

REGIONAL TRANSIT ISSUE PAPER

Revised 11/10/16 – page 2
of issue paper and page 5 of
Policy

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Agenda Item No.	Board Meeting Date	Open/Closed Session	Item	Issue Date
5	11/14/16	Open	Action	11/10/16

Subject: Whether to Approve an Amended and Restated Policy Pertaining to Advertising on RT Facilities and Vehicles

ISSUE

Whether to approve an Amended and Restated Policy Pertaining to Advertising on RT Facilities and Vehicles

RECOMMENDED ACTION

Approve Resolution 16-11-_____, Repealing Resolution Nos. 04-12-0290 and 06-06-0098 and Approving an Amended and Restated Policy Pertaining to Advertising on RT Facilities and Vehicles.

FISCAL IMPACT

Expanding the permissible advertising to include alcohol could result in additional income to RT, which receives a portion of the revenue generated by advertising contracts for buses and shelters, if RT is receiving a revenue share payment that exceeds the Minimum Annual Guarantee.

DISCUSSION

In 2004, by Resolution 04-12-0290, the Board adopted an Advertising Policy to govern commercial and public service announcements on RT's Vehicles and Facilities. The policy was amended in 2006 by Resolution 06-06-0098 to refine the circumstances under which private non-profit agencies could place "Public Service Announcements."

As RT is expanding the locations for commercial advertising to include stations and light rail vehicles, Staff took the opportunity to revisit the policy and is recommending several revisions:

1. Permit Alcohol Advertising. Since its inception, RT's Advertising Policy has prohibited advertising of the sale or consumption of alcohol beverages. In addition to banning ads specifically for alcohol, this has also excluded some ads for bars and restaurants. RT's advertising contractor has reported that this results in a loss of revenue due to ads that must be rejected under the policy. Staff is recommending that the policy be amended to remove alcohol from the category of prohibited advertising. Alcohol ads that appear designed to encourage or promote underage drinking would continue to be prohibited under the "unlawful conduct" category.
2. Prohibit Marijuana Advertising. RT's current advertising policy does not specifically regulate marijuana advertising. RT has had one request for placement of a medicinal marijuana advertisement, which was withdrawn prior to an RT decision to allow or

Approved:

Presented:

Revised Final 11/10/16

General Manager/CEO

Acting VP of Communications and Partnerships

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disallow it under the advertising policy. With the passage of Proposition 64, RT anticipates additional requests for marijuana advertising. Because this is an evolving area, Staff recommends that the Board prohibit marijuana advertising for the moment, subject to reconsideration at a later date.

3. Prohibit Religious Advertising. Most explicitly religious advertising is already excluded under RT’s Policy due to the commercial advertising limitations. However, because many social services are offered through religious organizations, religious issues can be intertwined with public service announcements. The proposed addition would prohibit any ads that promote or oppose a religion, religious belief, or religious practice. Public Service Advertisements of services that are incidentally offered by religious organizations would be permitted.

4. Better Define Public Service Announcements (PSA). The existing advertising policy generally permits “commercial advertisements” and “public service announcements.” Presently a “public service announcement” is defined by reference to the entity that places the ad (must be a public entity or a 501(c)(3) non-profit), rather than its content. Staff is recommending that the policy be revised to specify that a PSA must relate to:
 - A community event hosted by a public entity;
 - Prevention or treatment of illnesses;
 - Promotion of safety or personal well-being;
 - Education or training;
 - Provision of children and family services; or
 - Provision of services and programs that provide support to low income citizens, senior citizens, and people with disabilities.

5. **Prohibit Electronic Smoking Products, Services and Devices.** Due to growing data indicating that electronic smoking (aka “vaping”) leads to tobacco smoking and nicotine addiction, particularly among juveniles, Staff is recommending an explicit prohibition on advertisement of Electronic Smoking, Products, Services and Devices.

By focusing the definition of PSA, RT can better regulate what might be termed “issue ads” that assert a position on a potentially-controversial social issue without offering meaningful services or information to the public.

RESOLUTION NO. 16-11-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

November 14, 2016

REPEALING RESOLUTION NOS. 04-12-0290 AND 06-06-0098 AND APPROVING AN AMENDED AND RESTATED POLICY PERTAINING TO ADVERTISING ON RT FACILITIES AND VEHICLES.

