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REPORT NO. R13-0273

SEP 13 2013

REPORT RE:

DRAFT ORDINANCE AMENDING SECTIONS 12.05, 12.06, 12.07, 12.08, 12.10.5, 12.11.5, 12.21, 12.21.1, 12.22, 12.23, 12.32, 13.11, ARTICLE 4.4 OF CHAPTER I, SECTION 19.01, AND SECTION 91.6216.4.3 OF CHAPTER IX OF THE LOS ANGELES MUNICIPAL CODE TO ENACT NEW CRITERIA FOR THE ESTABLISHMENT OF SIGN DISTRICTS, CREATE NEW RELIEF PROVISIONS FOR CERTAIN DEVIATIONS FROM THE SIGN REGULATIONS, ESTABLISH ADMINISTRATIVE CIVIL PENALTIES FOR VIOLATIONS OF THE SIGN REGULATIONS, AND ENACT RELATED TECHNICAL CORRECTIONS AND OTHER MEASURES TO CONTROL THE POTENTIAL IMPACTS OF SIGNS ON TRAFFIC SAFETY AND THE VISUAL ENVIRONMENT

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File Nos. 08-2020, 11-0724, 11-1705 and 12-1611

Honorable Members:

In accordance with policy instructions from the Planning Department and the PLUM Committee, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance has three main purposes: (1) enact new criteria for the establishment of sign districts; (2) update the City's sign regulations; and (3) establish new civil penalties for violations of the sign regulations and a new framework for handling administrative appeals relating to violations of the sign regulations.

Charter Findings

Pursuant to Charter Section 559, the Planning Commission approved the draft ordinance and recommended that the City Council adopt it. If the City Council chooses to adopt this ordinance, it may comply with the provisions of Charter Section 558 by either adopting the findings prepared by the Director of Planning attached to the file or by making its own findings.

Background

The City's sign regulations were initially enacted in 1986. The most significant change to the sign regulations occurred in 2002 when the City added a ban on off-site commercial signs to the regulations. The sign regulations now include several other types of sign bans.

Beginning in 2003, the City was besieged with multiple lawsuits challenging the constitutionality of the City's sign bans as well as other aspects of the sign regulations. It was only after 2010 that the City was able to finally prevail in the last major legal challenge to the City's sign bans and to completely restore the bans.

After restoration of the sign bans, the Department of City Planning, in conjunction with the City Attorney's Office, resumed work on a comprehensive rewrite of the City's sign regulations that began in 2008, but was put on hold during the major sign litigation. That rewrite of the sign regulations was necessary to address issues that surfaced during the past decade, and resulted in this draft ordinance. Following is a description of the ordinance's most significant proposed changes to the existing sign regulations.

A. Sign Districts

1. Criteria for sign districts

The City has been creating sign districts for many years, with the earliest being the Hollywood Signage Supplemental Use District in 2004. The City's creation of sign districts, however, was put on hold in 2007 when a sign company called World Wide Rush filed a lawsuit alleging that the City's creation of several sign districts (which allowed off-site commercial signage) undermined the City's sign bans to such a degree that the sign bans were no longer valid. The lower court agreed with World Wide Rush and invalidated the City's sign bans. But in 2010 the Ninth Circuit Court of Appeals reversed the lower court in a decision called *World Wide Rush LLC v. City of Los Angeles*, 606 F.3d 676 (9th Cir. 2010). In that decision, the Ninth Circuit expressly ruled that cities can create sign districts to allow signs that would otherwise be prohibited by a sign ban.

In 2011, the Ninth Circuit handed down another decision, *Vanguard Outdoor, LLC v. City of Los Angeles*, 648 F.3d 737 (9th Cir. 2011), which confirmed and expanded upon its ruling in *World Wide Rush*.

The Planning Department has used these decisions as a road map for revising Los Angeles Municipal Code (LAMC) Section 13.11, which sets forth the criteria for sign districts, as follows:

- **Findings for creating sign districts that address aesthetics and traffic safety**

  The courts will only uphold a sign district if a city provides sufficient reasons for the creation of the district. Therefore, the City needs to carefully and fully articulate such reasons at the time it creates a sign district. The creation of the sign district should be tied to the City's interests in traffic safety and aesthetics.

