



The COMET Executive Committee Meeting minutes are prepared and presented in summary form, audio recordings of the meetings are on file at The COMET and are part of the approved minutes. If you would like to hear the recording from the meeting, please contact Paige Jernigan at cometadmin@thecometsc.gov.

Per SC Code of Laws, Title 30, Chapter 4, Section 30-4-80 - All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings. The COMET complied with the notification of this meeting on Friday, July 5, 2019 at 3:15 p.m.

The Central Midlands Regional Transit Authority
Executive Committee Meeting Minutes
Wednesday, July 10, 2019 at 11:00 a.m.
3613 Lucius Road, Columbia, SC 29201 – Conference Room A

Members Present:

Ron Anderson, Chair
John V. Furgess, Sr.
Col. (R) Rogers Leaks, Jr.
Dr. Robert Morris
Andy Smith

Guests Present:

Frannie Heizer, Burr, Foreman, McNair Law Firm

Absent Board Members:

None

**Indicates participation by phone.*

The COMET Staff Present

John Andoh, Executive Director/CEO
Paige Jernigan, Interim Administrative & Customer Service Specialist

1. CALL TO ORDER
Mr. Anderson called the meeting to order at 11:07 a.m.
2. DETERMINATION OF QUORUM
A quorum was determined at 11:07 a.m. of the meeting.
3. ADOPTION OF THE AGENDA



Motion:

A motion was made by Dr. Morris and seconded by Mr. Smith to adopt the agenda.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

4. ADOPT MINUTES FROM DECEMBER 17, 2018 MEETING

Motion:

A motion was made by Dr. Morris and seconded by Col. Leaks to adopt the minutes from December 17, 2018 meeting.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

5. MATTERS REFERRED FROM THE BOARD OF DIRECTORS

- **Discuss Previous Motions from March 2017 to Present**

Mr. Andoh summarized the motions listed on Page 7. He explained the list of motions taken to the Board for approval.

January 25, 2017 - To have the Executive Director and Executive Committee evaluate the bus advertising policy and come back with a recommendation in May or June on how to proceed. This was approved by the Board of Directors at the June 2018 Board of Directors Meeting. Update Advertising Policy, release RFP to sell advertising, coordinate with City of Columbia regarding ordinance changes to advertise on benches and shelters.

June 24, 2019 - To be brought up in July 2019.

All Board and Committee Meetings must have a quorum before occurring. Bylaws and Board Policies 3 and 4 may need to be changed.

All calls made to the Executive Director, The COMET staff and Transdev staff must be returned by the next business day. This is addressed in Board Policy #6 and will require revision, as well as the Transdev contract.

All contracts and legal review must be done by Legal Counsel. Mr. Andoh added that this is already the case.

6. OLD BUSINESS

None



7. NEW BUSINESS

A. Discuss Bylaws and SC Code of Laws Regarding Meeting Quorum

Mr. Andoh referred to Agenda Item # 7A. He added that the staff recommends that the Executive Committee review the Bylaws regarding a meeting quorum and provide direction to staff. At the June 2019 Board of Directors Meeting, Dr. Morris made a motion "All Board and Committee Meetings must have a quorum before occurring."

South Carolina Code of Laws, Title 30 - Public Records, SECTION 30-4-20. Definitions, (available here: <https://www.scstatehouse.gov/code/t30c004.php>) defines a quorum as: (d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. (e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

According to Robert's Rules of Order, Newly Revised, 11th Edition (2011), Page 21 states "Quorum of Members., The minimum number of members who must be present at the meetings of a deliberative assembly for business to be validly transacted is the quorum of the assembly." Page 347, further states "that in absence of a quorum, any business transacted (except for the procedural actions noted in the next paragraph) is null and void. But if a quorum fails to appear at a regular or properly called meeting, the inability to transact business does not detract from the fact that the society's rules requiring the meeting to be held were complied with and the meeting was convened - even through it had to adjourn immediately". Page 347 further states "Even in the absence of a quorum, the assembly may fix the time to which to adjourn (22), adjourn (21), recess (20) or take measures to which a quorum as explained below:

