

Transportation Committee

Meeting date: November 9, 2015

For the Metropolitan Council meeting of November 18, 2015

Subject:	Approval of updated Policies and Standards for Advertising on Metro Transit Properties.
District(s), Member(s):	All
Policy/Legal Reference:	Minn Stat. 473.405 subd 1
Staff Prepared/Presented:	Brian Lamb, General Manager Bruce Howard, Director of Customer Services and Marketing Maria Cone, Manager of Market Development David Theisen, Deputy General Counsel
Division/Department:	Metro Transit/ Marketing

Proposed Action

That the Metropolitan Council approve the updated Policies and Standards for Advertising on Metro Transit Properties.

Background

The current Policies and Standards for Advertising on Metro Transit Properties were approved by the Metropolitan Council in 2007. Since then the number of Metro Transit vehicles, facilities and other properties have expanded. Businesses have new products, services and technologies they wish to advertise and in new and different ways. Legal issues and decisions surrounding how transit agencies conduct advertising sales have also been impacted. It makes sense then to periodically review the Policies and Standards to ensure they are up to date and in alignment with the Council's mission.

Rationale

Staff reviewed the current Policies and Standard against the issues discussed above and have made a few small administrative changes to the policy including adding new Metro Transit services like Commuter Rail and BRT and including Metro Mobility which now offers advertising space on its vehicles. Staff is also recommending the following proposed changes to the Policies and Standards:

- 1) Include spirits or liquor advertising as permitted advertising by modifying section 2.01(a)
- 2) Include tobacco-related or electronic delivery devices as defined by Minnesota Statutes as excluded advertising in section 2.01(c)
- 3) Include a provision to clarify the Council's acceptance of an advertisement does not constitute endorsement by adding section 3.05.

Funding

These Policies and Standards support revenue generation for the Council's transit system while making it clear that it is a nonpublic forum making space available for limited types of advertising.

Known Support / Opposition

There is no known opposition to this item.

POLICIES AND STANDARDS FOR ADVERTISING ON METRO TRANSIT PROPERTIES AND OTHER COUNCIL TRANSIT ASSETS

The Metropolitan Council (“Council”) is a political subdivision of the State of Minnesota and operates a regional transit system through its Metro Transit and Metropolitan Transportation Services divisions. It is in the public interest to make advertising space available on certain designated transit assets to generate revenue and help fund the operation of the regional transit system. These advertising spaces include, but are not limited to buses (including coaches and Bus Rapid Transit (“BRT”) buses), light rail vehicles, commuter rail coaches, Metro Mobility (ADA) vehicles, Transit Link vehicles, parking facilities, bus shelters, light rail and commuter rail platforms and stations, BRT stations/platforms, garages and other properties or other facilities (collectively referred to as “Council Transit Assets”) in conjunction with its regional transit system.

I. PURPOSE

1.01 Nonpublic Forum; Commercial/Proprietary Functions. The Council will make space on its Council Transit Assets available for limited types of advertising (“Permitted Advertising”). By allowing limited types of advertising on or within its buses, light rail vehicles, commuter rail coaches, Metro Mobility vehicles, and other designated Council Transit Assets the Council does not intend to create a public forum for public discourse or expressive activity, or to provide a forum for all types of advertisements. The display of Permitted Advertising on designated Council Transit Assets is intended only to supplement fare revenue, tax proceeds and other income that fund the regional transit system.

1.02 Certain Excluded Advertising. The Council will not accept for display on its Council Transit Assets the types of advertising defined in Section 2.01 of these *Policies and Standards* (“Excluded Advertising”). By not accepting Excluded Advertising the Council can: (a) maintain a professional advertising environment that maximizes advertising revenues and minimizes interference or disruption of the commercial aspects of its regional transit system; (b) maintain an image of neutrality on political matters and other noncommercial issues that are the subject of public debate and concern; (c) protect passengers, employees and Council Transit Assets from harm or damage that can result from some individual’s reactions to political or controversial materials; and (d) help build and retain transit ridership.

1.03 Limits on Permitted Advertising. Placing reasonable limits on Permitted Advertising displayed on its Council Transit Assets will enable the Council to: (a) avoid subjecting its passengers and other members of the public to material that may cause them embarrassment or discomfort and discourage them from using regional transit services; (b) maintain an image of professionalism and decorum; (c) avoid displaying material that is not suitable for viewing by minors who ride on Metro Transit buses, light rail vehicles or commuter rail coaches, or whose neighborhoods are served by Metro Transit bus routes, and light rail transit and commuter lines, or other Council transit services; and (d) maximize revenues by attracting and maintaining the patronage of passengers.

