


Staff Summary

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| Subject Adoption of Advertising Policy with Revised Advertising Standards |
| Department Real Estate |
| Department Head Name Jeffrey B. Rosen |
| Department Head Signature  |
| Project Manager/Division Head Jeffrey B. Rosen |

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| Date April 27, 2015 |
| Vendor Name |
| Contract Number |
| Contract Manager Name |
| Table of Contents Ref # |

| Board Action | | | | | |
|--------------|---------------|---------|----------|------|-------|
| Order | To | Date | Approval | Info | Other |
| 1 | Finance Comm. | 4/27/15 | | | |
| 2 | Board | 4/29/15 | | | |
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| Internal Approvals | | | |
|--------------------|---|-------|---|
| Order | Approval | Order | Approval |
| 3 | Chief of Staff  | | |
| 2 | Chief Financial Officer  | 1 | Legal  |
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Purpose:

To obtain Board approval of the MTA Advertising Policy annexed hereto that includes revisions to MTA's Advertising Standards.

Discussion:

The proposed MTA Advertising Policy would establish uniform, reasonable, and viewpoint-neutral standards for the display of advertising in and on the facilities, vehicles and other property (together "Property") of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (together "MTA") and convert the MTA's Property from a designated public forum into a limited public forum by excluding advertising of a political nature.

The MTA's mission is to provide safe, reliable, and efficient public transportation and crossings within its service area. The MTA's transportation operations are funded by a combination of federal, state, and local funds, including grants and taxes, as well as fare box and toll revenue. Advertising revenues are an important supplemental source of revenue that supports the MTA's transportation operations. The MTA's purpose in allowing paid advertising to be displayed in and on the Property is to maximize such supplemental revenue to support transportation operations.

By accepting paid advertising for display in and on the Property, the MTA is acting in a proprietary capacity as a provider of public transportation and crossings seeking to maximize advertising revenue to support its transportation operations. Starting from the Effective Date of the new Policy (April 29, 2015), the MTA does not intend that the advertising permitted to be displayed in and on the Property be created, designated, or used as a public forum for expressive activities or general discourse or opinions. In furtherance of the MTA's purpose of maximizing advertising revenue, the MTA in its proprietary capacity would be limiting advertisements it will accept for display in and on the Property to paid commercial advertising, certain public service announcements that will help build goodwill for the MTA among its riders and the public, and governmental messages. The MTA would continue to retain control over the advertising that it will allow to be displayed in and on the Property by subjecting all proposed advertisements to the Advertising Standards included in the proposed MTA Advertising Policy. MTA expressly intends that the advertising permitted to be displayed in and on the Property be a limited public forum.

In establishing and enforcing these revised Advertising Standards, the MTA seeks to fulfill the following goals and objectives:

- Maximize advertising revenue
- Maximize ridership and fare revenue
- Maintain a secure and orderly operating environment
- Maintain a safe and welcoming environment for all MTA employees and customers, including minors, who use MTA's subways, buses, commuter trains and crossings
- Minimize the resources and attention that have been expended to resolve disputes relating to the permissibility of certain political advertisements, thus unnecessarily diverting the organization from performing its mission
- Avoid identification of MTA with, and the appearance of MTA endorsement of, the advertisements of non-MTA parties displayed in or on the Property, including the associated messages, products, services, or events being proposed or promoted

MTA received approximately \$138 million in advertising revenues in 2014. It is estimated that the revenue received by MTA in 2014 from advertisements that would not be accepted under the proposed MTA Advertising Policy would have been under \$1 million or less than 1% of total annual revenues.

Recommendation:

It is recommended that the Board approve and adopt the annexed MTA Advertising Policy.

MTA ADVERTISING POLICY

I. PURPOSE

- A. To establish uniform, reasonable, and viewpoint-neutral standards for the display of advertising in and on the facilities, vehicles and other property (together “Property”) of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (together “MTA”).
- B. To convert the MTA’s Property from a designated public forum into a limited public forum by excluding advertising of a political nature after the Effective Date.

II. SCOPE

This policy applies to all advertisements proposed to be displayed in and on the Property on or after the Effective Date set forth below.

