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Policies and Procedures

No. 21

SUBJECT:

Board Approval: 12/10/09

MTS REVENUE-GENERATING DISPLAY ADVERTISING, CONCESSIONS, AND MERCHANDISE

PURPOSE:

To establish a policy and guidelines concerning a revenue-generating advertising, concessions, and merchandise program encompassing trolley stations, MTS property and facilities, and selected printed materials.

Advertising on bus shelters and benches within the public rights-of-way shall be governed by the applicable policies of the applicable jurisdiction. The City of San Diego policy is included as Attachment A to this policy.

BACKGROUND:

Public transit operators and administration agencies have historically utilized advertising, concessions, and merchandising programs to supplement operational and capital funds. A sound advertising and concessions program can be a viable, alternative income source while maintaining aesthetic standards and promoting transit use.

POLICY:

It is the policy of the Metropolitan Transit System (MTS) that advertising spaces on MTS property, which includes buses, light rail vehicles, and related transportation facilities, shall constitute a nonpublic forum.

The following guidelines will be reviewed annually to reflect the current policies of the MTS Board of Directors and to reflect changes in the trends of social and economic acceptance and appropriateness of various forms of advertising and concessions.

21.1 Advertising - General

21.1.1 The subject matter for all advertising materials displayed on MTS property shall be limited to speech which proposes a commercial transaction as its primary purpose.



- a. Acceptable advertising must promote for sale, lease, or other financial benefit a product, service, event, or other property interest in primarily a commercial manner for primarily a commercial purpose.
- 21.1.2 Safety, aesthetic considerations, rider convenience, and information needs will take precedence over revenue generation.
- 21.1.3 Quantity, quality, and placement of all advertising will be controlled by and subject to the specific approval of MTS.
- 21.1.4 MTS reserves the right to reject any advertisement that does not meet the Board's standards as set forth in this policy. Before any advertisement is rejected, it shall be referred to the Chief Executive Officer and General Counsel for MTS for appropriate action and a final decision.
- 21.1.5 The advertising program will serve the needs of local as well as national advertisers and encourage the promotion of public transit. Local advertisers will be guided by the appropriate transit agency staff in promoting specific routes/lines serving their areas.
- 21.1.6 No advertisement will be permitted that:
- a. appears to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect;
 - b. might be interpreted to be offensive to any religious, ethnic, racial, or political group;
 - c. directly or indirectly refers to religion;
 - d. is of a political or electoral nature, as determined by MTS;
 - e. might be interpreted as condoning any type of criminal act or which might be considered as derogatory toward any aspect of the law enforcement profession;
 - f. portrays acts of violence, murder, sedition, terrorism, vandalism, or other acts of violence against persons, animals, or institutions; or
 - g. depicts nudity or portions of nudity that would be considered as offensive, distasteful, pornographic, or erotic, is obscene, or advertises adult entertainment. The rule of "public acceptance" should be used in such cases; i.e., if the advertisement has already gained public acceptance, then it may be considered as acceptable to MTS.

- h. depicts, suggests, or refers to alcohol, tobacco, or firearms, which includes promoting or offering in commerce the sale or use of alcohol, tobacco or firearms, or firearms-related products.
 - i. might be interpreted as condoning any type of discrimination; or
 - j. might be interpreted as condoning or soliciting any unlawful act or conduct; or
 - k. contains profane language and/or appearance or suggestion of profane language.
- 21.1.7 No advertisement will be permitted that is in conflict with any applicable federal, state, or local law, statute, or ordinance.
- 21.1.8 No advertisement will be permitted that contains false or grossly misleading information.
- 21.1.9 MTS reserves the right to allow exceptions to the policy if MTS determines that application of the policy as written would likely be unconstitutional in any particular situation.
- 21.1.10 Upon written demand by the Chief Executive Officer of MTS on stated grounds that shall be reasonable and upon review by General Counsel of MTS, any advertisement or other display deemed to be noncompliant with this policy will be removed. No refund shall be made for the time such objectionable material was on display.
- 21.1.11 Advertising treatments will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional/traffic signs and informational material, and will not encroach on necessary sight lines (e.g., driver/operator view of waiting patrons) nor present any other safety risks or hazards.
- 21.1.12 Advertising industry standard sizes will be used for all advertising treatments.
- 21.1.13 Advertising treatments will be maintained in "like-new" condition. Damage to the advertisement or its housing will be corrected within forty-eight (48) hours.
- 21.2 Advertising - Light Rail Vehicles and Buses
- 21.2.1 For light rail vehicles (LRVs) and buses, a maximum of 10 percent of the full fleet may carry full-bus advertising formats rather than conventional advertising formats. Vehicle fronts must remain "unwrapped" with standard paint schemes and materials.

