

# Guidelines Governing Advertising in and Upon SMART Facilities and Vehicles

## 1. Purpose:

1.1 Sonoma-Marín Area Rail Transit District (“SMART”) owns and operates a passenger rail system within the Counties of Sonoma and Marin.

1.2 SMART’s rail transit operations are funded by a combination of federal, local and state funds, including grants and taxes, as well as fare revenue. SMART’s purpose in accepting transit advertising is to generate revenue to augment SMART’s operating budget.

1.3 The primary purposes of SMART’s transit system are to provide safe and efficient public rail transportation and a bicycle-pedestrian pathway within its service area. Consistent with these purposes, SMART places great importance on maintaining secure, safe, comfortable and convenient Transit Facilities and Transit Vehicles and pathways in order to, among other things consistent with the provision of effective and reliable public transportation, retain existing riders and attract new users of public transit services. To generate additional revenue while also accomplishing the primary objectives of transit operations, SMART will accept advertising on its Transit Facilities and Transit Vehicles only if such advertising complies with this Advertising Policy.

1.4 It is the express intention of this policy that SMART’s property is designated a non-public forum. SMART’s acceptance of transit advertising will not create or provide a general public forum for expressive activities. Rather, as noted, SMART’s fundamental purposes 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, SMART 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 non-public forum.

1.5 SMART finds that certain types of advertisements interfere with SMART’s primary purpose of generating revenue to benefit the transit system. This Advertising Policy advances the advertising program’s revenue-generating objective by prohibiting advertisements that could detract from the goal by creating substantial controversy, interfering with and diverting resources from transit operations, and/or posing significant risks of harm, inconvenience, or annoyance to transit passengers or pathway users, operations and vehicles. Such advertisements create an environment that is not conducive to achieving 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 Advertising Policy foster the maintenance of a professional advertising environment that maximizes advertising revenue.

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

- Maximizing advertising revenues;
- Preventing the appearance of favoritism by SMART;
- Preventing the risk of imposing demeaning or disparaging views on a captive audience;
- Maintaining a position of neutrality on controversial issues;
- Preserving the marketing potential of the advertising space by avoiding content that the community could view as demeaning, disparaging, objectionable, inappropriate or harmful to member of the public generally or to minor in particular;
- Maximizing ridership and pathway use;
- Avoiding claims of discrimination and maintain a non-discriminator environment for riders;
- Preventing any harm or abuse that may result from running demeaning, disparaging or objectionable advertisements;
- Reducing the diversion of resources from transit operations that is caused by demeaning disparaging, objectionable, inappropriate or harmful advertisements.

1.7 This Advertising Policy applies to the posting of all advertisements on transit facilities and transit vehicles on or after the effective date. SMART's transit facilities and transit vehicles are a non-public forum and, as such, SMART 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. This Advertising Policy does not apply to SMART owned property in the possession of another party pursuant to a lease, license or concession agreement.

1.8 SMART'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.

## 2. Advertising Policy

2.1 ***Permitted Advertising Content*** – The following classes of advertising are authorized on transit facilities and transit vehicles if the advertising does not include any material that qualifies as prohibited advertising under this Advertising Policy:

2.1.1 **Commercial and Promotional Advertising.** Commercial and promotional advertising that promotes or solicits the sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for commercial or noncommercial purposes or more generally promotes an entity that engages in such activities.

2.1.2 Governmental Advertising. Governmental entities, meaning public entities specifically created by government action, may purchase advertising space for messages that advance specific government purposes.

2.1.3 Public Service Announcements. SMART recognizes that its advertising program and its overall public transportation mission are promoted by allowing for public service announcements. Such announcements engender goodwill with the public because the transit system is seen as a caring and active participant in the community.

A Public Service Announcement must satisfy the following criteria:

- a. The sponsor of a Public Service Announcement must be a government entity or a nonprofit corporation that is exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code.
- b. The Public Service Announcement must be directed to the general public or a significant segment of the public and relate to:
  - Prevention or treatment of illnesses;
  - Promotion of safety or personal well-being;
  - Education or training;
  - Provision of children and family services;
  - Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
  - Provision of services and programs that provide support to low income citizens, senior citizens, and people with disabilities.

