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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF CORONA, Plaintiff and Respondent, v. AMG OUTDOOR ADVERTISING, INC. et al., Defendants and Appellants.	E062869 (Super.Ct.No. RIC1412756) O P I N I O N

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge. Affirmed.

Raymond N. Haynes; Cole & Loeterman and Dana M. Cole for Defendants and Appellants.

Dean Derleth, City Attorney, and John D. Higginbotham, Assistant City Attorney, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and appellants, AMG Outdoor Advertising, Inc. (AMG), and others, appeal from a January 23, 2015, order granting a preliminary injunction in favor of plaintiff and respondent, City of Corona (the City), requiring defendants to cease using and immediately remove a billboard, or outdoor advertising sign, that AMG erected in the City without a city or state permit.[1]

Defendants principally claim that the City is enforcing Ordinance No. 2729 (the 2004 ordinance) against them in an impermissibly discriminatory manner, because the City has allowed another billboard operator, Lamar Advertising Company (Lamar), to erect *new* billboards in the City, after the 2004 ordinance was enacted, while denying them the right to do so. As we explain, this claim is unsupported by any evidence in the record, and belied by the City's evidence. Defendants also claim the 2004 ordinance violates their equal protection rights, is an invalid prior restraint, and violates their free speech rights under the California Constitution. (Cal. Const., art. 1, § 2, subd. (a).) We find no constitutional violation or other error, and affirm the order granting the preliminary injunction.

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[1] There are five additional defendants and appellants: Alex Garcia, Sid's Carpet Barn, Inc., Curlan, Ltd., Rockefellas, and Pala Casino Resort and Spa. Their connection to AMG is described *post*.

II. BACKGROUND

A. *The 2004 Ordinance and Other Applicable Law*

On September 1, the City adopted the 2004 ordinance, which amended the Corona Municipal Code (CMC)[2] to prohibit all new off-site billboards, or "outdoor advertising signs," anywhere in the City, except as permitted pursuant to a "relocation agreement" between the City and "a billboard and/or property owner." Section 17.74.160 of the CMC states: "Except as provided in § 17.74.070(H), outdoor advertising signs (billboards) are prohibited in the City of Corona. The city shall comply with all provisions of the California Business & Professions Code regarding amortization and removal of existing off-premise[s] outdoor advertising displays and billboard signs."[3]

The 2004 ordinance allows off-site billboards erected in the City before the 2004 ordinance went into effect, that is, a "grandfathered" billboard, to be relocated in the City pursuant to a relocation agreement with the City. Section 17.74.070H. of the CMC states, in part: "[C]onsistent with the California Business & Professions Code Outdoor Advertising provisions, new off-premises advertising displays may be considered and

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[2] In issuing the preliminary injunction, the trial court took judicial notice of various CMC provisions, including those cited in this opinion.

[3] The 2004 ordinance does not apply to on-site billboards, that is, billboards advertising a business, commodity, or service conducted, sold or offered on the premises where the billboard is located or to which it is affixed. (CMC, § 17.74.030.) "Off-site billboards display messages directing attention to a business or product not located on the same premises as the sign itself. [Citation.] For example, a billboard promoting the latest blockbuster movie, but attached to a furniture store, is an off-site sign. The same billboard, when attached to a theater playing the movie, is an on-site sign." (*World Wide Rush, LLC v. City of Los Angeles* (9th Cir. 2010) 606 F.3d 676, 682.)

constructed as part of a relocation agreement entered into between the City . . . and a billboard and/or property owner where one or more nonconforming billboards owned by the billboard and/or property owner . . . are removed. Such agreements may be approved by the City Council upon terms that are agreeable to the City . . . in [its] sole and absolute discretion."

The exception to the 2004 ordinance, which allows "grandfathered" billboards to be relocated pursuant to a relocation agreement with the City, is consistent with section 5412 of the Outdoor Advertising Act (the OAA). (Bus. & Prof. Code, § 5200 et seq.) It provides: [N]o advertising display which was lawfully erected anywhere within this state shall be compelled to be removed, nor shall its customary maintenance or use be limited . . . without payment of compensation, as defined in the Eminent Domain Law . . . . [¶] . . . [¶] It is a policy of this state to encourage local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication. Cities, counties, cities and counties, and all other local entities are specially empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city, county, city and county, or other local entity, and to adopt ordinance or resolutions providing for relocation of displays." (Bus. & Prof. Code, § 5412.)

The CMC also prohibits any billboard to be erected in the City without a building permit. Section 15.02.070 of the CMC provides: "No person, firm or corporation shall

erect, re-erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish any building or other structure in the city, without obtaining a valid building permit prior to commencement of any work."

It is unlawful for any person to violate any provision or to fail to comply with the CMC, and any condition caused or permitted to exist in violation of the CMC is deemed a public nuisance. (CMC, § 1.08.020.) The City may seek to abate any such public nuisance in a civil action. (CMC, §§ 1.08.020, 8.32.210.)

B. *Factual Background*

AMG owns and operates off-site billboards in Southern California. In November 2014, an AMG agent, Jeanelle Heaston, went to the City planning department and asked for an application for a permit to erect an off-site billboard at 3035 Palisades, just south of State Route 91 in the City. A planning technician refused to provide Ms. Heaston with a permit application, explaining that billboards were not allowed in the City and all billboards then under construction in the City were being built pursuant to a relocation agreement with the City.

Over the weekend of December 6 and 7, 2014, AMG erected a monopole V-shaped billboard with two 14-foot by 48-foot static displays on the property at 3035 Palisades, just south of State Route 91 between Green River Road and Serfas Club Drive. Curlan, Ltd. owns the property on which the billboard was erected and leases the property to Sid's Carpet Barn. An advertisement for Rockefellas, a bar located in Corona and owned by Alex Garcia, the owner of AMG, was placed on one side of the billboard, and

an advertisement for Pala Casino Resort and Spa, located near Fallbrook, was placed on the other side.

AMG did not have a City permit (CMC, § 15.02.070) or a permit from the California Department of Transportation (Caltrans) (Bus. & Prof. Code, § 5350) to erect the billboard. AMG could not have received a building permit from the City to erect the billboard, because it could not have shown that the billboard was traceable to a billboard erected in the City before the 2004 ordinance went into effect. (CMC, § 17.74.160.) AMG could not have received a permit from Caltrans because the City had not approved the location of the billboard. (Bus. & Prof. Code, § 5354.)

On December 10 and 19, 2014, the City sent cease and desist letters to defendants and their counsel, advising them that the billboard violated the CMC and demanding its prompt removal. On December 23, counsel for AMG advised the City by letter that the 2004 ordinance banning all off-site billboards violated AMG's free speech rights, and was also unconstitutional as applied because the City was allowing another billboard operator, Lamar, to erect multiple billboards in the City despite the 2004 ban. AMG advised the City that it was "prepared to construct multiple" billboards in the City unless AMG and the City reached an agreement. Also on December 23, AMG submitted an application to the City to erect the billboard.

On December 30, 2014, the City filed a verified complaint against defendants seeking temporary, preliminary, and permanent injunctive relief, and other remedies, based on defendants' unauthorized erection and use of the billboard. On January 16,

defendants answered the complaint, and AMG and Rockefellas cross-complained against the City for declaratory relief, an injunction prohibiting the City from enforcing the 2004 ordinance, and a writ of mandate ordering the City to issue a building permit for the billboard.

On January 7, 2015, the trial court issued a temporary restraining order directing defendants to stop using the billboard and remove the advertising on it, but not requiring the removal of the billboard.[4] Following a January 23 hearing, the trial court issued a preliminary injunction (1) prohibiting defendants from operating, allowing, using, and advertising on the billboard, (2) ordering defendants to immediately remove the billboard, including the pole, panels, and entire structure, and (3) prohibiting defendants from erecting any additional billboards in the City without first obtaining all required permits.

In issuing the preliminary injunction, the court rejected defendants' claim that the City was violating defendants' equal protection rights by allowing Lamar to erect new billboards in the City in violation of the 2004 ordinance. The court found that "each Lamar sign is traceable back to a grandfathered billboard, which predate[s] the 2004 ban." The court also found that the City's relocation agreements with Lamar properly allowed Lamar to relocate only "grandfathered" billboards, and Lamar was therefore in a

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[4] On January 26, 2015, in case No. E062662, this court summarily denied defendants' January 9, 2015, petition for an immediate stay and writ of mandate directing the trial court to set aside the temporary restraining order.

different position than defendants, who did not own, and were not seeking to relocate, a grandfathered billboard. Defendants appealed.[5]

III. DISCUSSION

A. *Standard of Review*

"The general purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits of the action. [Citation.] '"The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or . . . should not be restrained from exercising the right claimed by him."' [Citation.]" (*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280.)

