



February 14, 2018

VIA FEDEX & EMAIL

Planning and Land Use Management Committee
City of Los Angeles
200 N. Spring Street, Room 430
Los Angeles, CA 90012

Re: City Sign Code Update (Council File 11-1705); CEQA Compliance

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

The Los Angeles Advertising Coalition appreciates all the work that this Committee has put into crafting a sensible and balanced update to City's Sign Code. To ensure continued and prompt progress, we respectfully request that the City reaffirm its position that this ordinance is exempt from review under CEQA, just like all City ordinances that merely adopt a framework and do not actually approve any particular project or action. Attached is a detailed letter from Latham & Watkins LLP detailing why the Sign Code update is exempt from review. The Coalition agrees.

In 2013, the City found that the 2013 draft Sign Code update was exempt from CEQA review because, even though *the 2013 draft ordinance would permit new digital and non-digital off-site signage, the 2013 revisions were more restrictive than existing regulations* and, therefore, exempt. The City identified two exemptions: (1) the Class 3 categorical exemption, which exempts the construction or conversion of small structures; and (2) the Class 8 categorical exemption, which exempts regulatory process involving procedures for protection of the environment. Both Class 3 and Class 8 exemptions continue to apply.

The 2017 Sign Code update remains more restrictive than existing regulations, especially regarding relocation agreements. For example, while digital off-site signs are currently permitted pursuant to relocation agreements, the Sign Code has no standards for relocation agreements. *In contrast, 2017 draft sign ordinance establishes restrictive location, takedown, and compatibility standards that ensure there will be a net reduction in signs.*

The Sign Code update presents a very different situation from the Hybrid Industrial Zoning Ordinance where a trial court found the City erred in relying on CEQA's "common sense exemption" and the Class 6 categorical exemption (basic data collection/information gathering). ***First, the City is not relying on the "common sense exemption" or Class 6 exemption here.*** Second, the facts and the record surrounding the HI-Ordinance are also very different. There, the HI-Ordinance allowed an intensification of use, while here the draft Sign Code requires a reduction in the overall number of signs. There, the HI-Ordinance's record was clear that it would be applied to a particular location, facilitating environmental review, while here the Sign Code update applies city-wide.

Consistent with the City's past practices and to ensure that the City has the ability to continue to adopt policies and ordinances such as the Sign Code without having to undertake years of environmental review, the Coalition respectfully requests that the City deem the Sign Code update exempt from CEQA review. Environmental review now is especially inapt because any sign requiring a discretionary approval under the Sign Code will itself be reviewed under CEQA.

The Coalition looks forward to continuing its work with this Committee and the City Sign Code update that will ensure sign reductions across the City and a level playing field for all.

Sincerely,

A handwritten signature in cursive script that reads "Stacy Miller".

Stacy A Miller
Los Angeles Advertising Coalition

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LATHAM & WATKINS LLP

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File No. 042897

Re: City Sign Ordinance Update (Council File 11-1705); CEQA Compliance

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

On behalf of our client, Clear Channel Outdoor, Inc., we appreciate your continued progress in devising progressive solutions as part of the City's efforts to address signage issues, including opportunities for all impacted communities to remove existing billboards and obtain additional public benefits.

We write as a follow-up to our letter to you dated December 12, 2017, to provide additional support for the City to continue to conclude that the updates to the existing Sign Code are exempt from CEQA. Since 2013, the City has maintained that the Sign Code is exempt from CEQA. The further updated draft proposed sign ordinance released on December 7, 2017, contains no changes that should cause the City to change its position. In fact, doing so would be contrary to a long line of City precedent and would subject the City to demands for unnecessary, costly, and timely environmental review for similar ordinances, frustrating the City's ability to legislate effectively.

I. THE PROPOSED SIGN ORDINANCE IS EXEMPT FROM CEQA.

In 2013, the Planning Department found that substantial revisions to the draft sign ordinance were exempt from CEQA. These revisions would have, among other things, established a process for applicants to apply to construct new digital off-site signs in sign districts across the City. The current proposed ordinance should similarly be deemed exempt.

In support of its 2013 determination, the Planning Department prepared a more than 300-page document analyzing the 2013 revised draft ordinance in comparison to existing law. This document explained why two of CEQA's categorical exemptions (i.e. Classes 3 and 8) applied to the ordinance. The Department of Planning explained that even though *the draft ordinance would permit new digital and non-digital off-site signage* across the City, *the 2013 revisions*

were more restrictive than existing regulations (and the 2009 draft ordinance) and, therefore, they were categorically exempt from CEQA review under section 15303 of the CEQA Guidelines. Section 15303 of the CEQA Guidelines exempts “New Construction or Conversion of Small Structures.”

The City’s determination that the previous draft sign ordinance updates were exempt remains fully applicable to the proposed ordinance released to the public on December 7, 2017. The current proposed ordinance does not approve a single sign and will likely result in even more sign reduction than previous drafts. The proposed ordinance would establish strict standards on any applications for relocation agreements, which currently exist in the City’s code without conditions as an exemption to the City’s off-site sign ban. Such applications are already permitted under state law. *See* Business and Professions Code § 5412. Because the proposed ordinance would be more restrictive as a whole than existing regulations, it is exempt from CEQA for the same reasons the Department of Planning previously enunciated as well as others outlined here.