  To help ensure that the City does this, the draft ordinance sets forth required findings for the creation of a sign district.

- **Sign "takedowns" versus "community benefits"**

  The original draft of the ordinance prepared by the Planning Department imposed a 1 to 1 takedown requirement. Under this takedown requirement, an applicant for a sign district would have to remove one square foot of existing off-site signage as a condition for installing each square foot of new off-site signage within a new sign district.

  The PLUM Committee modified the takedown requirement so that up to one-half of the takedown of existing signs can be satisfied through "community benefits," such as sidewalk and streetscape improvements.

  The subject of "takedowns" and "community benefits" is discussed in more detail below.

- **Number of sign districts**

  Creating too many sign districts or exempting too large a portion of the City from a sign ban might cause a future court to strike down the sign bans. During the hearing on the *Vanguard* case, the Ninth Circuit indicated that the existence of too many sign districts in a city might work at cross purposes to the sign bans. If that were to occur, the

bans would no longer adequately improve aesthetics and traffic safety and would thus be invalid under the First Amendment.

To address this issue, the draft ordinance helps to limit the number of sign districts in the City by limiting their location to regional centers and, as explained below, by requiring a minimum size for sign districts.

After PLUM acted on the draft ordinance, Planning staff advised our Office that specific plan zones that function as C, R5 or M zones should also qualify for Tier 1 Sign Districts (described below). In accordance with that advice, we have made the appropriate changes to proposed Section 12.32.

- **Size of sign districts**

  The draft ordinance increases the minimum size of sign districts for two reasons. First, sign districts that affect a larger area are more consistent with the legislative nature of sign districts. Second, the larger size requirement makes it more difficult to qualify for a sign district, thus reducing the overall potential number of sign districts in the City.

2. Tier 1 and Tier 2 sign districts

Criteria for the creation of sign districts is set forth in LAMC Section 13.11. The proposed ordinance amends Section 13.11 to allow for two types of sign districts.

The first type are Tier 1 sign districts which are larger in size (at least 5,000 linear feet of street frontage or 15 acres) than Tier 2 sign districts and for the most part can only be located in regional centers. The second type are Tier 2 sign districts which are smaller in size (minimum five acres or 100,000 square feet of non-residential floor area if site is not in a regional center) than a Tier 1 sign district but can be located in most parts of the City.

The draft ordinance protects the public by requiring, in proposed Section 13.11 D, that all off-site commercial signs in a Tier 2 sign district not be "visible from any public right-of-way or any property other than the subject property."

Both Tier 1 and Tier 2 sign districts require findings that comply with the Ninth Circuit's decision in *World Wide Rush*.

3.. Community benefits as a proposed alternative to sign take down requirement for new sign districts

At the PLUM Committee's meeting of August 8, 2011, several speakers representing the sign industry or the business community expressed concern that the sign takedown requirement for new sign districts is too difficult to meet. The speakers asked that PLUM consider as an alternative to the sign takedown requirement a "community benefits" requirement.

In response, PLUM modified the takedown requirement at its October 18, 2011 meeting to include a "community benefits" alternative. The new language allows applicants for a new sign district to satisfy up to one-half of their sign takedown requirement through "community benefits" measures, which include improvements such as public landscaping, sidewalk improvements, undergrounding of utilities, and construction of public parking structures.

In part to help protect the City in the event of a legal challenge to the ordinance, we recommend that the Council instruct the Department of City Planning, working in conjunction with the Departments of Building and Safety and Public Works, to promulgate specified criteria for these "community benefits" measures. This will help ensure that the imposition of "community benefits" measures is (1) consistent among sign districts and (2) as equivalent as possible to a sign takedown.

