

CITY OF SOUTH PORTLAND BUS SERVICE ADVERTISING POLICY

Section 1. Purpose.

Through this Policy, the City of South Portland (the “City”) intends to establish uniform, viewpoint-neutral standards for the display of advertising on the interior and exterior of its Bus Service buses and all related equipment and facilities. In setting its advertising standards, the City seeks to fulfill the following goals and objectives:

- (a) Utilize space on the interior and exterior of its buses for advertising purposes to generate revenue for the construction, operations and maintenance of the City’s transportation facilities and services;
- (b) Provide information to the public by or about the City and which is produced by the City, its agents, employees or officials;
- (c) Maintain the safe and orderly operation of the Bus Service;
- (d) Maintain a safe and welcoming environment for all Bus Service passengers, including minors who travel on or come in contact with the Bus Service; and
- (e) Avoid the identification of the City with advertisements or the viewpoints of the advertisers.

In keeping with its proprietary function as a provider of public transportation, the City does not intend by accepting advertising to convert its property into an open public forum for public discourse, debate or expressive activity. Rather, its Bus Service’s fundamental purpose is to provide transportation services, and the City accepts advertising as a means of generating revenue to support its Bus Service operations. In furtherance of this discrete and limited objective, the City retains control over the nature of advertisements accepted for posting on City property and maintains its advertising space as a nonpublic forum that is subject to the viewpoint neutral regulations set forth herein. As set forth in Section 2, this Policy prohibits advertisements that could detract from the City’s goal of generating revenue or interfere with the safe and convenient delivery of transportation services to the public.

Section 2. Advertising Standards.

A. Permitted Advertising.

The City will permit only commercial and governmental advertising. Commercial advertising is advertising that is designed to promote or solicit a commercial transaction

concerning the sale, distribution, or availability of goods, services or events for an advertiser's commercial or proprietary interest, regardless of whether the advertiser is a for-profit, non-profit, or governmental entity. Governmental advertising is advertising when the advertiser is the United States government, the State of Maine, or a political subdivision of the State of Maine, and the advertisement furthers or supports a specific governmental purpose. Notwithstanding the above general rule requiring commercial or governmental advertising, the following content is allowed:

- (1) City operations advertising that promotes Bus Service transit services, programs or products, including co-sponsorships with commercial or governmental third parties that would increase ridership or otherwise support the Bus Service's mission.
- (2) Notices or messages to the public by or about the City and which is produced by the City, its agents, employees or officials.

B. Prohibited Advertising.

The City shall not display or maintain any advertisement that falls within one or more of the following categories:

- (1) False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading or deceptive.
- (2) Libelous Speech, Copyright Infringement, or Otherwise Unlawful. The advertisement, or any material contained in it, is libelous or an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal or likely to subject the City to litigation.
- (3) Obscenity or Nudity. The advertisement contains obscene material or images of the state of nudity. For purposes of this Policy, the term "obscene" shall have the meaning contained in 17 M.R.S. § 2911(1)(D), as may be amended, and the term "state of nudity" shall have the meaning contained in 17-A M.R.S. § 511-A(3)(C), as may be amended.
- (4) Prurient Sexual Suggestiveness. The advertisement contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of this Policy, the term "minor" shall mean a person under 18 years of age.
- (5) "Adult"-Oriented Goods or Services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are

identifiable with, films rated “X” or “NC-17,” video games rated “M” or “AO,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites and escort services.

- (6) Smoking. The advertisement promotes the sale or use of, or depicts, tobacco or tobacco-related products, products that simulate smoking or are modeled on tobacco products, including, but not limited to, cigarettes, cigars, and smokeless (e.g., chewing) tobacco and electronic cigarettes, or promotes the sale, use or cultivation of marijuana, marijuana products, marijuana businesses, or marijuana services.
- (7) Alcohol or Firearms. The advertisement promotes the sale or use of, or depicts, alcohol or firearms.
- (8) Prescription Drugs and Implantable Medical Devices. The advertisement promotes the sale or use of, or depicts, prescription drugs or implantable medical devices.
- (9) Profanity. The advertisement contains profane language.
- (10) Violence. The advertisement contains an image or description of graphic violence, including, but not limited to: (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
- (11) Unlawful Goods or Services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of goods or services that are unlawful or illegal under federal, State or local law.
- (12) Unlawful Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, behavior or activities that are unlawful or illegal under federal, State or local law.
- (13) Demeaning or Disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the City will determine whether a reasonably prudent person, knowledgeable of the City’s ridership and using contemporary community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.

- (14) Political Campaign Speech. The advertisement contains political campaign speech. For purposes of this Policy, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, county, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of this Policy, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.
- (15) Political Issues or Matters of Public Debate. The advertisement concerns political issues or expresses or advocates an opinion, position or viewpoint on a matter of public debate about economic, political, moral, religious or social issues.
- (16) Adverse to the City. The advertisement, or any material contained in it, that is directly adverse to the commercial or administrative interests of the City, or that tends to disparage the quality of service provided by the City, or that tends to disparage public transportation generally.
- (17) City Graphics and References. The advertisement contains City graphics, seals, logos, or representations without the express written consent of the City.
- (18) Harmful or Disruptive to Bus Service. The advertisement 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 public transportation system.
- (19) Unsafe Bus Behavior. The advertisement 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 buses.

Section 3. Advertising Program and Administration.

- (a) The City, acting by and through its Transportation Director or his/her designee, shall, from time to time, select an “Advertising Contractor” who shall be responsible for the daily administration of the City’s advertising program in a manner consistent with this Policy and the terms of its agreement with the City. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections and posting of advertising displays on or in all Bus Service buses.

- (b) The Advertising Contractor shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by the City.
- (c) The City Manager shall designate an employee (typically, the Transportation Department's Operations and Maintenance Supervisor) as the City's "Contract Administrator" to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions and requirements of this Policy shall be addressed initially to the Contract Administrator.
- (d) The City reserves the right, in all circumstances, to require that an advertisement on or in its Bus Service equipment and facilities include a disclaimer, in a size and location approved by the City, indicating that the advertisement is not sponsored by, and does not necessarily reflect the views of, the City.
- (e) Advertising is permitted only on Bus Service rolling stock. Advertising will not be placed in bus stops, shelters, buildings, or available through City electronic media, except as provided in Section 2(A)(1) and (2).
- (f) The City reserves the sole right to determine the size, location and placement of advertising space made available for sale.
- (g) The City has the unqualified right to display, on or in all of its Bus Service equipment and facilities, advertisements and notices that pertain to City operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.
- (h) 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 City property. City contracts granting advertising rights shall include this Policy as an attachment and require the following:
 - (i) The Advertising Contractor must comply with the advertising standards set forth in this Policy, as they may be amended from time to time.
 - (ii) The Advertising Contractor must display only those advertisements that are in compliance with the Policy.
 - (iii) Any pilot programs or experimental advertisements must be approved by the City in advance.

Section 4. Severability.

The City reserves the right, from time to time, to suspend, modify or revoke the application of any or all of this Policy as it deems necessary to comply with legal mandates, to accommodate the Bus Service's primary transportation function, and to

fulfill the goals and objectives referred to herein. All the provisions of this Policy shall be deemed severable.

Adopted: May 25, 2021