



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>R. M. Proulx</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/15/2018		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Catherine Westphall Dept: Marketing and Research <i>Catherine Westphall</i> Signature/Date: Nov. 27, 2018	General Counsel <i>[Signature]</i> 11/27/18 []	Controller/Treasurer <i>Chris Gao</i> 11/28/18 []	District Secretary []	BARC <i>[Signature]</i> 11/27/2018 []

Advertising Content Guidelines

PURPOSE:

To seek approval and Board adoption of revised Advertising Content Guidelines.

DISCUSSION:

In light of controversial advertisements that appeared on BART in 2018, members of the Board have asked for reconsideration of BART's advertising guidelines.

The purpose of the potential changes to the Guidelines is to maintain BART advertising space as a nonpublic forum to meet District objectives related to safety and security, providing a welcoming environment, maintaining and increasing ridership and ad revenue, avoiding unintentional association with viewpoints expressed in ads, and reducing the diversion of resources from other BART objectives. New guidelines, if adopted, will apply to all new ad sales beginning 30 days after the date of adoption.

On November 15, 2018, two options were presented to the Board as an informational item. Staff recommends adoption of Option A as the more comprehensive of the two Options, A and B. Minor clarifications have been made to Option A to more inclusively allow ads related to:

- BART programs, products, services, or partnerships (Option A, section A.2);
- Museums, theaters, or galleries (Option A, section A.3.c);
- Visual or performing arts, fairs, or festivals (Option A, section A.3.g);
- Planetariums (Option A, section A.3.q); and
- Government-designated historic sites (Option A, section A.3.s).

FISCAL IMPACT:

The District currently has an Agreement with OUTFRONT Media to sell advertising in the BART system and in several MUNI Metro stations. Under the current Agreement - which expires June 30, 2029 - OUTFRONT forecasts payments to the District totaling \$272 million. Of this total, \$160 million are base payments and the balance depends on sales volume. It is anticipated that Option A would have a small impact on these revenues to the District (less than 2%).

ALTERNATIVES:

1. The Board could adopt Option B as an alternative; however, staff recommends Option A as the more comprehensive of the two options.
2. Alternatively, the Board could reject both options, and keep the current Advertising Content Guidelines or direct staff to prepare additional options for Board consideration.

RECOMMENDATION:

Adopt Advertising Content Guidelines Option A.

MOTION:

That the Board adopt Advertising Content Guidelines Option A, to be applied to all new ad sales beginning 30 days after the date of adoption.

BART ADVERTISING CONTENT GUIDELINES – OPTION A

OBJECTIVE

Through these guidelines, the San Francisco Bay Area Rapid Transit District (“BART”), in keeping with its primary function as a provider of public transportation, does not intend to convert its property into an open public forum for public discourse, debate, or expressive activity. In furtherance of the discrete and limited objectives described below, BART shall retain control over the nature of advertisements accepted for posting in the BART system, and maintain its advertising space as a nonpublic forum with limited content neutral subject matter restrictions. In setting its advertising standards, BART seeks to meet the following goals and objectives:

- (a) Maintain a secure and orderly operating environment;
- (b) Maintain a safe and welcoming environment for all BART passengers, including minors who use the BART system, without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or veterans’ status, and avoid claims of discrimination from the public;
- (c) Maintain and increase ridership and fare revenue;
- (d) Avoiding unintentional appearance of favoritism, association with, or bias towards any group, movement, or viewpoint;
- (e) Preserve the marketing potential of the advertising space by avoiding content that the community could view as inappropriate or harmful to the public;
- (f) Increase advertising revenue to help support BART service to the public;
- (g) Avoid imposing demeaning or disparaging messages on a captive audience; and
- (h) Reduce the diversion of resources from BART objectives caused by controversy surrounding advertisements.

BART retains the unqualified right to display, on or in its facilities, advertisements and notices that pertain to BART operations and promotions, consistent with the provisions of its agreement with the Advertising Contractors. Promotional materials may include, but not be limited to, internal marketing collateral, BART branding campaigns, and co-promotional campaigns with third parties. Consistent with the status of the BART premises to which this policy pertains as a nonpublic forum, BART does not accept free public service announcements. These Guidelines shall be effective upon adoption and shall be enforced to the degree that it does not impair the obligations of any executed contract. BART reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, facilitate its primary transportation function, to ensure the safety or security of BART customers and BART facilities, or to fulfill the goals and objectives referred to herein. All provisions of these Guidelines shall be deemed severable.

For purposes of understanding the meaning of advertisements, BART may refer to information beyond the advertisement including, but not limited to, dictionaries, reviews by authoritative bodies,

or public information regarding the advertiser. BART shall assess whether an independent, reasonably prudent person, knowledgeable of BART's customer profile and using prevailing community standards, would believe that the advertisement complies with the provisions of these Guidelines. In the case of advertisements that use double entendres or multiple interpretations, all meanings of the advertisement must comply with these Guidelines. BART reserves the right, in all circumstances, to require that an advertisement in the BART system include a disclaimer indicating that such advertising is paid for by the advertiser, stating that "The views expressed in this advertisement do not reflect the views of BART," or a similar statement, and BART may set minimum size standards for the disclaimer to ensure legibility.

