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Policies and Procedures

No. 62

SUBJECT:

Board Approval: 7/17/2014

FIRST AMENDMENT ACTIVITIES ON MTS PROPERTY

PURPOSE:

To establish a policy and guideline concerning the regulation of First Amendment Activities on MTS property.

BACKGROUND:

It is the policy of MTS to provide safe, secure and efficient transit services to its passengers. In furtherance of this policy, MTS intends that its transit vehicles and facilities be used only for travel-related purposes so that passengers can utilize the transit system in a safe and efficient manner without inconvenience or delay. Activities for non-travel purpose, as defined below, bring the risk of interference with the entering, exiting, boarding, transferring and de-boarding of MTS passengers from transit vehicles and facilities as well as the increase in administrative costs necessary for security enforcement, maintenance and litter removal at transit facilities.

To prevent interference with and obstruction of MTS's responsibilities to provide transportation and protect its facilities, while at the same time accommodating First Amendment Activities that are protected by state and federal law, MTS has made certain areas of its property available for First Amendment Activities and has instituted the following policy.

POLICY:

The following guidelines will be reviewed by staff to reflect current policies of MTS Board of Directors and to reflect changes in the trends of social and economic acceptance and appropriateness of various forms of First Amendment Activities.

62.1 DEFINITIONS

- a. "First Amendment Activit(y)(ies)" includes, but is not limited to, distribution of literature, pamphlets, handbills, signature gathering, picketing, demonstrating and displaying



activities protected by the First Amendment. Commercial activities are not considered First Amendment Activities under this Policy.

- b. "Commercial activities" include: (1) advertising that promotes the sale, lease or other financial benefit of a product, service, event or other property interest which does no more than propose a commercial transaction; (2) exhibiting, selling, or offering for sale, hire, lease, or let out in MTS Facilities any good, merchandise or service which does no more than propose a commercial transaction, and (3) conducting business activities in MTS Facilities for the personal financial gain of the individual or his or her employer where the "business activity" is not a protected First Amendment Activity.
- c. "MTS Facility" includes but is not limited to, MTS owned or controlled buses and trolley cars as well as Transit Centers and Trolley stations, train operators' cabs, bus operators' seats, closed off areas, mechanical or equipment rooms, employee-only areas, storage areas, interior rooms, tracks, roadbeds, tunnels, shops, barns, train or bus yards, garages, depots and areas marked as restricted or dangerous.

62.2. USE OF MTS FACILITIES

- a. No person may perform any act which interferes with or may tend to interfere with the safe and efficient operation and provision of transit service.
- b. No person shall engage in Commercial Activities while present at MTS Facilities pursuant to a First Amendment Activity Permit.
- c. Persons shall be permitted to participate in First Amendment Activities in "Designated Areas" of MTS Facility as described in Exhibit C upon issuance of a Permit by MTS as described in Exhibit A.
- d. Authorized First Amendment Activities conducted in the "Designated Areas" of MTS Facilities as described in Exhibit C shall only occur during the operating hours of transit routes and operations.

62.3 AREAS WHERE FIRST AMENDMENT ACTIVITIES ARE PROHIBITED

- a. All areas of MTS Facilities as described in Exhibit B where First Amendment Activities are prohibited shall constitute a non-public forum.
- b. The "paid fare zones" of MTS Facilities where access is available only to ticketed passengers, including the inside of a bus, inside of a trolley car and in the area for boarding, exiting or waiting for a trolley car shall be reserved for ticketed passengers and authorized MTS personnel only. These areas shall constitute a non-public forum and no First Amendment Activity is permitted.

- c. Any MTS Facility where First Amendment Activities may impede the free-flowing ingress and egress of passengers shall constitute a non-public forum and no First Amendment Activity is permitted.
- d. Any MTS Facility where public and passenger access is restricted shall constitute a non-public forum and no First Amendment Activity is permitted.
- e. This provision shall not apply to MTS authorized advertisements or Commercial Activity pursuant to a vendor agreement with MTS.

62.4 “DESIGNATED AREAS” WHERE FIRST AMENDMENT ACTIVITIES ARE PERMITTED

- a. The “Designated Areas” of MTS Facilities as described in Exhibit C shall allow for First Amendment Activities subject to a MTS issued Permit and MTS Board Policy No. 62.

This original Policy was adopted on 7/17/14.

