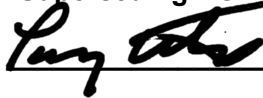


Document Code No.: CON-1-1-5-DP
Title: Transit Advertising Policy
Affected Agencies: King County Metro Transit Department
Keywords: (1) Transit; (2) Advertising
Sponsoring Agency: King County Metro Transit Department
Type of Action: Superseding CON-1-1-4-DP dated March 2, 2020



Signature: 

Date signed and effective: February 9, 2021

I. Purpose

- A. King County Transit System. The King County Metro Transit Department operates one of the largest bus systems in the nation, one that includes more than 225 bus routes throughout the County, with nearly 9,000 bus stops and more than 130 park-and-ride facilities connecting riders with those routes. The transit system is a vital component of the broad spectrum of public services the County provides. The County's transit advertising program is intended solely to generate revenue to support the transit system.

Advertising as Revenue Source. The County's transit operations are funded by a combination of federal, state and local funds, including grants and taxes, as well as fare box revenue. Advertising revenues are an important additional source of revenue that supports transit operations. The County's fundamental purpose in accepting transit advertising is to generate revenue to augment the Metro Transit Department's operating budget.

The primary purpose of the County's transit system is to provide safe and efficient public transportation within its service area. Consistent with this purpose, the County places great importance on maintaining secure, safe, comfortable and convenient Transit Facilities and Transit Vehicles in order to, among other things be consistent with the provision of effective and reliable public transportation, retain existing riders and attract new users of public transit services (KCC 28.96.020 and .210). To generate additional revenue while also accomplishing the primary objectives of transit operations, the County will accept advertising on its Transit Facilities and Transit Vehicles only if such advertising complies with this Advertising Policy.

- B. Nonpublic Forum Status. The County's acceptance of transit advertising does not provide or create a general public forum for expressive activities. In keeping with its proprietary function as a provider of public transportation, and consistent with KCC 28.96.020 and .210, the County does not intend its acceptance of transit advertising to convert its Transit Vehicles or Transit Facilities into public forums for public discourse and debate. Rather, as noted, the County's sole purpose and intent is to accept advertising as an additional means of generating revenue to support its transit operations. In furtherance of that discreet and limited objective, the County retains strict control over the nature of the ads accepted for posting on or in its Transit Vehicles and Transit Facilities and maintains its advertising space as a nonpublic forum.

In the County's experience, certain types of advertisements interfere with the program's sole purpose of generating revenue to benefit the transit system. This

policy advances the advertising program's revenue-generating objective and preserves the forum's primary transit purposes by prohibiting advertisements that interfere with and divert resources from transit operations, that detract from transit purposes by creating substantial controversy, and/or that pose significant risks of harm, inconvenience, or annoyance to transit passengers, operators and vehicles. Such advertisements create an environment that is not conducive to achieving increased revenue for the benefit of the transit system or to preserving and enhancing the security, safety, comfort and convenience of its operations. The viewpoint neutral restrictions in this policy thus foster the maintenance of a professional advertising environment that maximizes advertising revenue, and protects the interests of the captive audience that uses Metro's transit services.

This policy is intended to provide clear guidance as to the types of advertisements that will allow the County to generate revenue and enhance transit operations by fulfilling the following important goals and objectives:

- Maximizing advertising revenue;
- Maintaining a position of neutrality and preventing the appearance of favoritism or endorsement by the County;
- Preventing the risk of imposing objectionable, inappropriate or harmful views on a captive audience;
- Preserving the value of the advertising space;
- Maximizing ridership and maintaining a safe environment for transit customers and other members of the public;
- Avoiding claims of discrimination and maintaining a non-discriminatory environment for riders;
- Preventing any harm or abuse that may result from running objectionable, inappropriate or harmful advertisements;
- Reducing the diversion of resources from transit operations that is caused by objectionable, inappropriate or harmful advertisements.
- Preserving Metro's business reputation as a professional, effective and efficient provider of public transit services.

The County's Transit Facilities and Transit Vehicles are a nonpublic forum and, as such, the County will accept only that advertising that falls within the categories of acceptable advertising specified in this viewpoint neutral policy and that satisfies all other access requirements and restrictions provided herein.

The County reserves the right to suspend, modify or revoke the application of any of the standards in this Policy as it deems necessary to comply with legal mandates, to accommodate its primary transportation function, or to fulfill the goals and objectives identified above. All of the provisions in this Policy shall be deemed severable.

