

**The Clean Transit Enterprise Board Meeting took place on Monday, January 31st, 2022. These meetings were held in a virtual format only, in an abundance of caution due to the COVID-19 pandemic.**

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The documents are considered to be in draft form and for information only until final action is taken by the Clean Transit Enterprise Board.

## **Clean Transit Enterprise Board Meeting Monday, January 31<sup>st</sup>, 2022, 2:30pm – 4:30pm**

### **Call to Order, Roll Call:**

Board Members: Matt Frommer – SWEEP , Bonnie Trowbridge – Drive Clean Colorado, Mark Garcia – TC District 8, Cris Jones – Deputy Director of Community Vitality for the City of Boulder, David Averill – Executive Director for San Miguel Authority Regional Transportation, Shoshana Lew – Executive Director of CDOT, Kelly Blynn - CEO, Richard Coffin – CDPHE Air Pollution Control Division,

Kay Kelly – CDOT, Herman Stockinger – CDOT, Jeff Sudmeier – CDOT, Kathy Young – Colorado Attorney General’s Office, Jennifer Uebelher – CDOT, Amber Blake – CDOT, Kate Hruska – CDOT, Michael King – CDOT, Sari Weichbrodt - CDOT

### **Welcome, Board Members, & CDOT Staff Introductions**

### **Background (Kay Kelly)**

**Purpose:** Describe how the Clean Fleet Enterprise fits into the broader CDOT and goals around climate and air quality.

**Action:** No approval action was requested.

### **Discussion:**

- 9 board members. 6 board members are appointed by the governor, 1 member from CDOT, 1 member from CEO, 1 member from CDPHE
- SB260 created three transportation electrification enterprises, with approximately \$733 million to be invested over the next 10 years:
  - Community Access Enterprise – Colorado Energy Office
  - Clean Fleet Enterprise – Colorado Department of Health and Environment
  - Clean Transit Enterprise – CDOT
- The Clean Transit Enterprise will support electrification of public transit through electrification planning, facility upgrades, fleet vehicle replacements, and associated charging infrastructure.
- State of Colorado Zero Emission Vehicle Goals:
  - Reduce GHG emissions by 26% by 2025, 50% by 2030, 90% by 2050 relative to 2005 statewide GHG pollution levels.
  - Increase light duty electric vehicle registrations to 940,000 by 2030.
  - Convert the state transit fleet to 100% zero emission vehicles by 2050, with an interim target of 1,000 transit ZEVs by 2030.
  - Cover 100% of the State highway network within 30 miles of the DC fast charger
  - Increase electrification of scenic and historic byways to 100% by 2025.
- Development of Clean Truck Strategy underway.
- Creation of CDOT Transit Zero Emission Vehicle Roadmap in 2021.

### **Powers and Duties of the Board (Herman Stockinger)**

**Purpose:** Primary business purpose of the Clean Transit Enterprise is to mitigate the adverse environmental and health impacts of air pollution and greenhouse gas emissions.

**Action:** No approval action was requested.

**Discussion:**

- Overview of board duties regarding rules, fees, grants, loans, 10-year plan, public accountability dashboard, and prepare annual report.

**Bylaws and Articles of Organization (Herman Stockinger)**

**Purpose:** Overview of Bylaws (how the board functions) and Articles of Organization

**Action:** No approval action was requested this month.

February board meeting: adopt articles of organization and bylaws.

**Discussion:**

- Articles of organization: business purpose, TABOR exemption, powers & duties, revenues & expenditures, and bylaw adoption.
- Bylaws: board composition, meeting frequency & methods, open meetings & records, officers & staff, fiscal year & budget, miscellaneous provisions.
  - No compensation for the board. Necessary and reasonable expenses such as travel for meetings can be reimbursed.
  - If a board member fails to attend three consecutive meetings that member may be subject to recommendation to the Governor for removal of the enterprise board.
  - This board must meet a minimum of four times per year. Notice and content of meetings should be posted on CDOT's clean transit enterprise webpage at least 24 hours before a meeting.

**Board Officers (Herman Stockinger/Kay Kelly)**

**Purpose:** CDOT support staff are expected to be Kay Kelly (Program Administrator) and Jennifer Uebelher (Secretary). Chairperson and Vice-Chairperson will also need to be elected at February board meeting.

**Action:** No approval action was requested this month.

February Board Meeting: Election of officers, Chairperson and Vice-Chairperson.