II. ADVERTISING POLICIES

2.01 Excluded Advertising. For the purposes of these *Policies and Standards*, the advertising described in this Section 2.01 is “Excluded Advertising.” The Council will not accept the following Excluded Advertising for display, posting or placement on or within its buses, light rail vehicles, commuter rail coaches, Metro Mobility vehicles or other Council Transit Assets:

- (a) ***Political or “Issues” Advertising.*** The advertising space on Council Transit Assets is a nonpublic forum. The Council therefore will not accept political or “issues” advertising of any kind. For the purposes of these *Policies and Standards*, political or issues advertising includes: (1) advertisements, posters or other displays that promote or oppose candidates for appointive or elective offices; (2) political campaign material; (3) advertisements, posters or other displays that promote or oppose ballot questions, initiatives, petitions or referenda; and (4) advertisements, posters or other displays that promote, oppose or otherwise directly relate to issues of public debate on economic, political or social issues.
- (b) ***Alcoholic Beverages.*** The Council will not accept advertisements and images soliciting or promoting the sale or use of alcoholic beverages ~~other than beer and wine. Beer and wine unless~~ the advertising ~~must~~ contains a responsible drinking message. Copy or graphics that do not portray responsible use of ~~beer or wine alcoholic beverages~~ by individuals or groups of legal age will not be accepted.
- (c) ***Tobacco Products.*** The Council will not accept advertisements and images soliciting or promoting the sale or use of “tobacco,” ~~products including, but not limited to, cigarettes, cigars and smokeless tobacco~~ “tobacco-related devices” or “electronic delivery devices” as these terms are defined in Minnesota Statutes section 609.685.
- (d) ***Advertisements Affecting Image or Operation.*** The Council will not accept advertisements and images that threaten or adversely affect: the public image of the Council or its Metro Transit and Metropolitan Transportation Services divisions; the Council’s ability to operate its Council Transit Assets; or the Council’s ability to attract and maintain the patronage of passengers.

2.02 Permitted Advertising. Subject to the viewpoint-neutral standards contained in Section 3.01 of these *Policies and Standards*, the Council will accept “Permitted Advertising” for display or placement on designated Council Transit Assets. For the purposes of these *Policies and Standards*, “Permitted Advertising” is advertising that: (a) does not qualify as Excluded Advertising under Section 2.01; and (b) generally relates to the economic interests of the advertiser and its audience. Permitted Advertising typically promotes the sale, rental, distribution or availability of goods, services, food, entertainment, products or property (real or personal), but also may solicit business or promote (commercial or noncommercial) transactions, events or programs. Advertising defined in Section 3.02 also is Permitted Advertising.

2.03 Prohibitions on Literature or Product Distribution and Leafleting. The Council’s purpose in operating a regional transit system is to meet the public’s need for efficient, effective and safe public transportation. Council Transit Assets are not public forums for public discourse or expressive activity. Literature or product distributions, leafleting and similar activities can: disrupt or delay passengers who are boarding and exiting buses, light rail vehicles and commuter rail coaches and other

Council transit vehicles; distract passengers; distract bus and other operators; cause maintenance issues; and otherwise create safety issues for passengers, operators and surrounding traffic. Accordingly, political campaign activities, distribution of political or issues campaign literature, leafleting, and other informational or campaign activities are prohibited: within Metro Transit buses and other Council transit vehicles; within light rail vehicles and commuter rail coaches; on light rail and commuter rail passenger platforms and stations; on BRT stations/platforms; and within or on other Council Transit Assets. Notwithstanding the policies that allow the display of Permitted Advertising on designated Council Transit Assets, nothing in these *Policies and Standards* authorizes or permits advertisers to distribute literature, leaflets, coupons, products, samples or other items: within Metro Transit buses or other Council transit vehicles; within light rail vehicles and commuter rail coaches; on light rail and commuter rail passenger platforms and stations; on BRT stations/platforms; and within or on other Council Transit Assets. On a limited basis and in conjunction with a “partnering” opportunity approved by Metro Transit or Metropolitan Transportation Services, the Council may allow an advertiser to distribute items on or within Council Transit Assets other than light rail or commuter rail passenger platforms, or BRT platforms. Any distribution of literature, leaflets, coupons, products, samples or other items must be pre-approved by Metro Transit or Metropolitan Transportation Services and must comply strictly with terms and conditions established by Metro Transit or Metropolitan Transportation Services.

