

Board Policy No. 13 Advertising, Concessions and Merchandising

Summary

This document establishes policy and guidelines concerning a revenue-generating advertising, concessions, and merchandise program for NCTD.

Background

Public transit operators and administration agencies have historically utilized advertising, concessions, and merchandising programs to supplement operational and capital funds. A sound advertising and concessions program can be a viable alternative income source while promoting transit use and ensuring rider convenience and safety. This policy advances the advertising program's revenue-generating objective while also prohibiting advertisements that could detract from that goal, such as by harming advertisement sales, reducing ridership, or tarnishing's NCTD's reputation. By this Policy, NCTD intends to limit advertising space to innocuous and less controversial commercial and service-oriented advertising only. NCTD's justifications for its advertising program and policy include:

- 1) Generating advertising revenue;
- 2) Increasing ridership by promoting NCTD's services, programs, and benefits;
- 3) Informing NCTD riders of local, state, or federal programs, services, or benefits;
- 4) Preserving ridership by avoiding controversial content;
- 5) Preventing the risk of imposing controversial views on a captive audience;
- 6) Preserving the marketing potential of the advertising space by avoiding controversial content;
- 7) Maintaining a position of neutrality on matters of public debate; and
- 8) Reducing the risk of diversion of resources from transit operations that are caused by controversial content.

Purpose

These programs shall include advertising on or in BREEZE and FLEX buses, LIFT vehicles, COASTER and SPRINTER trains, transit facilities in North County, merchandise sold to the public, selected printed materials, and NCTD websites, online media, and social media. The purpose is to increase revenues supplementary to fares and non-operating subsidies to be used for NCTD operations without creating a negative perception or harming the "brand" name of NCTD and the services that we provide. The display of advertising is solely for this purpose. It is not intended to provide a general public forum for purposes of communication but rather to make use of property held in a proprietary capacity in order to generate revenue. It is the Policy of NCTD that such advertising spaces on NCTD property, which includes the exterior and interior of buses and trains, benches, shelters, related transportation facilities, selective printed materials, website, online media, and social media, shall constitute a non-public forum subject to uniform viewpoint-neutral restrictions. This policy has been drafted to ensure a non-public forum status on its advertising spaces and NCTD staff will accordingly enforce this policy with that intention.

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Advertising on bus shelters, benches, and transit centers within the non-NCTD public rights-of-way shall be governed by the then-current policies of the applicable jurisdiction.

Advertising – Permitted Content

In accordance with the revenue-generating purpose of this policy, the subject matter for all advertising materials displayed on NCTD property shall be limited to Commercial Speech. Commercial Speech is speech that: does no more than propose a commercial transaction; or is an expression related solely to the economic interests of the speaker and its audience (e.g. promotes for sale, lease, or other financial benefit a product, service, event, or other property interest). Notwithstanding the above general rule requiring Commercial Speech, the following content is allowed:

- a. NCTD operations advertising that promotes NCTD transit services, programs, or products, including co-sponsorships with third parties that would increase ridership or otherwise support NCTD's mission. NCTD may promote public transportation options and/or routes for public events or locations through scheduling media, NCTD websites, or other media if such promotion is intended to increase ridership or otherwise support NCTD's mission.
- b. Advertisements from Local, State, or Federal Governmental agencies or legally affiliated entities regarding public programs, public services, and public events that are not otherwise prohibited under this Policy.

Advertising – Prohibited Content

No advertisement will be permitted that:

- a. Expresses or advocates an opinion, position, or viewpoint on matters of public debate regarding economic, political, religious, social, or moral issues;
- b. Appears to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect;
- c. May reasonably be interpreted to be offensive to any religious, ethnic, racial, or political group;
- d. May reasonably be interpreted as condoning any type of criminal act or which could reasonably be considered as derogatory toward any aspect of the law enforcement profession;
- e. Portrays acts of violence, murder, sedition, terror, antisocial behavior, vandalism, or other acts of violence against persons, animals, or institutions;
- f. Depicts nudity or portions of nudity prominently featured in the advertisement. The rule of "public acceptance" should be used in such cases; i.e., if the advertisement has already gained public acceptance, then it may be considered as acceptable to NCTD;
- g. Contains or involves any material that describes, depicts, or represents sexual conduct or activities including adult bookstores, adult video stores, adult dance clubs, adult telephone services, and adult internet sites;
- h. Adult films rated "X" or "NC-17", television rated "MA", or video games rated "A" or "M";
- i. Promotes the sale or use of firearms, ammunition, or other firearms-related products;

