

ATTACHMENT E

BART ADVERTISING CONTENT GUIDELINES

OBJECTIVE

Through this policy, the San Francisco Bay Area Rapid Transit District (BART) intends to establish uniform, viewpoint-neutral standards for the display of advertising within all BART facilities (including, but not limited to, stations, track ways, and railcars). 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 travel on or come in contact with the BART system.
- (c) Maximize advertising and fare revenue. In no event shall any advertising be installed without payment of the prevailing commercial rate.
- (d) Avoid identifying or associating BART, its employees, board members, or its contractors with the advertisements or the viewpoints of advertisers.

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, or to facilitate its primary transportation function, or to fulfill the goals and objectives referred to herein. All provisions of these Guidelines shall be deemed severable.

BART is committed to providing an environment free of discrimination. It is also the District's policy and practice to assure equal application of these guidelines without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or Vietnam Era veterans' status.

ADVERTISING PROGRAM ADMINISTRATION

- (a) BART shall, 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. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections, and posting of advertising displays on or in all BART facilities including, but not limited to, stations, track ways, and railcars.
- (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 Contract Administrator for review and consideration. The Contract Administrator, together with the Department Manager of Marketing & Research, shall determine whether the proposed advertising will be accepted. In the event that the advertising is rejected, the party or parties proposing the advertising 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 Executive Manager – External Affairs Office or the officer designated by the General Manager for this purpose. The Executive Manager – External Affairs Office or General Manager designee, on the basis of such consultation, shall determine whether the proposed advertising will be accepted or rejected.

BART OPERATIONS and PROMOTIONS

BART has 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 shall include, but not be limited to, internal marketing collateral, BART branding campaigns, and co-promotional campaigns with third parties.

DISCLAIMERS

BART reserves the right, in all circumstances, to require that an advertisement on BART property, its stations, its railcars or other facilities include a disclaimer indicating that such advertising is paid for by the advertiser. BART may require the Advertising Contractors to maintain a supply of decals imprinted with a disclaimer to this effect to apply to ads that state a point of view. The Advertising Contractors will apply these decals in a viewpoint-neutral manner.

ADVERTISING STANDARDS

- (a) BART intends that its facilities constitute nonpublic forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid advertising will not be permitted for placement or display on or in BART facilities. Unpaid advertisements will not be permitted.
- (b) BART shall not display or maintain any advertisement that falls within one or more of the following categories:
 - (i) Demeaning or Disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For

purposes of determining whether an advertisement contains such material, BART will determine whether a reasonably prudent person, knowledgeable of BART's customer profile 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, an individual or group of individuals.

- (ii) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, or depicts such products.
- (iii) Alcoholic Beverages. The advertisement promotes or encourages the consumption of alcoholic beverages including, but not limited to beer, wine, and distilled spirits, or depicts such products.
- (iv) Profanity. The advertisement contains words recognized by the community as vulgar, indecent or profane for display in a public setting that includes minors.
- (v) Graffiti. The advertisement contains graphics or language that promotes, resembles or otherwise encourages graffiti or vandalism
- (vi) Inappropriate Graphics. The advertisement contains graphics recognized by the community as inappropriate including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
- (vii) Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
- (viii) Violence. The advertisement either (a) contains an image or description of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage, violence or violent behavior.
- (ix) Unlawful Goods or Services. The advertisement, 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.
- (x) Unlawful or Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, or behavior that promotes activities which are detrimental to the maintenance and safe operation of the BART system.

- (xi) False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is clearly false, misleading, or deceptive.
- (xii) Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject BART to litigation.
- (xiii) Obscenity or Nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
- (xiv) Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these Guidelines, the term “minor” shall have the meaning contained in California Penal Code Section 313.
- (xv) “Adult”-oriented Goods or Services. The advertisement 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,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult internet sites, and escort services.
- (xvi) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization of the Contract Administrator.
- (xvii) Injurious to BART and its Mission. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, denigrates BART or promotes alternatives to BART in a manner that directly impairs BART ridership and/or revenue.