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Date: May 9, 2022

From: Better Eugene-Springfield Transportation (BEST)

To: Lane Transit District (LTD) Board of Directors

Re: **Reviewing face mask policy considering new CDC guidance**

Dear Board Members,

We urge you to review LTD's face mask requirement and determine what is in the interest of public safety.

We do so after doing our own research; consulting with Amalgamated Transit Union Local 757, AARP Oregon, Lane Independent Living Alliance, League of Women Voters of Lane County, Mobility International USA, and frequent transit riders with disabilities; and reaching out to Lane County Public Health (LCPH).

Recent History

On April 18, a federal judge overturned the Centers for Disease Control and Prevention (CDC) mandate that public transportation operators require the use of face masks.¹

The Court concludes that the Mask Mandate exceed the CDC's statutory authority and violates the procedures required for agency rule making under the [Administrative Procedure Act]. Accordingly, the Court vacates the Mandate and remands it to the CDC.

On April 19, like many other public transportation operators, LTD responded by lifting its own face mask requirement:²

"This is good news for many people, but it is important that we all respect people's choices to wear a face mask or not," said Mark Johnson, LTD's Interim General Manager. "I want to thank all of our passengers and LTD employees for their patience and compliance with the face mask mandate for more than a year. It has been a 'heavy lift' for all of us."

¹ *Health Freedom Defense Fund, Inc. v. Biden*, Order on Motion for Summary Judgment, U.S. District Court, Middle District of Florida, Tampa Division, 4/18/22, <https://www.courtlistener.com/docket/60052717/53/health-freedom-defense-fund-inc-v-biden/>.

² "Face Masks Optional on LTD Buses," LTD, media release, 4/19/22, <https://www.ltd.org/latest-news/face-masks-optional-ltd-buses>.

Building a successful community by bringing people together to promote transportation options, safe streets, and walkable neighborhoods.

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But on May 3, the CDC issued revised guidance:³

At this time, CDC recommends that everyone aged 2 and older—including passengers and workers—properly wear a well-fitting mask or respirator over the nose and mouth in indoor areas of public transportation (such as airplanes, trains, etc.) and transportation hubs (such as airports, stations, etc.). When people properly wear a well-fitting mask or respirator, they protect themselves and those around them, and help keep travel and public transportation safer for everyone. Wearing a well-fitting mask or respirator is most beneficial in crowded or poorly ventilated locations, such as airport jetways. We also encourage operators of public transportation and transportation hubs to support mask wearing by all people, including employees.

Previously, the CDC explained:⁴

Traveling on public transportation increases a person's risk of getting and spreading COVID-19 by bringing people in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces. ... Staying 6 feet away from others is often difficult on public transportation conveyances. People may not be able to distance themselves by the recommended minimum of 6 feet from other people seated nearby or from those standing in or passing through the aisles on airplanes, trains, or buses.

Other Transit Agencies

We have not heard how other Oregon transit agencies are responding to the new guidance.

But even before the new guidance, San Francisco Bay Area Rapid Transit (BART) reimposed a face mask requirement:⁵

On April 28, 2022, the BART Board of Directors approved a temporary amendment to the District's Code of Conduct to require riders to wear masks in paid areas of the system with limited exceptions. ... Children ages two and under as well as people with medical conditions that prevent them from wearing masks are exempt from the mandate. The rule is effective until July 18, 2022, unless it is extended by the BART Board. ... Throughout the pandemic BART has prioritized the safety of riders.

Local Considerations

LTD need not do what other transit agencies are doing or only the minimum required by law.

BEST appreciates that throughout the pandemic, LTD has consistently prioritized the safety of its riders, especially the most vulnerable.

³ "CDC Recommendation for Masks and Travel," CDC, media release, 5/3/22, <https://www.cdc.gov/media/releases/2022/s0503-covid-19-travel.html>.

⁴ "Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs, CDC," updated 4/18/22, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html>.

⁵ "Face masks required on BART through July 18, 2022, due to board vote," BART, media release, 4/28/22, <https://www.bart.gov/news/articles/2020/news20200421>.