III. ADVERTISING STANDARDS AND RESTRICTIONS

3.01 Advertising Standards and Restrictions. The Council will make available on designated Council Transit Assets space for advertisements subject to the viewpoint-neutral restrictions in this Section 3.01 that limit certain forms of paid and unpaid advertising. Advertisements cannot be displayed or maintained on Council Transit Assets if the advertisement or information contained in the advertisement falls within one or more of the following categories:

- (a) ***False, Misleading, Deceptive or Disrespectful Advertising.*** Advertising or any material or information in the advertising that is false, misleading or deceptive, or that is intended to be (or reasonably could be interpreted as being) disparaging, disreputable or disrespectful to persons, groups, businesses or organizations, including advertising that portrays individuals as inferior, evil or contemptible because of their race, color, creed, sex, pregnancy, age, religion, ancestry, national origin, marital status, disability, including those related to pregnancy or child birth, affectional or sexual orientation, or any other characteristic protected under federal, state or local law.
- (b) ***Unauthorized Endorsement.*** Advertising that implies or declares the Council, or its Metro Transit or Metropolitan Transportation Services divisions, endorses a product, service, event or program. The prohibition against endorsement does not apply to advertising for a service, event or program for which the Council, or its Metro Transit or Metropolitan Transportation Services divisions, is an official sponsor, co-sponsor or participant, provided Metro Transit’s General Manager or the Director of Metropolitan Transportation Services or other designated representative gives prior written approval regarding the endorsement.
- (c) ***Obscene or Offensive Material.*** Advertising that contains obscene or offensive materials. “Obscene materials” means displays or information that, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific

value, or otherwise qualifies as “obscene” as that term is defined in Minnesota Statutes section 617.241. “Offensive materials” means displays or information that would be offensive to a reasonably prudent person of average sensitivity in the community, including advertising that contains derisive, distorted, immoral, profane or disreputable language or impressions. Obscene or offensive material also includes advertising that contains “pornographic work” as that term is defined in Minnesota Statutes sections 617.246 and 617.247 or promotes pornography, including “men and women’s sophisticated magazines,” “X-rated” or adult-oriented films, “X-rated” or adult-oriented cable channels, or businesses trafficking in pornography, including the use of brand names, trademarks, slogans or other materials that are identifiable with these items, activities or services.

- (d) ***Unlawful Goods or Services.*** Advertising or any material or information in the advertising that depicts, promotes or reasonably appears to encourage the use or possession of unlawful or illegal goods or services.
- (e) ***Unlawful Conduct.*** Advertising or any material or information in the advertising that: depicts, promotes or reasonably appears to encourage unlawful or illegal behavior or conduct, including unlawful behavior of a violent or antisocial nature; is libelous or an infringement of copyright; is otherwise unlawful or illegal; or is likely to subject the Council to liability.
- (f) ***Adult Entertainment.*** Advertising that promotes or displays images associated with adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult internet sites and escort services.
- (g) ***Graffiti.*** Advertising that uses images or symbols that depict or represent graffiti.
- (h) ***Illegal Firearms and Weapons.*** Advertising that contains images or depictions of illegal firearms or other weapons, or the unlawful use of firearms or other weapons.
- (i) ***Internet Addresses and Telephone Numbers.*** Advertising that directs viewers to internet addresses or telephone numbers that contain materials, images or information that would violate these advertising standards if the materials, images or information were contained in advertising displayed or posted on Council Transit Assets.
- (j) ***Distractions and Interference.*** Advertising that incorporates or displays any rotating, revolving, or flashing devices or other moving parts or any word, phrase, symbol or character, any of which are likely to interfere with, mislead or distract traffic or conflict with any traffic control device or motor vehicle regulation.