- Fix the time to which to adjourn. Doing so makes it possible for the meeting to continue a later day, after you obtained enough people to achieve a quorum.
- Adjourn. You can end the meeting for the time being and wait for the next regular meeting.
- Recess. Sometimes achieving a quorum is as simple as taking a short break to contact members; then the meeting can proceed with the business of the assembly. Recess is often used when attendees leave a meeting room in the middle of a meeting and suddenly somebody notices that there aren't enough members in the room anymore.
- Take other measures to assemble a quorum. The Board can, for example, appoint a committee to go make calls and round up enough members for the business meeting; while waiting for additional members to arrive, non-actionable items can continue with the program or scheduled speaker. A motion to do something to



obtain a quorum is treated as a privileged motion and takes precedence over a motion to recess.

Mr. Furgess requested Attorney Heizer read this report instead of Mr. Andoh as it is a legal document. Mr. Anderson interjected that Mr. Andoh reviewing the staff report is appropriate and he is chairing the meeting and is allowing Mr. Andoh to proceed. Mr. Furgess insisted Attorney Heizer read this report. Mr. Anderson called Mr. Furgess out of order. Mr. Andoh continued his summary and opened the floor with questions from the Committee.

Attorney Heizer explained that we have engaged/subcontracted an expert registered Parliamentarian, Ms. Helen McFadden. Ms. McFadden will try to have a report prepared by the end of the month and perhaps hold a workshop. She added that if there is not a quorum, the meeting can continue if the items discussed do not require action. She recommends that no quorum equals no action. She added that the Board can make any changes to the Bylaws referring to Robert's Rules of Order.

One distinction, if a quorum is present and the meeting begins to dissipate (members leave, etc.), the existence of a quorum is presumed unless until someone calls for or after the fact and a roll call is recorded without a quorum, that is evidence of a defect.

Dr. Morris commented that we need to clarify this motion. He doesn't agree that the meeting should begin without a quorum, but you can proceed through discussion items. Attorney Heizer and Mr. Anderson added that you could do one of three things:

- 1) Proceed with informational items/non-action items
- 2) Recess/ Attempt to gain a quorum
- 3) Adjourn

Should the Board of Directors wish to amend the bylaws to state: "A quorum is required to have a meeting", then Section 5.5 should be amended to include that language. The requirements to make amendments to the bylaws are defined below:

Section 12.1. Amendments. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board; if members shall be given seven (7) days written notice, prior to formal action, of the proposed amendment, which notice must include the actual wording of the proposed amendment. Furthermore, Board Policy #5 should be amended to include such language.



Motion:

A motion was made by Mr. Anderson and seconded by Dr. Morris to clarify and put in writing our policy to state that all meetings begin with **Call of Order and Determination of a Quorum** call and if a quorum does not exist then the Board can proceed on non-voting items for discussion, recess, adjourn, or attempt to gain a quorum. If the Board proceeds with non-voting (informational) items only, the Bylaws would have to be amended.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

Attorney Heizer reiterated that only Public Comment, the Ridership Report, any reports from the Executive Director would be considered informational items. She noted, the key being non-action items only.

If an item has been to a Committee, with no quorum it will stall. Attorney Heizer requested the ability to do more research on Committee quorum and action and get back to us.

B. Discuss Board Policy #6 Regarding Communications

Mr. Andoh referred to Page 32. The staff recommends that the Executive Committee review the Board Policy #6 regarding communications and provide direction to staff. At the June 2019 Board of Directors Meeting, Mr. Furgess made a motion "All calls made to the Executive Director, The COMET staff and Transdev staff must be returned by the next business day".

Current Board Policy #6 states the following:

1. Between Board and COMET Executive Director, all board members have the unlimited access to the Executive Director for concerns, information, suggestions etc.
 - A. All responses from the Executive Director should be provided in a timely manner to the inquiring Board Member and the response should be copied to the entire COMET Board.
 - B. If a staff member or contractor has been assigned to respond, the response should be shared with all Board members and Executive Director.
 - C. The Executive Director is expected to reach out and solicit input at a minimum of once a quarter from all Board members outside regular meetings.

