

## Guidelines Regulating MBTA Advertising

Adopted November 23, 2015

Amended November 20, 2017

Amended October 31, 2022

### Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MBTA seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maximization of revenue generated by attracting, maintaining, and increasing ridership;
- (c) maintaining the safe and orderly operation of the MBTA;
- (d) maintaining a safe and welcoming environment for all MBTA passengers, including minors who travel on or come in contact with the MBTA system; and
- (e) avoiding the identification of the MBTA or the Commonwealth of Massachusetts with advertisements or the viewpoints of the advertisers.

The MBTA reserves the right, from time to time, to suspend, modify or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

### Advertising Program and Administration

- (a) These guidelines shall apply to advertising on or in all MBTA equipment and facilities (including but not limited to land, terminals, stations, garages, yards, shops, structures, rolling stock, vehicles, fences, equipment, electronic and hard copy media, websites, and other personal property) unless otherwise expressly provided by contract regarding a premise covered by an alcoholic beverages license.
- (b) The MBTA shall, from time to time, select an “Advertising Contractor” who shall be responsible for the daily administration of the MBTA’s advertising program in a manner consistent with these Guidelines and the terms of its agreement with the MBTA. 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 MBTA equipment and facilities.
- (c) 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 MBTA.

- (d) The MBTA shall designate an employee as its “Contract Administrator” to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

### MBTA Operations and Promotions

The MBTA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MBTA operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.

### Disclaimer

The MBTA reserves the right, in all circumstances, to require that an advertisement on or in its equipment and facilities include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the MBTA.

### Advertising Standards

- (a) The MBTA intends that its equipment and facilities constitute a nonpublic forum that are subject to the viewpoint-neutral restrictions set forth below, which are designed to ensure that advertising on MBTA property serves the purposes set forth above. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MBTA equipment and facilities. By adopting this policy, the MBTA does not agree or consent to any implication that any property owned by the MBTA is any type of public forum.
- (b) The MBTA may display advertisements that fall under one or more of the following categories:
  - (i) Commercial advertising. Advertising with the purpose of soliciting or promoting the sale, rent, lease, license, distribution, brand, or availability of goods, property, services, programs, or events for the advertiser’s commercial or proprietary interests.
  - (ii) Governmental advertising. Advertising sponsored by a federal, state, or local governmental entity that advances a specific governmental purpose.
  - (iii) Public Service Announcements from Non-Profits. Advertising sponsored by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is directed to the general public or a significant segment of the general public and the sole expressed purpose of which relates directly to:

(A) the availability of services to prevent or treat illnesses or to promote wellness;

(B) the availability of services to promote health and safety;

(C) the availability of education or training services;

(D) the availability of services and programs that provide support to low income citizens, children, senior citizens, or people with disabilities;

(E) events relating to arts and culture, museum exhibitions, or religious services; or

(F) solicitation by broad-based contribution campaigns that provide funds to multiple charitable organizations active in the above-listed areas.

(c) Notwithstanding section (b) above, the MBTA shall not display or maintain any advertisement that falls within one or more of the following categories:

(i) Incitement or “Fighting Words”. The advertisement contains material, or directs viewers to material, that the MBTA reasonably foresees would imminently incite or provoke violence or other immediate breach of peace, and so harm, disrupt, or interfere with safe, efficient, and orderly transit operations.

(ii) 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 MBTA will determine whether a reasonably prudent person, knowledgeable of the MBTA’s ridership and using prevailing 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.

(iii) Tobacco, Cannabis, and Smoking or Smoking-Simulation Products. The advertisement promotes the sale or use of, or depicts: (1) tobacco or tobacco-related products; (2) products that simulate smoking or are modeled on tobacco products, including but not limited to cigarettes, cigars, smokeless (e.g. chewing) tobacco and electronic cigarettes, or vaping devices; or (3) cannabis, cannabis accessories or cannabis products.<sup>1</sup>

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<sup>1</sup> The terms “Cannabis,” “Cannabis Accessories,” and “Cannabis Products” are defined at 935

- (iv) Profanity. The advertisement contains or implies profane language.
- (v) Firearms. The advertisement either (a) advertises a firearm or a brand of firearms, (b) contains an image of a firearm in the foreground of the main visual, or (c) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement.
- (vi) 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.
- (vii) Unlawful Goods or Services. The advertisement, or any material referenced or contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- (viii) Unlawful Conduct. The advertisement, or any material referenced or contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- (ix) Obscenity or Nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws ch. 272, §31.<sup>2</sup>
- (x) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts, or represents, explicitly or by euphemism, 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

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C.M.R. 500.002. For guidance on proposed advertisements concerning hemp and hemp-derived products, the Authority may consult the Department of Agricultural Resources’ Policy Statement Regarding the Sale of Hemp-Derived Products in the Commonwealth, available at <https://www.mass.gov/doc/mdar-policy-statement-sale-of-hemp-derived-products/download>.

<sup>2</sup> Mass. Gen. Laws ch. 272, §31, defines “obscene” as follows: “matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value” Mass. Gen. Laws. ch. 272, §31, defines “nudity” as follows: “uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.”

purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws ch. 272, §31.<sup>3</sup>

- (xi) Political Campaign Speech. The advertisement contains political campaign speech. For purposes of these Guidelines, 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, state, or federal election, or (3) promotes or opposes a candidate or group of candidates for local, state, or federal election. For purposes of these Guidelines, 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.
- (xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the MBTA or the Commonwealth of any service, product, or point of view, without prior written authorization of the MBTA (through its General Manager) or the Commonwealth (through the Secretary of Transportation).
- (xiii) False, Misleading, or Deceptive. The advertisement, or any material contained in it, is false, misleading, or deceptive.
- (xiv) Libel and Intellectual Property Infringement. The advertisement contains material that is libelous, infringes on any copyright, trademark, or other intellectual property rights, or is likely to subject the advertiser or the MBTA to litigation.
- (xv) “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 that are identifiable with: films rated “X” or “NC-17,” video games rated M or AO, adult book stores, adult book, video, or entertainment stores or websites, nude dance clubs and other adult entertainment establishments, adult telephone or video/chat services, and escort services.
- (xvi) The advertisement directs viewers to websites, telephone numbers, or other media sources that contain materials, images, or information that would violate the foregoing Advertising Standards if the materials, images, or information were contained in the advertisement itself.

(d) Limited Display of Alcohol-Related Advertisements:

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<sup>3</sup> Mass. Gen. Laws ch. 272, §3 I, defines “minor” as “a person under eighteen years of age.

The MBTA may display advertisements that advertise an alcohol product or a brand of alcohol products in the following limited circumstances only:

- (i) The advertisement appears in an MBTA rail station, bus shelter, or billboard, provided, however, that no alcohol advertisements shall be affixed in rail stations where weekday average Student Pass usage exceeds 10% of station ridership, as determined by the MBTA in its sole estimation;
- (ii) Up to fifteen (15) exterior full-body or Ultra Super King train wraps may be displayed across the MBTA subway system (Red, Green, Blue, and Orange lines) at any one time, with a maximum of 4 per line;
- (iii) The advertisement complies with the Outdoor Advertising Association of America's Code of Industry Principles as they concern alcohol advertisements.

The MBTA Advertising Manager may delay implementation of any part of this section.