


CITY COMMISSION POLICY

<p>GRAND RAPIDS</p>  <p>MICHIGAN</p>	<p>NUMBER: 900-61</p>	<p>HISTORY</p> <p>FILE # DATE</p>
	<p>DATE: March 23, 2021</p>	
	<p>FILE NUMBER: 12805</p>	
	<p>DEPARTMENT: MOBILE GR</p>	

SUBJECT: **Transit Advertising Policy**

PURPOSE: To provide an advertising policy with clear standards that declares certain transit advertising spaces as non-public forums, places restrictions on content advertised only in conformance with First Amendment principles, and fosters a consistent, ministerial review of advertisements for compliance with policy regulations.

POLICY:

A. Application of Policy

This Transit Advertising Policy applies to the posting of all new advertisements on transit facilities and transit vehicles on or after the Effective Date of this Policy.

B. Subject of Policy

Transit Facilities shall include City-owned or controlled bus stops, other transit stops, bus platform waiting areas, and other infrastructure used in conjunction with transit whatever the mode within the City limits. Transit Vehicles shall include all City-owned transit passenger vehicles and other modes of transportation, including, but not limited to, rapid transit buses, scooters, bikes, or electric bikes. The Mobile GR and Parking Services Director may add additional facilities or vehicles to the above list as technology or innovation may warrant.

C. Objectives

1. To utilize Transit Vehicles and Transit Facilities as non-public forums to sell or lease advertising space for commercial speech.

2. In limiting advertisements to commercial speech only the City has an interest in:
 - a) maintaining a position of neutrality on issues that would disaffect riders or potential riders to the detriment of the system;
 - b) preventing interference with the purpose of the transit system;
 - c) preventing a reduction in income earned from selling advertising space because commercial advertisers would be dissuaded from using the same forum that would also be used for public debate;
 - d) minimizing chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience certain material that does not facilitate rapid, convenient, pleasant, and inexpensive service to commuters.

3. In limiting certain forms of commercial speech the City has an interest in:
 - a) reducing drinking or smoking by minors;
 - b) reducing a minor's use of age-restricted products illegal for minors;
 - c) reducing a minor's use of substances that would be illegal for consumption or possession;
 - d) protecting minors from dangers attendant to illegal use of weapons;
 - e) protecting minors from content that is rated as not appropriate for minors by law or that may incite behavior inappropriate for schooling;
 - f) protecting all passengers from engaging in unsafe transit behaviors or sensory inputs that would put a driver, passenger, or another person using the right-of-way or other viewer in danger.

D. Standards

1. Permitted Advertising Content

Only commercial speech will be permitted on Transit Facilities and Transit Vehicles. For purposes of this policy, "commercial speech" is defined as an advertisement that proposes a commercial transaction. In addition, the City of Grand Rapids or other governmental entity may display advertising by the City of Grand Rapids or other governmental entity as its own government speech.

Where there is an implied non-commercial message attached to the commercial speech, such implied content shall not be evaluated or acted upon so long as the main purpose of the advertisement is to propose a commercial transaction. In making the determination of the main purpose of the advertisement, the City shall take into account the organization's stated purpose in their articles of incorporation, the organization's web materials, and any other public-facing media that the organization makes generally known.

2. Prohibited Advertising Content

Advertising is prohibited on or in Transit Facilities and Transit Vehicles if it includes any of the following:

- a) Noncommercial Speech. Material where the content of the message does not propose a commercial transaction or where the intended audience is not actual or potential consumers.

- b) Political Campaign Speech. Advertising that promotes or opposes a political party, the election of any candidate or group of candidates for federal, state, or local government offices, or initiatives, referendums or other ballot measures.
- c) Prohibited Products, Services, or Activities.

