

First Amendment and Advertising Policies



METROPOLITAN
TRANSPORTATION
COMMISSION



Metropolitan Transportation Commission
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First Amendment Overview

1. Protects, among other freedoms, freedom of speech
2. “Commercial speech” is protected, but there are limits
3. Restrictions on speech are analyzed differently depending on the type of governmental property where the speech would occur

First Amendment to the U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Forum Analysis

Government property is divided into three categories, or fora, each with a different standard of review for restrictions on speech:

1. Traditional Public Forum
2. Designated Public Forum
3. Nonpublic Forum

	Strict Scrutiny	Reasonableness Review
Traditional Public Forum	X	
Designated Public Forum	X	
Nonpublic Forum		X

Factors Considered in Determining Nature of Forum in Bus Advertising Cases

1. Whether government intended to open a nontraditional forum for public discourse – stated intent and actual practice are factors
2. Nature of property and compatibility with expressive activity
3. Whether non-commercial advertising has been allowed
 - a. Political
 - b. Social or policy issues

Proposed Clipper[®] Policy

The proposed Clipper[®] policy states intent to maintain a nonpublic forum

- Limits custom cards to commercial purpose if sponsor is non-governmental
- Limits governmental sponsorship to messages that advance governmental purposes of the sponsor

Policy contains restrictions on proposed content for custom cards

- To be applied in a viewpoint-neutral manner
- Consistent with MTC's commercial interests in operating the Clipper[®] program