



WORK SESSION AGENDA ITEM SUMMARY

City Council

STAFF

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SUBJECT FOR DISCUSSION

Transfort Advertising Discussion.

EXECUTIVE SUMMARY

The purpose of this work session is to provide an update on progress in creating a new Transfort advertising policy before issuing a Request for Proposals (RFP) for a new advertising agreement. Staff will provide historical context regarding past and current agreements, updates and changes to the proposed policy, revenue and expense impacts, and legal risks due to ever evolving caselaw.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. What feedback and questions do Councilmembers have regarding proceeding with a new Transfort advertising policy and agreement?

BACKGROUND / DISCUSSION

Strategic Alignment

High Performing Government 7.8 - Maintain and protect assets and infrastructure to drive reliability, cost effectiveness, efficiency and improve the customer experience.

Historical Background

For several decades, Transfort has contracted for advertising services on buses, shelters and benches as a source of revenue to fund operations. Transit advertising is a common form of additional revenue in the transit industry for agencies of all sizes and modes.

Transfort currently administers two advertising agreements, one for on-bus advertising for the 54 buses in the transfort fleet, and a second for bus stop shelters and benches. Advertising is currently sold on 210 shelters and 167 benches throughout the Transfort system, which consists of 480 total active bus stops.

The current agreement for advertising on shelters and benches was first initiated in 2001 and was executed for a twenty-year term. The long term of this contract was intended to allow the vendor to recoup the costs of benches and shelters, which they purchased provided, but the City now owns. This agreement was structured such that the vendor provided all maintenance at these shelters and benches including: cleaning, repairs, refuse removal, snow removal, and replacement of damaged or worn components. The

agreement allowed the vendor to keep a high percentage of the advertising revenues to provide these services and turn a profit. Transfort received a small portion of advertising revenues (20%).

The on-bus advertising agreement is a more traditional five-year agreement with no maintenance components. Advertising revenues are distributed proportionally with the firm retaining 40% of revenues and Transfort retaining 60%. For both agreements the contractor sold, installed and maintained all advertising on buses, benches and shelters in compliance with Transfort's Advertising Policy. The current policy is attached.

Both agreements were to expire at the end of 2021. In the summer of 2020 Transfort and purchasing staff produced a Request for Proposal (RFP) with the intent to combine these two agreements into a single traditional term contract. There were only two responses to this RFP and neither respondent was willing or able to perform the requested maintenance program as previously administered for benches and shelters. Purchasing staff quickly negotiated a short-term extension of the current agreements to allow the current advertising and maintenance programs to continue while the team regrouped to devise a new strategy.

Revenue & Expense Considerations

Historical revenues received by Transfort are outlined in the chart below:

Year	On-Bus Advertising Revenue	Bus Shelter & Bench Advertising Revenue	Totals
2017	\$ 129,500	\$ 140,454	\$ 269,954
2018	\$ 134,125	\$ 143,263	\$ 277,388
2019	\$ 138,750	\$ 146,128	\$ 284,878
2020	\$ 143,375	\$ 149,051	\$ 292,426
2021	\$ 148,000	\$ 152,032	\$ 300,032
Five Year Total			\$ 1,424,678

It is likely that Transfort's revenue for shelter and bench advertising will see an increase in revenue share with a new agreement that does not include a requirement to provide shelters and benches and perform all maintenance. It is unknown at this time what that increase might be without conducting an RFP. The current revenue share for Transfort is 20% under the current agreement with maintenance included. On-bus advertising is expected to maintain similar revenue until such time that Transfort expands routes and increases the bus fleet size to accommodate more advertising space. It is expected that the revenue share to Transfort would remain at 60% as in the current contract.

On the expense side, it is expected that the maintenance costs to bring all maintenance in-house will increase the budget by approximately \$380,000 annually for staff payroll and for outside contracting for a portion of snow removal. There is also an additional one-time expense of \$179,000 for vehicles and equipment for the expanded maintenance staff. These expenses are outlined in the following charts (the items in red are not currently budgeted):

Ongoing Expenses		
Position	Status	Additional Cost (Benefits Included)
Technician I, Facilities	Funded with ARPA through 2024	\$80,000
Technician I, Facilities	Funded with ARPA through 2024	\$80,000
Facilities Supervisor	BFO Offer	\$60,000
Technician I, Facilities	BFO Offer	\$50,000
Technician I, Facilities	BFO Offer	\$80,000
Ongoing Expense Total		\$350,000

One-Time Expenses	
Equipment	Total
Vehicles	\$120,000
Utility Vehicle (Snow Removal)	\$34,000
Trailer	\$15,000
Storage Unit	\$10,000
	\$179,000

Regardless of revenue from any future advertising agreement, there will be an ongoing increase in expense since no current vendor will agree to perform the maintenance outlined in the previous agreement. However, staff are hopeful that an increase in revenue share with a future bench and shelter advertising agreement will cover the difference.

