



City of Rockville

MEMORANDUM

July 7, 2010

TO: Scott Ullery, City Manager

FROM: Rebecca Torma, Transportation Planner II *RT*

VIA: Emad Elshafei, Chief, Traffic and Transportation Division *EE*
 Craig Simoneau, Director of Public Works *CS*

SUBJECT: Bus Shelter Advertising Programs

This memorandum presents information the Mayor and Council requested to assess the possibility of allowing bus shelter advertisements in the City of Rockville. The information below discusses the number of bus facilities, current installation procedures and maintenance program for shelters and trash receptacles located within the City. It also includes a detailed comparison chart of the bus shelter advertising agreements for the City of Gaithersburg, Takoma Park and Montgomery County. The sign ordinance, right-of-way considerations, and first amendment rights are discussed since they may impact the City's ability to install bus shelters with advertising. Lastly, it includes a recommendation to proceed with negotiating a bus shelter advertisement agreement in the City of Rockville. Staff recommends a bus shelter agenda item be brought to the Mayor and Council to seek their concerns and agreement before soliciting proposals from firms to maintain advertising bus shelters.

Background

There are currently 477 bus stops in the City with 70 shelters and 72 trash receptacles. The City installs approximately eight bus shelters at bus stops each year and determines shelter placement based on bus stop usage, neighborhood interest, and availability of right-of-way. Priority is given to bus stops with an average of 25 or more users per day.

In 2004, Montgomery County contracted with "Clear Channel" to maintain County shelters with advertisement. The agreement also included maintaining 22 City shelters. Since 2004, the City added 48 bus shelters, which were not included in the agreement. Since the City was unwilling to allow advertising on its bus shelters per the County contract, the County requested the City in

April 2008 to maintain the bus shelters and trash receptacles located within the City. Therefore, in December 2008, the City hired a contractor to maintain the bus shelters and trash receptacles at bus stops. The annual maintenance cost of the shelters and trash receptacles is approximately \$90,000 and funded from the Transportation Demand Management operating budget. The cost to purchase shelters is primarily funded from the Bus Shelter Capital Improvements Program (CIP) which developers make monetary contributions towards as part of on-site requirements or as mitigation for off-site improvements.

Bus Shelter Advertising Programs in the Area

The City of Gaithersburg, City of Takoma Park and Montgomery County have their own bus shelter advertising agreements that are described below. All of the agreements specify maintenance of the shelters, advertising restrictions and payment terms. Attached is a chart providing a detailed comparison of the agreements from the three jurisdictions.

Gaithersburg

The City of Gaithersburg has a 10-year agreement with a contractor to erect, install and retrofit up to 70 bus shelters. The agreement includes specifications for the maintenance of shelters, payments to the City and advertising restrictions. The contractor provides all cleaning, snow removal, trash pick up and repairs for all of the bus shelters. In addition, the contractor is responsible for trash pick up at a maximum of 200 bus stops without shelters. The agreement restricts the ads to “be of reputable character” and does not permit ads for alcohol and tobacco. In addition, the agreement grants the City the right to disapprove advertisement deemed inappropriate by them. City of Gaithersburg staff report that they have received very few complaints about the ads and the contractor is responsive to City’s request to remove them. The agreement also allows for non-advertising shelters, which “shall not exceed 10 percent of the total combined advertising and non-advertising shelter inventory.” In addition, the City can designate up to 5 percent of the shelter inventory to advertise City programs and events. The contractor shall pay a fee to the City equal to 10 percent of the advertising receipts generating from the shelters. The City currently has installed 55 advertising shelters (approximately 5 non-advertising) and earned up to \$21,000 per year.

Takoma Park

The City of Takoma Park has a 10-year agreement with a contractor to erect and install a minimum of 21 bus shelters with advertising. This agreement provides specifications for maintenance, advertising restrictions and payments to the City. The City’s agreement specifies that the contractor shall be solely responsible for the cleaning, repair and replacement the shelters. However, the contractor is not responsible for trash pick up. The agreement also states that the advertisements “shall be of reputable character,” conform to recognized business standards and shall not conflict with the laws of the United States, State of Maryland or the City. The agreement does not discuss non-advertising shelters or if the City can advertise its own events or programs on the shelters. The contractor is also required to pay a fee to the City equal

to 10 percent of the gross advertising receipts generated from the advertising shelters. The City currently has 25 bus shelters and earned up to \$20,000 per year.

Montgomery County

Montgomery County began its bus shelter advertising program in 2004. The 15-year agreement the County signed with a contractor includes specifications for shelter maintenance, advertising restrictions and payments to the County. The contractor is required to purchase, install and maintain 400 advertising bus shelters and 100 non-advertising bus shelters. The maintenance of the shelters includes snow removal, cleaning, repairs and trash pick up only around the shelter, not trash in the receptacles. The County hired a different contractor for this task.

