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August 3, 2011

Councilmember Paul Krekorian  
Los Angeles City Hall  
200 N. Spring Street, Room 425  
Los Angeles, CA 90012

Re: Proposed Sign Ordinance/Council File 08-2020;  
08-3386-S1

Dear Councilmember Krekorian:

Our firm represents Summit Media LLC ("Summit"), one of the smallest of the limited number of companies that operate billboards in the City of Los Angeles. We are writing to suggest an amendment to the proposed sign ordinance that the PLUM Committee is scheduled to consider on August 9. This amendment is necessary to ensure that Summit and other smaller off-site sign operators are treated fairly under the proposed ordinance; also, to ensure that the City's limited enforcement resources are not wasted on endless and unproductive legal proceedings concerning trivial issues, but instead are available to vigorously enforce the law against egregious violators of the sign ordinance.

City agencies report that a significant number of both off-site and on-site signs in the City vary in small measure from the height, size, location, etc. specifications contained in their permits or in applicable law. These minor non-compliances, often the result of innocent error or oversight, in most cases have existed for years, never been cited, and never been the source of community concern or controversy.

Appropriately, the proposed sign ordinance provides relief for on-site signs with minor non-compliances. Specifically, Section 14.4.22 of the proposal allows for the height, location, sign area, etc. requirements to be "adjusted" up to 20% to provide relief for non-compliant on-site signs. Yet, the proposed ordinance contains no similar relief mechanism for off-site signs with minor non-compliances.

Further, the ordinance proposes astronomical new civil penalties—ranging from \$2500 to \$48,000 per day--to enforce off-site sign non-compliances. Section 14.4.26.D. Making matters worse, the penalties appear to be fixed, i.e., cannot be reduced based on mitigating factors. Section 14.4.26.B.7. As such, the full amount of the penalties must be assessed against the off-site sign operator regardless whether a non-compliance is minor (e.g., the sign is a foot lower than its permit provides) or major (e.g., the sign never had a permit at all).

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This approach is problematic in many regards. First, it threatens operators of off-site signs with draconian fines—way in excess of the revenues or, in some cases, the value of the signs themselves—for minor non-compliances that have never been the source of community concern or controversy.<sup>1</sup> Second, the threat would fall completely on the smaller sign companies like Summit, and have no impact on the largest companies and the vast majority of non-compliant billboard signs in the City. Indeed, the City's four largest outdoor advertising companies--which collectively control over 95% of the off-site signs, as well as 100% of the billboards converted in recent years to digital signs, in the City<sup>2</sup>--all currently enjoy the protection of amnesty provisions in the much-criticized settlement agreements with the City. Those provisions allow for re-permitting not only of off-site signs with minor permit non-compliances, but also of signs built with no permits whatsoever. The settlement agreements also contain specific dispute resolution mechanisms for noncompliant signs that fall outside the amnesty provisions.<sup>3</sup> As such, the enforcement scheme proposed in the draft ordinance would have no effect on the largest companies and over 95% of the non-compliant billboard signs in the City.

Finally, the approach would be harmful to the City, tying up its limited enforcement resources in an endless series of administrative and judicial proceedings. In the past, notices to comply concerning minor non-compliances invariably led to vigorously contested administrative hearings, with judicial proceedings threatened thereafter. These legal proceedings dominated the time and resources of the City's Building and Safety, Planning, and City Attorney offices. Given the complex legal issues involved and the poor condition of the City's permit records, the enforcement efforts produced few, if any, results. The situation will be the same here, particularly given the unfair nature of the proposed enforcement scheme. Again, all this will be done in the name of addressing trivial non-compliances that have never been and are not today the source of community controversy or concern. And, all this will deplete the resources needed to vigorously enforce the law against the egregious violators of the sign ordinance.

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<sup>1</sup> The enormous size of these fines and the chilling effect they may have on lawful 1<sup>st</sup> Amendment conduct raises troubling legal issues in and of itself.

<sup>2</sup> Three companies--CBS Outdoor, Clear Channel, and Regency--collectively operate approximately 3500 large-format billboard structures. Two of those companies--CBS and Clear Channel--collectively operate all of the 100+ billboards in the City that were converted to digital since 2007 under the settlement agreements discussed below. A fourth company, Lamar (formerly Vista), operates approximately 4000 smaller format, so-called "8-sheet," off-site signs.

<sup>3</sup> The settlement agreements with CBS Outdoor and Clear Channel have been held to be unlawful by a Los Angeles Superior Court judge. However, the judge's ruling has been appealed, and the settlement agreements remain in force and effect throughout the appeal due to an automatic stay of the trial court ruling. The settlement agreements with Regency and Vista (now Lamar) suffer from the same legal defects as the CBS Outdoor and Clear Channel agreements, but have not yet been challenged in court. Thus, the four large companies continue to enjoy the benefits of the agreements.

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In light of these facts, we would suggest that the City propose a relief mechanism for minor off-site sign non-compliances that borrows from the concepts contained in the on-site sign adjustment proposal. Specifically, we would suggest the inclusion of an off-site sign re-permitting provision that reads as follows:

14.4. \_\_. Minor Non-compliances in Existing Off-Site Signs. Notwithstanding any other provision of this division or Chapter 1 of the Code, an existing off-site sign and structure that was constructed under a valid building permit, but which is currently out of compliance with the sign face area, height, number of faces, or location permitted under such building permit, shall be made to conform to the requirements of the building permit or applicable law at the time the permit was issued. In the alternative, upon application, a building permit shall be reissued in conformance with the provisions of Section 91.106 of this Code to allow such existing sign and/or sign support structure to be maintained in its current condition, provided the following standards, as applicable, are met: (a) in the case of sign face area and height, the nonconformance is no greater than 20 percent beyond what is otherwise permitted by either the building permit or the Code at the time the permit was issued; (b) in the case of location, the sign is located on the same lot for which the sign is permitted and the lot is not currently zoned for residential use; and (c) in the case of an added second panel, the addition of a second panel was allowed under the Code at the time the permit was issued. If a sign or sign structure is nonconforming in more than one way, but each nonconformance individually meets the applicable standard above, a permit shall be reissued for the sign or sign support structure. This provision shall not apply to digital conversions undertaken pursuant to settlement agreements entered into prior to the effective date of this provision.

We appreciate your consideration of this suggestion, and would be pleased to provide any further information that would be helpful.

Sincerely,



Philip R. Recht