The trial court weighs two interrelated factors in determining whether to issue a preliminary injunction: "[T]he likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999.) Generally, the trial court's ruling on an application for a preliminary injunction rests in its sound

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[5] On April 28, 2015, while this appeal was pending, AMG and California Outdoor Equity Partners (COEP) sued the City in the United States District Court for the Central District of California, case No. CV 15-03172 MMM (AGRx), seeking the same relief AMG and Rockefellas seek by their cross-complaint in this action. On May 27, 2015, the district court denied AMG and COEP's ex parte application for a temporary restraining order, prohibiting the City from enforcing the 2004 ordinance prohibiting all new off-site billboards in the City, except grandfathered billboards relocated pursuant to a relocation agreement with the City, on the ground the plaintiffs did not show they were likely to succeed on the merits of their claims.

discretion and will not be disturbed on appeal absent an abuse of discretion. (*Ibid.*; *SB Liberty, LLC v. Isla Verde Assn., Inc.*, *supra*, 217 Cal.App.4th at pp. 280-281.) On appeal, the party challenging the preliminary injunction has the burden of demonstrating it was improperly granted. (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 306.)

In reviewing an order granting a preliminary injunction, we do not reweigh conflicting evidence or assess witness credibility, we defer to the trial court's factual findings if substantial evidence supports them, and we view the evidence in the light most favorable to the court's ruling. (*People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th 614, 630.) To the extent the plaintiff's likelihood of prevailing on the merits turns on legal rather than factual questions, however, our review is de novo. (*Costa Mesa City Employees Assn. v. City of Costa Mesa*, *supra*, 209 Cal.App.4th at p. 306.)

When, as here, the preliminary injunction mandates an affirmative act that changes the status quo, it is scrutinized even more closely on appeal: "'"'The judicial resistance to injunctive relief increases when the attempt is made to compel the doing of affirmative acts. A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal.'" [Citation.] The granting of a mandatory injunction pending trial "'is not permitted except in extreme cases where the right thereto is clearly established.'" [Citations.]' [Citation.]" (*People ex rel. Herrera v. Stender*, *supra*, 212 Cal.App.4th at p. 630.)

On the other hand, a more deferential standard of review applies when the government is seeking to enjoin the violation of an ordinance: "Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties." (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-73, fn. omitted; see also *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1166.) Here, we find no abuse of discretion and uphold the order granting the preliminary injunction.

B. *The City's Relocation Agreements With Lamar Do Not Unlawfully Discriminate Against Defendants, Because the City Has Not Allowed Lamar to Erect Any Off-site Billboards Other Than Grandfathered Billboards (CMC, § 17.74.070H.)*

The crux of defendants' claim, in the trial court and in this appeal, is that the City is applying the 2004 ordinance against them in an unlawfully discriminatory manner. Defendants claim the City has entered into relocation agreements with Lamar that have allowed Lamar to erect *new* billboards in the City, after the 2004 ordinance went into effect, which are not grandfathered billboards because they were not erected in the City before September 1, 2004. (CMC, § 17.74.070H.)

This claim fails because it is contrary to the facts. As the trial court found, and as the City demonstrated with substantial, uncontradicted evidence, *all of the off-site billboards* currently in the City, consisting of nine owned by Lamar and two owned by another billboard operator, General Outdoor Advertising, are grandfathered billboards in that they were either in their current location before the 2004 ordinance went into effect, or they are traceable to pre-September 1, 2004, grandfathered billboards.

1. Additional Background

In support of its application for the temporary restraining order and preliminary injunction, the City adduced original and supplemental declarations of its community development director, Joanne Coletta. Ms. Coletta had served as the City's community development director since 2008 and had worked in the community development department for 20 years.

According to Ms. Coletta, the City had not allowed any new billboards to be erected since September 1, 2004, when the 2004 ordinance went into effect, except in connection with an approved relocation agreement. Likewise, no permits to construct new billboards had been issued except in connection with an approved relocation agreement. A relocation agreement was required when any billboard had to be moved, such as when a freeway was being widened. As of January 2015, several billboards had either been relocated, or were in the process of being relocated, in connection with Caltrans's widening of State Route 91 through the City.

Lamar had nine billboards in the City, and each was either a "grandfathered" billboard that was in place before the 2004 ordinance went into effect, or was traceable to a grandfathered billboard. For example, the Lamar billboard on Delilah Street had been relocated from East Third Street due to the State Route 91 widening project, pursuant to a relocation agreement. The billboard was originally erected along Interstate 15 at Magnolia Avenue, before the 2004 ordinance went into effect, and was relocated to Third Street pursuant to an original relocation agreement. Due to the State Route 91 widening project, the board had to be relocated again.

Lamar purchased one of its nine billboards from Empire Outdoor Advertising, and assumed Empire Outdoor Advertising's relocation agreement with the City. Some of Lamar's billboards also had been "converted from static [to] digital" pursuant to an approved relocation agreement.[6] None of Lamar's grandfathered billboards had been relocated without an approved relocation agreement.[7]

Another billboard operator, General Outdoor Advertising, had two double-sided billboards in the City, bringing the total number of off-site billboards in the City to 11. General Outdoor Advertising had a relocation agreement with the City that allowed it to

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[6] Since 2006, when the City adopted Ordinance No. 2864, the City also required a relocation agreement to replace a static billboard face with an electronic message center, electronic message board, or changeable message board.

[7] After September 2004, Lamar surrendered three grandfathered billboards to the City. Thus, despite purchasing one grandfathered billboard from Empire Outdoor Advertising, Lamar had fewer billboards in the City than it had when the 2004 ordinance went into effect.

change its two double-sided billboards from static to "changeable message board" in the same locations, and the City and General Outdoor Advertising were in the process of negotiating a relocation agreement for both billboards. The 11 grandfathered off-site billboards in the City were the only off-site billboards in the City.[8]

Pursuant to its relocation agreements with Lamar and General Outdoor Advertising, the City was entitled to place public service announcements on the digital billboards, or waive that right and receive the greater of a guaranteed minimum amount of revenue from each billboard face, or a percentage of the actual amount of revenue from each billboard face. "The vast majority of the time, the City receive[d] the guaranteed minimum. Occasionally, the percentage ha[d] exceeded the minimum, but never by a substantial amount."

2. Analysis

In support of their unlawful discrimination claim, defendants principally rely on *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921. There, the City of Los Angeles entered into settlement agreements with certain billboard operators, allowing the operators to digitize their existing billboards despite a municipal ordinance banning "'alterations or enlargements of legally existing off-site signs.'" (*Id.* at p. 924.) The settlement agreements thus permitted the city and the settling billboard operators to

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[8] On December 30, 2014, Ms. Coletta issued a written denial of AMG's December 23 application for a building permit for its billboard. The CMC provided for an administrative appeal hearing before a neutral hearing officer in the event a permit application was denied. (CMC, §§ 15.02.195, 1.09.010 et seq.) AMG did not appeal the City's denial of its permit application.

"circumvent the general ban in the municipal code on alterations to existing offsite signs." (*Id.* at p. 934.) The agreements were therefore void, or ultra vires, because the city acted beyond its authority in entering into them.

Here, in contrast to the ultra vires and void settlement agreement in *Summit Media*, the City has banned all new off-site billboards since 2004, and CMC section 17.74.070H. allows billboards in place before the 2004 ban to be relocated to other areas in the City pursuant to a relocation agreement with the City. When the owner of a preban or grandfathered billboard either wants to move it or has to move it because it will be condemned by eminent domain, both OAA and the CMC authorize the City to negotiate the terms of the relocation. (Bus. & Prof. Code, § 5412; CMC, § 17.74.070H.)

Contrary to defendants' claim, the City's relocation agreements with Lamar do not circumvent the 2004 ordinance ban on *new* off-site billboards. To the contrary, the relocation agreements merely provide for orderly relocation, in the City, of grandfathered off-site billboards—those erected in the City before the 2004 ordinance went into effect. Thus, defendants' assertion that the City has unfettered discretion to approve or deny *new billboard applications*, and unlawfully discriminate among new billboard applicants, is unsupported by any evidence in the record.

