

OPERATING MEMORANDUM TENANT EMPLOYEE PARKING 520 Third Street - Museum on the Square Building

The purpose of this Operating Memorandum is to (1) meet the obligations pursuant to the License Agreement by and between The City of Santa Rosa (CITY) and MUSEUM ON THE SQUARE LLC (MOTS) ("OWNER"), by which CITY grants to OWNER a License for limited passenger vehicle access over and across the Transit Mall for up to a total of fourteen employees of tenants of the MOTS building to access the parking lot adjacent to the south side of the Museum on the Square Building ("Building") and for purposes of the use of the License issue to OWNER by the CITY dated _____ ("License"); and (2) to fulfill the condition of design review approval for the Museum on the Square project for operational details to minimize any practical conflicts between building requirements/use of Second Street driveway and transit operations.

This Operational Memorandum relates only to the License for the use of the Transit Mall by employees of the MOTS' tenants and delivery service vehicles to access the parking lot adjacent to the MOTS Building.

In the event of a sale or other transfer of the property, any new owner or entity shall be required to execute a new Revocable License Agreement with the City and agree to all terms and conditions including the terms of conditions of the most current Operating Memorandum. Any sale or transfer of the property shall not expand upon the existing uses and the City reserves the right, in its sole and absolute discretion to refuse to grant any additional access rights through the transit mall.

The OWNER shall take the following steps to minimize conflicts between Transit Mall and MOTS operations.

I. Definitions

1. "OWNER" is Museum on the Square LLC, owner of the Museum on the Square, 520 Third Street, Santa Rosa, CA.
2. "Delivery Service vehicles" are those vehicles that enter the site for a commercial, service, operational, or similar purpose for the commercial or residential tenants of the building. Such vehicles are limited to two-axle vehicles with the exception of garbage trucks.
3. "Large Truck" is defined as a truck which exceeds thirty (30) feet in length.
4. "Commercial tenants" includes all non-residential owners or tenant occupants.
5. "Parking permit" is the permit provided by the OWNER to an employee of a tenant of the MOTS building allowing the holder of the permit to enter the Transit Mall to access the on-site parking lot adjacent to the MOTS building.
6. "Employee" means an employee of a tenant of the MOTS building who is being issued a parking permit under the provision of this Operating Memorandum.

7. "Operating hours" is defined as the regular operating times of Santa Rosa CityBus from the first bus pull-in to the last bus pull-out at the Transit Mall.
8. "Incidental Deliveries and Service Calls" are (1) the delivery of items customarily provided to commercial tenants in the course of the business day or afterward; (2) tasks performed by persons laboring on or providing services or materials for exterior or interior building components or building or office equipment, whether those people are on-site maintenance staff or outside service personnel; (3) the use of commercial vehicles to move commercial goods into the building from another location; and (4) garbage and waste pickup.

II. Contact Information

Prior to the issuance of parking permits to employees, the OWNER shall provide the TRANSIT DIVISION the information listed below for its facility manager in charge of the distribution of parking passes to tenant employees and an alternate contact for same. "The TRANSIT DIVISION shall identify a point of contact and provide the OWNER with the information listed below."

Contact information to be provided in writing by each party for both the contact and alternate contact shall include their respective

- names,
- addresses,
- office phone numbers,
- cell phone numbers,
- fax numbers, and
- email addresses

This information shall be kept up to date by the TRANSIT DIVISION and OWNER.

III. Ordinary Use by Commercial Tenants Prohibited

OWNER shall incorporate into its leases, rental agreements, or purchase agreements with non-residential tenants or buyers a provision prohibiting owners of commercial spaces, commercial tenants, their employees, other than those to whom a parking permit is issued as described herein, and customers or invitees from using the Transit Mall for vehicular access to the building for parking, passenger drop-off purposes, or deliveries, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein. Only Delivery/Service vehicles with a commercial, service, operational or similar purpose are excluded from the provision set forth in this section with the provision that the vehicle can safely turn around within the confines of the parking area.

IV. Employee Parking

Up to fourteen (14) EMPLOYEES, may be provided access for one vehicle per on-site parking space through the Transit Mall. The OWNER will furnish each EMPLOYEE with a parking permit or identifier that can be displayed such that it is clearly visible through the front windshield of the vehicle. Vehicles must display the visible identifier at any time they attempt to traverse the Transit Mall in order to enter or exit the MOTS site.

OWNER shall be responsible for enforcing the use of the on-site parking lot only by vehicles displaying the correct permit. OWNER will provide the Transit Division with its protocol for such enforcement.

All EMPLOYEES must attend a Transit Mall Orientation provided by the CITY of no greater than one hour in duration prior to receiving the parking permit. CITY shall conduct Transit Mall Orientations within one week of receiving a request for training for new recipients of parking permits.

EMPLOYEE vehicles shall only access the MOTS Project site through the Transit Mall via the B Street/Second Street intersection, thus restricting MOTS parking lot access driveway operations to left-in- right-out movements.