Exhibits B and C amended on 2/20/15 (per CEO's authorization).

Exhibits B and C amended on 5/27/15 (per CEO's authorization).

Exhibit A amended on 9/8/17 (per CEO's authorization).

Exhibit C amended on 5/22/2018 (per CEO's authorization)

Attachments: Exhibit A – Permit Application for First Amendment Activities

Exhibit B – MTS Facilities where First Amendment Activities are Prohibited

Exhibit C – “Designated Areas” of MTS Facilities where First Amendment Activities are Permitted

Exhibit A – MTS Board Policy No. 62

PERMIT APPLICATION FOR FIRST AMENDMENT ACTIVITIES

Permit Application Process: A Permit Application for First Amendment Activities (which is included at the end of Exhibit A) shall be submitted and received by MTS at least seven (7) calendar days, but no more than thirty (30) calendar days, prior to the date of the proposed activity. The Permit Application shall include:

- (1) Contact information of the individual or the representative organization;
- (2) The preferred MTS Facility to conduct the proposed activity;
- (3) The proposed activity;
- (4) The preferred days and time of the proposed activity;
- (5) The approximate number of persons who will participate in the activity; and
- (6) The proposed equipment to be used (i.e. tables/chairs).

No later than two (2) business days (Monday through Friday, 8:00am to 5:00pm, excluding MTS holidays) before a proposed activity for which a fully completed Permit Application has been filed, MTS shall issue or deny the Permit Application based on MTS Board Policy No. 62. Notice of denial of a Permit Application shall set forth the grounds for denial.

Availability of Permits: Issuance of a Permit shall occur on a first come, first serve basis without regard to renewal status. When MTS receives more applications for Permits than MTS is able to grant, MTS may impose such reasonable and equitable restrictions as to allowable times and days as may be required to provide fair opportunities for all applicants to conduct First Amendment Activities. Only one First Amendment Activity is allowed in the same physical space at the same time.

Permit Conditions: Permits to engage in First Amendment Activity shall be valid for a specific MTS Facility location, date and time period, not to exceed one (1) month. In issuing a Permit, MTS may impose reasonable time, place and manner conditions necessary in addition to those provided in MTS Board Policy No. 62 in order to prevent interference with MTS's transportation services. MTS will consider safety and security issues pertaining to the activity, including the availability of appropriate safety and security personnel, in determining the reasonable time, place and manner conditions that will be imposed on the Permit. Such conditions may include, but are not limited to:

- (1) Specification of the days, time and duration of First Amendment Activity;
- (2) Specification of the location of First Amendment Activity;
- (3) Limitations on the number of persons who may participate in the First Amendment Activity;
- (4) Limitations on a minor participating in First Amendment Activities without at least one adult supervising. A minor is defined as an individual less than 18 years of age other than a legally emancipated minor; and
- (5) Restrictions on the size or number of equipment, including, without limitation, tents, tables or chairs.

Use of Permit: Any person or group issued a Permit will be required to have it on their person or with their group when engaged in their First Amendment Activity. At the request of MTS personnel, any person or groups engaged in First Amendment Activities must produce a valid Permit for the date, time period and MTS Facility location of the First Amendment Activity.

Prohibited Activities: No person or group, while engaging in any First Amendment Activity for which a Permit has been issued, shall:

- (1) Interfere with the smooth flow of passengers through entrances or exits of MTS Facilities;
- (2) Interfere with the access onto or off of an escalator, stairway or elevator;
- (3) Interfere with access to or from ticket or automatic fare collection machines;
- (4) Interfere with any MTS authorized Commercial Activity or concession;
- (5) Interfere with MTS employees' performance of their responsibilities and duties;
- (6) Interfere with access to any fire safety system component, public telephone, information board, news vending machine, kiosk or building entrance;
- (7) Post or affix to MTS Facilities any signs, leaflets, posters, flyers, pamphlets, brochures, banners, structures, material or paraphernalia of any kind;
- (8) Use a sound amplification device including, but not limited to, any radio receiver, phonograph, television receiver, certain musical instruments, tape recorder, cassette player, compact disc player, speaker device or system, sound amplifier or any sound-producing device of similar nature that creates excessive noise causing a public safety concern or which emits noise interfering with transit operations. Sound amplification device does not include assistive hearing devices for persons who are hearing impaired;
- (9) Disturb the peace or disturb others by engaging in boisterous or unruly behavior;
- (10) Willfully block the free movement of another person;
- (11) Conduct aggressive panhandling which is the accosting of other persons in any MTS Facility for the solicitation of money, funds or alms. Accosting includes, but is not limited to, actions intended to cause fear of bodily harm or intimidation, intentional touching or blocking, and violent or threatening gestures or language. Aggressive panhandling is expressly prohibited in all MTS Facilities; or
- (12) Violate any MTS issued Permit, MTS Ordinance, MTS Board Policy or other applicable local, state and federal laws. Any violation of a MTS issued Permit, MTS Ordinance, MTS Board Policy or law may result in one or more of the following: revocation of the MTS Permit; removal from MTS property; citation; or arrest.

