

Date: 11/1/16  
Submitted in PLUM Committee  
Council File No: 11-1705  
Item No. 3  
Deputy: \_\_\_\_\_

355 South Grand Avenue  
Los Angeles, California 90071-1560  
Tel: +1.213.485.1234 Fax: +1.213.891.8763  
www.lw.com

FIRM / AFFILIATE OFFICES  
Barcelona Moscow  
Beijing Munich  
Boston New York  
Brussels Orange County  
Century City Paris  
Chicago Riyadh  
Dubai Rome  
Düsseldorf San Diego  
Frankfurt San Francisco  
Hamburg Seoul  
Hong Kong Shanghai  
Houston Silicon Valley  
London Singapore  
Los Angeles Tokyo  
Madrid Washington, D.C.  
Milan

**LATHAM & WATKINS** LLP

November 1, 2016

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

Re: November 1, 2016, PLUM Agenda Item 3, CF 11-1705 (off-site signage)

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

On behalf of Clear Channel Outdoor, Inc. (“CCO”), we appreciate your continued direction for progressive solutions as part of the City’s continuing efforts to address signage issues, including opportunities for all impacted communities to obtain takedowns and other public benefits. We write to provide additional information for your consideration, after reviewing the reports from the City’s Chief Legislative Analyst (“CLA”) and the City Administrative Officer (“CAO”), each dated October 28, 2016 (the “CLA Report” and the “CAO Report,” respectively), and in response to your specific direction given at the August 23, 2016, PLUM Committee hearing.

**I. RELOCATION AGREEMENTS**

We strongly support the CLA’s recommendation to use relocation agreements for off-site signage outside of sign districts on privately owned property, with a range of square footage of lawfully permitted conventional billboards to be removed and replaced with a specified square footage of new offsite digital displays. This is consistent with the precedent set by many other cities in California. As the CAO pointed out at the August hearing, however, appropriate sign reduction ratios and public benefit requirements are essential to achieve the desired degree of reduction in off-premise signage in the City, as discussed further below. Moreover, given that individual factors impact each location, it is important to maintain flexibility to negotiate public benefits to be included in a relocation agreement on a site-by-site basis.

**A. Relocation Agreement Process.**

We appreciate the CLA Report recommendation for clear criteria for sites for relocation agreements for digital signs. Consistent with our prior comments, such criteria can ensure

**LATHAM & WATKINS<sup>LLP</sup>**

protections for residences (including reasonable restrictions on locations/zones, illumination, spacing, and related issues). Moreover, any process for relocation 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).

**B. Takedown Ratios.**

In order to create a system that treats smaller and larger sign companies in an equitable manner, an appropriate takedown system, including an appropriate ratio, must be provided. The 8:1 and 9:1 ratios discussed in the CLA and CAO Reports, however, are too high to result in significant takedowns for many of the communities currently impacted by concentrated numbers of existing signs. As noted by staff previously in its August 19, 2016 report, the 8:1 ratio is unprecedented.

We recommend the following takedown system set forth in Attachment A, which recognizes the potential burden on smaller companies.

This system allows opportunities for smaller companies and larger sign companies, while providing for the potential for a relatively high takedown ratio (5:1) in appropriate circumstances, to achieve greater sign reduction.

**C. Public Benefits Must be Negotiated; No Nexus Study Needed.**

Under Section 5412 of the California Business and Professions Code, the essence of a relocation agreement is negotiation (“local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city....”). Due to the unique characteristics of each outdoor advertising sign, relative value can vary significantly depending on a number of factors, including location and visibility, among others. As a result, the in-lieu payment should be negotiated on a site-by-site basis. Indeed, review of numerous other cities that have entered into relocation agreements shows a significant range in such payments as a result of the differences in location and visibility of individual signs.

We disagree with the CAO’s recommendation that mandatory annual in-lieu payments be made to the City, in contrast to negotiated amounts, though we agree that the number and location of takedowns is an important factor. Consistency with the direction of Section 5412 for individual review, in contrast to having a payment mandated by the government agency approving the agreement, where it does not have a property interest in the underlying property or sign, is important to avoid creating a tax that could be challenged as subject to additional applicable legal requirements.

The California Constitution, Article 13C, Section 1, defines a “tax” as: “any levy, charge, or exaction of any kind imposed by a local government” [subd. (e)]. Therefore, any required moneys collected pursuant to ordinance, including but not limited to a requirement for a share in revenues generated by the sign, is a tax. It would be a “charge” that is “imposed” by the City.

**LATHAM & WATKINS<sup>LLP</sup>**

Based on a negotiated payment, like a development agreement, the City can bargain for the annual commitment of significant public benefits as conditions to relocation agreements on private property. No Citywide nexus study is required in order to determine appropriate community benefits.<sup>1</sup> Instead, the relationship between a sign's value and impact to the charge included in a relocation agreement is established by the record of negotiations for the agreement and other generally applicable standards (e.g., public benefits must mitigate impacts of the sign, including, in particular, potential aesthetics and safety impacts).

A relocation agreement that is consistent with Business and Professions Code section 5412, which allows a municipality and a private party to enter into an agreement on whatever terms that are agreeable to the parties, is neither a tax nor a fee because it is not mandatory under the law. Section 5412 does not require any charges or exactions as a precondition for the agreement. Rather, whether a charge is included in the agreement and the level of such a charge is up to the agreement of the parties. In other words, the terms and conditions of a relocation agreement are not "exactions" taken by the government as an exercise of its takings power; rather a relocation agreement is a freely negotiated contract, which is an exercise of the police power. Similarly, the terms and conditions of a relocation agreement are not "taxes" because they are not "imposed" by the government, but rather agreed upon by the parties. However, an ordinance codifying minimum levels of money or percentages of revenues to be collected would make such charges mandatory under the law, i.e., "imposed" by the government as a condition for relocation agreements, transforming such charges from ordinary, voluntarily agreed-upon contractual terms into taxes "imposed" by the City.