Valley Outdoor, Inc. v. City of Riverside (9th Cir. 2006) 446 F.3d 948 is also distinguishable. The problem in *Valley Outdoor*, as the court put it, was that "the City assert[ed] unbridled discretion under its municipal code to decide which late-filed applicants get to erect billboards and which do not." (*Id.* at p. 954.) Here, the City had

no authority to discriminate and did not in fact discriminate among any new off-site billboard applicants. The 2004 ordinance banned all *new* off-site billboards, and the record shows the City has uniformly enforced that ban. Since the 2004 ordinance went into effect, the City has only allowed off-site billboards to be erected in the City *if* the billboard was erected in the City before the 2004 ordinance went into effect, or the billboard was traceable to such a grandfathered billboard. (CMC, § 17.74.070H.)

C. *Equal Protection*

Defendants claim the City's relocation agreements with Lamar violate their equal protection rights. Not so. A substantially similar claim was squarely rejected in *Maldonado v. Morales* (9th Cir. 2009) 556 F.3d 1037, 1048, where the court found that the grandfathering clause of the OAA, exempting its application to billboards in place before November 7, 1967, did not violate the equal protection rights of new off-site billboard operators, because "banning new offsite billboards but allowing legal non-conforming billboards to remain 'furthers the State's significant interest in reducing blight and increasing traffic safety,' even if all billboards are not eliminated." And, unlike Lamar and General Outdoor Advertising, defendants do not own any billboards erected in the City before the 2004 ordinance went into effect. Thus, defendants are not similarly situated with Lamar or General Outdoor Advertising for equal protection purposes. (*Ibid.*)

D. The *2004 Ordinance and Preliminary Injunction Are Not Invalid Prior Restraints*

Defendants claim the 2004 ordinance and the preliminary injunction amount to unconstitutional prior restraints on their free speech rights. Not so. Content-neutral injunctions which do not bar all avenues of expression are not treated as prior restraints. (*Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 763, fn. 2.) An injunction is content-neutral if its challenged provisions "burden no more speech than necessary to serve a significant government interest." (*Id.* at p. 765.)

The 2004 ordinance bans all new off-site billboards, and the preliminary injunction requires defendants to cease operating and remove their new off-site billboard. Neither burdens more speech than necessary to accomplish the City's interest in increased traffic safety and aesthetics (*Maldonado v. Morales*, *supra*, 556 F.3d at pp. 1046-1048) and defendants may avail themselves of other forms of communication (*G.K. Ltd. Travel v. City of Lake Oswego* (9th Cir. 2006) 436 F.3d 1064, 1074).

The 2004 ordinance is also not a prior restraint because it does not afford the City unbridled discretion. Under the prior restraint doctrine, "'a law cannot condition the free exercise of First Amendment rights on the "unbridled discretion" of government officials.'" (*Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814, 818.) "'Unbridled discretion challenges typically arise when discretion is delegated to an administrator, police officer, or other executive official,' as opposed to a legislative body." (*World Wide Rush, LLC v. City of Los Angeles*, *supra*, 606 F.3d at p. 688.) That is not the case here. Instead, the 2004 ordinance allowed the city council, in

the exercise of its legislative authority to regulate land use, to approve relocation agreements for grandfathered off-site billboards. (CMC, §§ 17.74.160, 17.74.070H.) As such, the 2004 ordinance is not an invalid prior restraint on free speech. (*World Wide Rush, LLC v. City of Los Angeles, supra*, at p. 688 [city council's exercise of its legislative authority to regulate land use does not implicate the First Amendment].)

E. The 2004 Ordinance is Not Facially Invalid Under the California Constitution

Defendants claim the 2004 ordinance is facially invalid under the free speech clause of the California Constitution. Not so. First, it is settled that a governing entity's ban on all new off-site commercial billboards does not violate the First Amendment. In *Metromedia, Inc. v. City of San Diego* (1981) 453 U.S. 490, 510-513 (*Metromedia*), a plurality of the high court concluded that a City of San Diego ordinance did not violate the First Amendment, to the extent it banned all off-site commercial billboards. Specifically, the plurality concluded that the city ordinance banning all off-site commercial billboards satisfied the four-prong, intermediate scrutiny test established in *Central Hudson Gas & Elec. v. Public Serv. Comm'n* (1980) 447 U.S. 557, 562-566 for determining whether a governmental restriction on commercial speech violates the First Amendment.

Central Hudson held: "The Constitution . . . accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. [Citation.] The protection available for a particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation." (*Central Hudson*

Gas & Elec. v. Public Serv. Comm'n, supra, 447 U.S. at pp. 562-563.) *Central Hudson* adopted a four-part test for determining the validity of governmental restrictions on commercial speech: (1) "whether the expression is protected by the First Amendment," if so, (2) "whether the asserted governmental interest is substantial," if so, (3) "whether the regulation directly advances the governmental interest asserted," and (4) "whether [the regulation] is not more extensive than is necessary to serve that interest." (*Id.* at pp. 563, 566.) The *Metromedia* plurality specifically held that the City of San Diego ordinance was constitutional to the extent it banned all off-site commercial billboards, but unconstitutional to the extent it generally banned billboards with noncommercial content, while allowing on-site billboards carrying commercial content, thus afforded greater protection to commercial speech than to noncommercial speech.[9] (*Metromedia, supra*, 453 U.S. at pp. 513-514.)

Metromedia remains the law of the land. (See, e.g., *Outdoor Systems, Inc. v. City of Mesa* (9th Cir. 1993) 997 F.2d 604, 610-611["*Metromedia* remains the leading decision in the field, holding that a city, consistent with the *Central Hudson* test, may ban

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[9] The *Metromedia* plurality remanded the matter to the California Supreme Court to determine whether the unconstitutional portions of the ordinance could be severed from the constitutionally permissible portions. (*Metromedia, supra*, 453 U.S. at p. 521 & fn. 26.) On remand, our state Supreme Court refused to sever the unconstitutional portions of the ordinance from its constitutionally permissible portions, because that would "leave the city with an ordinance . . . less effective in achieving the city's goals, and one which would invite constitutional difficulties in distinguishing between commercial and noncommercial signs." (*Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 191.) Here, in contrast, the 2004 ordinance is content neutral: it bans all off-site billboards, regardless of their commercial or noncommercial content.

all offsite commercial signs, even if the city simultaneously allows onsite commercial signs."]; *Clear Channel Outdoor, Inc. v. City of Los Angeles* (9th Cir. 2003) 340 F.3d 810, 813 ["The Supreme Court, the Ninth Circuit, and many other courts have held that the on-site/off-site distinction is not an impermissible content-based regulation."]; *Tahoe Regional Planning Agency v. King* (1991) 233 Cal.App.3d 1365, 1405 ["*Metromedia* . . . establishes that a governing entity 'may permit onsite signs while restricting offsite signs. The only restrictions are that noncommercial messages must be permitted in locations where commercial messages are permitted, and the local entity cannot regulate what type of noncommercial message . . . is permissible . . . .'"]; *City and County of San Francisco v. Eller Outdoor Advertising* (1987) 192 Cal.App.3d 643, 658-665.)

Notwithstanding *Metromedia*, defendants claim that the City's 2004 ban on all new off-site commercial billboards violates the free speech clause of the California Constitution, which states: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const., art. I, § 2, subd. (a).)

Defendants argue that "[t]he State Constitution has always protected commercial speech[,] and state free speech jurisprudence does not recognize the federal 'commercial speech/noncommercial speech' dichotomy with its limited protection for commercial speech . . . ." In support of their state constitutional claim, defendants rely solely on *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468 (*Gerawan I*) where the court concluded that a marketing program and order issued by the California Secretary of Food

and Agriculture, namely, the California Plum Marketing Program and Marketing Order No. 917, compelling California plum producers, including Gerawan, to fund generic advertising for California-produced plums, "implicate[d]" Gerawan's free speech rights under article I, section 2 of the California Constitution. (*Gerawan I, supra*, at pp. 509-515.) In making this determination, the court observed that, as a general rule, "article I's free speech clause and its right to freedom of speech are not only as broad and as great as the First Amendment's, they are even 'broader' and 'greater.' [Citations.]" (*Id.* at p. 491.) Defendants' state constitutional claim rests solely on this general proposition.

