

THIS PRINT COVERS CALENDAR ITEM NO. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Amending the SFMTA's Advertising Policy to revise the advertising standards to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

SUMMARY:

- The SFMTA Board adopted the SFMTA's original Advertising Policy in February 2004.
- The SFMTA authorizes advertising on SFMTA property and on transit shelters covered under contracts with the SFMTA for the purpose of generating revenue to support SFMTA operations.
- Both the current Transit Shelter Advertising Agreement with Clear Channel Outdoor and the current Agreement for Advertising on SFMTA Vehicles and Other Property with Intersection (formerly Titan Outdoor) require the contractors to comply with the SFMTA's Advertising Policy.
- The proposed amendment would change the existing Advertising Policy's advertising standards to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.
- Due to uncertainty in the state and local regulatory environment for cannabis and cannabis-related products and businesses, the SFMTA is proposing to prohibit this type of advertising at this time and would likely revisit this matter in approximately six months, when the regulatory environment clarifies.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Advertising Policy

APPROVALS:

		DATE
DIRECTOR	 _____	<u>11/16/2017</u>
SECRETARY	 _____	<u>11/14/2017</u>

ASSIGNED SFMTAB CALENDAR DATE: November 21, 2017

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PURPOSE

Amending the SFMTA's Advertising Policy to revise the advertising standards to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

- Goal 3: Improve the environment and quality of life in San Francisco
- Objective 3.5: Reduce capital and operating structural deficits

This item will support the following Transit First Policy Principle:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

Background

The SFMTA authorizes advertising on SFMTA property, including transit vehicles and shelters, under contracts with Clear Channel Outdoor and Intersection which generate revenue to support SFMTA operations. However, such advertising is not intended to interfere with the SFMTA's primary mission of delivering public transit or performing other duties to maintain the City's transportation network.

The SFMTA Board approved the original Advertising Policy at its February 3, 2004 meeting. At that time, the SFMTA Board declared that it was in the best interests of the SFMTA to adopt an official policy. On January 16, 2007, October 16, 2007, October 15, 2013 and April 4, 2017, the SFMTA Board approved amendments to this policy to clarify certain aspects and provide additional requirements, including a disclaimer statement and prior SFMTA approval of pilot programs or experimental advertising, to add a purpose statement and findings in support of the Advertising Policy and to prohibit advertisements that, among other things, concern a political or public issue, contain profanity or violent descriptions or images, are intended to be insulting, degrading, disparaging, demeaning or offensive, are reasonably likely to be harmful or disruptive to the SFMTA's transit system, encourage or depict unsafe transit behavior, or are adverse to the interests of the SFMTA.

The current Transit Shelter Advertising Agreement with Clear Channel Outdoor continues through December 9, 2022, with a five-year option to extend at the sole discretion of the City and the SFMTA, and the current Agreement for Advertising on SFMTA Vehicles and Other

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Property with Intersection (formerly Titan Outdoor) expires on June 30, 2019, with two five-year options to extend at the sole discretion of the City and the SFMTA. Both contractors are required to comply with the SFMTA's Advertising Policy including any amendments adopted by the SFMTA Board.

Proposed Amendments to the Advertising Policy

Due to uncertainty in the state and local regulatory environment for cannabis and cannabis-related products and businesses, the SFMTA is proposing to prohibit commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services at this time. The SFMTA will likely revisit this policy decision in approximately six months, when the regulatory environment clarifies. The proposed amendment to the Advertising Policy would revise the permitted advertising content to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

STAKEHOLDER ENGAGEMENT

The SFMTA has received a number of complaints from customers and others about cannabis-related advertising currently on SFMTA property. The proposed Advertising Policy revisions are intended to respond to these complaints and to provide an opportunity for the regulatory environment to clarify.

ALTERNATIVES CONSIDERED

The alternatives to approving this amended Advertising Policy are to keep the current Advertising Policy or to amend it in a different way.

