

ADMINISTRATIVE RULE 12

SUBJECT: ADVERTISING

EFFECTIVE DATE: MAY 22, 2014

SCOPE:

This Administrative Rule has been established to address the placement of advertising on the Authority's transit vehicles, facilities, shelters and other property.

AUTHORITY:

Authority for the establishment of this Administrative Rule is as follows:
Part II, Chapter 343, Florida Statutes

I. PURPOSE:

- A. This Administrative Rule applies to the posting of all new advertisements on Authority's transit vehicles, facilities, shelters and other property on or after the effective date hereof.
1. Advertising as Revenue Source. The Authority's transit operations are funded by a combination of federal, state and local funds, including grants and taxes, as well as fare box revenue. Advertising revenues are an important additional source of revenue that supports transit operations. The Authority's fundamental purpose in accepting transit advertising is to generate revenue to augment the Authority's operating budget.
 2. Primary Purpose of Authority's Transit System. The primary purpose of the Authority's transit system is to provide safe and efficient public transportation within its service area. Consistent with this purpose, the Authority places great importance on maintaining secure, safe, comfortable and convenient transit facilities and transit vehicles in order to, among other things consistent with the provision of effective and reliable public transportation, retain existing riders and attract new users of public transit services. To generate additional revenue while also accomplishing the primary objectives of transit operations, the Authority will accept advertising on its transit facilities and vehicles only if such advertising complies with this Administrative Rule.
 3. Non-Public Forum Status. The advertising space on the Authority's transit vehicles, facilities, and shelters constitutes a non-public forum. The Authority's acceptance of transit advertising will not provide or create a general public forum for expressive activities. In keeping with its proprietary function as a provider of public transportation, the Authority does not intend its acceptance of transit advertising to permit its transit

vehicles, facilities or shelters to be used as open public forums for public discourse and debate. Rather, the Authority's fundamental purpose and intent is to accept advertising as an additional means of generating revenue to support its transit operations. In furtherance of that discreet and limited objective, the Authority will retain strict control over the nature of the advertisements accepted for posting on or in its transit vehicles, facilities and shelters and will maintain its advertising space as a non-public forum.

4. Policy Advances Revenue Objective. In the Authority's experience, certain types of advertisements interfere with the program's primary purpose of generating revenue to benefit the transit system. This Administrative Rule advances the advertising program's revenue-generating objective by prohibiting advertisements that could detract from that goal by creating substantial controversy, interfering with and diverting resources from transit operations, and/or posing significant risks of harm, inconvenience, or annoyance to transit passengers, operators and vehicles. Such advertisements create an environment that is not conducive to achieving revenue for the benefit of the transit system or to preserving and enhancing the security, safety, comfort and convenience of its operations. The viewpoint neutral restrictions in this Administrative Rule foster the maintenance of a professional advertising environment that maximizes advertising revenue.

This Administrative Rule is intended to provide clear guidance as to the types of advertisements that will allow the Authority to generate revenue and enhance transit operations by:

- Increasing and maximizing revenue;
- Preventing the appearance of favoritism by the Authority;
- Preventing the risk of imposing views on a captive audience;
- Maintaining a position of neutrality on controversial issues;
- Preserving the marketing potential of the advertising space by avoiding content that the community could view as offensive, inappropriate or harmful to the public;
- Maximizing ridership;
- Avoiding claims of discrimination and maintaining a non-discriminatory environment for riders;
- Preventing any harm or abuse that may result from running controversial or offensive advertisements; and
- Reducing the diversion of resources from transit operations that are caused by controversial or offensive advertisements.

5. Application of Policy. This Administrative Rule applies to the posting of all new advertisements on the Authority's transit vehicles, facilities, and shelters on or after the effective date hereof. The Authority's transit vehicles, facilities and shelters are a non-public forum and, as such, the

Authority will accept only that advertising that falls within the categories of acceptable advertising specified in this viewpoint neutral policy and that satisfies all other access requirements and restrictions provided herein.

II. ADVERTISING POLICY:

- A. Permitted Advertising Content – The following classes of advertising are authorized on transit vehicles, facilities and shelters if the advertising does not include any material that qualifies as Prohibited Advertising under **Section II(B)** of this Administrative Rule:
1. Commercial and Promotional Advertising. Commercial and promotional advertising that promotes or solicits 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.
 2. Governmental Advertising. Governmental entities, meaning public entities specifically created by government action, may purchase advertising space for messages that advance specific government purposes.
 3. Public Service Announcements. The Authority recognizes that its advertising program and its overall public transportation mission are promoted by allowing for public service announcements. Such announcements engender goodwill with the public because the transit system is seen as a caring and active participant in the community. The sponsor of a public service announcement must be a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- B. Prohibited Advertising Content. Advertising is prohibited on transit vehicles, facilities and shelters if it includes any of the following content (such content, **“Prohibited Advertising”**):
1. Political. Advertisements promoting or opposing a political party, or promoting or opposing the election of any candidate or group of candidates for federal, state, judicial or local government offices are prohibited. In addition, advertisements that are political in nature or contain 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 are prohibited.
 2. Public Issue. Advertisements expressing or advocating an opinion, position or viewpoint on matters of public debate about economic, political, religious or social issues are prohibited.