2. Between Board and COMET Staff, all Board members have access to COMET staff to obtain information as necessary to effectively serve as a Board member. It is the responsibility of staff to keep the Executive Director informed of such contact. All substantive responses from staff to inquiring Board Member should be put in writing and copied to all Board members and Executive Director.



3. Between Board and Contractor, all Board members have access to the Contractor; provided that each Board Member should follow the terms of The COMET/Contractor contract and first direct requests through the Executive Director with copies to all Board members. It is the responsibility of the Contractor to keep the Executive Director informed of such contact and responses to same. All written inquiries from a Board Member to Contractor should be copied to all Board members and Executive Director.

The following amendments to the Board Policy can be made as defined below (in RED):

1. Between Board and COMET Executive Director, all board members have the unlimited access to the Executive Director for concerns, information, suggestions etc.
 - A. All responses from the Executive Director should be provided in a timely manner to the Inquiring Board Member and the response should be copied to the entire COMET Board.
 - B. If a staff member or contractor has been assigned to respond, the response should be shared with all Board members and Executive Director.
 - C. The Executive Director is expected to reach out and solicit input at a minimum of once a quarter from all Board members outside regular meetings.
 - D. The Executive Director shall return a Board Member telephone call by the next business day.
2. Between Board and COMET Staff, all Board members have access to COMET staff to obtain information as necessary to effectively serve as a Board member. It is the responsibility of staff to keep the Executive Director informed of such contact. All substantive responses from staff to inquiring Board Member should be put in writing and copied to all Board members and Executive Director. Should a Board Member make a telephone call to a COMET staff member, the staff member shall return the telephone call by the next business day and advise the Executive Director of such call.

Regarding communication between the Board and the Contractor, Section 13 of the Contract would need to be amended to include the following language:

13. MEETINGS. The Contractor's General Manager and/or his authorized representative shall coordinate with the Director regarding all intergovernmental relations efforts, and other matters as requested by the Director. The Contractor shall, as directed by Authority, coordinate closely with affected municipal, county, state, and private representatives on all service matters that affect the daily operation of the bus services, such as road closures, inclement weather, and as they affect the operation of Authority service.



13.1 The Authority staff/Contractor meetings shall include at least one meeting every week or as deemed necessary. The Contractor, upon request by the Authority, shall be available for meetings in public session with the Authority Board at least once every month to discuss the status, performance, and proposed improvements of the bus system. The Contractor will ensure all its employees attend Authority meetings, workshops, and informational sessions as required by the Authority.

13.2 The Contractor shall, as directed by the Authority, attend citizen meetings to provide information concerning the transit system.

13.3 The Contractor shall return calls of the Director or Authority Board by the next business day. Regarding communication between the Board and the Contractor, Section 13 of the Contract would need to be amended to include the following language:

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13.1 The Authority staff/Contractor meetings shall include at least one meeting every week or as deemed necessary. The Contractor, upon request by the Authority, shall be available for meetings in public session with the Authority Board at least once every month to discuss the status, performance, and proposed improvements of the bus system. The Contractor will ensure all its employees attend Authority meetings, workshops, and informational sessions as required by the Authority.

13.2 The Contractor shall, as directed by the Authority, attend citizen meetings to provide information concerning the transit system.

13.3 The Contractor shall return calls of the Director or Authority Board by the next business day.

Due to Freedom of Information Act (FOIA), unless it's an emergency, Mr. Anderson and Attorney Heizer reminded the Committee that if a motion is NOT on the agenda, no action can be taken.