3.02 Other Permitted Advertising and Public Service Announcements. The Council may make advertising space available for advertising proposed by governmental entities, institutions or tax-exempt nonprofit organizations (examples include: ads focusing on personal health or wellness issues, or ads informing the public about programs, services or events). Nonprofit entities must document their tax-exempt status. On a limited basis, the Council may make unpaid advertising space available for public service announcements. Costs associated with the design, production, installation and removal of public service announcements are the responsibility of the group or organization requesting the public service announcement. The advertising and public service an-

nouncements permitted under this section cannot contain displays or messages that qualify as Excluded Advertising under Section 2.01 and must comply with these advertising *Policies and Standards*. Unless the source of the advertising or public service announcement is obvious from the content or copy, the advertisement or public service announcement must specifically identify the sponsor of the advertisement or the message.

3.03 Advertising Pricing and Space Availability. The price for placing advertising on Council Transit Assets is governed by the contract(s) between the Council and its advertising contractor(s). The Council limits the amount of space on its Council Transit Assets available for advertising and does not represent that it can accommodate all requests for advertising space. Advertising space will be made available only on Council Transit Assets designated by Metro Transit or Metropolitan Transportation Services. No advertising, signs and other types of postings or messages may be displayed, posted or placed on any other Council Transit Assets.

3.04 Reservation of Rights. The Council reserves the right to amend these *Policies and Standards* at any time. Revisions or amendments will be made in writing and provided to the Council's advertising contractor(s). Subject to any contractual obligations, the Council reserves the right to discontinue advertising on Council Transit Assets and discontinue accepting advertising for display or posting on Council Transit Assets. The Council reserves the right to limit the availability of advertising space on its Council Transit Assets and remove advertising that does not comply with these advertising *Policies and Standards* and, subject to any contractual obligations, reserves the right to display advertisements and notices on Council Transit Assets that pertain to the operation of Council transit services and operations and its own promotions.

3.05 Disclaimer of Endorsement. The Council's acceptance of an advertisement does not constitute an express or implied endorsement by the Council, or its Metro Transit or Metropolitan Transportation Services divisions, of: the content or message of the advertisement; any organization, product, service or information contained in the advertisement; or the advertisement sponsor.

IV. APPEAL OF ADVERTISING DECISIONS

4.01 Initial Reviews. The Council's advertising contractor(s) will make initial decisions about accepting or rejecting proposed advertising. The decisions will be based on these *Policies and Standards*. The Council's Manager of Market Development, or other designated Council staff, will work with the Council's advertising contractor(s) and advertisers to resolve issues about advertisements that do not comply with these *Policies and Standards*. Resolution may include modification of the art, copy or both.

4.02 Appeals to Advertising Review Committee. An advertiser may appeal a decision to reject or remove an advertisement by filing a written request with the Advertising Review Committee within ten (10) business days after the rejection or removal decision. The advertiser's request must state why the advertiser disagrees with the decision in light of the Council's advertising *Policies and Standards*. The Advertising Review Committee consists of the following Metro Transit personnel: the Chief Operations Officer, the Director of Customer Services and Marketing and the Manager of Market Development, or alternative personnel designated by the General Manager. When an appeal involves advertising on Council Transit Assets under the purview of Metropolitan Transportation Services, the Advertising Review Committee will consist of following personnel: the Assistant Director for Contracted Transit Services, Metro Transit's Director of Customer Services

and Marketing, and Metro Transit’s Manager of Market Development, or alternative personnel designated by the Director of Metropolitan Transportation Services. The Advertising Review Committee may consult with legal counsel and the Council’s Office of Equal Opportunity. The Advertising Review Committee will review the basis for the rejected or removed advertisement and will consider the advertiser’s reasons for filing the request. The Advertising Review Committee will make a decision on the request and will notify the advertiser of its decision in writing within fifteen (15) business days after receiving the advertiser’s request.

4.03 Further Review by Appeal Official. An advertiser who disagrees with a decision of the Advertising Review Committee may request the “Appeal Official” to review the committee’s decision. For appeals involving advertising on Council Transit Assets under the purview of the Metro Transit division, the Appeal Official is the General Manager of Metro Transit. For appeals involving advertising on Council Transit Assets under the purview of Metropolitan Transportation Services, the Appeal Official is the Director of Metropolitan Transportation Services. The advertiser’s written request for further review must be received within five (5) business days after receipt of the Advertising Review Committee’s decision. The Appeal Official may accept, reject or modify the Advertising Review Committee’s decision and will notify the advertiser of the Appeal Official’s decision within five (5) business days after the Appeal Official receives the advertiser’s request for further review. The Appeal Official’s decision is final.

Adopted by the Metropolitan Council _____, __ 2015