Permit Denial: MTS may deny a Permit Application on one or more of the following grounds:

- (1) The application is not timely, fully completed and executed;
- (2) The application or the person on whose behalf the application is made has on prior occasions damaged MTS's;
- (3) A fully executed prior Permit Application for the same time and place has been received, and a Permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular MTS Facility location;
- (4) The use or activity intended by the applicant would present a danger to the safety of the applicant, passengers using MTS services, MTS employees or the general public;
- (5) The use or activity intended by the applicant would interfere with the access of MTS passengers to a MTS Facility including interrupting the flow of passengers, diverting foot traffic, delaying passengers or otherwise disrupt or create an obstruction of the orderly functioning of MTS's transportation services;
- (6) The applicant or the person on whose behalf the application is made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity

previously permitted or has violated the terms of prior Permits issued to or on behalf of the applicant; or

- (7) The use or activity intended by the applicant is not a protected First Amendment Activity.

Appeal Following a Permit Denial: An applicant may submit a written appeal within 10 days of a denial to the Chief Executive Officer setting forth the reasons why the Permit Application should be granted.

No Endorsement: Issuance of a Permit by MTS does not constitute an endorsement by MTS of the message conveyed or of the sponsor of the message.

Clean Up Required: Any person or group whom is allowed to engage in First Amendment Activities authorized under the terms of MTS Board Policy No. 62 shall be responsible for removal of all written materials and other property and clean-up of the areas where the activity was conducted. No such materials or property shall be left behind or stored at MTS facilities.

Responsibility for Damage or Injury: Any person or group who is allowed to engage in First Amendment Activity authorized under the terms of MTS Board Policy No. 62 shall be responsible for any damage or injury arising out of that activity.

Activity at own risk: Any person or group who is allowed to engage in First Amendment Activity authorized under the terms of MTS Board Policy No. 62 shall do so at his or her own risk. MTS does not guarantee additional security, safety or privileges by issuing a Permit.

Temporary closure: Notwithstanding MTS Board Policy No. 62, MTS shall have the authority to temporarily close access to areas otherwise open to First Amendment Activity as deemed necessary, such as during construction, special events, sporting events, or in response to a threat to safety and security.

Public Outreach: Notwithstanding MTS Board Policy No. 62, all necessary MTS public outreach activities including, but not limited to, publication of information regarding stop closures, detours or customer surveys, has priority over all Permit Applications for First Amendment Activities.

No Assignment: The Permit issued under MTS Board Policy No. 62 shall not be assigned or transferred and any attempt to do so shall be void.

Severability: If any provision of MTS Board Policy No. 62 is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS)

PERMIT APPLICATION TO ENGAGE IN FIRST AMENDMENT ACTIVITY

Permit Application shall be submitted and received by MTS at least seven (7) calendar days, but not more than thirty (30) calendar days, prior to the date of the proposed activity. Submit Permit Application to:

San Diego Metropolitan Transit System (MTS)

Attn: Legal Department

1255 Imperial Avenue, #1000

San Diego, CA 92101

Telephone: (619) 557-4539

Samantha.leslie@sdmts.com

Office Hours: 8:00am – 5pm, Monday through Friday (excluding holidays)

First Amendment Activity is allowed only in “Designated Areas”, with an MTS issued Permit and subject to reasonable time, place and manner restrictions described further in MTS Board Policy No. 62.