Motion:



A motion was made by Mr. Anderson and seconded by Mr. Smith to recommend to the Board to approve Item #7B D. *The Executive Director shall return a Board Member telephone call by the next business day and Section 19.3 The Contractor shall return calls of the Executive Director or Authority Board by the next business day within 24 hours with the modification of "excluding weekend and/or Holidays" and striking clause 2. Between Board and COMET Staff.*

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

Col. Leaks expressed concern regarding management on weekends during emergencies. Mr. Andoh explained that if that were to occur, Transdev General Manager, Executive Director, and Director of Administration & Operations/COO. It was determined that at the next Board meeting we would review our Transdev Disaster Plan.

D. Discuss Contract & Legal Documents Reviewed by General Counsel

Mr. Andoh stated that staff recommends that the Executive Committee review the scope of services regarding General Counsel and provide direction to staff.

At the June 2019 Board of Directors Meeting, Mr. Furgess made a motion "All contracts and legal review must be done by Legal Counsel". Burr Forman McNair's Scope of Work within the Legal Services Contract with The COMET states the following:

Burr Forman McNair's Scope of Work within the Legal Services Contract with The COMET states the following:

The firm will act as General Counsel to The COMET staff and Board of Directors. General Counsel will provide advice and interpretation of Local, State and Federal law with a focus on areas of transportation, contract, government, employment, and procurement law. The General Counsel will report to the Executive Director/CEO and provide support to the Board of Directors.

Typical Duties will include, but are not limited to, the following:

- Provide general legal advice;
- Be able to or have access to specialized services such as employment, procurement, financial, Federal Transit Administration law and regulation
- Represent The COMET in litigation
- Represent The COMET in matters with federal, state, and/or local governments and/or agencies



- Maintain knowledge of issues facing The COMET, and be prepared to offer legal advice
- Review and approve legislative documents about Board of Directors actions
- Review, consult and approve forms for contracts as needed
- Assist The COMET in the federal, state and local grant process when requested
- Work with other assigned The COMET counsel as required
- Attend work sessions and meetings with Board and Staff when requested.

Specific Duties will include, but are not limited to, the following:

- Review contracts, reports, proposals, SCFOIA requests, etc. and advise the Executive Director/CEO and staff on legal issues and/or as to legal form upon requests
- Assist/advise the Executive Director/CEO and staff on Parliamentarian matters and attend Board meetings upon request
- Board of Directors may also contact the General Counsel with their own inquiries and
- Counsel is as well authorized to respond to those inquiries
- Represent the Board of Directors in developing/negotiating the employment contract with the Executive Director/CEO or his/her representative
- Report to and receive assignments from the Executive Director/CEO
- Assist/advise Executive Director/CEO and staff on procurement matters as requested

Other Duties will include, but are not limited to, the following:

Annually review the federal certifications and assurances with the Executive Director or his designee as requested and certify the accuracy of federal certifications and assurances by "pinning" them to the FTA website;

- Provide prompt response to inquiries from the Board
- Establish reasonable completion dates for assignments and be accountable for adherence to such dates
- Attend meetings of the Board of Directors upon request
- Monthly, review and approve agenda items that require legal counsel review to be considered by the Board of Directors at their subsequent meetings
- Provide prompt response to inquiries by The COMET. Establish reasonable completion dates for assignments and be accountable for adherence to such dates
- Provide Bond Counsel services when requested
- Provide Labor Counsel services when requested
- Time spent by an associate and/or paralegal should not be billed at the senior attorney rate but at an appropriate associate rate only



- Provide The COMET finance department with billing broken down by assignment and list the attorney or subcontractor performing the assignment

Below specifically relate to the motion made:

- Review contracts, reports, proposals, SCFOIA requests, etc. and advise the Executive Director/CEO and staff on legal issues and/or as to legal form upon requests
- Assist/advise the Executive Director/CEO and staff on Parliamentary matters and attend Board meetings upon request
- Board of Directors may also contact the General Counsel with their own inquiries and Counsel is as well authorized to respond to those inquiries

Mr. Furgess stated that he wants to ensure all legal documents are interpreted by legal counsel. Mr. Anderson stated that if something is on the agenda that needs clarification from legal, let's just plan on having someone from the legal team to be present. Attorney Heizer mentioned that she works very closely with Mr. Andoh on all legal matters but will be more than happy to be present when needed and/or phone call. Mr. Anderson reminded that when Mr. Andoh arrived it was suggested that he use the lawyer less.