Gerawan I did not hold that the marketing program violated Gerawan's free speech rights under the California Constitution; it left that issue for the Court of Appeal to determine on remand, and directed the Court of Appeal to decide the proper test to be employed in determining whether the marketing program violated Gerawan's free speech rights under the state Constitution. (*Gerawan I, supra*, 24 Cal.4th at pp. 515-517.) On remand, the Court of Appeal concluded that the marketing program violated Gerawan's free speech rights under the state Constitution because the generic advertising it required Gerawan and other plum growers to finance did not advance a valid government interest. (*Gerawan Farming, Inc. v. Kawamura* (2004) 33 Cal.4th 1, 10 (*Gerawan II*).) The Court of Appeal found it unnecessary to determine "precisely which legal standard to employ" in determining whether the marketing order violated the state Constitution. (*Ibid.*)

The case returned to the state Supreme Court in *Gerawan II.* There, the court concluded, in light of intervening Untied Stated Supreme Court precedent, that it would

be inappropriate to subject the marketing program "to only minimal scrutiny," and determined that the *Central Hudson* test was the proper test to apply in determining whether the marketing program violated Gerawan's free speech rights under the state Constitution. (*Gerawan II*, *supra*, 33 Cal.4th at pp. 20-24.) Applying that test, the court concluded the matter could not be resolved on the pleadings and had to be remanded to the trial court "for further factfinding" to determine whether the marketing program satisfied the four-prong *Central Hudson* test. (*Id.* at p. 24.)

Again, based on the "broader" and "greater" free speech protections afforded by article I of the California Constitution noted in *Gerawan I*, defendants maintain that "a city may not discriminate against lawful commercial speech, or between different types of lawful commercial speech simply because it is commercial." As noted, however, under *Metromedia* a governing entity may, consistent with the *Central Hudson* test, allow or discriminate in favor of *on-site* commercial signs, while banning or discriminating against *off-site* commercial signs, without violating the free speech clause of the First Amendment. (*Metromedia*, *supra*, 453 U.S. at pp. 507-512.) In light of *Gerawan II*, the analysis and result are the same under the California Constitution.

Lastly, defendants claim that the City's ban on all new off-site billboards "is exactly the same ban already found unconstitutional" in *Metromedia*.[10] Not so. As

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[10] In *Metromedia*, the court remanded the matter to the California Supreme Court to determine whether the facially invalid portion of the ordinance, generally banning billboards carrying noncommercial advertising, could be severed from the constitutional portion banning all new off-site commercial billboards. (*Metromedia*, *supra*, 453 U.S. at p. 521 & fn. 26.) On remand, in *Metromedia, Inc. v. City of San Diego*, *supra*, 32 Cal.3d

[footnote continued on next page]

noted, the 2004 ordinance prohibits *all* new off-site billboards, regardless of their content (CMC, §§ 17.74.160, 17.74.070H.) and thus does not treat noncommercial speech less favorably than commercial speech—the element of the City of San Diego ordinance found facially invalid in *Metromedia* on First Amendment grounds. (*Metromedia, supra*, 453 U.S. at p. 513; see also *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 959 ["This court has never suggested that the state and federal Constitutions impose *different boundaries* between the categories of commercial and noncommercial speech."]; *Vanguard Outdoor, LLC v. City of Los Angeles* (9th Cir. 2011) 648 F.3d 737, 739, 746-747 ["claim that the California Constitution affords greater protection than the First Amendment fails in light of California Supreme Court case law."].)

IV. DISPOSITION

The January 25, 2013, order granting the preliminary injunction is affirmed. The City shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278.)

KING

J.

We concur:

McKINSTER

[footnote continued from previous page]
at pages 187 and 190, the court concluded that the unconstitutional portion of the ordinance could not be severed from the constitutional portion. (*Ibid.*)

Acting P. J.

MILLER _____
J.

Filed 1/26/16

CERTIFIED FOR PUBLICATION

COURT OF APPEAL -- STATE OF CALIFORNIA

FOURTH DISTRICT

DIVISION TWO

CITY OF CORONA, Plaintiff and Respondent, v. AMG OUTDOOR ADVERTISING, INC. et al., Defendants and Appellants.	E062869 (Super.Ct.No. RIC1412756) ORDER CERTIFYING OPINION FOR PUBLICATION AND MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT

A request having been made to this court pursuant to California Rules of Court, rule 8.1120(a), for publication of a nonpublished opinion heretofore filed in the above entitled matter on January 7, 2016, and it appearing that the opinion meets the standard for publication as specified in California Rules of Court, rule 8.1105(c),

IT IS ORDERED that said opinion be certified for publication pursuant to California Rules of Court, rule 8.1105(b).

IT IS FURTHER ORDERED that the opinion filed in this matter on January 7, 2016, is modified as follows:

1. On pages 1 and 23, the words NOT TO BE PUBLISHED IN OFFICIAL REPORTS are replaced with the words CERTIFIED FOR PUBLICATION.

2. On page 3, second paragraph, the word "any" should be added before the word "off-site" and the word "billboards" should be changed to "billboard."

3. On page 6, the fourth sentence of the first full paragraph, the word "grandfathered" should be inserted after the words "traceable to a."

4. On page 14, the first sentence of the first full paragraph, the word "agreement" should be deleted and the word "agreements" inserted in its place.

5. On page 14, the sixth sentence of the first full paragraph, the word "the" should be inserted after the word "both."

6. On page 18, the 14th sentence, the word "and" should be inserted before the word "thus."

7. On page 18, footnote 18, the fourth sentence, the word "refused" should be deleted and the word "declined" inserted in its place.

8. On page 21, the third sentence on the page, the word "thus" should be inserted after the word "Appeal."

9. On page 21, the first sentence of the second full paragraph, the word "Again," should be deleted.

10. On page 22, the first sentence of the first full paragraph, the word "claim" should be deleted and the word "argue" inserted in its place.

11. On page 22, footnote 10 should be deleted in its entirety.

Except for these modifications, the opinion remains unchanged. This modification does not affect a change in the judgment.

CERTIFIED FOR PUBLICATION

KING
J.

We concur:

McKINSTER
Acting P.J.

MILLER
J.

Clear Channel Outdoor

Bryan Parker
EVP, Real Estate & Public Affairs

April 18, 2016

Date: 4-19-16
Submitted in PLUM Committee
Council File No: 11-1705
Item No.: 2
Deputy: Communication from Public

Honorable Jose Huizar, Chair
Honorable Marqueece Harris-Dawson, Vice Chair
Honorable Mitchell Englander
Honorable Gilbert A. Cedillo
Honorable Felipe Fuentes
Planning and Land Use Management Committee
City of Los Angeles
200 N. Spring Street, Room 430
Los Angeles, CA 90012

Dear Chairman Huizar, Vice Chair Harris-Dawson, and Honorable Councilmembers:

Clear Channel Outdoor appreciates the City's continuing efforts to address signage issues. Although the recently proposed draft sign ordinance ("New Version B") shows some progress, we urge that clear direction be given to develop a coherent policy for digital signage that would result in a substantial reduction of existing signs and opportunities for improvements to aesthetics and public safety in Los Angeles communities. Other previously expressed concerns about the City's approach in drafting a new sign ordinance have not been addressed in New Version B and those issues are also outlined here.

The City Itself Recognizes the Many Potential Benefits of a Comprehensive Sign Reform. As outlined by the CLA's June 18 report, which was joined by the Planning Department, the potential benefits of off-site digital signs in the City are significant. The CLA readily acknowledged that the "[f]or each new digital sign allowed, the City could specify a number of static (or digital) sign removals."

Sign Reduction and Community Benefits. Although New Version B contemplates reduction of sign area in connection with new off-site signs within a Sign District from a sign impact area adjacent to the sign district, this would limit sign reductions to the very limited areas within Los Angeles that may become sign districts. In contrast, an ordinance permitting such signs outside sign districts can be used to effectuate meaningful sign reduction throughout the entire City, generate substantial beautification and traffic improvements, and improve public safety communications. The record demonstrates extensive support from a range of stakeholders including first responders, non-profits, and small and large local business and industries, together with a number of community representatives. If the City is truly committed to the reduction of existing off-site signs in a fashion that provides equal access for all Los Angeles communities to benefit from such off-site sign reduction, the City should use the relocation agreement process provided for under state law rather than limit these benefits to potential sign districts.

New Version B proposes community benefits with sign districts or adjacent sign impact areas in connection with new off-site signs in sign districts that include sidewalk widening and landscaping, undergrounding of utilities, streetscape improvements, lighting improvements,

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original art murals and public art installations, public parking structures, façade improvements and other improvements. We are proposing, in addition to these benefits, funding for both the local Council district and to the general fund that can be used to address significant quality of life and safety issues that the City is currently struggling to find funding to combat.

