Prevention or treatment of illnesses;
- Promotion of safety or personal well-being;
- Education or training;
- Art or culture;
- Provision of children and family services;
- Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
- Provision of services and programs that provide support to low income citizens, senior citizens and people with disabilities.

B. Prohibited Advertising

Advertising is prohibited on TJPA property if it falls under one or more of the following categories:

- (1) Political or Public Issues. Material that either (a) promotes or opposes a political party, promotes or opposes any state or local ballot measure or the election of any candidate or group of candidates for federal, state, judicial or local government offices; or (b) is political in nature or contains political messages, including advertisements involving political or judicial figures and/or advertisements involving an issue that is political in nature in that it directly or indirectly implicates the action, inaction, prospective action or policies or a governmental entity; or (c) expresses or advocates an opinion, position or viewpoint on a matter of public debate about economic, political, religious or social issues.
- (2) False, Fraudulent, or Misleading. Material that is, or the sponsor reasonably should have known is, false, fraudulent, misleading, or deceptive.
- (3) Profanity. Material that contains profane language.
- (4) Libel, Slander, Defamation, or Invasion of Privacy. Material that is libelous, slanderous, defamatory, or an invasion of privacy.
- (5) Obscene or Pornographic. Material that is obscene or pornographic, by community standards.
- (6) Illegal Goods or Services, or Unlawful Behavior. Material that advocates or promotes the use of illegal goods or services, or unlawful conduct, or otherwise conflicts with the requirements of TJPA's funding partners, including the U.S. Department of Transportation.
- (7) Violence. Material that portrays images or descriptions of: graphic violence, including dead, mutilated or disfigured human beings or animals; the act of

killing, mutilating or disfiguring human beings or animals; the act of inflicting pain or violence towards or upon a person or animal; or weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner.

- (8) Copyright, Trade or Service Mark, or Other Infringement. Material that infringes on any copyright, trade or service mark, or other protected intellectual property.
- (9) Insulting, Degrading, Disparaging, Demeaning, or Offensive. Material directed at a person or group that is intended to be (or reasonably could be interpreted as being) (a) insulting, degrading, disparaging, demeaning, or offensive so as to be reasonably foreseeable that it will incite or produce lawless action in the form of retaliation, vandalism or other breach of public safety, peace and order, or (b) disparaging or disrespectful to persons, groups, governments, businesses or organizations, including advertisements that portray individuals as inferior, evil or contemptible.
- (10) TJPA or Public Agency Partner Graphics and References. Material that contains TJPA or its public agency partners' graphics, logos or representations, or contains or implies an endorsement by TJPA or its public agency partners, without the express written consent of TJPA or its public agency partners.
- (11) Tobacco, Firearms, or Cannabis. Material that constitutes commercial advertising of tobacco, firearms, or cannabis products, businesses, or services.
- (12) Unsafe Transit Behavior. Material that encourages or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in waiting, boarding, riding upon, or disembarking from transit vehicles.
- (13) Adverse to TJPA or Public Agency Partners. Material directly adverse to the commercial or administrative interests of TJPA or its public agency partners, or that tends to disparage the quality of service provided by TJPA or its public agency partners, or that tends to disparage public transportation generally.

III. Administration

TJPA advertising contractors shall be responsible for the daily administration of the advertising program in a manner consistent with this Policy and with the terms and conditions of their agreements with TJPA.

TJPA reserves the right to require that any Advertising identify the entity sponsoring the Advertising in clearly visible type.

TJPA reserves the right to require that any Advertising include the following statement in clearly visible type: “The views expressed in this advertisement do not necessarily reflect the views of the Transbay Joint Powers Authority.”

Any contract granting the right to advertise on TJPA property shall attach this Policy and require compliance with this Policy, as it may be amended from time to time. TJPA reserves the right to review and approve all proposed Advertising prior to posting to ensure consistency with this Policy. Upon written demand by TJPA, the contractor must promptly remove any Advertising that is in violation of this Policy at the contractor’s sole expense.

The TJPA Board may amend this Policy at any time without prior written notice to any entity that purchases or sells Advertising on TJPA property.