21.2.2 Transit information material may be placed inside LRVs and buses at the discretion of the operating corporation's Chief Executive Officer. Such information can include, in accordance with this policy, the promotion of regularly scheduled public transit routes that will serve major community events open to the public with no admission charge. The subject matter and proposed advertisement regarding such event must comply with the provisions set forth under section 21.1 of this policy.

21.2.3 At the request of a recognized public entity and with the approval of the Chief Executive Officer, LRVs and buses may carry notices of events that are served by regularly scheduled transit routes and open to the public for an entrance or other fee in accordance with this policy and under the following conditions only:

- The subject matter and proposed advertisement of the noticed event must comply with the provisions set forth under section 21.1 of this policy.
- Such notices shall be limited to no more than once per month.
- More than one event may be shown on the same notice.
- The listing order within the monthly notice will be by event dates. Should more than one event start on the same date, alphabetical ranking will then be used.
- Notices will be produced in English and Spanish.
- The production costs of each notice (including translation, typesetting, camera work, and printing) will be reimbursed by the participating public entity/event. If more than one public entity/event is involved, costs will be divided equally among all participants.

21.2.4 Metropolitan Transit System advertising would be excluded from the 10 percent cap on full-bus advertising formats.

21.2.5 Super King and Mural formats are approved for acceptable use on buses. The size specification for the Super King is 226 inches x 30 inches and is placed between the front and rear wheel wells on the street side of the bus. Murals are defined as encompassing the space under the vehicle passenger windows on each side of the bus and extending from the front of the bus to just past the rear wheel well. These advertising formats will not be subject to the 10 percent cap assigned to full-bus wraps.

21.3 Advertising - Transit Centers, Major Transit Points, Stations, and Stops

21.3.1 Advertising treatments (housings) will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. MTS plan specifications will be followed

wherever applicable. Advertising treatments will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

21.3.2 Any unsold transit center, major transit points, and station display advertising space will be allocated for graphics and/or other nonrevenue-producing functions approved by the MTS Board. At least one full display panel per transit center and station will be reserved exclusively for transit-related items.

21.4 Advertising - Printed Materials

21.4.1 Advertising space may be allowed in printed materials (e.g., timetables, maps, and informational brochures) at the discretion of the Chief Executive Officer.

21.4.2 Advertising space may be allowed on the reverse side of regional passes, tickets, and transfers at the discretion of the Chief Executive Officer.

21.4.3 No advertising space shall supersede necessary transit information and/or regulations.

21.4.4 At the discretion of the Chief Executive Officer, MTS may allocate space in printed materials to inform transit customers about private entities actively participating in transit services, e.g., pass and ticket-sales outlets.

21.5 Concessions

21.5.1 Concession formats, quantity, and placement will be approved and controlled by the MTS Board.

21.5.2 Contracts for any concession format or related development will be awarded in accordance with existing MTS policies.

21.5.3 During hours of business, concessionaires will provide the public with transit information materials as directed and supplied by MTS or its designated representative.

21.5.4 Concession treatments/structures will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. MTS plan specifications will be followed wherever applicable. Concession treatments/structures will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

21.5.5 Concession treatments/structures will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional signs and informational materials, and will not encroach on necessary sight lines.

21.5.6 Concessionaire contracts will include remittance to MTS on a monthly basis and shall include a flat rate, plus percentage of gross revenue, as approved by the MTS Board.

21.5.7 Any and all concession on-site signing and displays will be in accordance with existing MTS policies and subject to approval of the Chief Executive Officer.

