

MEMORANDUM

To: David Andrews, Town Manager
From: The Brough law Firm, PLLC; Robert Hornik
Re: Chapel Hill Transit Advertising Policy
Date: March 1, 2019

We have reviewed the Town of Chapel Hill's proposed **Transit Advertising Fee Schedule and Policy, Draft Non-Public Forum Option 1.17.18**, and more specifically the proposed amended Policy 1.01 which would designate CHT vehicles and facilities to be "non-public forums" for advertising (current policy designates them as "limited public forums"). In broad terms, the proposed change would allow Chapel Hill Transit ("CHT") to limit the type of advertising it will accept on and inside CHT vehicles and facilities. This change, if adopted, would **prohibit** CHT from accepting advertising constituting "political speech"; advertising in "support of or in opposition to a religion, denomination, tenet or belief"; advertising for transportation modes which compete with CHT services; and advertising which in whole or in part conveys information of a non-commercial character (such as by pairing in an advertisement some commercial speech with general information about religious, moral, political, environmental or other matters). The stated purpose of the proposed change is to further the goal of generating revenue for CHT through advertising, while at the same time prohibiting the type of advertising that poses "significant risk of harm, inconvenience or annoyance to transit passengers, operators and vehicles."

Generally speaking, a "traditional public forum" is a place like a park, or a sidewalk, which are places where open public speech and debate has traditionally been accepted and allowed. In such forums, the government may not regulate speech based on the speaker's point of view but the government may restrict the time, place or manner of such speech in order to serve a compelling state interest in a narrowly tailored way – regulate as little as is necessary to serve the interest. Other public property that is not considered a "traditional public forum" may be (but does not have to be) opened for public discourse by a government. If the government does open such places, then it must abide by the same rules protecting speech as in the traditional public forum. In a nonpublic forum – a place that is neither traditional public forum nor limited public forum as designated by the government controlling it – the government may restrict the content of speech as long as the restriction is reasonable and viewpoint neutral. Places like airport terminals, polling places and a public school's internal email system have been determined to be non-public forums.

In our opinion, the designation of CHT vehicles and facilities as non-public forums as proposed would likely pass constitutional muster. We take no position, however, on the policy question of whether the Town of Carrboro should support the proposed policy change.