4. Revised procedures for approval of individual signs erected within a sign district

With the assistance of the Planning Department, we revised the procedures for the approval of individual signs within a sign district. Under the revised procedures, eligible signs may be approved by the Director of Planning as an Administrative Clearance. Proposed signs not eligible for an Administrative Clearance shall be subject to the approval procedures for supplemental use districts generally, with the proviso that the special findings for Sign Adjustments and Sign Variances be used when those entitlements are granted.

B. "Interior Signs" and "Exterior Signs"

Many commercial property owners express an interest in having interior signs in an enclosed area, such as in an outdoor shopping center. Others express great concern about the potential negative impacts of such interior signs including visibility from the street and nearby properties.

The version of the ordinance recommended by PLUM seeks to accommodate both sides by creating a definition of the term "Interior Sign." That definition allowed interior signs in an enclosed space but prohibited those signs from being visible from ". .

. any public right of way or any property other than the subject property . . ." and also restricted the ambient lighting from such signs.

In response to the City Attorney's request for comments pursuant to Charter Section Rule 38, the Department of Building and Safety recommended a simpler approach that accomplishes the same goal. The Department of Building and Safety recommends eliminating the new definitions of "Interior Sign" and "Exterior Sign" and, instead, revising the "Scope" at proposed LAMC Section 14.4.3 A. The rewritten "Scope" provision now provides that the City's sign regulations apply to all "exterior signs and sign support structures . . ." and includes an exception for signs that are "enclosed by permanent, opaque architectural features on the project site including building walls, freestanding walls, roofs, etc." The exception language includes the same protections for the public as the language recommended by the PLUM Committee including the signs not being visible from the public right-of-way or any property other than the subject property and being subject to brightness limitations. The Department of City Planning concurs with this approach.

C. Sign Illumination Standards

Upon the recommendation of the Department of City Planning, the PLUM Committee approved a version of the draft ordinance that imposes new illumination and brightness standards for both digital and non-digital signs. Since the time of the PLUM Committee's approval of the draft ordinance, the Department of City Planning, in consultation with the Department of Building and Safety, has reconsidered its view on the necessity of changing the illumination and brightness standards for non-digital signs at this time. City Planning is therefore now recommending that the City Council amend the draft ordinance to remove the new illumination and brightness standards with respect to non-digital signs. This means that the existing illumination and brightness standards for those signs will stay in place.

The sign illumination limits for digital signs were moved from proposed Section 14.4.4 F 2 to proposed Section 14.4.19 dealing with "Digital Displays." Those sign illumination limits for digital signs were modified so that the Department of Building and Safety will no longer measure sign brightness of digital signs. Instead, the Department of Building and Safety's sole authority will be to approve the private testing agency hired by an applicant to measure sign brightness of digital signs, and to review the measurements submitted by that agency.

D. Removal of Relocation Agreements as an Exception to the City's Off-Site Sign Ban

Both the Planning Department and our Office recommend the removal of relocation agreements as a stated exception to the City's off-site sign ban set forth in proposed Section 14.4.4. There are two reasons for this. First, it is unnecessary to set

forth this exception in the City's sign regulations because such relocation agreements are authorized by the state Outdoor Advertising Act and, as state law, preempt the City's Code. Second, some persons have incorrectly viewed this stated exception as an attempt by the City to enlarge the scope of relocation agreements under state law, which is not the case.

E. Removal of "Hazard to Traffic Prohibition"

The existing Sign Code contains a prohibition on "Hazard to Traffic" set forth in LAMC Section 14.4.5. This prohibition has been difficult for the Department of Building and Safety and for the Department of Transportation to enforce, which is why the proposed ordinance removes this prohibition.

In any event, signs presenting a safety hazard to motorists on freeways within the City will continue to be regulated by the prohibition on signs with "Freeway Exposure" set forth in Section 14.4.6 of the existing Sign Code and Section 14.4.5 of the proposed draft ordinance. In addition, the proposed ordinance contains new digital display standards which are intended to mitigate hazards to traffic safety posed by digital signs.

F. Signs in A and R Zones

In response to the City Attorney's Charter Rule 38 letter, the Department of Building and Safety recommended modifications to language in proposed LAMC Section 14.4.21, Signs in A and R Zones. The modifications address the department's concern that the standards were too restrictive for low-density R zones, and not restrictive enough for temporary signs. The Department of City Planning concurs with these modifications.