We therefore respectfully request your direction for the Planning Department to revise "Version B" to address the CLA's proposed instructions for digital signs outside of sign districts and to include the additional benefits that we are proposing.

Relocation Agreements Are an Effective Tool for Pursuing Sign Reduction and Generating Public Benefits. New Version B eliminates the City's long-standing provision exempting signs permitted pursuant to relocation agreements from the City's existing ban on new off-site signs. Section 14.4.4.B.11 of the Municipal Code currently incorporates California Business & Professions Code section 5412's express affirmation of the City's ability to enter into relocation agreements "on whatever terms are agreeable to the display owner and the city." It is against the City's interest to remove this flexibility from the City.

Indeed, in its September 13, 2013, report to the City Council, the City Attorney explained that "such relocation agreements are authorized by the state Outdoor Advertising Act and, as state law, preempt the City's Code."

By limiting new digital signs to only sign districts, which can only be proposed in a very narrowly drawn portion of the City, New Version B ensures that most of the City's residents will not enjoy any of the benefits that a sign reduction program can create. Instead of restricting such opportunities to the small number of sign districts recommended by staff, regulatory tools such as relocation agreements can be used – as they are in many other cities – to allow some digital signs in appropriate locations outside sign districts while ensuring protection for the visual environment and for single-family residential neighborhoods.

Relocation agreements are a particularly effective method to reduce the number of off-site signs, improve the visual environment, and gain substantial public benefits, as has been done in many other California cities. Attached are examples of over 25 relocation agreements entered into under state and local laws from all over California (Attachment 1). California law encourages cities to enter into sign relocation agreements with private parties and to do so liberally under whatever terms the parties deem appropriate.

For Los Angeles, such agreements should maximize the opportunities for sign reduction and the provision of public benefits (e.g., funding for both the affected Council district as well as for the general fund), ensure protections for residences (including reasonable restrictions on locations/zones, illumination, and spacing, and related findings), and provide a predictable, easy to implement, fully applicant-funded and indemnified, and public permit processing system to ensure reasonable rules on permit application processing and review.

As we detailed in a letter to the City Planning Commission last fall from the Los Angeles Advertising Coalition (Attachment 2), meaningful sign reduction is a public policy goal that requires agreements with private sign owners for its implementation, as demonstrated by

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numerous other cities across the country and within California.

As discretionary approvals, sign relocation agreements, development agreements, or conditional use permits provide the City with the flexibility to obtain the community benefits appropriate for the particular sign's impact on the area and the needs of the affected community. We urge the City not to unnecessarily abandon this important and highly effective regulatory tool.

Addressing the City's Incomplete Permit Records. New Version B does not address the issues created by the City's incomplete permitting records for off-site signs, nor does it recognize the provisions of state law on these issues, given that most of the existing signs in the City were erected long before the adoption of more recent restrictions. We note that a replacement permitting system substantially similar to a program implemented by the City of San Francisco has previously been proposed. This program would enable the City to resolve the problems associated with the historically poor recordkeeping of many off-site signs without letting serious or obvious violators benefit from a broader amnesty program. Proposed language for this approach is detailed in Attachment 3.

Due Process Concerns Remain. Due process concerns also remain, and New Version B must be revised to address the appeal process where a violation of the sign ordinance is alleged. Clear Channel Outdoor supports strict enforcement of the City's sign regulations and the tolling of all penalties during the entirety of the City's administrative appeal process. The intent appears to be to toll the penalties during the administrative process, but it is unclear whether penalties are tolled if the Administrative Hearing Officer's determination is appealed under section 14.4.25.A.6. We ask that the ordinance be clarified to make clear that all civil penalties are tolled during the entirety of the City's administrative appeal process. The City should also clarify that administrative penalties are tolled during judicial review of Compliance Orders. See Attachment 4 for proposed revision to section 14.4.25.A

Sign Adjustments. In the off-site sign industry, a sign company generally owns the sign structure and leases space for it from a property owner. New Version B proposes allowing existing off-site signs to be moved within the boundaries of the property on which they currently are located. We have no objection to allowing this flexibility, but the ordinance must be clear that only the sign owner is able to apply to relocate the existing sign. The current language is uncertain and potentially places the City at risk of becoming mired in third-party contract disputes, which would be an otherwise avoidable waste of scarce City resources. To make clear that only the sign owner can request relocation, we propose adding the following text at the end of the proposed Section 14.4.21.A in New Version B: "**For purposes of this Section 14.4.21, the term 'applicant' shall mean the owner of the sign to be relocated.**"

Sign District Takedown Requirements. The prior draft sign code would have allowed up to fifty percent of the sign reduction requirements for new off-site signs in sign districts to be substituted, in part, by an equivalent amount of other community benefits. New Version B, however, eliminates this flexibility. To avoid unduly limiting the City's flexibility in determining how best to improve the City's visual environment, this flexibility should be restored.

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Clear Channel Outdoor

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EVP, Real Estate & Public Affairs

Sign Regulation's Application to Public Right-of-Way. Section 14.4.3.A of New Version B provides that the sign regulations apply only to signs "not located entirely in the public right-of-way." Please clarify whether the City intends to exclude street signs only or whether the City also intends to exclude off-site advertising signs City may choose to erect. For example, if the City intends to construct new off-site signs entirely within the public right-of-way, is the intent of the New Version B that such signs are exempt from all signage regulations?

* * * * *

All of these issues have been addressed previously by the Planning Commission. Therefore the City Planning Commission need not hold yet another hearing on the signage issues that the Planning Commission, this Committee, the full City Council, and the public have already considered at length. That there may be disagreement in terms of policy does not mean that an issue was not considered.

Thank you again for the opportunity to provide feedback regarding these important issues. We look forward to continuing to work with the City and all stakeholders on devising clear, reasonable, and workable ordinances and principles that recognize the importance of off-site signage in Los Angeles and encourage the benefits it provides.

Sincerely,

Bryan Parker
Executive Vice President

Attachments

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ATTACHMENT 1

Jurisdiction	Permitting Summary	Public Benefits (Sign Reduction)	Public Benefits (Services)	Public Benefits (Funding)
Fontana	3 double-sided digital - 2013, Lamar Central Outdoor - Public and private property - Includes freeway-facing signs (I-10)	9 signs (18 displays)	- Free City use of space-available advertising for nonprofit service messaging - Free emergency messaging - Restrictions in content (no adult content, alcohol, political advertising, among others)	- (Public property sign) Greater of $360,000 in annual fees over 20 years or 20% share of gross receipts
Garden Grove	1 double-sided digital - 2014, Clear Channel Outdoor - Private property; no eminent domain proceedings	3 signs (4 displays)	Advertising space, one spot 4 weeks per year	- Annual mitigation fee of $1.57M over 30 years - $15,000 up-front payment
Hayward	1 double-sided digital - 2010, Clear Channel Outdoor - Private property; no eminent domain proceedings - Includes freeway-facing signs (Hwy 92)	5 signs (8 displays)	- Provide at least 12.5% time for the promotion of local civic uses and additional time on a space available basis.	N/A
Los Angeles	The 15th Street Supplemental Use District was created in order to accommodate the construction of two double- sided signs (each sign having one digital display) pursuant to an agreement between Clear Channel Outdoor and the L.A. County MTA. Although these signs were permitted through an SUD and not a relocation agreement, it was functionally the same as a relocation agreement.	14 signs along Santa Monica Blvd.	N/A	N/A
Martinez	1 double-sided digital - 2011, CBS Outdoor - Private property - Includes freeway-facing sign (I-680)	1 sign	Limited free advertising as well as access to the display for emergency alerts	City to receive quarterly revenue share equal to 11% of net receipts (estimated $120,00 to $160,00 annually) up to a max limit of 16.66% of gross receipts.
Newark	3 double-sided digital - 2012, Clear Channel Outdoor - Public and private property; no eminent domain proceedings - Includes freeway-facing signs	24 displays in Orange, L.A., San Diego, and Alameda Counties	- Guaranteed at least 5% time to advertise City events	- Annual fees over 25 years totaling approx. $4M