ADVERTISING STANDARDS

A. Permitted Advertising Categories

The BART system is limited to only the following categories of advertising:

1. **Commercial Advertising.** Paid communications from a for-profit entity or entities.
2. **Governmental Advertising.** Paid communications from public entities created by government action with the intent to advance a specific government purpose as well as communications from BART related to BART programs, products, services, or partnerships.
3. **Public Service Announcements.** Paid communications from any entity not described under Sections A1 or A2 of these guidelines which promotes or furnishes any of the following goods or services:
 - a. The prevention or treatment of an illness, injury, condition, or syndrome recognized by the most recent Diagnostic and Statistical Manual ("DSM") or the Centers for Disease Control ("CDC");
 - b. The recruitment or solicitation of participants for medical, psychological, or behavioral studies;
 - c. Museums, theaters, or galleries which are open to the general public;
 - d. Licensed or accredited pre-K through 12 education programs or services;
 - e. Colleges or universities that have received regional or statewide accreditation;
 - f. Vocational or trade programs;
 - g. Visual or performing arts, fairs, or festivals, provided that the venue or event is open to the general public and has a valid operating permit issued by a governmental entity;
 - h. Environmental matters;
 - i. Provision of services and programs that provide support to low income citizens, victims of abuse, families, youth, immigrants, historically disadvantaged populations, senior citizens, veterans, people identifying as LGBT, or people with disabilities;
 - j. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations;
 - k. Diet or nutrition;
 - l. Sporting events, sporting activities, or services related to sports;
 - m. Travel services, information, or promotion;
 - n. Licensed farmers markets, public botanical gardens, or public parks;
 - o. Commercial or professional trade organizations;

- p. Credit unions, investment entities, or financial services;
- q. Zoos, planetariums, or aquariums;
- r. Governmentally funded public broadcast entities; or
- s. Government-designated historic sites.

B. Prohibited Advertising Categories

Notwithstanding any provisions in Section A of these Guidelines, advertising content that falls into one or more of the following categories is prohibited in the BART system based on inconsistency with the goals and objectives described above:

1. **Political or Public Issue Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
 - a. Supporting or opposing a political party;
 - b. Supporting or opposing any political or judicial office holder;
 - c. Supporting or opposing a proposed ballot measure;
 - d. Supporting or opposing a law, ordinance, regulation, or proposed legislation;
 - e. Supporting or opposing a constitutional amendment or amendments;
 - f. Supporting or opposing an active governmental investigation;
 - g. Supporting or opposing ongoing civil litigation;
 - h. Supporting or opposing ongoing criminal prosecution;
 - i. Supporting or opposing a judicial ruling or rulings;
 - j. Supporting or opposing a strike, walkout, boycott, protest, divestment, embargo, or groupings thereof;
 - k. Supporting or opposing the election of any candidate or group of candidates;
 - l. Supporting or opposing a policy or policies of a named or identified governmental, business, or nonprofit entity other than the policies of the advertiser itself;
 - m. Supporting or opposing any foreign nation or group of nations or any policy of a foreign nation or group of nations other than the policies of the advertiser itself;
 - n. Depicting an image or images of one or more living political or judicial figures or depicting an image of one or more political or judicial figures that have died within the last five (5) years;
 - o. Referring to one or more living political or judicial figures or referring to one or more political or judicial figures that have died within the last five (5) years; or
 - p. Using a slogan, symbol, slogans, or symbols associated with any prohibited category of this section B1.

2. **Religious Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
 - a. Promoting or opposing any religion, atheism, spiritual beliefs, or agnosticism, inclusive of images depicting religious iconography occupying 15% or more of any advertisement frame.

3. **Obscene or Vulgar Content.** Any material that, when viewed as a whole, can reasonably be regarded as:
 - a. Meeting the standards for obscenity as set forth in the California Penal Code Section 311; or
 - b. Utilizing words, text, symbols, or images recognized by the community as extremely vulgar, indecent, or profane for display in a public setting that includes minors.
4. **Unlawful, Unsafe, or Disruptive Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as encouraging or promoting any of the following:
 - a. The sale, use, possession, or distribution of goods or services that are unlawful;
 - b. A contest or contests that violate applicable law;
 - c. Unlawful or unsafe behavior;
 - d. Detrimental actions to the maintenance and safe operation of public transportation; or
 - e. Graffiti or vandalism.
5. **False, Misleading, or Tortious Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as:
 - a. False or fraudulent;
 - b. Deceptive or misleading;
 - c. Copyright, trademark, or patent infringement;
 - d. Constituting a tort of libel, trade libel, public disclosure of private facts, intrusion into private matters, misappropriation of a person's name or likeness, or depiction in a false light; or
 - e. BART graphics, logos, or representations without the express written consent of BART, or which implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization by BART.
6. **Content Advertising Specified Goods or Services.** Any material that directly advertises any of the following categories of goods or services:
 - a. Alcohol, or any material that depicts the consumption of alcoholic beverages or signs of excessive alcohol intoxication;
 - b. Firearms or non-firearm weapons;
 - c. Tobacco, or depictions of tobacco-related products, e-cigarettes, products that simulate smoking, or products that resemble tobacco products; or
 - d. "Adult"-oriented goods or services, including the use of brand names, trademarks, or slogans, for goods or services rated "X" or NC-17 by the Motion Picture Association of America ("MPAA"), adult book stores, adult video stores, nude dance clubs, adult telephone services, adult internet sites, or escort services.