III. OBJECTIVE

The MTA’s mission is to provide safe, reliable, and efficient public transportation and crossings within its service area. The MTA’s transportation operations are funded by a combination of federal, state, and local funds, including grants and taxes, as well as fare box and toll revenue. Advertising revenues are an important supplemental source of revenue that supports the MTA’s transportation operations. The MTA’s purpose in allowing paid advertising to be displayed in and on the Property is to maximize such supplemental revenue to support transportation operations.

By accepting paid advertising for display in and on the Property, the MTA is acting in a proprietary capacity as a provider of public transportation and crossings seeking to maximize advertising revenue to support its transportation operations. Starting from the Effective Date, the MTA does not intend that the advertising permitted to be displayed in and on the Property be created, designated, or used as a public forum for expressive activities or general discourse or opinions. In furtherance of the MTA’s purpose of maximizing advertising revenue, the MTA in its proprietary capacity is limiting advertisements it will accept for display in and on the Property to paid commercial advertising, certain public service announcements that will help build goodwill for the MTA among its riders and the public, and governmental messages. The MTA retains control over the advertising that it will allow to be displayed in and on the Property by subjecting all proposed advertisements to the Advertising Standards below. MTA expressly intends that the advertising permitted to be displayed in and on the Property be a limited public forum.

In establishing and enforcing these Advertising Standards, the MTA seeks to fulfill the following goals and objectives:

- Maximize advertising revenue
- Maximize ridership and fare revenue
- Maintain a secure and orderly operating environment

- Maintain a safe and welcoming environment for all MTA employees and customers, including minors, who use MTA's subways, buses, commuter trains and crossings
- Minimize the resources and attention that have been expended to resolve disputes relating to the permissibility of certain political advertisements, thus unnecessarily diverting the organization from performing its mission
- Avoid identification of MTA with, and the appearance of MTA endorsement of, the advertisements of non-MTA parties displayed in or on the Property, including the associated messages, products, services, or events being proposed or promoted

IV. ADVERTISING STANDARDS

A. Permitted Advertising

The MTA may display advertisements that fall under one or more of the following categories:

1. Commercial advertising. Paid advertisements that propose, promote, or solicit the sale, rent, lease, license, distribution, or availability of, or some other commercial transaction concerning, goods, products, services, or events for the advertiser's commercial or proprietary interest, or more generally promote an entity that engages in such activities.

2. Governmental advertising. Notices or messages from the MTA that promote the MTA or any of its functions or programs, and also paid notices or messages of the United States government, the State of New York and its agencies, the City of New York and its departments, or of any of the County governments within the Metropolitan Commuter Transportation District that advance specific governmental purposes.

3. Public service announcements. Public service announcements not otherwise prohibited under Section IV.B of this Policy, which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public and relate directly to:

- Prevention or treatment of illnesses;
- Promotion of safety or personal well-being;
- Education or training;
- Art or culture;
- Provision of children and family services;
- Provision of services and programs that provide support to low income citizens, senior citizens, or people with disabilities; or
- Solicitation by broad-based contribution campaigns that provide funds to multiple charitable organizations active in the above-listed areas.

B. Prohibited Advertising

Notwithstanding the foregoing, the MTA will not accept any advertisement for display in or on the Property if it falls within one or more of the following categories:

1. Promotes or opposes a political party, or promotes or opposes any ballot referendum or the election of any candidate or group of candidates for federal, state, judicial, or local government offices.
2. Is political in nature, including but not limited to advertisements that either:
 - a. Are directed or addressed to the action, inaction, prospective action or policies of a governmental entity, except as permitted in Sections IV.A.2–IV.A.3 of this Policy; or
 - b. Prominently or predominately advocate or express a political message, including but not limited to an opinion, position, or viewpoint regarding disputed economic, political, moral, religious or social issues or related matters, or support for or opposition to disputed issues or causes.
3. Is false, misleading, or deceptive.
4. Promotes unlawful or illegal goods, services, or activities, or involves other unlawful conduct.
5. Falsely implies or declares an endorsement by the MTA of any service, product, or point of view.
6. Encourages or depicts unsafe behavior with respect to MTA’s transportation operations, such as failure to comply with normal safety precautions in awaiting, boarding, riding upon or debarking from MTA vehicles, or is otherwise directly adverse to the commercial, administrative or operational interests of the MTA as a business.
7. Depicts or describes in a patently offensive manner sexual or excretory activities so as to satisfy the definition of obscene material as contained in New York Penal Law § 235.00, as such provision may be amended, modified, or supplemented from time to time.
8. Contains material, which, if sold or loaned to a minor for monetary consideration with knowledge of its character and content, would give rise to a violation of New York Penal Law § 235.21, which prohibits the dissemination of indecent material to minors, as such provision may be amended, modified, or supplemented from time to time.
9. Contains material, which, if displayed with knowledge of its character and content, would give rise to a violation of New York Penal Law § 245.11, which prohibits the public display of offensive sexual material, as such provision may be amended, modified, or supplemented from time to time.
10. Promotes tobacco or any tobacco-related product.

11. Contains an image of a person who appears to be a minor in sexually suggestive dress, pose, or context.

12. Contains material the display of which the MTA reasonably foresees would imminently incite or provoke violence or other immediate breach of the peace, and so harm, disrupt, or interfere with safe, efficient, and orderly transit operations.

13. Contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MTA will determine whether a reasonably prudent person, knowledgeable of the MTA's ridership and using prevailing community standards, would believe that the advertisement contains material that is abusive to, or debases the dignity of, an individual or group of individuals.

14. Contains sexually explicit material that appeals to the prurient interest in sex or is so violent, frightening, or otherwise disturbing as to reasonably be deemed harmful to minors.

15. Promotes an escort service or sexually oriented business.

C. **Additional Provisions Relating to Advertisements**

To avoid identification of the MTA with messages or images contained within advertisements displayed in and on the Property and to avoid the appearance of MTA endorsement of goods, products, services, events by advertisers, advertisements shall readily and unambiguously identify the person, corporation, or entity paying for the advertisement. An advertiser may, at the MTA's discretion, be required to include in the advertisement a statement explicitly identifying the person, corporation, or entity paying for the advertisement. An advertiser may also, at the MTA's discretion, be required to incorporate additional language to avoid the appearance of MTA endorsement.

V. REVIEW OF ADVERTISING PROPOSED FOR DISPLAY IN OR ON THE PROPERTY

1. Before accepting an advertisement for display in or on the Property, the advertising contractor shall review such proposed advertisement to determine whether the advertisement complies with the Advertising Standards.

2. If the advertising contractor determines that a proposed advertisement does not, or may not, comply with the Advertising Standards it shall promptly notify the Director of MTA Real Estate (or a designee) in writing of its determination and the reason for its determination.

3. If the Director of Real Estate determines, following receipt and consideration of such recommendation, that a proposed advertisement does not comply with the Advertising Standards, the advertiser shall be notified by the advertising contractor. The advertising contractor, in consultation with the Director of Real Estate, may discuss with the advertiser revisions to the advertisement to try to bring the advertisement into compliance with the Advertising Standards, and the advertiser may submit a revised advertisement to the advertising contractor for review.

3. If the advertiser and the advertising contractor do not reach agreement with regard to a revision of the advertisement, or the Director of Real Estate determines that no appropriate revision would bring the advertisement into compliance with the Advertising Standards, or the advertiser chooses not to submit a revised advertisement, the advertiser may request a final determination from the Director of Real Estate. The Director of Real Estate, in reaching a final determination, may consult with the advertising contractor, or with the MTA General Counsel, and the Chairman and Chief Executive Officer, or their designees, or with any other individuals, and may consider any materials submitted by the advertiser. The Director of Real Estate shall advise the advertiser and the advertising contractor of the final determination in writing.

VI. SEVERABILITY

If any section, subsection, sentence, clause, phrase or other portion of this Policy is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such invalidity shall not affect the validity of the remaining portions of this Policy, which remaining portions shall continue in full force and effect.

VII. EFFECTIVE DATE

This Advertising Policy is effective as of April 29, 2015.