**Discussion:**

- No further discussion.

**Clean Transit Enterprise Revenue Estimates and Start Up Loan Agreement (Jeff Sudmeier)**

**Purpose:** Overview of forecasted revenues and review of startup loan agreement.

**Action:** No approval action was requested this month.

February board meeting: Formally request loan approval.

**Discussion:**

- FY2023 forecasted revenue for Clean Transit Enterprise is \$8 million, projected to grow to \$21 million per year by FY2032. No revenue is expected in FY2022.
- Loan stipulated by SB260 was approved by the Transportation Commission on December 16, 2021 for costs incurred between now and when revenue starts flowing in the next fiscal year.
  - Loan terms: interest rate is 2% annually, repayment starts September 1, 2022, full repayment due on June 20, 2023. Loan amount is approximately \$73,500.

### **Rulemaking (Herman Stockinger)**

**Purpose:** Statutory purpose of the rule is to set the clean transit retail delivery fee and govern the grant process.

**Action:** No approval action was requested this month.

February board meeting: open official rules or authorize CDOT to open official rules on the board's behalf.

#### **Discussion:**

- "Clean Transit Retail Delivery Fee" is \$0.03 per retail delivery (may increase according to inflation).
- Staff recommends using the current State Management Plan process for awarding and overseeing grants.
- Process and Timeline (Rules must be in place by June 30, 2022)
  - Enterprise needs to open a draft rule in late February and authorize the CDOT Hearing Officer to conduct Public Hearing.
  - CDOT staff will file the rule with the Secretary of State
  - Conduct Public Hearing – late March or early April
  - Adopt rule in mid-April
  - Rule Effective date could be as early as May 31,2022

### **Board Ethics Training (Kathy Young)**

**Purpose:** Mandatory ethics training and best practices for public boards including identifying and managing conflicts of interest, understanding the Colorado Open Records Act, and open meeting laws.

**Action:** No approval action was requested this month.

#### **Discussion:**

- Colorado requires annual training on statutory powers and duties, identifying and managing conflicts of interest, Colorado Open Records Act and Open Meeting laws.
- Clean Transit Enterprise
  - TABOR exempt enterprise – no more than 10% of the enterprise's annual revenue can come from state sources. The Clean Transit Enterprise has the ability to issue bonds, but issuing bonds is not a requirement.
  - Government owned business within CDOT
  - Type 1 transfer - within limits can manage yourself and create your own policies within the business purpose.
- Conflicts of interest:
  - Board directors receive no compensation other than a per diem.
  - Board members shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.
- CORA (Colorado Open Records Acts):
  - All public records shall be open for inspection unless otherwise provided by law.
  - Includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2) C.R.S or political subdivision of the state. This includes internal and external communication, hard paper documents and electronic documents.