Notwithstanding items 6.a. and 6.c. above, depictions of tobacco products or alcohol consumption are permissible to the extent that the purposes of such depictions are non-commercial and are otherwise advancing a scientific, medical, journalistic, artistic, or public health objective.

7. **Inappropriate, Offensive, or Violent Content.** Any material that, when viewed as a whole, can reasonably be regarded as depicting or describing any of the following:
- a. A graphic or realistic dead, mutilated, or disfigured human body or bodies;
 - b. A graphic or realistic human body part or body parts in a state of mutilation, dismemberment, decomposition, or disfigurement;
 - c. A fetus or fetuses in a state of mutilation, dismemberment, decomposition, or disfigurement;
 - d. Human or animal excrement, vomit, or graphic depictions of blood or viscera;
 - e. An act of animal abuse as defined in California Penal Code Section 597;
 - f. The act of killing, mutilating, or disfiguring human beings or animals;
 - g. Genocide, mass-murder, or war crimes recognized under the laws and customs of war;
 - h. Weapons or violent implements, if either appear to be aimed or pointed at the viewer;
 - i. Images of firearms, non-firearm weapons, or threatening sharp-edged device in the foreground of an image or occupying 15% or more of any advertisement image or frame;
 - j. Graphic violence or graphic sexual harassment;
 - k. Denigrating public transportation or the mission of BART;
 - l. Graphic images that, under contemporary community standards, would be reasonably considered extremely frightening to minors or the elderly; or
 - m. Material that is insulting, degrading, disparaging, demeaning, or disrespectful; or material that belittles or is dismissive of genocide, war crimes, or slavery that is so objectionable under contemporary community standards as to make it reasonably foreseeable that the material will result in harm to (including loss of ridership), disruption of, or interference with the transportation system.

ADVERTISING PROGRAM ADMINISTRATION

(a) BART may, from time to time, select "Advertising Contractors" who shall be responsible for the daily administration of BART's advertising programs, in a manner consistent with these Guidelines and with the terms and conditions of their agreements with BART.

(b) BART shall designate an employee as its "Contract Administrator" to be the primary contact for the Advertising Contractors on issues related to advertising content. Questions regarding the terms, provisions, and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

(c) The Advertising Contractors shall comply with these Guidelines, and shall review all advertising with reference to them. If there is any question as to whether a proposed advertisement falls into a prohibited category--as outlined in these Guidelines--the Advertising Contractors shall refer that advertisement to the Department Manager of Marketing and Research, or their designee for review and consideration. The Department Manager of Marketing and Research or their designee shall determine whether the proposed advertising will be accepted. In the event that the advertising is rejected, the advertiser may request in writing that the decision be reconsidered. Upon such request, the Department Manager of Marketing & Research shall consult with BART's Office of the General Counsel and with the Assistant General Manager for External Affairs, or the officer designated by the General Manager for this purpose. The Assistant General Manager for External Affairs or General Manager designee, on the basis of such consultation, shall determine whether the proposed advertising will be accepted or rejected.

BART ADVERTISING CONTENT GUIDELINES – OPTION B

OBJECTIVE

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- (c) Maintain and increase ridership and fare revenue;
- (d) Avoiding unintentional appearance of favoritism, association with, or bias towards any group, movement, or viewpoint;
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 - e. Graffiti or vandalism.
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 - b. Deceptive or misleading;
 - c. Copyright, trademark, or patent infringement;
 - d. Constituting a tort of libel, trade libel, public disclosure of private facts, intrusion into private matters, misappropriation of a person's name or likeness, or depiction in a false light; or
 - e. BART graphics, logos, or representations without the express written consent of BART, or which implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization by BART.

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 - b. Firearms or non-firearm weapons;
 - c. Tobacco, or depictions of tobacco-related products, e-cigarettes, products that simulate smoking, or products that resemble tobacco products; or
 - d. "Adult"-oriented goods or services, including the use of brand names, trademarks, or slogans, for goods or services rated "X" or NC-17 by the Motion Picture Association of America ("MPAA"), adult book stores, adult video stores, nude dance clubs, adult telephone services, adult internet sites, or escort services.

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