LTD also led the “Don’t Invite Covid, Follow the Four” public education campaign.⁶

We also appreciate that the face mask requirement has been a burden on bus drivers, who have had to try to enforce the requirement while also dealing with the challenges of being front line workers during the pandemic. If LTD opts to reinstate a face mask requirement, we urge LTD to consider using some of the roughly \$75 million in COVID relief funds to take steps to ease the burden on drivers.

But cases—if not necessarily hospitalizations and deaths—are starting to rise:⁷

“We are seeing cases and hospitalizations starting to increase and that was expected,” said Dr. Paul Cieslak, medical director for communicable diseases and immunizations at OHA. “COVID-19 continues to be transmitted at high levels in Oregon. If you’re in large groups, sooner or later you’ll be exposed.”

For many Americans, the risk is just of getting mildly or severely sick. But the risk for those with underlying conditions may be much greater.

Moreover, Lane County isn’t just “Anywhere USA” but rather “TrackTown USA,” the site of the first World Track and Field Championships held in America. We are hearing concerns that bringing people together from all over the world, as new variants of the coronavirus continue to emerge and packing them together closely without face masks, could lead to an extraordinary event—and not in a good way. These concerns extend beyond just LTD to include all forms of public transportation, as well as the procedures for the event itself.

Duty of LTD Board

As LTD lifted the requirement the very next day after the federal court ruling, we presume the decision to lift the face mask requirement was not a policy decision by the full Board but rather an administrative one by the General Manager or other staff.

Of course, it is appropriate for staff to make administrative decisions around the day-to-day operations of the agency. But when there are questions about the public interest, Board members have a “duty of care” to ask questions, gather information, and provide oversight.

In reference to Board members—not of public agencies but of nonprofits like BEST—the Oregon Attorney General explains:⁸

Duty of Due Care

You don’t always have to be right, but you must act with common sense and make informed decisions. To do so requires:

⁶ “Don’t Invite COVID, Follow the Four,” LTD, media release, 12/7/20, <https://www.ltd.org/latest-news/month:2020-12/dont-invite-covid-follow-four/>.

⁷ “OHA releases biweekly COVID-19 reports,” Oregon Health Authority, media release, 5/4/22, <https://content.govdelivery.com/accounts/ORDHS/bulletins/31668e7>.

⁸ “Your Rights, Roles and Responsibilities as a Nonprofit Officer,” Oregon Department of Justice, <https://www.doj.state.or.us/charitable-activities/laws-guides-for-charities/your-rights-roles-and-responsibilities-as-a-nonprofit-officer>.

- **Active participation:** Attend board meetings, evaluate reports, read minutes, and review the performance of the executive director.
- **Reasonable inquiry:** The board has a responsibility to gather all necessary facts related to any problem that might arise. Reports of office or employee theft or mismanagement must be investigated.

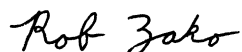
Questions to Ask

Although BEST is not an expert in public health nor transit operations, we suggest it would be useful for the LTD Board to ask staff for answers to these questions:

1. **Risks to Vulnerable Riders:** How safe is it for people with underlying conditions, even if masked, to ride a public bus in proximity to people not wear face masks? What about care givers traveling to see people with underlying conditions? What is the CDC, OHA, or LCPH recommending?
2. **Bus Drivers:** What are the concerns or preferences of bus drivers, who are frontline workers and tasked with trying to enforce any requirements on buses?
3. **Alternatives:** Beyond requiring or not requiring face masks for all passengers, are there any alternatives, for example, designating mask and no mask zones on a bus, or other ways of balancing the needs and desires of different passengers?
4. **Triggers:** If the LTD Board determines that requiring face masks are not warranted at this time, what changing conditions in our community, if any, would lead to a reinstatement of the mask requirement? How is LTD keeping up with and responding to the latest public health guidance as the pandemic waxes and wanes?
5. **Process:** How did LTD make the decision on April 19 to lift the face mask requirement? Who made the decision, what expert advice did they rely on, and what pros and cons did they consider?

We look forward to hearing the results of your review of LTD's face mask requirement and other measures and determination of what is in the interest of public safety.

For BEST,



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