Jurisdiction	Permitting Summary	Public Benefits (Sign Reduction)	Public Benefits (Services)	Public Benefits (Funding)
	- Public and private property; no eminent domain proceedings - Includes freeway-facing sign (I-580)			
Palmdale	1 new double-sided digital; Relocate 2 other double-sided signs - 2015, Lamar Central Outdoor	13 signs (23 displays)	- Public service announcements	N/A
Perris	6 double-sided digital - 2013, Lamar Central Outdoor - Public and private property - Includes freeway-facing signs (I-215)	12 signs (24 displays)	- Two free public service announcements on new billboards for duration of CUP term	N/A
Rancho Cucamonga	1 double-sided digital - 2009, San Diego Outdoor Advertising - Private property - Includes freeway-facing sign (I-15)	2 signs	- 10% free time to City for public service messages; additional time as available	TBD
Rancho Cordova	1 double-sided digital - 2013, Clear Channel Outdoor - Private property; no eminent domain proceedings - Includes freeway-facing signs (Hwy 50)	3 signs (2 traditional, 1 electronic)	- City access to sign for community safety alert messaging	- Annual fee of approx. $50,000 (initial 25 year term plus option for additional 25 year term) - $75,000 signing bonus
Riverside County	1 single-sided digital - 2009, Lamar Central Outdoor - Public property - Includes freeway-facing signs (Hwy 80)	- 2 signs	N/A	Relieved of payment of just compensation for taking of original sign,
Rocklin	2 double-sided digital - 2012, Clear Channel Outdoor - Public and private property; no eminent domain proceedings - Includes freeway-facing signs (Hwy 65)	3 signs	Free advertising on space-available basis, as well as access to display for emergency alerts	- One-time $25,000 signing bonus paid to City - Annual fees of $54,000 per year, with 12% increase every five years
	1 double-sided digital	1 sign	City use of available sign time for promotion	Guaranteed minimum of $4.4M in general

Jurisdiction	Permitting Summary	Public Benefits (Sign Reduction)	Public Benefits (Services)	Public Benefits (Funding)
Sacramento (City)	4 digital and 2 traditional - 2010, 2012, Clear Channel Outdoor - Public property (2010); Private property (2012) ; no eminent domain proceedings - Includes freeway-facing signs (I-80; I-5; Hwy 99)	- 15 signs (19 displays) - Net reduction of 4,000 s.f. of sign area	N/A	- Initial $330,000 payment - Annual payments of at least $720,000 per year for 25 years
San Carlos	1 double-sided digital - 2014, Clear Channel Outdoor - Public property; no eminent domain proceedings	1 display	Advertising space, one 2-week spot four times per year	- lease rent - $100,000 up front payment - Greater of $200,000 per year or $30 of gross revenue
San Francisco	This agreement approved a process for the City's consideration of proposals to relocate larger signs to convert into smaller panel signs. No specific signs or sites were identified.	The process agreed upon was designed to achieve a 75% reduction in existing square footage owned by the sign company.	N/A	- One-time upfront $1.75M payment
South San Francisco	1 double-sided digital - 2015, Clear Channel Outdoor - Private property; no eminent domain proceedings	2 signs	Advertising space, four 2-week blocks (1 spot/year)	- $40,000 per display per year (with increases every 5 years) - Up to $280,000 reimbursement for City Gateway Signs - Reimbursement of processing fees
South El Monte	1 double-sided digital -2013, Clear Channel Outdoor (through CUP and development agreement/relocation agreement) -Private property; no eminent domain proceedings	2 signs (2 displays)	Advertising space, 1 spot 4 weeks per year	- $15,000 up-front payment - $5,000 per year
Santa Clara	1 new double-sided digital - 2011, Clear Channel Outdoor - Private property; no eminent domain proceedings - Includes freeway-facing signs	4 signs (6 displays)	- At least 10% time to City and nonprofits (with at least half the messages shown between 6 a.m. and 9 p.m.)	- $140,000 fee payment

Jurisdiction	Permitting Summary	Public Benefits (Sign Reduction)	Public Benefits (Services)	Public Benefits (Funding)
Victorville	2 single-sided traditional - 2013, Lamar Central Outdoor - Private property - Includes freeway-facing signs (I-15)	- 2 signs - Conversion to digital shall require 2:1 takedown ratio	N/A	N/A

ATTACHMENT 2

October 19, 2015

VIA ELECTRONIC DELIVERY

Los Angeles City Planning Commission
c/o Commission Executive Assistant
200 North Spring Street, Room 272
Los Angeles, CA 90012
E-mail: cpc@lacity.org

Re: Signage/Outdoor Advertising Issues, October 22, 2015;
Hearing Agenda Item 7, CPC-2015-3059-CA

Dear President Ambroz and Honorable Commissioners:

As you consider public policy issues related to outdoor advertising, we write on behalf of Los Angeles Advertising Coalition to follow up on the issue of helpful precedent from other jurisdictions, as noted in the Department of City Planning's October 14, 2015 Supplemental Recommendation Report.

First, as to offsite digital signs, many individuals and local leaders, from nonprofits to labor groups, joined representatives of the entertainment industry and business community to testify before you in September as to the opportunities from digital signage to support and encourage job creation as well as provide public safety benefits and enhanced revenue for the City. (See, for example, Ron Miller and Frank Lima, *L.A. needs a comprehensive digital sign ordinance: Guest commentary*, L.A. DAILY NEWS (Oct. 9, 2015); Gary Toebben, *It's Time to Pass a Citywide Sign Ordinance*, L.A. AREA CHAMBER OF COMMERCE BUSINESS PERSPECTIVE (Oct. 13, 2015) [attached].) Such revenues, together with billboard removal, provide opportunities to improve the visual landscape and promote the removal of some of the over 9,000 off-site sign faces identified in LA's existing inventory. Instead of forbidding such opportunities to the vast majority of Los Angeles as a result of the small number of sign districts recommended by staff, regulatory tools can be used – as in many other cities – to allow some digital signs in appropriate locations outside sign districts while ensuring protection for the visual environment and for single-family residential neighborhoods.

At your hearing, Commissioners discussed the potential to establish objective criteria, such as through a conditional use permit process or other legal mechanisms, to allow digital off-site signs outside of sign districts. Clearly, a regulatory program can be crafted that provides for a public process considering site-specific and project-specific features. The City does that now with sign districts, which establish strict regulations for digital signage, as well as for on-site digital signage; and in both cases, issues of lighting, residential protections, and location are carefully regulated both through project permits (for sign districts) and strict Building and Safety covenant requirements (for on-site digital signage). Moreover, the City has been very successful in defending its sign ordinance including exceptions (See the Court of Appeal's decisions in *Metro Lights, LLC v. City of Los Angeles* (9th Cir. 2009), *World Wide Rush, LLC v. City of Los Angeles* (9th Cir. 2010), and *Vanguard Outdoor, LLC v. City of Los Angeles* (9th Cir. 2011).)

As noted by staff in its October 14 supplemental recommendation report, other municipalities and counties across California have used conditional use permit processes or similar processes and other exceptions to local zoning regulations to allow for new off-site digital signs. Over 20 cities and counties throughout the state have zoning regulations prohibiting new off-site signage, but allowing for exceptions for signs installed pursuant to specific provisions.

For example, the City of Downey generally prohibits new off-site signage, but under its municipal code has approved new signage with a variance, conditional use permit, and development agreement.

Approaches for authorizing new signs may also include relocation agreements, which are expressly provided for under California Business & Professions Code section 5412. Indeed, in its September 13, 2013 report to the City Council, the City Attorney explained that "such relocation agreements are authorized by the state Outdoor Advertising Act and, as state law, preempt the City's Code." In light of that, we hope the City will retain the long-existing provisions regarding relocation agreements, currently codified at Section 14.4.4.B.11 of the Municipal Code. Relocation agreements can be used to reduce the number of off-site signs in the City, improve the visual environment, and gain substantial public benefits, as has been done in many other California cities. California law encourages cities to enter into sign relocation agreements with private parties and to do so liberally under whatever terms the parties deem appropriate.

Meaningful sign reduction is a public policy goal that requires agreements with private sign owners for its implementation. Other cities across the country balance sign reduction with other benefits, establishing a variety of takedown ratios. as noted by staff in its October 14 supplemental recommendation report: for example, Dallas, Texas (3:1); Miami, Florida (from 2:1 to 4:1, depending in the circumstances); San Antonio, Texas (2:1 to 7:1, depending on the circumstances); and Minneapolis (2:1 for nondigital signs or 4:1 for new digital signs). Modernization and improvement of signage, in comparison to existing conditions, is also a legitimate policy goal.