The agreement restricts the advertising, however not as specifically as the Gaithersburg and Takoma Park agreements. According to the County staff, very few complaints about the ads were received and the contractor has been responsive to the County's request to remove ads. In addition, the County is allowed to advertise its own programs and events on the shelters. Under the agreement, the County earns between 10 to 20 percent advertising revenue, depending on the year of the agreement. The County has installed 400 advertising bus shelters (40 non-advertising shelters) and earned up to \$400,000 per year.

Items for Further Research and Consideration

Several factors associated with bus shelter advertising need further research and consideration including potential changes to the City's sign ordinance, ensuring compliance with the right-of-way regulations, and establishing advertising guidelines that protect the City from legal challenges.

Sign Ordinance

According to the City of Rockville's Zoning Ordinance, most signs are not permitted in the right-of-way. However, the two sign sections of the Zoning Ordinance listed below may allow for the bus shelter advertising.

25.18.04.b.08 – Only Permitted Signs Lawful; Signs Specifically Prohibited

“Signs erected by any person on any public property or right-of-way except for signs as may be directed by the City Manager;”

25.18.05.05 – Exemptions

“Any sign erected by or at the direction of, any governmental body having jurisdiction over the property or the right-of-way on which the sign is located;”

Text amendments may be required or may be helpful in implementing advertisements at bus shelters depending on how the Mayor and Council decide to proceed. Montgomery County

specifically exempted advertising on bus shelters from their Zoning Ordinance. Below is the text that was added to the Zoning Ordinance and approved by the County Council.

59-F-8.1. Exempt

“A sign legally affixed to a bus shelter or transit center information kiosk pursuant to an approved franchise agreement.”

Instead of amending the Zoning Ordinance, the City of Gaithersburg’s agreement considers the bus shelters a public service and amenity. The agreement states that the shelters are not subject to regulations or ordinances pertaining to billboards, outdoor signs, portable signs, building signs, or any other form of out-of-home advertising or sign ordinance rules, regulations or other ordinances.

Right of Way Considerations

The implementation of a bus shelter advertising program requires a review of right-of-way regulations. For advertising bus shelters located along state roads, the State Highway Administration requires a permit for each shelter. Bus shelters with advertisements located in a right-of-way owned by the Washington Metropolitan Transit Authority would need to comply with WMATA right-of-way laws and regulations. The implementation of a bus shelter advertising program requires identifying the owners of the rights-of-way in question and the laws and regulations governing the rights-of-way.

First Amendment Rights

Before contracting for and implementing a bus shelter advertising program, the City will need to establish specific guidelines for determining acceptable advertisements. Since the courts consider advertisements on bus shelters to be a form of speech protected by the First Amendment, the City’s ability to reject undesirable advertising will be limited. Issues related to bus shelter advertising and first amendment rights may require further staff research and consideration depending on the direction the Mayor and Council wish to take.

Summary

The City has installed 15 percent of its bus stops with shelters. Additional bus shelters are added every year with the maintenance costs continuing to grow. Staff reviewed the bus shelter agreements for the three other jurisdictions and found that they work well by providing a revenue source and a shelter maintenance program in exchange for advertising rights. Therefore, staff recommends a bus shelter advertising program that could generate \$30,000 to \$40,000 a year in revenue and save the City up to \$90,000 a year on maintenance costs. The agreement with a contractor would include advertising shelters limited to non-residential areas, allowing the City 5 percent of the advertising space for its own programs and the City receiving a minimum of 10 percent of the advertising revenue.

The chart provides a detailed comparison of the agreements for the three jurisdictions.

	Montgomery County	Takoma Park	Gaithersburg
Agreement length	15 years	10 years	10 years
Maintenance	Cleaning, preventive maintenance, repair and replacement, graffiti abatement	Cleaning, preventive maintenance, repair and replacement, graffiti abatement	Cleaning, preventive maintenance, repair and replacement, graffiti abatement
Trash pickup	Trash around shelter, not in trash receptacles	No; City picks up trash	Yes; trash pick up in trash receptacles not to exceed 200 locations
Snow removal	Yes	Yes	Yes
Illumination of shelters	Yes	Not specified in the agreement	Yes
Location of new shelters	Specific locations listed in the agreement; No advertising shelters are installed in residential areas	Specific locations listed in the agreement	Specific locations listed in the agreement
Number of shelters that can be installed	Maximum of 400 advertising and 100 non-advertising; staged over 3 years; 20 non-advertising shelters each year in years 4-8	Minimum of 21	Maximum of 70 total shelters; non-advertising shelters not to exceed 10%
Number of shelters installed	400 advertising and 40 non-advertising	25 advertising	55 advertising; 5 non-advertising
Availability of advertising area to jurisdiction	Yes; no specifics in the agreement	Not specified in the agreement	5%; beyond 5% on an available basis
Percentage of revenue from advertisements	Years 2-3 - 10%; Year 4 - 15%; Years 5 -15 - 20%	10%	10%
Amount received by jurisdiction per year	\$400,000	\$19,000	\$21,000
What happens to shelters at the end of the agreement	Bus shelters become County property	Remove all advertising shelters and restore the property; alternative to allow City to purchase each shelter for \$1.00	Remove only advertising boxes leaving shelters; shelters become City property