Motion:

A motion was made by Mr. Furgess and seconded Mr. Anderson that all legal documents or contracts interpreted to the Board or individual members must be done by legal staff.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

E. Executive Director/CEO Authority

Mr. Andoh summarized the document on Page 44, Agenda Item # 7B. The staff recommends that the Executive Committee review the Executive Director's authority and provide direction to staff based on an email submitted by Mr. Furgess to discuss and clarify the Executive Director's authority. Attorney Heizer added that the term "authority" is frequently used in the Transdev contract and in certain instances it could be unclear. She recommended reviewing the Transdev Contract and Executive Director Job Description to indicate the difference between the Board and the Executive Director authority terminology. She added she does not want to make an amendment to the Transdev contract. Mr. Furgess clarified that the reason for this motion is because the General Manager was removed without Board notification.

Mr. Furgess asked if duties of the Transdev contract are modified by the Executive Director, has he violated the contract. Attorney Heizer said she would need an example for clarification. Mr.



Anderson explained the difference between the Planner versus Operational Planner. He added that Mr. Andoh pushed responsibilities back on Transdev according to the contract because The COMET was performing issues that are Transdev responsibilities.

Mr. Smith asked what the Board's responsibility should be. It was discussed that Transdev complaints should go directly to Transdev. Mr. Andoh explained that he refers them back to their General Manager and he advises Transdev. Mr. Anderson and Mr. Andoh reminded that Ms. Avis Watson, Transdev employee did state that she had exhausted all her resources and The COMET was her last resort. Mr. Andoh added that the issue is that Transdev is not responding, therefore they are going to The COMET.

Motion:

A motion was made by Mr. Anderson and seconded by Dr. Morris to defer Attorney Heizer's report until the September meeting.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

Mr. Anderson made a substitute motion to have Attorney Heizer develop a guideline/report identifying the use of the word "authority" as it relates to the Board of Directors or the Executive Director or staff in the Transdev contract be.

Dr. Morris asked who seconded the first motion, Mr. Anderson stated that Dr. Morris did. Dr. Morris then withdrew his first motion and told Mr. Anderson to do the same. As result, Mr. Anderson withdrew his earlier motion.

Motion:

A motion was made by Mr. Anderson and seconded by Dr. Morris to follow Attorney Heizer's suggestion to develop a guideline report identifying the use of the word "authority" as it relates to the Board of Directors, the Executive Director, or The COMET staff in the Transdev contract, Executive Director contract and where the responsibility lies using the word "authority" and be

referred to the September meeting.

Approved: Anderson, Furgess, Leaks, Morris, Smith

Absent: None

Motion passed.

B. LEGAL/CONTRACTUAL/PERSONNEL (MAY REQUIRE EXECUTIVE SESSION)



No Legal/Contractual/Personnel to discuss.

9. ADJOURN

Motion:

A motion was made by Mr. Smith and seconded by Mr. Furgess to adjourn the Executive Committee meeting at 12:19 p.m.

Approved: Anderson, Furgess, Leaks, Morris, Smith

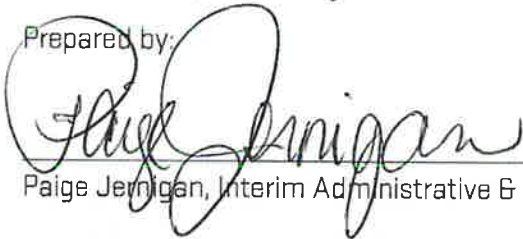
Absent: None

Motion passed.

CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY

Adopted this July, 2019, Agenda Item _____

Prepared by:


Paige Jernigan, Interim Administrative & Customer Service Specialist

Approved by:


Andy Smith, Board Secretary