Many California cities, like Los Angeles, prohibit new "off-site" or "off-premises" outdoor advertising displays, but allow for the discretionary relocation and/or modernization of off-site signs as exceptions. Just this past year, for example, the City of Long Beach approved a new ordinance that allows for off-site digital signage under a conditional use permit process,

which can be combined with a development agreement, to encourage removal of existing billboards that are not in compliance with the city's sign standards, under specified ratios. This conditional use permit process includes objective standards with specific, required findings ensuring that there is no net increase in off-site sign area in the city, a commitment by the applicant to produce a letter of intent or plan to reduce off-site signage, traffic safety, spacing, visual and aesthetic compatibility, and consistency with the goals of the ordinance, among others.

Similarly, San Jose and Rancho Cordova have citywide regulations in place prohibiting new off-site signs, including digital displays. Each jurisdiction, however, allows for sign adjustment permits with contractual agreements in order to facilitate the overall reduction of off-site signs and enhance the aesthetic environment. Like Long Beach, Rancho Cordova allows off-site signs using a conditional use permit process that requires adherence to specific eligibility, development, and location standards and requirements, notwithstanding a general ban on off-site signs. In San Jose, "[r]elocation approval is part of the demonstrated commitment of the city council to the aesthetic enhancement of the city," and is governed by specific height, width, area, location, illumination, and setback requirements. San Jose also allows for the use of other types of contractual agreements in exchange for off-site sign removal in other situations, provided specific findings can be made.

Other cities have adopted local implementing ordinances for state relocation agreements that specify required findings for relocation agreements to ensure that new off-site signs are appropriately located and regulated.

For example, the Sacramento Municipal Code generally prohibits new off-site signs, such as billboards, except those subject to a relocation agreement under Section 5412. In 2009, Sacramento implemented a "Digital Billboards Project" to allow new digital billboards to be constructed pursuant to agreements that would provide for the removal of traditional billboards elsewhere in the City. As a result of the project, Sacramento negotiated for the removal of traditional billboards and allowed the construction of new digital billboards. This agreement, which required the City to make specific findings related to traffic and safety, land use compatibility, and aesthetics, among others, also reduced the number of signs in the city and secured revenues for the city; it was later amended in connection with the City's efforts to support a new basketball arena.

Another example is the City of Riverside, where the Zoning Administrator may approve relocation agreements for off-site signs, notwithstanding the City's general prohibition against the construction of new off-site signs, provided that certain findings are made. Among other required findings, a relocation agreement must be found to (1) facilitate "an improvement in the aesthetic appearance of the original billboard structure," (2) not result in any increase in sign area, and (3) not result in any costs to the City.

Roseville relatively recently amended its sign code to allow for relocated off-site signs pursuant to relocation agreements, provided certain findings are made. As in Sacramento and Riverside, Roseville generally prohibits off-site signs; however, relocation agreements are allowed, provided that findings related to land-use compatibility, traffic circulation, and safety can be made. The City of Martinez also recently amended its sign code in a similar way – despite

having a general prohibition of off-site signs, relocated signs are allowed provided that findings related to spacing, zoning, and environmental impacts are made. All of these cities, like those referenced above using a conditional use permit process, regulate off-site signage by requiring objective findings to justify the use of exceptions.

In addition to the Cities of Sacramento, Riverside, Roseville, and Martinez, noted above, California jurisdictions that generally prohibit off-site signs but allow for the relocation or modernization of off-site signs pursuant to relocation agreements include, for example, the Cities of Baldwin Park, Beaumont, Benicia, Colfax, Corona, Emeryville, Fontana, Hayward, Oceanside, Ontario, Palm Springs, Placentia, Rancho Cucamonga, Rocklin, San Francisco, Santa Clara, Victorville, Vista, and the County of Sacramento. s

Like relocation agreements, sign development agreements, like those permitted in Long Beach, are freely negotiated, arms-length contracts negotiated between public agencies and private parties and provide flexibility to the City to regulate off-site signage while securing substantial benefits for the public and the community. These agreements have provided for monetary payments (e.g., Oakland), additional sign takedowns (e.g., Santa Clara, Sacramento), and the provision of other public benefits such as the free use of advertising space for amber alerts and other public-service messages (e.g., Rocklin), and, as noted, are approved with specific required findings akin to conditional use approvals. Los Angeles has authorized signage in connection with development agreements for development projects that incorporate signage, for example.

Although staff noted in its supplemental report that "[c]ommunity benefits are generally not required in other cities," the overwhelming practice in California is that some form of community benefits are nearly always provided in connection with sign relocation agreements, development agreements, or conditional use approvals. Indeed, as noted by staff in its October 14 Supplemental Recommendation Report, digital signs in West Hollywood are required to pay a fee that provides revenues to both the local business improvement district and the City's general fund; in Irwindale, public benefits are required; and as noted, cities across California have obtained substantial community benefits notwithstanding the lack of a municipal code requirement for the provision of community benefits in connection with a sign approval. As discretionary approvals, sign relocation agreements, development agreements, or conditional use permits provide the City with the flexibility to obtain the community benefits appropriate for the particular sign's impact on the area and the needs of the affected community.

The City has many regulatory options to further its interests in traffic safety and aesthetics. Any process it creates can also encourage a fair, orderly, and deliberative process for all stakeholders through carefully drafted application procedures that are designed to impose reasonable limits on permit submittal to limit the number of applications that may be filed by any one applicant at any one time, and to provide full funding for City staff processing costs.

We welcome continued discussion on these issues and look forward to working with this Commission and Staff in modernizing the City's sign regulations for the future benefit of all the City's residents.

Sincerely,

Stacy Miller
Los Angeles Outdoor Advertising Coalition

cc: Councilmember Huizar, Chair, Planning & Land Use Management Committee
Councilmember Harris-Dawson, Planning & Land Use Management Committee
Councilmember Englander, Planning & Land Use Management Committee
Councilmember Cedillo, Planning & Land Use Management Committee
Councilmember Fuentes, Planning & Land Use Management Committee
Michael J. LoGrande, Director of Planning
Lisa M. Webber, AICP, Deputy Director of Planning
Jan Zatorski, Deputy Director of Planning

ATTACHMENT

L.A. needs a comprehensive digital sign ordinance: Guest commentary

By Ron Miller and Frank Lima

DailyNews.com

A Clear Channel digital billboard at Topanga Canyon Boulevard and Victory Boulevard in Woodland Hills is seen in this Feb. 28, 2013, file photo. (Michael Owen Baker/Staff Photographer) ¬

We each represent thousands of workers who work and live in the city of Los Angeles and are committed to good jobs and safe communities. We advocate for sensible policies on many issues, and we support a comprehensive digital sign ordinance that includes digital signs on private and public property outside of sign districts. It means much more to the health and safety of Angelenos than opponents have portrayed.

The Los Angeles City Council will finally have the opportunity to move forward with a comprehensive digital sign ordinance this year — and it's about time they do something. More than 450 cities and virtually every major metropolitan area in the United States have already passed such legislation and yet the city of Los Angeles lags behind the rest of the nation. These cities enjoy the benefits that digital signs provide their communities, including significant public revenue, an important public safety tool, job creation and a public service resource.

In Los Angeles, digital signs will provide millions of dollars in revenue for vital city services and neighborhood improvements. But this revenue only can be achieved by allowing for digital signs on both private and public property throughout the city.

In addition to revenue, digital signs will bring many other benefits to the community. The technology will allow firefighters and police to utilize a state-of-the art and immediate means to communicate public warnings and directions to residents in the case of a natural disaster like an earthquake or mudslide, an ongoing criminal threat, or severe brush fire danger on windy Red Flag Warning days. Moving forward with a digital sign ordinance will create jobs for local tradespeople who will both build and maintain these signs as well as take down existing traditional signs. And finally, digital signs allow local community partners to take advantage of public service announcements in a whole new way—allowing for much more dynamic communications to constituents from local organizations like the American Red Cross, Boys and Girls Clubs and animal shelters to promote pet adoption.

New digital signs outside of sign districts on private property will replace existing static signs and will not be located in residential neighborhoods. In fact, various proposals call for the removal of up to four times the square footage of existing static signs in exchange for one square foot of newly created digital signage that will be limited to commercial or industrial areas.

So why aren't we doing it already? It's time for the city of Los Angeles to join hundreds and hundreds of cities throughout the country and embrace this technology. We support the creation of new jobs, additional revenue for city services, the ability to instantly communicate important public safety announcements, and the potential removal of thousands of current signs in residential neighborhoods in exchange for new digital signs in commercial corridors only.

