



● **McQUISTON ASSOCIATES**

6212 Yucca St, Los Angeles, CA 90028-5223

(323) 464-6792 FAX same

consultants to technical management

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**CF08-2020**

**ITEM 50, Council 9/1/09**

M. Kostreulich

**STATEMENT of J.H. McQUISTON on  
AMENDING BILLBOARD ORDINANCE**

Honorable President and Members of the Council:

**Courts decree that the power of a City to regulate zoning is derived from the City's Police Power.** The police power flows from the City's mandate to maintain the Public Safety. But Courts caution that **Cities must not improperly exercise their police power, because it may instead become an "Inverse Condemnation"**.

**Regulating billboards is permissible if a public safety basis is provable by the City. Otherwise, the regulation may be determined by a Court of Law to be an Inverse Condemnation requiring "consideration" to be paid to the injured owner of the property which the City "took".**

In reviewing the proposed Ordinance and its many proposed amending Motions, **I cannot find a reasonable foundation based on Public Safety therein, because the non-uniform application therein specifically negates any reasonable public-safety basis for the proscriptions therein.**

If a use proscription is based on "public safety", then **all existing uses must also be declared unsafe.** "Grandfathering" **defeats the Ordinance per se.** It must not be allowed.

If "on-site" use does not jeopardize public safety, then "off-site" use will not jeopardize public safety either.

If the application of the Ordinance is not based on "public safety", then if existing uses may be continued, **every future use must be permitted, per Equal Protection Constitutional requirements, or else the City must pay Inverse Condemnation fees to those denied the use.**

This Council will be well-advised to **avoid the cost the City will incur if this Ordinance and/or amending Motions are enacted.** *Look instead to the future consequences of a Council action. Send it back for rework.*

The City's prior failure to assay properly the impact of its prior enactment now **makes it difficult to proceed with an Ordinance to correct its prior errors.** But it is not impossible to achieve an appropriate amendment.

The City must follow a more-reasonable Policy, based on a *reasonable exercise of its Police Power.* **Now is the time to avoid inevitable court actions and adverse judgments which the present proposals will cause.**

Respectfully submitted,

J. H. McQuiston

c: Interested parties