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- j. May reasonably be interpreted as condoning any type of discrimination;
- k. May reasonably be interpreted as condoning or soliciting any unlawful act or conduct;
- l. Contains political ads supporting or opposing a candidate, measure, or proposition;
- m. Directly or indirectly refers to religion;
- n. Promotes the sale or use of tobacco and tobacco-related products, cannabis, and cannabis-related products, electronic cigarettes, and vaporizers;
- o. Contains or promotes the sale or use of illegal drugs or drug paraphernalia;
- p. Primary purpose is to promote the sale of alcoholic beverages;
- q. Implies or declares an endorsement of NCTD of any service, product, or point of view without written authorization from NCTD;
- r. Depicts unsafe transit behavior aboard buses, rail line tracks, or other transit facility;
- s. Is reasonably foreseeable that it will result in harm to, disruption of, or interference with the normal operations of NCTD's transportation system;
- t. Mischaracterized as a commercial advertisement but upon examination is intended to distribute a non-commercial message;
- u. Contains or promotes sexual, religious, or racial stereotyping;
- v. Is in conflict with any applicable federal, state, or local law, statute, or ordinance;
- w. Contains false or grossly misleading information.

Advertising – Procedure

1. Safety, aesthetic considerations, customer convenience, and NCTD's need to convey transit-related and emergency information to passengers will take precedence over revenue generation.
2. Quantity, quality, and placement of all advertising will be controlled by and subject to the specific approval of NCTD.
3. NCTD reserves the right to review each proposed advertisement in advance and reject any proposed advertisement which does not meet the Board's standards as set forth in this policy. Each entity wishing to purchase advertising space shall submit the proposed advertisement to the NCTD contractor, which shall include the proposed content of the advertisement. Before any advertisement is rejected, it shall be referred to the Executive Director or his/her designee for appropriate action and a final decision.
4. The advertising program will serve the needs of local as well as national advertisers.
5. Upon written demand by the Executive Director or his/her designee of NCTD on stated grounds as set forth in this policy, any advertisement or other display deemed to be objectionable will be removed. No refund shall be made for the time such objectionable material was on display.

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6. Advertising placement or treatments will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional/traffic signs and informational material, and will not encroach on necessary sight lines (e.g., driver/operator view of waiting patrons), nor present any other safety risks or hazards (e.g., flashing lights, sound makers, mirrors, or other special effects).
7. All advertisements shall clearly identify the sponsor(s).
8. Advertising industry standard sizes will be used for all advertising treatments.
9. Advertising treatments will be maintained in “like-new” condition. Damage to the advertisement or its housing will be corrected within forty-eight (48) hours.

Advertising – Commuter Rail (COASTER), Hybrid Rail (SPRINTER), and Buses (BREEZE)

1. Commuter rail (COASTER), hybrid rail (SPRINTER), bus (BREEZE and FLEX), and paratransit service (LIFT) vehicles may carry interior and exterior commercial advertising.
2. BREEZE, FLEX, and LIFT vehicles:
 - a. “BREEZE”, “FLEX”, or “LIFT” logos on each side of the bus as well as the California Highway Patrol (CHP) operating number must always be displayed in accordance with NCTD policy. Driver’s window, front windows, and passenger-entry door must remain “unwrapped”.
 - b. May carry full-vehicle or partial-vehicle advertising formats (wraps).
 - c. May carry side display formats. The size specification for queen, king, and super king side displays will assure that they will be formatted and placed between the front and rear wheel wells on either or both sides of the bus. Murals are defined as encompassing the space under the vehicle passenger windows on each side of the bus and extending from the front of the bus to just past the rear wheel well.
3. COASTER and SPRINTER trains:
 - a. “COASTER” and “SPRINTER” logos on each side of any car as well as any required operating number must always be displayed on wrapped cars in accordance with NCTD policy. Vehicle branding and areas displaying identification markings must remain “unwrapped” with standard paint schemes and materials. Driver’s window, front windows, and passenger-entry door must remain “unwrapped”.
 - b. Full fleet may carry full-car or partial-car advertising formats (wraps).
4. Transit information material may be placed by NCTD inside COASTER, SPRINTER, and BREEZE vehicles at the discretion of the Executive Director or his/her designee. Such information can include, in accordance with this policy, the promotion of regularly scheduled public transit routes that will serve major community events open to the public with no admission charge.