21.6 Merchandise

21.6.1 Any and all system-related merchandise will be of the highest available quality and project a positive transit image.

21.6.2 Merchandise licensing agreements and royalty payments will be made in accordance with existing MTS policies.

21.7 Revenue

21.7.1 All revenue received from any form of advertising shall be accrued according to MTS policy and allocated during the annual budget process.

21.8 Contractor Services

21.8.1 MTS may engage contractor(s) services for the development, implementation, management, and maintenance of advertising, concessions, and/or merchandise programs in conformance with existing Board policies and in the best interests of MTS.

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Attachment A – City of San Diego Advertising Policy

Original Policy approved on 5/9/83.

Policy revised on 6/6/85.

Policy revised on 7/9/87.

Policy revised on 6/23/88.

Policy revised on 3/22/90.

Policy revised on 3/14/91.

Policy revised on 4/9/92.

Policy revised on 5/12/94.

Policy revised on 8/11/94.

Policy revised on 6/22/95.

Policy revised on 3/27/97.

Policy revised on 6/11/98.

Policy revised on 2/22/01

Policy revised on 2/26/04.

Policy revised on 12/10/09.

ATTACHMENT A

MTS POLICY NO. 21

CITY OF SAN DIEGO
ADVERTISING POLICY

Subject:

ADVERTISING ON BUS STOP SHELTERS AND BENCHES

Background:

The City of San Diego (City) entered into a Memorandum of Understanding (MOU) with the Metropolitan Transit Development Board (MTS), adopted July 25, 1988, and amended February 25, 1991, and June 21, 1999, authorizing MTS to install bus stop shelters and bus benches in public rights-of-way in the City. Pursuant to the MOU, MTS contracted with third parties for the construction, installation, and maintenance of the bus stop shelters and benches. In exchange, MTS's contractors receive the proceeds from the sale of advertising space on the shelters and benches.

MTS regulated the content of the advertising placed on the bus stop shelters and benches according to its Policies and Procedures No. 21. After advertising containing a religious message was removed pursuant to that policy, valid concerns were raised that the policy may violate due process and first amendment rights governing public speech.

Purpose:

It is the intent of the City Council to establish a policy governing advertising on bus stop shelters and benches in the public rights-of-way within the City that will be included by amendment in the MOU between the City and MTS, and administered by MTS.

It is the further intent of the City Council to prohibit advertising on bus stop shelters and benches of alcoholic beverages, tobacco products, and firearms in recognition of the fact that many public transit patrons are minors, that possession of these products by minors is illegal and dangerous, and that advertising is a persuasive medium for encouraging the use of these products by minors.

This policy applies only to advertising space located in designated areas on bus stop shelters and benches, as described in the MOU between the City and MTS.

Policy:

Advertising on Bus Stop Shelters and Benches:

1. In its agreement with its advertising contractors, MTS shall reserve the right to reject any advertisement, commercial or noncommercial, which does not meet the standards set forth in this policy.
2. All advertising posted on bus stop shelters and benches must conform to the

following criteria:

- A. Defamatory Advertising. No advertising will be permitted that falsely disparages any person, product, or company, or that is likely to damage the reputation of any person, product, or company.
 - B. Advertising Condoning Criminal Conduct. No advertising will be permitted that is likely to incite or produce imminent unlawful activity.
 - C. Obscene Advertising. No advertising will be permitted that contains obscene matter or matter harmful to minors, as defined in California Penal Code Sections 311 and 313.
 - D. False Advertising. No advertisement will be permitted that contains false or grossly misleading information.
 - E. Alcohol, Tobacco, and Firearms. No advertisement will be permitted that promotes the sale of alcoholic beverages, tobacco or tobacco products, or firearms.
 - F. Existing Laws. All advertisements must conform to applicable federal, state, and local laws.
3. The City may make demand upon the Chief Executive Officer of MTS for the removal of any advertisement, commercial or noncommercial, that does not conform to this policy. Such demand shall be in writing and shall state reasonable grounds for the demand. MTS shall consider and act upon the demand in accordance with this policy.

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POLICY.21.REV GENERATE DISPLAY
AD CONCESSIONS & MERCHANDISE
7/13/06