Now is the time for Los Angeles to move forward with a digital sign policy that makes sense for everyone.

Ron Miller is executive secretary of Los Angeles/Orange Counties Building and Construction Trades. Los Angeles Fire Department Capt. Frank Lima is president of United Firefighters of Los Angeles City.

It's Time to Pass a Citywide Sign Ordinance

Gary Toebben

Like 0

October 13, 2015

Advertising is essential for growing a business and our economy. More than 6,000 small and large businesses in Los Angeles use outdoor advertising as part of their strategy to market their goods and services. Outdoor advertising also creates thousands of jobs in our region for people who design and create the advertisements and for those who construct and service billboards and signage.

Despite how important and essential outdoor advertising is for many businesses, the City of L.A. lacks a much-needed policy to regulate outdoor advertising – especially digital billboards. We need clear guidance on where and how digital signs can be used throughout the city, including on-site messaging. That's why the Chamber, as the largest business organization in the region, has strongly and consistently stood in support of an ordinance that allows for and regulates digital signage on both private and public property throughout L.A. outside of sign districts.

As a city and business community that embraces new technologies and welcomes innovation, we support the use of digital billboards and the creation of regulations that adequately address their use. By allowing digital signs to be located on private and public property, the city has the opportunity to generate a new source of revenue to fund critical public services. More than a thousand municipalities across the country have paved the way by passing digital sign ordinances, and their businesses as well as their cities and neighborhoods are benefitting. It's time for L.A. to do the same.

Now is the time to create a straight-forward and streamlined ordinance that puts confusion to rest and gives both businesses and neighborhoods a better say over where and how we advertise in our city. This can be a win-win solution for all of us.

And that's *The Business Perspective*.

Total Votes: 0 Avg Vote: 0 ☆☆☆☆☆

Comments

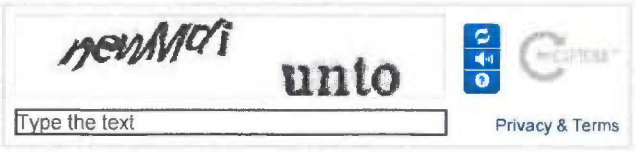
Private comment posted @ 7:02:17 pm

Leave a Comment

Comments submitted to The Business Perspective Blog are subject to review by the Los Angeles Area Chamber of Commerce prior to posting. The Chamber reserves the right to monitor and withhold comments that include personal, offensive, potentially libelous or copyright protected language, materials or links. Only comments relevant to the topic will be posted. Comments posted must have a valid email address. View our full terms & conditions.

Name:

E-Mail:



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ATTACHMENT 3

91.6205.18.6. Legally Existing Nonconforming Off-site Signs. All off-site signs existing in the City as of [December 1, 2002] shall be presumed to be legally existing off-site signs if one of the following requirements is met:

1. A permit exists for the sign at its current location or for any subsequent modification, and the sign is in compliance with such permit; or

2. Under the law in effect at the time the sign was constructed or modified, such sign or modification would have been permitted at the time of its construction or modification.

If neither the Department nor the owner of such an off-site sign structure can locate a building permit for the construction or subsequent modification of the off-site sign, the sign owner shall have the opportunity to submit evidence concerning the date when the sign was constructed or modified so that the City may determine whether the modification would have been legally permitted under the law in effect at the time. Such additional evidence may include, by way of example, but not limitation, , historical permits and permit records, a deed, a lease, a certificate of occupancy, an electrical permit, construction records, advertising records, tax records, and/or other similar records.

If any sign structure that was lawfully erected at the time it was constructed has been subsequently modified in a manner that was not lawful at the time the modification was made, the person in control of the sign structure shall bring the structure into compliance with all applicable sections of this Code in effect at the time it was modified.

91.6205.18.7. Certificate of Compliance.

A. Procedure. If a building permit cannot be located for the construction or subsequent modification of the off-site sign, the owner may elect to apply for a Certificate of Compliance from the Department. The Department shall issue a Certificate of Compliance for the sign structure unless it determines that under the law in effect at the time the sign was constructed or modified, such construction or modification could not have been permitted. Evidence that may be submitted includes, but is not limited to, historical permits and permit records, a deed, a lease, a certificate of occupancy, an electrical permit, construction records, advertising records, tax records, and/or other similar records.

B. Application Fee. The owner of an off-site sign structure shall pay a regulatory fee in an amount determined by the Department upon the submission of an application for a Certificate of Compliance pursuant to 91.6205.18.6. The applicant shall also provide the address of the sign structure, the date the structure was erected, a description of all subsequent modifications and the dates such modification were made, if known, and all supporting evidence in the applicant's possession.

The Department shall cause all money collected pursuant to this section to be deposited into the Off-Site Sign Periodic Inspection Fee Trust Fund described in Section 5.111.17 of the Los Angeles Administrative Code for purposes of disbursement as that section permits. The regulatory fee shall be used to finance the costs of administering the inspection program, including but not limited to, inspection, issuance of permits, Certificates of Compliance and inspection certificates, and maintenance of an off-site sign structure database.

ATTACHMENT 4

14.4.25.A.5.

Penalties shall stop accruing on the date that an appeal is filed, and will resume accruing under the circumstances set forth in Subsection E of this Section 14.4.25**, or upon the resolution of any judicial challenge to the City's final determination of any appeal under this Section 14.4.25, whichever is later**.

HOLLYWOOD HERITAGE, INC.
P.O. Box 2586
Hollywood, CA 90078
(323) 874-4005 • FAX (323) 465-5993

April 19, 2016

Date: 4-19-16
Submitted in PLUM Committee
Council File No: 11-1705
Item No. 2
Deputy: Communication from Public

Planning and Land Use Committee
200 North Spring Street
Roybal Hearing Room 350 – 2:30 PM
Los Angeles, CA 90012

RE: PUBLIC COMMENT: Revised Citywide Sign Ordinance
CF 11-1705, City Attorney Report R16-0092
RELATED CASES: CPC-2009-0008-CA, CF08-2020, CF11-0724, CF 11-1705, CF 12-1611, ENV 2009-009-CE, CPC-2015-3059-CA

Dear Planning and Land Use Committee Members:

Hollywood Heritage, Inc. has a preservation interest in Hollywood, a City of Los Angeles regional center as defined in the proposed Citywide Sign Ordinance. The LA City Attorney Report dated March 21, 2016 recommended to City Council the adoption of the City Planning proposed citywide sign ordinance Version B, attached to the report and is dated April 19, 2016. This ordinance, and other prior versions, seeks to amend LAMC Section 13.11 to allow for two types of sign districts, Tier 1 and Tier 2.

This proposed and revised Citywide Sign Ordinance requires City Planning Commission to prepare a report regarding a proposed Tier 1 sign district to evaluate the effects on aesthetics and traffic safety. Should City Council adopt this version, or any similar version, of the Citywide Sign Ordinance along with supporting findings; and/or determine that the project is exempt from CEQA (ENV 2009-0009-CE), Hollywood Heritage **requests that it be a consulting party** to the City project review process when any area within Hollywood be identified as a proposed new Tier 1 Sign District, or if there is a proposed amendment or change the existing Hollywood SUD, or should a project require a sign variance adjacent to or as part of a Qualified Historic Building or Resource located in Hollywood.

Sincerely,

Richard Adkins
President, Hollywood Heritage, Inc.

Cc: Council of the City of Los Angeles, 13th Council District
Councilmember, Mitch O'Farrell and Policy Advisor, Christine Peters
Via email: councilmember.ofarrell@lacity.org, christine.peters@lacity.org

Sharon Dickinson <sharon.dickinson@lacity.org>

Council file 11-1705 billboards

1 message

tmarq3711 <tmarq3711@aol.com> Tue, Apr 19, 2016 at 3:32 PM
To: Sharon.Dickinson@lacity.org

In total support of section B+ of the billboard file

I totalky support tge decision of October 22, 2015 LA City ordinance for billboards.

RESIDENCE of Boyle Heights would like to clean up the nuisances of over saturated billboard advertsiments with inappropriate advertisement for our children.

If you have any questions please feel free to contact me at 323283-2508 or tmarq3711@aol.com.

Sincerely yours
Teresa Marquez
President of Mother of ELA
And board member of Boyle Heights Stakeholders Assiciaton, NW

Sent from my Sprint Samsung Galaxy Note5.