

ORDINANCE NO. 013-63

AN ORDINANCE REPEALING ORDINANCE
NO. 012-30 RELATED TO ADVERTISING
ON THE CHICAGO TRANSIT AUTHORITY
PROPERTY, ADOPTING A NEW
ADVERTISING POLICY AND GUIDELINES

WHEREAS, The Chicago Transit Authority's ("Authority") primary purpose is to provide safe and efficient public transportation services for persons using its buses, trains, and other facilities; and

WHEREAS, The Chicago Transit Board has determined to permit certain forms of commercial, public service, and other advertising in or upon the Authority's buses, rail cars, stations, facilities and other designated property; and

WHEREAS, The Chicago Transit Board has determined that discharging the Authority's primary purpose of safe and efficient public transportation, while permitting certain advertising in or upon its vehicles and facilities to raise revenues, is best achieved by uniform, viewpoint-neutral standards for the display of advertising that do not interfere with the Authority's obligations to maintain passenger safety, minimize disruption to public transportation services, ensure peace and order on the public transportation system, protect passengers from fraudulent activities, and protect the health, safety and welfare of passengers; and

WHEREAS, On March 14, 2012, the Authority adopted Ordinance No. 012-30, revising and restating the Authority's Advertising Guidelines and permitting certain alcoholic beverage advertising on Authority property; and

WHEREAS, In the interest of clarity, to ensure that the rules for accepting and displaying advertising are consistently enforced and to maintain and enhance the Authority's reputation and public image, revisions were made to the Authority's advertising guidelines; and

WHEREAS, The proposed Advertising Policy clearly states that the sole purpose of transit advertising on Authority property is to raise revenue for the benefit of the Authority; and

WHEREAS, Staff recommends that Ordinance No. 012-30 be repealed in its entirety and that the Advertising Policy and Amended and Restated Advertising Guidelines for advertising on the Authority's buses, rail cars, stations, facilities and other property be adopted; and

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WHEREAS, Staff further recommends that CTA's property designated for advertising change from a designated public forum to a non-public forum; now, therefore:

BE IT ORDAINED BY THE CHICAGO TRANSIT BOARD
OF THE CHICAGO TRANSIT AUTHORITY:

SECTION 1. The Chicago Transit Board hereby repeals Ordinance No. 012-30 in its entirety and, in lieu thereof, adopts the Amended and Restated Advertising Policy and Guidelines, attached as Exhibit A hereto, as the Authority's Policy and Guidelines regarding advertising on its buses, rail cars, stations, facilities and other designated property.

SECTION 2. The Advertising Policy and Guidelines shall apply to all requests to post an advertisement in or upon the Authority's vehicles, stations, facilities and other designated property.

SECTION 3. If any part of this ordinance is declared invalid or void, the remainder of the ordinance shall remain in full force and effect.

SECTION 4. This ordinance shall be in full force and effect from and after its passage.

APPROVED:

PASSED:

Chairman

Assistant Secretary

May 8, 2013

May 8, 2013

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EXHIBIT A

GUIDELINES GOVERNING ALL ADVERTISING IN OR UPON CHICAGO TRANSIT AUTHORITY FACILITIES AND VEHICLES

I. PURPOSE:

A. This Transit Advertising Policy (“Advertising Policy”) applies to the posting of all new advertisements on transit facilities and transit vehicles on or after the effective date of Ordinance No. 013-63.

1. Chicago Transit Authority System. The Chicago Transit Authority (“CTA”) operates the second largest public transportation system in the nation, providing bus and rail service to the City of Chicago and 35 surrounding suburbs. The CTA’s trains and buses provide nearly 1.7 million rides on an average weekday on eight rail lines and 128 bus routes.
2. Advertising as Revenue Source. The CTA 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 CTA’s fundamental purpose in accepting transit advertising is to generate revenue to augment the CTA’s operating budget.
3. Primary Purpose of CTA’s Transit System. The primary purpose of the CTA’s transit system is to provide safe and efficient public transportation within its service area. Consistent with this purpose, the CTA 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 CTA will accept advertising on its transit facilities and vehicles only if such advertising complies with this Advertising Policy.
4. Non-Public Forum Status. It is the express intention of this Advertising Policy and Ordinance NO. 013-63, to convert the CTA’s property allocated for advertising from a designated public forum into a non-public forum.¹ Going forward, the CTA’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

¹ The CTA acknowledges the findings made in *Entertainment Software Association v. Chicago Transit Authority*, 696 F. Supp.2d 934 (N.D. Ill. 2010) and *Planned Parenthood Ass’n/Chicago Area v. Chicago Transit Authority*, 767 F.2d 1225 (7th Cir. 1985) where the CTA’s advertising property was found to be a designated public forum.

provider of public transportation, the CTA does not intend its acceptance of transit advertising to permit its transit facilities or transit vehicles to be used as open public forums for public discourse and debate. Rather, the CTA'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 CTA will retain strict control over the nature of the advertisements accepted for posting on or in its transit facilities and transit vehicles and will maintain its advertising space as a non-public forum.