- o Documents excluded from public records can include but are not limited to any work product prepared for an elected official.
- o Reasons for denial of inspection can include but are not limited to test questions, scoring keys from licensing exams, security arrangements, trade secrets, and employment records.
- o Documents can also be withheld under the Deliberative Process Privilege: records of the enterprise's deliberative process while the board is deliberating a decision.
- o A reasonable time for a government entity to produce a record for an open records request is three days. The period may be extended by seven working days upon finding of "extenuating circumstances".
- o There is a 14-day cooling off period for open records requests – Section 24-72-204(5)(a), C.R.S.
- State Open Meeting Policy "the Sunshine Law"
  - o Public business should be conducted in public, it should not be conducted behind closed doors. Citizens should have the opportunity to become fully informed and to also allow citizens to participate in the legislative decision-making process. Meetings should be open and properly noticed.
  - o A meeting is defined as any type of gathering convened to discuss public business in person, on telephone, virtually, electronically, any means of communication including email. If the meeting did not need to be noticed, the board should include the unnoticed meeting in the next board meeting minutes. Meetings that consist of two or more board members where public business is discussed or formal action is taken are declared to be public meetings and open to the public.
  - o Notice: Full and timely notice should be given a minimum of 24 hours in advance. Notice should include date and time, meeting location, agenda, specific agenda information, and ADA considerations. The Clean Transit Enterprise is not required to allow public comment at the meeting. Meetings must be noticed if you have a quorum and/or are taking official action.
  - o Executive sessions: An exception to open meetings laws is the ability to go into executive session and meet as a board without the public present. The board cannot take official or formal actions, and minutes are not kept, during the executive session. Executive sessions must be recorded. Attorney-client privileged communication may occur during executive sessions. Executive sessions must be noted on the meeting agenda and must be initiated from an open public meeting.
  - o Open meetings can be held virtually.
- Rick Coffin, APCD, asked: Does public business mean business related to this enterprise only?
- Kathy Young responded: Yes. As far as you, as a board member of this enterprise, being able to create a meeting, it needs to be the public business of the board you're sitting on. For example, two board members attending the same training does not constitute a meeting unless they are discussing board business. Then the meeting should be noted in the minutes.
- Kay Kelly, CDOT, provided this example: A couple board members have been asked to present at the Division of Transit and Rail monthly meeting, that is permissible, how should we notice that?
- Kathy Young responded: Unless there is a quorum of 5 board members on another committee, the meeting does not need to be noticed, but the presentation should be captured in the Clean Transit Enterprise minutes. Board members are encouraged to clarify in what capacity they are speaking from if they serve on multiple organizations with similar tasks.
- Amber Blake, CDOT, provided this example: David Avril is Chair of the Transit and Rail Advisory Committee and on the board of the Clean Transit Enterprise. David will likely be asked to provide updates on the Clean Transit Enterprise to the Transit and Rail Advisory Committee. The Transit and Rail Advisory Committee meetings are publicly announced and available to the public. David would likely obtain feedback from the Transit and Rail Advisory Committee to bring back to the Clean Transit Enterprise.
- Kathy Young responded: That is fine because one person can't create a meeting. The board should be aware of any conflicts of interest between different entities. David's update to the Clean Transit Enterprise should be recorded in the minutes.
- Amber Blake, CDOT asked: For members that are sitting on both boards, if the Transit and Rail Advisory Committee wanted to vote on providing information to the Clean Transit Enterprise board, should members who are sitting on both boards abstain?

- Kathy Young answered: Yes, if the Transit and Rail Advisory Committee board is voting on what their position is to present to the Clean Transit Enterprise, then the director should abstain from voting on one board or the other.
- Please reach out to Kathy Young regarding specific guidance.

### **Wrap Up and Next Steps (Kay Kelly)**

**Purpose:** Preview of February Clean Transit Enterprise board meeting.

**Action:** No action was requested.

#### **Discussion:**

- Actions for February Board Meeting
  - Elect Officers
  - Adopt Articles of Organization
  - Adopt Bylaws
  - Accept Loan
  - Open official rules or authorize CDOT to open official rules on the board's behalf
- Additional topics include: the Transit Zero Emission Vehicle Roadmap and development of the CTE's 10-Year Plan. Please reach out to Kay Kelly with additional topics.
- The Clean Transit Enterprise board is expected to meet monthly through June. After June, the Clean Transit Enterprise board is expected to meet on a quarterly basis.
- Future board packets, agendas, and meeting links can be found on the Clean Transit Enterprise webpage at: [https://www.codot.gov/programs/innovativemobility/Clean Transit Enterprise](https://www.codot.gov/programs/innovativemobility/Clean%20Transit%20Enterprise).
- The Clean Transit Enterprise can be reached at: [cdot\\_cleantransitenterprise@state.co.us](mailto:cdot_cleantransitenterprise@state.co.us).

### **Questions and Board Discussion**

- Kelly Blynn, CEO, would like to learn more about the current grant award process (State Management Plan Process) that the board will potentially adopt.
  - Kay Kelly responded: We will give a detailed overview of the Division of Transit and Rail process to govern grant programs. The statute has given us a lot of latitude to create a rule to govern the process by which the enterprise accepts applications for awards and overseas grants, loans, and rebates. That's the only direction we have in the statute. Similarly the statute does not provide a lot of guidance on the development of the 10-Year Plan, only that the CTE will publish a 10-Year Plan.
- Matt Frommer would like a better understanding of the federal grant opportunities - existing, new opportunities from the bipartisan infrastructure package, and matching funds for those federal grants.
  - Kay Kelly added this topic to her list.
- Matt Frommer requested a link to the Transit Zero Emission Vehicle Roadmap.
  - Michael King, CDOT, responded: Yes, the final version will be distributed later this week to transit agencies at the Transit Monthly meeting. This group will be included on the distribution list.

**Meeting Adjourned at: 3:46**