Applicability and Audience:

This Transit Advertising Policy applies to the posting of all new advertisements on Transit Facilities and Transit Vehicles on or after the Effective Date. Any advertisements which would be prohibited under this policy, but which were posted pursuant to the terms of a fully executed advertising contract prior to the Effective Date of this Policy, will be allowed

to remain posted for the duration of that contract. This Policy does not apply to the County's government speech as defined below.

Disclaimer of Endorsement. The County's acceptance of an advertisement does not constitute express or implied endorsement of the content or message of the advertisement, including any person, organization, products, services, information or viewpoints contained therein, or of the advertisement sponsor itself. This endorsement disclaimer extends to and includes content that may be found via internet addresses, quick response (QR) codes, and telephone numbers that may appear in posted ads and that direct viewers to external sources of information.

II. Definitions

- A. **Transit Facilities.** Transit Facilities include all properties controlled by Metro, including the downtown Seattle transit tunnel (KCC 28.92.190), transit tunnel mezzanine areas (KCC 28.92.200) and transit tunnel platform areas (KCC 28.92.210).
- B. **Transit Vehicles.** Transit Vehicles include all transit passenger buses, trolleys and street railcars.

III. Policy

- A. **Permitted Advertising Content:** Subject to the limitations on Prohibited Advertising under Subsection 6.2, only the following classes of advertising are authorized on or in Transit Facilities and Transit Vehicles:
 - 1. **Commercial Advertising.** Advertising proposing, promoting, or soliciting a commercial transaction for the sale, rent, lease, license, distribution or availability of goods, property, services, or events that anticipates an exchange of monetary consideration, for the advertiser's commercial or proprietary interest, including advertising from tourism bureaus, chambers of commerce or similar organizations that promote the commercial interests of its members.
 - 2. **Government Advertising.** Advertising by a federal, state or local governmental entity that advances specific governmental purposes.
- B. **Prohibited Advertising Content:** Notwithstanding § 6.1, advertising is prohibited on or in Transit Facilities and Transit Vehicles if it falls within one or more of the following categories:
 - 1. **Political Speech.** Advertising that promotes, or opposes: (a) a political party; (b) any person or group of persons holding federal, state or local government elected office; (c) the election of any candidate or group of candidates for federal, state or local government offices; or (d) initiatives, referendums or other ballot measures.
 - 2. **Public Issue Speech.** Advertising that primarily expresses or advocates an opinion, position or viewpoint on a matter of public debate about economic, political, public safety, religious or social issues. The following nonexclusive factors will be considered when applying this section to commercial advertising submitted under §6.1.1: (a) whether a commercial product or service is apparent from the face of the ad, (b) whether the commercial product or service is

incidental to the public interest content of the ad, (c) whether the sale of commercial products or services is the primary source of the advertiser's total annual revenue, and (d) whether the advertiser is a for-profit entity. This exclusion does not apply to Government Advertising under § 6.1.2.

3. Religious. Advertising that promotes or opposes any identifiable or specific religion, religious viewpoint, message or practice.
4. Prohibited Products, Services or Activities. Any advertising that (i) promotes or depicts the sale, rental, or use of, participation in, or images of the following products, services or activities; or (ii) that uses brand names, trademarks, slogans or other material that are identifiable with such products, services or activities:
 - (a) Tobacco. Tobacco products, including but not limited to cigarettes, cigars, and smokeless (e.g., chewing) tobacco;
 - (b) Vaping. Vaping products, including but not limited to e-cigarettes, vaping pens, and vaping oils;
 - (c) Alcohol. Beer, wine, distilled spirits or any alcoholic beverage licensed and regulated under Washington law, however, this prohibition shall not prohibit advertising that includes the name of a restaurant that is open to minors;
 - (d) Cannabis. Cannabis, cannabis products, cannabis businesses, or cannabis services;
 - (e) Firearms. Firearms, ammunition or other firearms-related products;
 - (f) Adult/ Mature Rated Films, Television Video Games, or Theatrical Presentations. Adult films rated "X" or "NC-17", or video games rated "A", or theatrical presentations recommended by the sponsor for persons 18 years or older;
 - (g) Adult Entertainment Facilities. Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments;
 - (h) Other Adult Services. Adult telephone services, adult internet sites and escort services.
5. Sexual and/or Excretory Subject Matter. Any advertising that contains or involves any material that describes, depicts or represents sexual or excretory organs or activities in a manner that a reasonably prudent person, knowledgeable of the County's ridership and using prevailing community standards, would find inappropriate for the public transit environment, including persons under the age of 18.