Identified Changes to Program

Staff began work on estimations of new expenses that would be incurred in order to bring all bench and shelter maintenance in-house. It is estimated that one FTE is needed to maintain about 60 stops or 25 shelters annually. This would bring the total need of maintenance staff to eight FTE or equivalent, up from the current three full-time and two part time hourly staff. Staff identified ARPA funding, administered through the Federal Transit Administration (FTA) to cover the expense of two Maintenance Technicians through at least 2024. Two hourly conversions and one new FTE have been requested in the current Budgeting for Outcomes (BFO) cycle.

In addition to upgrading the maintenance program, the City Attorney's Office reviewed the entire advertising policy and conducted a thorough review of new and evolving caselaw. It was determined that the current policy contained substantial risk of litigation due to recent court rulings as high as the Supreme Court which impacted restrictions that governmental entities, and transit agencies specifically, have historically applied to advertising and other programs. Recommended options for the program are discussed in the "Proposed Options" section below.

The entire policies and procedures related to the advertising program were also evaluated for improvements. Two examples that were found in need of change were as follows:

- Many transit agencies are now using digital advertising signs to rotate out multiple ads on buses and in shelters. It was determined that these should be prohibited in advance as they do not comply with the City's sign ordinances and Night Sky policies.
- The previous contract did not include a restriction on the size of an ad displayed on the back of bus bench. The current contractor, in line with current industry practices, had begun over the last few years to extend the size of the bench advertising graphics beyond the dimensions of the bus stop bench back, extending the profile of the advertisement several inches above the bench. City staff have begun to hear concerns from the community and Councilmembers about this enlarging of the advertising space. The size of bench advertising will be restricted to the specific dimensions of the bench back display only in all future contractual agreements for bus stops advertising.

Proposed Options













From a legal perspective, the City Attorney has provided three possible options to proceed with advertising on Transit properties:


Option 1: As one of Transfort’s primary goals of advertising is to increase revenue to support operations, one option would be to allow all types of commercial advertising with restrictions only on those areas for which we have confidence that government restriction would be upheld by the courts. Those limitations would allow Transfort to prohibit false or misleading advertisements as well as any advertising which promoted unlawful activities. The attached draft of a revised Transfort Advertising Policy reflects implementation of this Option.

Option 2: Another option would be to permit commercial advertising under the above restrictions but prohibit “political” advertising subject to an exhaustive list of restrictions, similar to that which was put into place by the Bay Area Rapid Transit system in California, (see attached). Creation of this type of advertising policy would require not only an exhaustive list of restrictions, but a detailed procedure explaining the methodology for making decisions to exclude political speech.


Option 3: Another option might be to eliminate commercial advertising altogether, seeking to avoid the threat of litigation for alleged constitutional violations. If this option were followed, then Transfort could limit all advertising to only Transfort advertising and “government speech.” Transfort advertising would include publication of information about Transfort services, rules, Code of Conduct, programs, etc., including co-sponsorships with commercial or governmental third parties that are intended to increase ridership or otherwise support Transfort’s mission. Government speech would include publication of public service information about federal, state, or local government programs and activities when requested specifically by federal, state and local entities, including advertising from non-profit organizations that are partnering with such entities. Eliminating commercial advertising would significantly reduce revenue received by Transfort but most likely would eliminate or severely reduce the threat of First Amendment litigation.

Each of these options have differing considerations. The matrix below illustrates the various considerations of each option:


Options	Aligning with Caselaw	Financial Benefit to the City	Council Policy Alignment	Administrative Impacts
1 – Immediate, Critical Improvements				
2 – Prohibit "Political" Speech				
3 – Suspend Commercial Advertising				



Minimal alignment or benefit to the City



Moderate alignment or benefit to the City



Greatest alignment or benefit to the City

ATTACHMENTS

1. Advertising Policy
2. Bart Example Policy
3. Powerpoint Presentation