We agree that benefits can be directed toward improvements in community aesthetics and traffic and public safety. Examples include without limitation, funding or in kind services of equivalent value for services to the homeless, graffiti abatement, street paving, public art programs, in-kind advertising space, public transit services, emergency messaging, traffic control and safety, congestion abatement, blight abatement, undergrounding or camouflaging of utilities, tree trimming and other landscaping services and beautification projects.

In addition to required sign removals in accordance with the Code, additional public benefits should be directed both toward serving communities within the Council District in which the altered, enlarged, or relocated off-site sign is to be located or within a radius of ten miles of the off-site sign, as well as benefits to improve conditions in other areas of the City.

## **II. MINIMUM LAND USE STANDARDS**

With respect to the various minimum land use standards recommended by the CLA, while we agree that digital displays should be restricted by appropriate standards, certain modifications must be made to these in order to make these workable and achieve their intended goals.

---

<sup>1</sup> A "general" nexus study to attempt to fix minimum levels of taxes for relocation agreement is not feasible and would result in a fee far below the benefits that could otherwise be provided by a relocation agreement. The Mitigation Fee Act requires that any fee or exaction be set at the level to offset all or a portion of the cost of public facilities related to the project. This is not applicable to sign relocations which do not require public facilities costs.

**LATHAM & WATKINS<sup>LLP</sup>**

Distance from Residential. The existing locations of signs in proximity to residential areas demonstrates that, due to the unique nature of the City, it is not feasible to restrict digital signs to 200 square feet from residentially zoned lots; instead the focus should be on prohibiting signs that are primarily visible from such areas. Prohibiting off-site digital displays in residential zones and requiring that such signs are not viewed primarily from a residential zone will achieve the intended goal of protecting residences from any impact from off-site digital displays. Lastly, the vast majority of proposed new digital will replace existing traditional signs at the existing site so the billboard is already part of the character of the area.

Freeway Ban. State law establishes a distance of 660 linear feet of a freeway and this should only apply if the sign is viewed primarily from a freeway. Prohibiting off-site digital signs within 2,000 square feet of a freeway is a restriction that goes way beyond state law and would unnecessarily limit the City's opportunities to obtain takedowns and public benefits from these locations.

Prohibition on Scenic Highways. The CLA Report recommends that one of the proposed land use controls is a prohibition of off-site signs along "designated scenic highways." This is a vague restriction and we strongly recommend that this language be clarified to say, "state designated scenic highway," which describes a specific, formal, and non-arbitrary designation provided for by state law.

Digital Display Illumination Standards. Both the State of California and the outdoor advertising industry have well-established illumination standards for digital displays. The CLA report recommends more restrictive standards for off-site digital signs outside of sign districts than for signs in sign districts. We strongly recommend that the City maintain consistent standards and adopt industry best practices for digital display illumination standards, as follows:

- Lighting levels will not increase by more than 0.3 foot-candles (over ambient levels) as measured using a foot candle meter at a pre-set distance;
- Pre-set distances to measure illumination, as illumination impact will vary with the expected viewing distances the sign, depending on its size:
  - Poster signs: 150'
  - 10.5' x 36' Bulletins: 200'
  - 14' x 48' Bulletins: 250'
  - 20' x 60' Bulletins: 350'.

### **III. ENVIRONMENTAL REVIEW**

Because the changes that are currently being contemplated as additional proposals for a revised sign ordinance all ensure greater sign reduction and do not result in any change in the physical environment because no sign is permitted "by right," there is no adverse impact to the

LATHAM & WATKINS<sup>LLP</sup>

environment. Accordingly, the current environmental clearance for the proposed sign ordinance does not need to be changed to incorporate these additional proposed changes and modifications.

\* \* \*

We appreciate the significant progress in exploring options to achieve the City's goals of sign reduction and community benefits in the ordinance. 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 practical ordinances and principles that recognize the importance of off-site signage in Los Angeles and encourage the benefits it provides.

Very truly yours,



Benjamin J. Hanelin  
of LATHAM & WATKINS LLP

LATHAM & WATKINS<sup>LLP</sup>

**ATTACHMENT A**

**Proposed Requirements for Converting Traditional Billboards to Digital**

<b>1. Large companies shall take down existing non-digital signage consistent with the following ratios:</b>	<b><i>Ratio</i></b>
The traditional billboard(s) being taken down are the same size and in the same location as the new digital billboard.	2:1
The traditional billboard(s) being taken down are a smaller size and the new digital billboard is in the same location as one of the traditional billboards; or The traditional billboard(s) being taken down are the same size and the new digital billboard is in a location which did not previously have a billboard.	4:1
The traditional billboard(s) being taken down are a smaller size and the new digital billboard is in a location which did not previously have a billboard.	5:1

<b>2. Medium and small companies shall take down existing non-digital signage consistent with the following ratios:</b>	<b><i>Ratio</i></b>
The traditional billboard being taken down is the same size and in the same location as the new digital billboard.	1:1
The traditional billboard(s) being taken down are a smaller size and the new digital billboard is in the same location as one of the traditional billboards; or The traditional billboard(s) being taken down are the same size and the new digital billboard is in a location which did not previously have a billboard.	2:1
The traditional billboard(s) being taken down are a smaller size and the new digital billboard is in a location which did not previously have a billboard.	3:1