1. Name (Individual or Representative Organization): _____

2. Address: _____
(Street)

3. Telephone / Email _____

4. Preferred MTS Facility location: _____ 2nd choice: _____

5. Preferred date(s) & time(s) of proposed activity: _____ 2nd
choice: _____

6. Proposed activity: _____

7. Approximate number of persons who will participate in the activity: _____

8. Proposed equipment to be used (i.e. tables/chairs): _____

9. The undersigned acknowledges receipt of the terms of MTS Board Policy No. 62 pertaining to
use of MTS Facilities for First Amendment Activities and has read and agrees to its terms.

Signature

Date

Exhibit B of MTS Board Policy No. 62

MTS FACILITES WHERE FIRST AMENDMENT ACTIVITES ARE PROHIBITED

The following MTS Facilities shall constitute non-public forums where First Amendment Activities are prohibited:

- 1) "Paid Fair Zone Areas" of MTS Facilities reserved for ticketed passengers only;
 - a. Inside all MTS Buses and Trolley Cars
 - b. Downtown Line Stations
 - i. Santa Fe Depot
 - ii. America Plaza
 - iii. Civic Center
 - iv. Fifth Avenue
 - v. City College
 - vi. Park & Market
 - vii. Gaslamp Quarter
 - viii. Convention Center
 - ix. Seaport Village
 - c. Green Line Stations
 - i. County Center / Little Italy
 - ii. Middletown
 - iii. Washington Street
 - iv. Morena/Linda Vista
 - v. Hazard Center
 - vi. Mission Valley Center
 - vii. Rio Vista
 - viii. Fenton Parkway
 - ix. Qualcomm Stadium
 - x. Mission San Diego
 - xi. SDSU
 - xii. Arnele Avenue
 - xiii. Gillespie Field
 - xiv. Santee
 - d. Green / Orange Line Station
 - i. Amaya Drive
 - e. Orange Line Stations
 - i. 25th & Commercial
 - ii. 32nd & Commercial
 - iii. Encanto/62nd Street
 - iv. Lemon Grove Depot
 - v. La Mesa Blvd.
 - f. Blue Line Stations
 - i. Barrio Logan
 - ii. Harborside
 - iii. Pacific Fleet
 - iv. 8th Street

- v. Iris Avenue
 - vi. Beyer Boulevard
 - vii. San Ysidro
- 2) Areas that First Amendment Activities may impede the free flowing ingress and egress of passengers; and
 - 3) Areas where public and passenger access is prohibited.

This Policy was originally adopted on 7/17/14.
Exhibits B and C amended on 2/20/15 (per CEO's authorization).
Exhibits B and C amended on 5/27/15 (per CEO's authorization).

Exhibit C of MTS Board Policy No. 62

"DESIGNATED AREAS" OF MTS FACILITIES WHERE FIRST AMENDMENT ACTIVITIES ARE PERMITTED

Within the following locations below, there are specific "Designated Areas" where First Amendment Activities may take place. First Amendment Activities may only be conducted within the "Designated Area" and cannot be conducted outside of the "Designated Area". The below "Designated Areas" do not include any "Paid Fare Zone" reserved for ticketed passengers as described in Exhibit B; any area where First Amendment Activities may impede the free flowing ingress and egress of passengers; and any area where public access is restricted. MTS will make available aerial and close up site photos identifying the specific "Designated Areas" located within the following stations:

- 1) Green/Orange Line Stations
 - a. El Cajon
 - b. Grossmont
- 2) Green Line Stations
 - a. 70th Street
 - b. Alvarado Medical Center
 - c. Grantville
 - d. Fashion Valley
 - e. Old Town
- 3) Orange Line Stations
 - a. Spring Street
 - b. Massachusetts Avenue
 - c. Euclid Avenue
 - d. 47th Street
- 4) Green/Orange/Blue Line Stations
 - a. 12th & Imperial
- 5) Blue Line Stations
 - a. 24th Street
 - b. E Street
 - c. H Street
 - d. Palm Avenue
 - e. Palomar Street
- 6) I-15 Corridor
 - a. Del Lago
 - b. Rancho Bernardo
 - c. Sabre Springs / Rancho Penasquitos
- 7) Transit Center
 - a. University Towne Center Transit Center
 - b. Miramar College Transit Center

This Policy was originally adopted on 7/17/14.

Exhibits B and C amended on 2/20/15 (per CEO's authorization).

Exhibits B and C amended on 5/27/15 (per CEO's authorization).

Exhibit C amended on 5/22/2018 (per CEO's authorization).

Exhibit C amended on 3/9/2020 (per CEO's authorization).