FUNDING IMPACT

Both advertising contracts include a minimum annual guarantee (MAG) and a revenue share component (65% for Intersection and 55% for Clear Channel Outdoor). If revenues exceed the MAG, then the SFMTA receives additional revenue from the contractors through the revenue share. The contractors have advised the SFMTA that the market for cannabis and cannabis-related products and businesses is expected to grow. By prohibiting this type of advertisement, the SFMTA could potentially forgo revenues through the revenue share if sales of advertisements would have pushed revenues above the MAG.

The SFMTA's advertising contractors will be allowed to post advertising for cannabis and any cannabis-related products and businesses that have already been sold.

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ENVIRONMENTAL REVIEW

On March 29, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the Communications Agreement is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

The City Attorney’s Office has reviewed this report.

RECOMMENDATION

SFMTA staff recommends that the SFMTA Board of Directors amend the SFMTA’s Advertising Policy to revise the advertising standards to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted the SFMTA's initial Advertising Policy (Policy) in February 2004; and,

WHEREAS, The SFMTA authorizes advertising on SFMTA property, including transit vehicles and shelters, under contracts with Clear Channel Outdoor and Intersection which generate revenue to support SFMTA operations; and,

WHEREAS, Both the current Transit Shelter Advertising Agreement with Clear Channel Outdoor and the current Agreement for Advertising on SFMTA Vehicles and Other Property with Intersection (formerly Titan Outdoor) require the contractors to comply with the SFMTA Advertising Policy; and,

WHEREAS, Such advertising is not intended to interfere with the SFMTA's primary mission of delivering public transit or performing other duties to maintain the City's transportation network; and,

WHEREAS, The existing Policy would be amended to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services; and,

WHEREAS, These changes are intended to address the uncertainty in the state and local regulatory environment for cannabis and cannabis-related products, businesses or services, and the SFMTA will likely revisit this matter in approximately six months, when the regulatory environment clarifies; and,

WHEREAS, On March 29, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the Advertising Policy Amendment is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now therefore be it

RESOLVED, That the SFMTA Board of Directors amends the SFMTA's Advertising Policy to revise the advertising standards to prohibit the advertisement of any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services; and be it

FURTHER RESOLVED, That the Policy, as amended, shall take effect on November 22, 2017; however, the SFMTA's advertising contractors will be allowed to post advertisements for cannabis and any cannabis-related products and businesses that have already been sold.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 21, 2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

SFMTA Advertising Policy Effective November 22, 2017

I. Purpose

The San Francisco Municipal Transportation Agency (SFMTA) operates the seventh largest public transit system in the country and exercises authority under the San Francisco Charter to manage the use by all modes of the City's transportation network. The SFMTA authorizes advertising on and in SFMTA facilities and property (including, but not limited to, buses, light rail vehicles, trolley cars, stations, parking garages, street furniture, cable cars, historic railcars and fare media) and under SFMTA contracts (hereafter "on SFMTA property") for the purpose of generating significant revenue to support SFMTA operations. Advertising shall not interfere with the SFMTA's delivery of transit or other services to the public or with the SFMTA's performance of its many other duties in maintaining the City's transportation network. Advertising on SFMTA property shall be consistent with the Agency's Strategic goals to:

- a. Create a safer transportation experience for everyone.
- b. Make transit, walking, bicycling, taxi, ride-sharing and car-sharing the preferred means of travel.
- c. Improve the environment and quality of life in San Francisco.
- d. Create a workplace that delivers outstanding service.

In keeping with its proprietary function as a provider of public transportation, the SFMTA does not intend by accepting advertising to convert its property into an open public forum for public discourse, debate or expressive activity. Rather, the SFMTA's fundamental purpose is to provide transportation services, and the SFMTA accepts advertising as a means of generating revenue to support its operations. In furtherance of this discrete and limited objective, the SFMTA retains control over the nature of advertisements accepted for posting on SFMTA property and maintains its advertising space as a limited public forum. As set forth in Section II, this Policy prohibits advertisements that could detract from the SFMTA's goal of generating revenue or interfere with the safe and convenient delivery of SFMTA services to the public. Through this Policy, the SFMTA intends to establish uniform, viewpoint-neutral standards for the display of advertising on SFMTA property.