G. Sign Variances and Adjustments

The City is often asked to grant variances to allow the building of a structure that would otherwise be prohibited by the City's Zoning Code. The same is true for signs and sign structures. The law requires that findings for a variance involving signage be different from a variance for a non-sign related structure because signage is protected by the First Amendment. The new ordinance thus sets forth procedures and findings specifically tailored for variances for signage. These findings incorporate two relevant court rulings.

In *Desert Outdoor Advertising, Inc. v. City of Oakland*, 506 F.3d 798 (9th Cir. 2007), the court held that findings relating to the public health or welfare are too vague to be applied to a variance for a sign or sign structure. The courts have, however, recognized the need for cities to have some flexibility in their findings relating to signs. The court in *G.K. Ltd., Travel v. City of Lake Oswego*, 436 F.3d 1064 (9th Cir. 2006),

held that cities could use a "compatibility" standard when deciding whether or not to approve proposed signs.

The draft ordinance incorporates the holdings of both cases as follows: (1) eliminating any findings relating to health and welfare; and (2) incorporating the concept of "compatibility" into the findings for variances and adjustments for signs.

The version of the ordinance considered by PLUM also contained a provision allowing the granting of adjustments for either existing on-site or off-site signs. After PLUM recommended approval of the ordinance, however, the Planning Department reconsidered the benefits and the detriments of allowing adjustments for off-site signs. One of the key benefits is allowing sign companies to update their existing off-site signs and legalize aspects of an existing off-site sign that do not conform to its permit. One of the key detriments concerns the potential environmental impacts of such adjustments for off-site signs. In the course of its final environmental analysis, staff determined that the potential environmental impacts of allowing larger or relocated off-site signs would be difficult to predict and justify. This difficulty complicates the CEQA review process. Therefore, the Planning Department has determined that, on balance, the detriments of this provision outweigh its benefits, and has asked the City Attorney to remove this provision from the draft ordinance.

H. Mural regulations

On September 4, 2013, the City Council adopted an ordinance regulating Original Art Murals. That ordinance amended three sections of the City's sign regulations located at Article 14.4 of Chapter 1 of the Municipal Code (the Zoning Code). They are LAMC Sections 14.4.2, 14.4.3 and 14.4.20. Those three sections are part of the City-wide sign regulations that are undergoing the comprehensive rewrite that is the subject of this report. Therefore, the current draft ordinance includes those three sections exactly as written in the ordinance regulating Original Art Murals.

I. Heightened Penalties for Billboard Violations

The draft ordinance creates a new administrative appeal process solely for sign and billboard violations. This new process is set forth in proposed Section 14.4.26. That administrative process will be the same as for other types of Code violations, with inspectors in the Department of Building and Safety issuing orders to comply and, thereby, correct sign violations. The administrative appeals process for sign and billboard violations will be handled by the Department of City Planning.

The new administrative appeal process will also provide an option for sign owners to request and pay a fee for an expedited administrative appeal. The notice for this new fee is set forth below.

The draft ordinance will also impose heightened penalties for sign violations which are significantly higher than for other types of Code violations. These new penalties are set forth in proposed Section 14.4.25. For the largest billboards (of 750 or more square feet), the first violation would be $12,000 per day, the second violation would be $24,000 per day, and the third violation would be $48,000 per day.

The purpose of these heightened penalties is to provide a deterrent to billboard companies that are violating the City's sign regulations. Because some of these companies make so much money from their billboards, they view the current, lesser penalties as a mere slap on the wrist and a necessary and affordable cost of doing business.