5. Policy Advances Revenue Objective. In the CTA's experience, certain types of advertisements interfere with the program's primary purpose of generating revenue to benefit the transit system. This Advertising Policy 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 Advertising Policy foster the maintenance of a professional advertising environment that maximizes advertising revenue.

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

- Increasing and maximizing revenue;
- Preventing the appearance of favoritism by the CTA;
- 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 generally or to minors in particular;
- 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.

6. Application of Policy. This Advertising Policy applies to the posting of all new advertisements on transit facilities and transit vehicles on or after the effective date of Ordinance No. 013-63. Any advertisements which would be prohibited under this

Advertising Policy, but which were or will be posted pursuant to the terms of a fully executed advertising contract prior to the effective date of this Advertising Policy, will be allowed to be posted or to remain posted for the duration of that contract. The CTA's transit facilities and transit vehicles are a non-public forum and, as such, the CTA 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. This Advertising Policy does not apply to CTA owned property in the possession of another party pursuant to a lease, license or concession agreement.

II. ADVERTISING POLICY:

A. Permitted Advertising Content – The following classes of advertising are authorized on transit facilities and transit vehicles if the advertising does not include any material that qualifies as Prohibited Advertising under this Advertising Policy:

1. Commercial and Promotional Advertising. Commercial and Promotional Advertising 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 CTA 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.

A Public Service Announcement must satisfy the following criteria:

- a. 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. The Public Service Announcement must be 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;
 - 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.

4. Advertisements for Alcohol. Advertising for alcohol products and by alcohol beverage companies shall be subject to the following restrictions:

- a. No advertisements will be permitted on CTA buses;
- b. No advertisements will be permitted within or on rail stations where ridership by reduced fare student riders (excluding U-Pass riders) exceeds 7.5%, as determined by the CTA;
- c. The placement of alcohol advertisements will be confined to a geographic area defined by Montrose on the North, Roosevelt on the South, Ashland on the West and Lake Michigan on the East, plus the station at Sox/35th Red Line and 35th/Bronzeville/IIT Green Line;
- d. No more than 15 exterior rail car pairs may have alcohol advertisements posted on the transit system at any one time;
- e. In addition, no more that 9.99% of the total advertising space available on the transit system will have alcohol advertising posted on it at any one time; and
- f. Advertising related to the sale of alcoholic beverages shall contain a statement, occupying at least 3% of the area of the advertisement, that indicates the legal drinking age in Illinois and warns of the dangers of alcohol consumption during pregnancy, or in connection with the operation of heavy machinery, or while driving.

B. Prohibited Advertising Content. Advertising is prohibited on transit facilities and transit vehicles if it includes any of the following content:

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. 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”;
- c. Adult Entertainment Facilities: Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments;
- d. Other Adult Services: Adult telephone services, adult internet sites and escort services;
- e. 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 720 ILCS 5/11-21(a) (2011) and as such law may be amended, modified or supplemented. Works of art are excluded;
- f. 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;
- g. 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;
- h. Illegal Activity: Advertising that promotes any activity or product that is illegal under federal, state or local law;
- i. 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;
- j. Firearms: Advertising that promotes or solicits the sale, rental, distribution or availability of firearms or firearms-related products;
- k. 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;
- l. Adverse to CTA: Advertising, or any material contained in it, that is directly adverse to the commercial or administrative interests of the CTA, or that tends to disparage the quality of service provided by the CTA, or that tends to disparage public transportation generally;
- m. CTA Graphics and References: Advertising that contains CTA graphics, logos, representations without the express written consent of the CTA;

- n. 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;
- o. 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
- p. 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 CTA vendor responsible for marketing the CTA's advertising space and for contracting with advertisers on behalf of the CTA (the "Advertising Vendor") for initial compliance review. The Advertising Vendor will perform a preliminary evaluation of the submission to assess its compliance with this policy. If the Advertising Vendor determines that a proposed advertisement does not comply with this Advertising Policy or is unable to make a compliance determination, it will forward the submission to the CTA's Business Development Department for further evaluation. The Advertising Vendor may 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 Advertising Policy. The Advertising Vendor will immediately remove any advertisement that the CTA's Business Development Manager directs it to remove.
- B. In the event the Advertising Vendor determines that a proposed advertisement does not comply with this Advertising Policy or is unable to make a compliance determination, the Business Development Department will review the proposed advertisement for compliance with the guidelines set forth in this policy and will direct the Advertising Vendor as to whether the proposed advertisement will be accepted. In the discretion of the Business Development Department, any proposed transit advertising may be submitted to the Director, Revenue, for review.

- C. The Director, Revenue, shall conduct a final review of the proposed advertising at the request of the Business Development Department. The decision of the Director, Revenue, to approve or reject any proposed advertising shall be final.
- D. The Business Development Department or the Director, Revenue, may consult with the CTA's legal counsel at any time during the review process.
- E. The Business Development Manager and the Director, Revenue are responsible for the implementation of this Advertising Policy.