6. False or Misleading. Any material that is or that the sponsor reasonably should have known is false, fraudulent, misleading, deceptive or would constitute a tort of defamation or invasion of privacy.
7. Copyright, Trademark or Otherwise Unlawful. Advertising that contains any material that is an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal.
8. Illegal Activity. Any advertising that promotes any activity or product that is illegal under federal, state or local law.
9. Profanity and Violence. Advertising that contains any profane language or employs the use of miscellaneous characters or symbols as a substitute for profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal.
10. Threatening Harm. Advertising that contains any threat, implied or direct, to harm a particular individual or group of individuals.
11. Harmful or Disruptive to Transit System. Advertising that contains material that is so objectionable as to be reasonably foreseeable that it may result in harm to, disruption of, or interference with, the operation, or business reputation of the transit system. For purposes of determining whether an advertisement contains such material, the County will determine whether a reasonably prudent person, knowledgeable of the County's ridership and using prevailing community standards, would believe that the material is so objectionable that it is reasonably foreseeable that it may result in harm to, disruption of, or interference with, the operation, or business reputation of the transit system.
12. Adverse to Transit. Advertising that is directly adverse to the commercial or administrative interests of the transit system, that tends to criticize the quality of service provided by the transit system, or that tends to criticize public transportation generally.
13. Lights, Noise and Special Effects. Flashing lights, sound makers, mirrors or other special effects that interfere with the safe operation of the bus or the safety of bus riders, drivers of other vehicles or the public at large.
14. Unsafe Transit Behavior. Any advertisement that encourages or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in awaiting, boarding, riding upon or debarking from transit vehicles.

C. Additional Requirements:

1. Sponsor Attribution and Contact Information. Any advertising in which the identity of the sponsor is not readily and unambiguously identifiable must include the

following phrase to identify the sponsor in clearly visible letters (no smaller than 72 point type for exteriors and 24 point type for interiors):

Paid for by _____

"Teaser ads" that do not identify the sponsor will, however, be allowed so long as a similar number of follow up advertisements are posted within eight weeks of the initial teaser ads that do identify the sponsor of those initial ads.

- D. Government Speech. The provisions of this policy do not apply to the County's government speech, which includes advertising sponsored solely by the County or by the County jointly with another entity to communicate any message deemed appropriate by the Transit Department General Manager.

IV. Procedures

Action By:

Action:

Transit Advertising Contractor

- A. All proposed transit advertising must be submitted to the Transit Advertising Contractor for initial compliance review. The Transit Advertising Contractor will perform a preliminary evaluation of the submission to assess its compliance with this policy. If, during its preliminary review of a proposed advertisement, the Transit Advertising Contractor is unable to make a compliance determination, it will forward the submission to the Transit Advertising Program Manager for further evaluation. The Transit Advertising Contractor may at any time discuss with the entity proposing the advertisement one or more revisions to an advertisement, which, if undertaken, would bring the advertisement into conformity with this Advertising Policy. The Transit Advertising Contractor will immediately remove any advertisement that the Transit Department at any time directs it to remove.

Transit Advertising Program Manager

- B. The Transit Advertising Program Manager will review the proposed advertisement for compliance with the guidelines set forth in this policy and will direct the Transit Advertising Contractor as to whether the proposed advertisement will be accepted. In the discretion of the Transit Advertising Program Manager, any proposed transit advertising may be submitted to the Transit Department General Manager for review.

Transit Department General Manager

- C. The Transit Department General Manager shall conduct a final review of proposed advertising at the request of the Transit Advertising Program Manager. The decision of the Transit Department General Manager to approve or reject any proposed advertising shall be final.

Action By:

Transit Advertising
Program Manager and
Transit Department
General Manager

Action:

D. The Transit Advertising Program Manager or the Transit Department General Manager may consult with other appropriate County employees, including the County's legal counsel, at any time during the review process.

V. Implementation Plan

The Transit Advertising Program Manager and Transit Department General Manager are responsible for the implementation of this Transit Advertising Policy.

VI. References

- A. Transit Code of Conduct, chapter 28.96 KCC.
- B. Public Transit Definitions, chapter 28.92 KCC.
- C. King County Charter Section 320.20: Provides that the county executive "shall have the power to assign duties to administrative offices and executive departments which are not specifically assigned by this charter or ordinance. . . ."
- D. Executive Policy/Procedures No. INF 7-4 (EP): Drafting and Implementing Executive and Department Policies.
- E. 28.94.120 Authorization to adopt administrative rules and procedures: The director is authorized to adopt such administrative rules and procedures as are necessary to implement the provisions of this chapter. (Ord. 11033 § 15, 1993).