The new heightened penalties in the draft ordinance are modeled after the City of New York's penalties. An appellate court has already upheld New York's heightened billboard violation penalties against an equal protection challenge. That challenge alleged that New York discriminated against outdoor advertising companies in a manner that deprived the companies of free speech rights under the First Amendment. *See In OTR Media Group, Inc., v. The City of New York*, 83 A.D.3d 451, 920 N.Y.S.2d 337 (2011). The court upheld New York's heightened penalties because the penalty differential was not based on content of the proposed signage but rather on the fact that outdoor advertising companies are not similarly situated to other types of entities. Because billboards generally generate more revenue than many other types of businesses, the ordinary penalties provide an insufficient deterrent to installing illegal billboards. For this reason, the court also noted that "the record clearly establishes that increased penalties were necessary to deter violations by OACs [Outdoor Advertising Companies] in particular." *Id.* at 2.

Various sign companies have requested that these new penalties be suspended during the pendency of an administrative appeal or litigation challenging the validity of the penalties. The issue remains unsettled among the courts. Therefore, the City Attorney's Office has added Section 14.4.26 E 7 which provides for the suspension of penalties if an initial hearing officer or the planning commission takes longer than 18 months to issue a decision on an administrative appeal of an order to comply relating to a violation of the City's sign regulations. The City Attorney's Office has also added a 90-day grace period from the date of adoption by the City Council before the ordinance, including the new penalties, goes into effect. This is intended to provide ample opportunity for any party that wishes to challenge the ordinance before the new penalties go into effect.

Finally, after PLUM recommended the draft ordinance, the Planning Department discovered that it inadvertently placed in proposed Section 14.4.25 the duty to tape record all administrative appeals, which is not the practice of the Department of Building and Safety for similar appeals. Therefore, City Planning has requested that Section 14.4.25 D 4 be removed.

J. Grandfathering of Requested Sign Districts and Land Use Approvals

Section 13 of the draft ordinance contains grandfathering language that will apply to 15 proposed sign districts in various stages of the application and approval process. This Office worked with Planning Department staff to refine that grandfathering language to make it as clear as possible.

While the policy decision as to whether to grandfather the 15 proposed sign districts is the City Council's to make, the Council will have to make findings for each of those individual sign districts that comply with the *World Wide Rush* decision. As this Office has done for all recently adopted sign districts, it will assist in reviewing and preparing these findings.

After PLUM recommended approval of the draft ordinance, the Department of City Planning determined that it would make more sense not to grandfather initiated discretionary land use approvals and to give such status only to granted discretionary land use approvals. Planning, however, recommends retaining grandfather status for both initiated and applied for sign districts; that subject was the topic of extended discussion during the hearings before PLUM and PLUM specifically expressed support for grandfather status for these two classes of approvals.

K. Miscellaneous clean up language

After PLUM acted on the proposed ordinance, the Department of City Planning discovered sign regulation language scattered throughout the Municipal Code that needs to be deleted so as not to be inconsistent with the proposed ordinance. These proposed deletions are set forth in Section 1 and Sections 3 through 7 of the proposed ordinance.

Approval of Form and Legality

Our Office has approved the draft ordinance as to form and legality.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety and the Department of Transportation. The Department of Building and Safety has given us its comments, which have been incorporated into the draft ordinance. The Department of Transportation had no comments. A Rule 38 letter was not sent to the Department of City Planning because that department has been working closely with this Office on the draft ordinance and is aware of the new language in the draft ordinance.

CEQA Findings

The Department of City Planning has prepared a narrative explaining why the ordinance qualifies for a Categorical Exemption (ENV-2009-0009-CE). The narrative is transmitted with this report. If you concur, you may comply with CEQA by adopting the required findings prior to, or concurrent with, your action on the ordinance.

Fee Notice Requirement

This ordinance imposes a new fee. Therefore, notice of its proposed adoption should be given in accordance with the provisions of California Government Code sections 66018 and 6062a. Those sections of State law require that, prior to adoption of a new or increased fee, a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

Recommended Actions

1. DETERMINE, having considered the proposed Categorical Exemption (ENV 2009-0009-CE), that the project is exempt from CEQA.

2. ADOPT the attached draft ordinance and its related findings.

If you have any questions regarding this matter, please contact Deputy City Attorney Kenneth Fong at (213) 978-8235. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
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PBE/KTF:zra
Transmittal

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