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Advertising – Transit Centers, Major Transit Points, Stations, and Stops

1. Advertising treatments (housings) will complement the architecture of the transit centers/stations and the flavor of the surrounding community. NCTD plan specifications will be followed wherever applicable. Advertising treatments will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.
2. Any unsold transit center, major transit points, and station display advertising space will be allocated for graphics and/or other nonrevenue-producing functions approved by the Executive Director or his/her designee. At least one full display panel per transit center and station will be reserved exclusively for transit-related items.
3. Naming rights and negotiations for specific transit stations, parts of stations, rail lines, or bus routes may be undertaken at the discretion of the Executive Director. Public input may be sought, and Board approval will be required for such agreements. Such naming rights treatments and formats will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

Advertising – Printed Materials

1. Advertising space may be allowed in printed materials (e.g., timetables, maps, and informational brochures) at the discretion of the Executive Director or his/her designee.
2. No advertising space shall supersede necessary transit information and/or regulations.
3. At the discretion of the Executive Director or his/her designee, NCTD may allocate space in printed materials to inform transit customers about private entities actively participating in transit services, e.g., pass and ticket sales outlets.

Advertising – Website, Online Media, and Social Media

At any time, NCTD may, at its sole discretion, use the NCTD website, online media, and/or social media pages to co-sponsor or advertise a third-party event, venue, or service that is intended to increase ridership or otherwise support NCTD's mission so long as it is not otherwise prohibited by this Policy.

Concessions

1. The general Board policy is to promote concessions at transit stations, provide transit customer amenities, and enhance revenue for the District at the discretion of the Executive Director.
2. Concession formats, quantity, and placement will be approved and managed by the Executive Director or his/her designee and may be subject to the review of the Board, as required.
3. Agreements for any concession format or related development will be issued in accordance with existing NCTD policies.

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4. Concession treatments/structures will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. NCTD plan specifications will be followed wherever applicable. Concession treatments/structures will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.
5. Concession treatments/structures will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional signs and informational materials, and will not encroach on necessary sight lines.
6. Concessionaire agreements will include remittance to NCTD or its designated operating vendor. Said remittance will be made monthly or quarterly and include a flat rate or a percentage of gross revenue, as approved by the NCTD Executive Director or his/her designee.
7. Concession signs, displays, or other means of advertising the concessionaire's activities will be in accordance with this NCTD Board Policy No. 13 and any other applicable NCTD policies and subject to approval of the Executive Director or his/her designee.

Merchandise

1. Any and all system-related merchandise will be of the quality that is generally available in the surrounding retail environment and will project a positive NCTD transit image.
2. Merchandise licensing agreements and royalty payments will be made in accordance with contemporary NCTD practices and in the best interests of NCTD.

Revenue

1. Except as otherwise provided, revenue from advertising on trains and buses, in transit centers, major transit points, stations and stops, and in printed publications shall accrue to NCTD.
2. In lieu of revenue, NCTD may elect to accept an equivalent value of goods and/or services, including but not limited to capital improvements, information services, and site maintenance.

Contractor Services

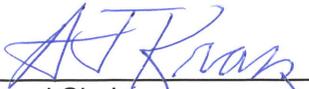
NCTD may engage contractor(s) services for the development, implementation, management, and maintenance of advertising, concessions, and/or merchandise programs in conformance with existing Board policies and applicable procurement rules and in the best interest of NCTD.

Annual Review of Advertising Policy

Notwithstanding anything to the contrary, as set out in this NCTD Policies Manual, the policies and guidelines, set out above, will be reviewed annually to reflect the current policies of the NCTD Board and to reflect changes in the trends of social and economic acceptance and appropriateness of various forms of advertising and concessions.

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Approvals

 10-15-2020
Board Chair Date

 10/15/2020
Executive Director Date

 10-15-2020
General Counsel Date

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DATE	REVISION No.	RESOLUTION No.	COMMENTS
10/18/2012	ADOPTED	12-10	
10/17/2013	1	13-07	2013 REVISION
10/16/2014	2	14-04	2014 REVISION
11/19/2015	3	15-08	2015 REVISION
10/20/2016	4	16-10	2016 REVISION
10/19/2017	5	17-10	2017 REVISION
10/18/2018	6	18-09	2018 REVISION
10/17/2019	7	19-06	2019 REVISION
10/15/2020	8	20-08	2020 REVISION