## 2.2 **Prohibited Advertising Content.**

Advertising is prohibited on or in Transit Facilities and Transit Vehicles if it includes any of the following content:

2.2.1 Political Campaign Speech. Advertising that promotes, or opposes a political party, the election of any candidate or group of candidates or federal, state or local government offices or initiatives, referendums or other ballot measures.

2.2.2 Prohibited Products, Services or Activities. Any advertising that (1) promotes or depicts the sale, rental, or use or participation in, or images of the following products, services or activities: or (2) uses brand names 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. **Firearms.** Firearms, ammunition or other firearms-related products.
- c. **Adult/Mature Rated Films, Television or Video Games.** Adult films rated “X” or “N-17”, television rated “MA” or video games rated “A” or “M”.
- d. **Adult Entertainment Facilities.** Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments.
- e. **Other Adult Services.** Adult telephone services, adult internet sites and escort services.

- 2.2.3 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 way:
- a. That the average adult person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors in sex; or
  - b. which is patently offensive to contemporary standard in the adult community as a whole with respect to what is suitable material for minors to see; or
  - c. that depicts, or reasonably appears to depict, a person under the age of eighteen (18) exhibiting his or her sexual or excretory organs or engaging in sexual or excretory activities.
- 2.2.4 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.
- 2.2.5 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.
- 2.2.6 Illegal Activity. Any advertising that promotes any activity or product that is illegal under federal, state or local law.
- 2.2.7 Profanity and Violence. Advertising that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal.

- 2.2.8 Demeaning or Disparaging. Advertising that contains material that demeans or disparages an individual, group of individual or entity. For purposes of determining whether an advertisement contains such material, SMART will determine whether a reasonably prudent person, knowledgeable of the SMART ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of any individual, group of individuals or entity.
- 2.2.9 Harmful or Disruptive to Transit System. Advertising that contains material that is so objectionable as to be reasonably foreseeable that it will result in harm to, disruption of or interference with the transportation system. For purposes of determining whether an advertisement contains such material, SMART will determine whether a reasonably prudent person, knowledgeable of SMART's ridership and using prevailing community standards, would believe that the material is so objectionable that it is reasonable foreseeable that it will result in harm to, disruption of or interference with the transportation system.
- 2.2.10 Lights, Noise and Special Effects. Flashing lights, sound makers, mirrors or other special effects that interfere with the safe operation of the train or the safety of train riders, pathway users, drivers of other vehicles or the public at large.
- 2.2.11 Unsafe Transit Behavior. Any advertisement that encourage 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.
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- 2.2.12 Public Issue. Advertisements expressing or advocating an opinion, position or viewpoint on matters about economic, political, religious or social issues.
- 2.2.12 SMART Graphics and References. Advertising that contains SMART graphics, logos or representations without the express written consent of SMART.

## 2.3 **Additional Requirements**

- 2.3.1 **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 of 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 tease ads that do identify the sponsor of those initial ads.

### 3. Procedures

3.1 All proposed transit advertising must be submitted to SMART for initial compliance review. The (position) will perform a preliminary evaluation of the submission to assess its compliance with this policy. The (position) may at any time discuss with the entity proposing the advertisement one or more revisions to an advertisement which, if taken, would bring it into conformity with this Advertising Policy.

3.2 In the event the (position) determines that a proposed advertisement does not comply with this Advertising Policy or is unable to make a compliance determination, the General Counsel will review the proposed advertisement for compliance with the guidelines set forth in this policy and will direct the (position) as to whether the proposed advertisement complies with this policy.

3.3 The (position) shall conduct a final review of the proposed advertising. The decision of the (position), to approve or reject any proposed advertising shall be final.

3.4 The (position) is responsible for the implementation of this Advertising Policy.