Without limiting the prohibition of any advertising which is not commercial speech found in Section D. above, any advertising that promotes or depicts the sale, rental, use of or participation in the following products, services or activities; or uses brand names, trademarks, slogans, images or other materials that are identifiable with such products, services or activities are prohibited:

- i. Tobacco Products. This includes, but is not limited to, cigarettes, cigars, e-cigarettes, and smokeless (e.g. chewing) tobacco;
- ii. Marihuana products;
- iii. Alcoholic beverages or products;
- iv. Firearms, Ammunition or other Firearms-related Products or weapons;
- v. 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";
- vi. Adult Entertainment Facilities and Other Adult Services. Adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult internet sites, and escort services;
- vii. Sexual and/or Excretory Subject Matter. Any advertising that contains or involves material that describes, depicts or represents sexual or excretory organs or activities in a way:
 - That the average adult person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors in sex; or
 - Which is patently offensive to contemporary standards in the adult community as a whole with respect to what is suitable material for minors to see; or
 - That depicts, or reasonably appears to depict, a person under the age of eighteen exhibiting sexual or excretory organs or engaging in sexual or excretory activities.

For the purposes of this subsection, "sexual or excretory organs" shall mean and include the human pubic area, anus, buttocks, genitalia, or any portion of the areola or nipple of the human breast. "Sexual or excretory activities" shall mean and include actual or simulated sex acts, including, but not limited to, the touching of one's own or another's clothed or unclothed sexual or excretory organs, urination and defecation.

- d) False or Misleading Material. 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.
 - e) Unlawful Use of Copyrighted or Trademarked Material. Advertising that contains an infringement of a copyright, trademark or service mark, or is otherwise unlawful or illegal.
 - f) Illegal Activity. Advertising that promotes any activity or product that is illegal under federal, state, or local law.
 - g) Profanity or Violence. Advertising that contains profane language, 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 the intentional infliction of pain or violent action towards or upon a person or animal.
 - h) Unsafe Transit Behavior. Any advertisement that encourages or depicts unsafe behavior with respect to transit-related activities, such as disregard for normal safety precautions in awaiting, boarding, riding upon or alighting from transit vehicles.
 - i) Lights, Noise and Special Effects. Flashing lights, sound makers, mirrors or other special effects that interfere with the safe operation of the Transit Vehicle or Transit Facility, or the safety of Transit Vehicle drivers, drivers of other vehicles, or the public at large.
3. Attribution and Contact Information. Any advertising where the identity of the advertiser is not readily and unambiguously identifiable must include the following identifying phrase: Paid for by _____. This must be in clearly visible letters (no smaller than 72-point type for exteriors and 24-point type for interiors). Advertising materials will be produced at the advertiser's expense and must be of good quality and conform to standards for size, weight, material, placement location and other physical characteristics as set forth by the City. Such standards shall be on file at the Mobile GR and Parking Services office.

E. Procedure

Being that the City does no more than reserve eligibility for access to the non-public forums to a particular class of speakers whose members must then as individuals obtain permission, all proposed transit advertising must be submitted to the Mobile GR and Parking Services Director for compliance review. The Mobile GR and Parking Services Director may seek input from a contractor or appropriate city staff, including the City's Law Department, at any time during the review process. The Mobile GR and Parking Services Director or their designee will review the proposed advertisement for compliance with this policy and make a final decision to approve or deny the advertisement. In the event the Mobile GR and Parking Services

Director or their designee is not available, the City Manager or their designee may be substituted at any step in this process.

F. Disclaimer of Endorsement

The City's acceptance of a third-party advertisement does not constitute express or implied endorsement of the content or message of the advertisement, including any person, organization, products, services, information or viewpoints contained therein, or of the advertisement sponsor itself. This endorsement disclaimer extends to and includes content that may be found via internet addresses, quick response (QR) codes, and telephone numbers that may appear in posted ads and that direct viewers to external sources of information. However, such a disclaimer need not be printed on the advertisement itself.

G. Responsibilities

The Mobile GR and Parking Services Director and City Manager are responsible for the implementation of this Transit Advertising Policy.

H. Appeals

A party who feels that their advertising has been rejected in error may file an appeal within 10 days of such rejection by submitting a letter in writing to the GR Mobile and Parking Services office stating the reason or reasons that the appellant feels that the Policy has been misapplied. Appeals shall be heard in a reasonable time thereafter by the City Manager or their designee. The City shall have 30 days after the appeal hearing to issue a final decision. The decision shall be based strictly on the application of this policy and the City Manager may consult with the City Attorney in evaluation of the appeal. The appeal decision shall be final.

I. Severability

All the provisions in this Policy shall be deemed severable if found to be necessary by a court of law.