V. Incidental Deliveries and Service Vehicles

Vehicles performing incidental deliveries and/or service calls shall not be restricted from using the Transit Mall except as follows:

1. Large Trucks shall be prohibited from using the Transit Mall during Operating Hours. During non-Operating Hours, Large Trucks must comply with Section VI "Large Truck Deliveries" section of this Operating Memorandum, or during the MOTS construction, with Section VII, "Construction Period Conditions."
2. The Delivery/Service vehicle shall pull fully into the driveway so that at no time does it block the public sidewalk or project into the Transit Mall travel way. Such vehicles shall not back into the parking lot from the Transit Mall.
3. The Delivery/Service vehicle shall exit the building site head-out and shall not back into Transit Mall.
4. The Delivery/Service vehicle shall access and exit the Transit Mall only from B Street and in no case shall use the intersection of 2nd Street and Santa Rosa Avenue.

VI. Large Truck Deliveries

Large Trucks shall be prohibited from using the Transit Mall to access the MOTS site during Operating Hours. During non-Operating Hours Large Truck(s) are permitted to idle or park in the Transit Mall solely for the purposes of loading or unloading material deliveries to the MOTS site. Large trucks are prohibited from idling and/or parking in the Transit Mall when not actively unloading materials. Large trucks are only permitted to idle or park curbside in the area to the west of the MOTS driveway, marked as the N2 bays by Transit Mall signs, and cannot impede the traffic flow by buses through the Transit Mall.

VII. Construction-Period Conditions

During any period of MOTS building construction, use of Transit Mall shall be restricted as follows:

1. Delivery of construction materials, mobilization or demobilization of cranes, booms and other equipment, and removal of construction debris shall be limited to non-

- Operating Hours except as set forth at 2, below.
2. During Operating Hours, the activities set forth at 1, above, shall be permitted provided that
 - (a) OWNER gives CITY contact listed in Section II above 72 hours prior written notice for movement through the Transit Mall of cranes and booms and at least 24 hours for the other activities,
 - (b) OWNER provides safety and management personnel to conduct the vehicle to the site, first meeting the vehicle at any off-site location,
 - (c) OWNER ensures that the operator of the vehicle conforms with any instructions provided by identified CITY contact listed in section II above, and
 - (d) does not impede the normal bus traffic in the Transit Mall.

During periods of City-directed construction occurring within the Transit Mall, CITY will make all reasonable efforts to allow continuous access to the MOTS parking lot by OWNER. CITY will take all reasonable efforts to minimize temporary periods of MOTS site access closure and will provide no less than one week notice to OWNER of the expected duration for said closures.

VIII. Security Gates

If OWNER installs a vehicular security gate at the driveway into the on-site surface parking lot adjacent to the MOTS building, that gate on the MOTS site shall (1) be set back 18' from the back-of- sidewalk, and (2) shall remain open 7:00 a.m. to 6:00 p.m. Monday through Friday. During non-operating hours, OWNER shall provide, to operators of all vehicles having the right to access the site from the Transit Mall, all necessary information to operate the gate safely and expeditiously. OWNER will install a flashing light and audio warning system at the parking lot exit into the Transit Mall to be activated only when a car is present at the stop bar.

IX. Signage

OWNER shall install permanent traffic-control signage on the MOTS site in accordance with the approved project plans. CITY has the right to review and approve any additional traffic control signage prior to its installation by OWNER on the external face of the southernmost fence and/or Access Gate on the MOTS site.

X. Operating Memorandum Review and Revisions

The CITY and OWNER, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement.

The CITY shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Operating Memorandum or the License provided that such changes shall not materially impact Grantee's rights of access under the Easement.

In addition to the above provisions to review the Operating Memorandum the CITY will annually

review the License and Operating Memorandum and the OWNER's use of the Transit Mall under the License to ensure that the uses allowed by the License do not interfere with the underlying transit purposes of the Transit Mall as required by the Federal Transit Administration

If the CITY determines that OWNER's exercise of the rights granted by the License interfere with the underlying transit purposes of the Transit Mall, CITY shall notify OWNER of the interference and work with OWNER to eliminate the interference. If the two parties cannot come to an agreement how to eliminate the interference, the City reserves the right to terminate the License.

This Operating Memorandum is binding on OWNER, its employees, officers and agents, and heirs or assigns.

CITY reserves the right to revoke an EMPLOYEE permit following (1) any single preventable incident resulting in injury to pedestrian or other transit users within the Transit Mall or (2) two preventable non-injury incidents resulting in property damage or loss within the Transit Mall. Such action by the City shall be provided to the OWNER's contact identified in Section II above and shall be effective immediately upon delivery to OWNER.

CITY must provide no less than 60 days' notice to OWNER of changes to the CityBus schedule that may impact the conditions of this Operating Memorandum.