WHEREAS, Sacramento Regional Transit District (RT) has entered or will enter into licensing agreements with advertising companies whereby RT makes space available on RT vehicles and facilities for the placement of commercial advertising and public service announcements; and

WHEREAS, RT licenses space for advertising on its buses and bus shelters to create an additional source of operating revenue that will fund additional transit services and amenities; and

WHEREAS, RT's licensing agreements limit the type of advertisements that may be placed on RT bus shelters and vehicles so that those places do not become a public forum for the dissemination, debate, and/or discussion of public issues; and

WHEREAS, RT's licensing agreements prohibit certain types of advertising to promote a safe, convenient and pleasant environment for RT patrons and to maximize fare revenues by attracting and maintaining the patronage of passengers; and

WHEREAS, the RT Board desires to modify its existing policy (embodied in Resolution Nos. 04-12-0290 and 06-06-0098) pertaining to display of advertising on RT vehicles and facilities to establish an objective and enforceable standard for advertising that is consistently applied and that is consistent with the free speech guarantees of the United States and the State of California.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

Section 1: Public Purpose

In adopting this policy it is RT's declared intent and purpose to maximize advertising revenues provided that all of the following interests are preserved and furthered:

- A. Providing a safe, convenient and pleasant environment for RT patrons, which includes maximizing RT fare revenues by attracting and maintaining the patronage of passengers; and
- B. Protecting minors who use RT facilities and travel on RT's transportation system; and
- C. Avoiding any potential identification of RT with the point of view or message of the advertisement placed by a third party.

Section 2: **Public Forum**

In adopting this policy, it is RT's declared intent and purpose to not permit advertising that individually or in combination would cause any real or personal property owned or controlled by RT (hereinafter "RT Property") to become a public forum for the dissemination, debate, and/or discussion of public issues.

Section 3: **Advertising on RT Facilities and Vehicles by Permission**

Advertising placed by a third party on RT Property is not authorized unless permitted in accordance with the provisions of a license agreement approved by RT. Any license agreement approved by RT for the placement of advertising on RT Property must be consistent with the provisions of this policy. Pre-existing licensing agreements for advertising on RT Property will be amended, if necessary, to be consistent with this policy and to make any other changes that may equitably be required thereby.

Section 4: **Authorized Advertisements and Announcements**

Advertising placed by a third party on any RT Property must either be a commercial advertisement or a public service announcement. For the purposes of this policy:

A. A commercial advertisement is an advertisement that: (i) has as its primary purpose the promotion of a commercial transaction, such as the sale of real or personal property, services and/or entertainment, which is offered to the public generally and (ii) is not otherwise prohibited under Section 5.

B. A public service announcement is an announcement that:

1. Is directed to the general public or a significant segment of the public and relates to:
 - A community event hosted by a public entity;
 - Prevention or treatment of illnesses;
 - Promotion of safety or personal well-being;
 - Education or training;
 - Provision of children and family services; or
 - Provision of services and programs that provide support to low income citizens, senior citizens, and people with disabilities; and
2. Is placed by RT or a California public entity and is not otherwise prohibited under Section 5. A public service announcement must bear the following legend if the sponsor is not readily or easily identifiable from the content of the proposed announcement: "This message is sponsored by _____ (name of sponsor)"; or
3. Is placed by a non-profit corporation, if all of the following criteria are met: (i) The organization sponsoring the ad is qualified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code; (ii) The organization provides RT with a letter on the letterhead of a city, county, or city and county attesting that the primary purpose of the proposed announcement is to the public health, safety, or welfare or announces an upcoming event or a service provided by or

sponsored by a California public entity, which letter must be signed by the City Manager, County Executive or a department head; and (iii) The announcement includes the following text: "This message is sponsored by (name of non-profit)"; and

4. The announcement is not otherwise prohibited under Section 5.

Section 5: Viewpoint Neutral Limitations

The following viewpoint-neutral content-based limitations are established. No advertisement or announcement (hereinafter referred to as "Ad") is permitted on or may be maintained on any RT Property if it or information contained in it falls within one or more of the following categories:

- A. False, misleading, or deceptive. The Ad, or any material contained in it, is false, misleading, or deceptive.
- B. Unlawful goods or services. The Ad, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- C. Unlawful conduct. The Ad, or any material contained in it, promotes, depicts or encourages, or appears to promote, depict or encourage, unlawful behavior or activities.
- D. Endorsement. The Ad, or any material contained in it, implies or declares an endorsement by RT of any service, product or point of view, without prior written authorization of RT (through its General Manager/CEO).
- E. Obscenity. The Ad, or any material contained in it, contains obscene matter or any other matter that is prohibited under the provisions of California Penal Code Section 311 and following, as such laws may be amended or supplemented.
- F. Prurient Interests. The Ad, or any material contained in it, contains harmful matter or any other matter that is prohibited under the provisions of California Penal Code Section 313 and following, as such laws may be amended or supplemented.
- G. Profanity, Vulgarity, Riot. The Ad, or any material contained in it, is profane or vulgar, or presents a clear and present danger of causing a riot, disorder, or other imminent threat to public safety, peace or order.
- H. Community Standards. The Ad contains material that is so objectionable under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of, or interference with the transportation system.

- I. Libelous speech, Copyright infringement. The Ad, or any material contained in it, holds up an individual or groups of people to public ridicule, derision or embarrassment, or is libelous, or is an infringement of a copyright, trademark or registered mark.
- J. Tobacco. The Ad, or any material contained in it, promotes or depicts the sale or use of tobacco or tobacco-related products, except products that counteract symptoms of tobacco habituation.
- K. Marijuana. The Ad, or any material contained in it, promotes or depicts the sale or use of marijuana.
- L. Firearms. The Ad, or any material contained in it, directly or indirectly promotes the sale or use of a firearm or contains an image or depiction of a firearm.
- M. Political Campaign Speech. The Ad, or any material contained in it, contains political campaign speech. For purposes of these guidelines, the term “political campaign speech” is speech that (1) supports or opposes or appears to support or oppose a ballot measure, initiative, or referendum, or (2) refers to any candidate for public office.
- N. Religion. The Ad, or any material contained in it, promotes or opposes any religion, religious belief, or practice.
- O. Traffic Interference. The Ad, or any material contained in it, displays any word, phrase, symbol, or character likely to interfere with, mislead, or distract traffic, or conflict with any traffic control device.
- P. Distraction. The Ad, or any material contained in it, incorporates any rotating, revolving, or flashing devices, or any other moving parts.
- Q. Violence. The Ad, or any material contained in it, contains an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices associated in the advertisement with an act or acts of violence or harm on a person or animal.
- R. “Adult”-oriented goods or services. The Ad, or any material contained in it, promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC-17”, video games rated “A” or “M,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services.

- S. **Electronic Smoking Products, Services, or Devices.** The Ad, or any material contained in it, promotes or encourages use of electronic or battery-operated devices that deliver vapors for inhalation.
- S.T. **Special provisions regarding web addresses and telephone numbers.**
The Ad, or any material contained in it, directs viewers to a website or telephone number that contains material that violates this Policy.
- T.U. **Public Forum**
The Ad, or any material contained in it, if posted individually or in combination with other Ads, causes RT Property to become a public forum for the dissemination, debate, and/or discussion of public issues.
- U.V. **Disclaimer or Attribution**
The Ad fails to contain any disclaimer or attribution as required under Section 6 and 7 of this Policy.

Section 6: Disclaimer

RT reserves the right, in all circumstances, to require an advertisement or announcement on any real or personal property under RT's control to include a disclaimer stating that it is not sponsored by, and does not necessarily reflect the views of RT.

Section 7: Attribution

All advertisements or announcements on RT Property must clearly and unambiguously identify the person or entity that has sponsored, paid for, or caused the advertisement or announcement to be placed on RT Property. Website addresses or phone numbers without more, are insufficient to satisfy this section.

Section 8: Moratorium

At the discretion of RT's General Manager/CEO, RT may at any time, subject to any contractual obligations, declare a complete ban or moratorium on all advertising on any real or personal property under RT's control and direct that no advertisements or announcements of any kind, other than RT advertisements or announcements, be accepted for display and posting.

Section 9: **Repeal of Resolution Nos. 04-12-0290 and 06-06-0098**

Effective upon the approval of this Resolution, Resolution Nos. 06-12-0290 and 06-06-0098 are hereby repealed.

JAY SCHENIRER, Chair

A T T E S T:

HENRY LI, Secretary

By: _____
Cindy Brooks, Assistant Secretary