3. Prohibited Products, Services or Activities. Any advertising that promotes or depicts the sale, rental, or use of, or participation in, the following products, services or activities; or that uses brand names, trademarks, slogans or other material that are identifiable with such products, services or activities:
- a. Tobacco: Tobacco products, tobacco-related products, and products that simulate smoking or are modeled on the tobacco products, including but not limited to cigarettes, cigars, and smokeless (e.g., chewing) tobacco, and electronic cigarettes;
 - b. Alcohol: Alcohol, products containing alcohol and alcohol-related products;
 - c. Gambling: Any of: (i) gambling or (ii) the services or products of any business or establishment whose primary business or primary income is derived from the conduct of gambling;
 - d. Adult/Mature Rated Films, Television or Video Games: Adult films rated “X” or “NC-17”, television rated “MA” or video games rated “A” or “M”;
 - e. Adult Entertainment Facilities: Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments;
 - f. Other Adult Services: Adult telephone services, adult internet sites and escort services;
 - g. Other Mature Products and Services: Products or services that may not be purchased by persons seventeen (17) years of age or younger pursuant to state or federal law;
 - h. Nudity, Sexual and/or Excretory Subject Matter: Advertising depicting nudity, sexual conduct or sexual excitement is not permitted. The terms “nudity,” “sexual conduct,” and “sexual excitement” have the same meanings herein as in Fla. Stat. §§ 847.001(9), (16), and (17) (2013), as such law may be amended, modified or supplemented. Works of art are excluded;
 - i. False or Misleading: Any material that is or that the sponsor reasonably should have known is false, fraudulent, misleading, deceptive or would constitute a tort of defamation or invasion of privacy;
 - j. Copyright, Trademark or Otherwise Unlawful: Advertising that contains any material that is an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal;

- k. Illegal Activity: Advertising that promotes any activity or product that is illegal under federal, state or local law;
- l. Profanity and Violence: Advertising 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;
- m. Firearms: Advertising that promotes or solicits the sale, rental, distribution or availability of firearms or firearms-related products;
- n. Disparaging: Advertising that is intended to be (or reasonably could be interpreted as being) disparaging, disreputable, or disrespectful to persons, groups, businesses or organizations, including advertising that portrays individuals as inferior, evil or contemptible;
- o. Adverse to the Authority: Advertising, or any material contained in it, that is directly adverse to the commercial or administrative interests of the Authority, or that tends to disparage the quality of service provided by the Authority, or that tends to disparage public transportation generally;
- p. Authority Graphics and References: Advertising that contains Authority graphics, logos, representations without the express written consent of the Authority;
- q. Insulting, Degrading or Offensive: Any material directed at a person or group that is so insulting, degrading or offensive 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;
- r. Harmful or Disruptive to Transit System: Any 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; and
- s. 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 debarking from transit vehicles.

C. Additional Requirements.

1. Sponsor Attribution and Contact Information. Any advertising in which the identity of the sponsor is not readily and unambiguously identifiable must include the following phrase to identify the sponsor in clearly visible letters (no smaller than 72 point type for exteriors and 24 point type for interiors): Advertisement paid for by _____.
2. “Teaser ads” that do not identify the sponsor will, however, be allowed so long as a similar number of follow up advertisements are posted within eight weeks of the initial teaser ads that do identify the sponsor of those initial ads.

III. PROCEDURES:

- A. All proposed transit advertising must be submitted to the Authority vendor responsible for marketing the Authority's advertising space and for contracting with advertisers on behalf of the Authority (the “**Advertising Vendor**”) for initial compliance review. The Advertising Vendor will submit the advertising to the Business Development Officer to determine whether the proposed advertising complies with guidelines set forth in this Administrative Rule. For the avoidance of doubt, the Advertising Vendor will defer to any determinations made by the Business Development Officer, the Chief Executive Officer or the Governing Board as to whether advertising complies with this Administrative Rule. The Advertising Vendor may (but need not) at any time discuss with the entity proposing the advertisement one or more revisions to an advertisement, which, if undertaken, would bring the advertisement into conformity with this Administrative Rule.
- B. In the event that a proposed advertising is rejected, such rejection may be appealed by the party seeking to advertise to the Authority’s Chief Executive Officer within thirty (30) days of such rejection. After such date no appeal will be permitted. Any such appeal shall be in writing. The Chief Executive Officer will review the proposed advertising for compliance with the guidelines set forth in this Administrative Rule. The Chief Executive Officer may review any appeal *de novo*.
- C. In the event that the Chief Executive Officer affirms the decision to reject any advertising, the decision of the Chief Executive Officer may be appealed to the Governing Board within thirty (30) days of the date that the Chief Executive Officer informs the party seeking to advertise of his or her decision. After such date no appeal will be permitted. Any such appeal shall be in writing and shall be accompanied by the fee described below. The Governing Board may review any appeal *de novo*. The decision of the Governing Board to approve or reject any proposed advertising shall be final. The Chairman may, in his or her sole discretion, elect to conduct a hearing to evaluate an appeal. In the event that the

Chairman elects to conduct a hearing, the Chairman shall have the discretion to adopt procedures under which the hearing will be conducted.

- D. The Business Development Officer, the Chief Executive Officer and the Governing Board, may consult with the Authority's legal counsel at any time during the review/appeal process.
- E. In the event that either the Business Development Officer or the Chief Executive Officer is unable to make a compliance determination or otherwise deems it appropriate, such officer may refer the matter directly to the Chief Executive Officer or the Governing Board, as the case may be.
- F. The Advertising Vendor will, if directed by the Authority, immediately remove (or cause to be removed) any advertising that violates this Administrative Rule.

I hereby certify that the foregoing Administrative Rule 12 was adopted by the Governing Board of the Authority at its duly called meeting on May 22, 2014.


Deborah S. Morrow, Assistant Secretary