II. Advertising Standards

A. Permitted Advertising Content

The following classes of advertising are authorized on SFMTA property if the advertising does not include any material that qualifies as Prohibited Advertising, as described in subsection (B) below:

a. Commercial and Promotional Advertising. Advertisements that promote or solicit 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.

b. Governmental Advertising. Notices or messages from government entities, meaning public entities specifically created by government action, that advance specific government purposes.

c. Public Service Announcements. Announcements 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 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;
- Art or culture;
- 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.

B. Prohibited Advertising Content

Advertising is prohibited on SFMTA property if it includes any content that falls under one or more of the following categories:

1. Political and Public Issue. Any material that (i) promotes or opposes a political party, promotes or opposes any state or local ballot measure or the election of any candidate or group of candidates for federal, state, judicial or local government offices, (ii) is political in nature or contains political messages, including advertisements involving political or judicial figures and/or advertisements involving an issue that is political in nature in that it directly or indirectly implicates the action, inaction, prospective action or policies of a governmental entity, or (iii) expresses or advocates an opinion, position or viewpoint on a matter of public debate about economic, political, religious or social issues.

2. False or Misleading. Any material that is or the sponsor reasonably should have known is false, fraudulent, misleading, deceptive, or would constitute a tort of defamation or invasion of privacy.

3. Copyright, Trademark or Otherwise Unlawful Infringement. Any material that infringes on any copyright, trade or service mark, title or slogan.
4. Obscenity or Pornographic. Any material that is obscene or pornographic.
5. Defamation or Lawless Action. Any material that is clearly defamatory or advocates imminent lawlessness or violent action.
6. Alcohol, Tobacco, or Firearms. Any material that constitutes commercial advertising of alcohol, tobacco or firearms.
7. Profanity and Violence. Advertisement that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal, or that depicts weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner.
8. Insulting, Degrading, Disparaging, Demeaning or Offensive. Any material directed at a person or group that is intended to be (or reasonably could be interpreted as being) (i) insulting, degrading, disparaging, demeaning or offensive so as to be reasonably foreseeable that it will incite or produce lawless action in the form of retaliation, vandalism or other breach of public safety, peace and order, or (ii) disparaging or disrespectful to persons, groups, governments, businesses or organizations, including advertisements that portray individuals as inferior, evil or contemptible.
9. Harmful or Disruptive to Transit System. Any material that is reasonably likely to cause harm to, disruption of or interference with the transportation system.
10. Unsafe Transit Behavior. Any advertisement that encourages or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in awaiting, boarding, riding upon or disembarking from transit vehicles.
11. Adverse to SFMTA. Advertising, or any material contained in it, that is directly adverse to the commercial or administrative interests of the SFMTA, or that tends to disparage the quality of service provided by the SFMTA, or that tends to disparage public transportation generally.
12. SFMTA Graphics and References. Advertising that contains SFMTA graphics, logos or representations without the express written consent of the SFMTA.

13. Cannabis. Any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

III. Advertising Administration

SFMTA advertising contractors shall be responsible for the daily administration of the SFMTA's advertising in a manner consistent with this Policy and with the terms and conditions of their agreements with the SFMTA.

SFMTA advertising contractors shall post the following language with every advertisement, in a size and location approved by the SFMTA: "The views expressed in this advertisement do not necessarily reflect the views of the San Francisco Municipal Transportation Agency."

This Policy shall be effective upon adoption but shall not be enforced to impair the obligations of any contract in effect at the time of its approval. It shall be incorporated into any new contract for advertising on SFMTA property. SFMTA contracts granting advertising rights shall include this Policy as an attachment and require the following:

- a. Any advertising contractor must comply with the advertising standards set forth in this Policy, as they may be amended from time to time.
- b. Any advertising contractor must display only those advertisements that are in compliance with the Policy.
- c. Any pilot programs or experimental advertisements must be approved by the SFMTA in advance.