Exempting the proposed sign ordinance from CEQA is entirely consistent with the City’s prior determinations regarding land use ordinances with City-wide application. A review of recent land use ordinances shows that the City regularly exempts such ordinances from CEQA review on the grounds that amendments relating primarily to process or funding, where no physical change to the environment is approved at the time of ordinance adoption, are either not “projects” within the meaning of CEQA or are subject to one or more CEQA exemptions (or both). With the revisions contained in the December 7, 2017 proposed ordinance, which add detailed restrictions and ensure a reduction of signs, this ordinance should be treated the same way the City processes similar ordinances.

The proposed ordinance qualifies for exemption from CEQA review. This analysis can be justified through several different approaches. As detailed below, the proposed ordinance is not a “project” under CEQA and, even if it were, it qualifies for each of the Class 3, Class 8, and “common sense” exemptions.

It is also important to remember that while the proposed ordinance itself is exempt, the individual projects that may be proposed under it will also be required to be reviewed under CEQA.

II. CITIES ACROSS THE STATE HAVE DETERMINED THAT SIGN REGULATION ORDINANCES ARE EXEMPT FROM CEQA AND DO NOT CAUSE SIGNIFICANT ENVIRONMENTAL IMPACTS.

There is ample precedent from other California cities supporting a determination that the ordinance does not require CEQA review.

For example, the recent digital sign ordinance in Long Beach used a categorical exemption (Section 15305, for minor alterations to land use limitations), and other cities have approved revised sign ordinances in combination with a specific relocation agreement using negative declarations under CEQA and/or have determined such an ordinance does not constitute

a CEQA “project.” Multiple other jurisdictions, listed below, are in accord.

<i>CEQA Review of Sign Ordinances in Other California Cities</i>	
<i>Jurisdiction</i>	<i>CEQA Review</i>
City of Long Beach	Categorical Exemption, Section 15305, Minor Alterations to Land Use Limitations
County of Alameda	Categorical Exemption, Section 15308, Actions by Regulatory Agencies for Protection of the Environment
Martinez	Mitigated Negative Declaration, Included approval of a specific relocation agreement proposal
Placentia	Mitigated Negative Declaration, Included approval of a specific relocation agreement proposal
Rocklin	Mitigated Negative Declaration, Included approval of a specific relocation agreement proposal
City of Azusa	Ordinance provisions to implement state law provisions for relocation agreements not a “project”
City of Benecia	Ordinance provisions to implement general ban but includes exception for relocation agreements not a “project”
City of Montebello	Ordinance provisions to implement state law provisions for relocation agreements not a “project”

A. The proposed ordinance is exempt under the Class 3 categorical exemption for construction of small structures.

Section 15303 of Title 14 of the California Code of Regulations (or the “CEQA Guidelines”) generally exempts “construction or conversion of small structures” from the provisions of CEQA. This exemption (also known as the Class 3 exemption) covers “construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.”

The Department of Planning previously found that the previous draft sign ordinance was exempt from CEQA under the Class 3 exemption. The Department of Planning explained that “Billboards in Sign Districts can be considered as ‘limited numbers of new, small facilities’”. They are limited because, compared to the existing regulations, the proposed ordinance greatly limits where Sign Districts can be located, thus greatly limiting the numbers of billboards that

can be constructed.”¹ Because any new off-site signs “must be reviewed individually to analyze any potential environmental impacts of signage - this proposed citywide ordinance would only further restrict the regulatory mechanisms currently used to establish Sign Districts. Therefore, the analysis that can be done for this ordinance is limited to the signage that can reasonably be foreseen to be built in the future. The proposed ordinance includes thorough review mechanisms for off-site signs” CEQA Narrative at 17.

The Department’s conclusion is equally applicable to the proposed ordinance. The proposed sign ordinance, by design, cannot result in an increase in the number of new signs, but will actually result in fewer off-site signs in the City. When proposed in a specific location, any necessary individualized CEQA review can occur at the appropriate time and will be possible because the facts necessary for the analysis will then be available. Off-site signs permitted pursuant to the proposed sign ordinance are subject to numerous restrictions on the development, location, and other standards for off-site signs, including specific illumination, location, size, spacing, and other restrictions. The result of the proposed ordinance can only result in “limited numbers of new, small facilities,” if any, but when considered in the context of the proposed ordinance’s requirements, it will actually lead to an overall reduction of these “facilities.”

The City similarly invoked the Class 3 exemption (combined with Class 1, 2, 4, and 16 exemptions) in adopting the new Quimby update Ordinance 184,505, which incorporated park fee requirements to mitigate park and open space-related impacts of new residential development. Ordinance 184,505 “does not involve a commitment to any specific project that may result in a potentially significant physical impact on the environment.” Categorical Exemption ENV-2015-2329-CE. Like the park fee, the proposed ordinance does not commit the City to any specific relocation project but merely provides a process through which such projects may be pursued. *See also* CEQA Narrative at 17 (“[T]he specific impacts of future signage requests can be fully addressed once the details of those requests are known.”).

B. The proposed ordinance is exempt under CEQA’s Class 8 exemption.

Any ordinance may also be exempt under section 15308 of the CEQA Guidelines (the Class 8 exemption).

Section 15308 of the CEQA Guidelines exempts actions to “assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment” from the provisions of CEQA. The proposed ordinance provides a “regulatory process involv[ing] procedures for protection of the environment” – for example, a guaranteed reduction of sign area in the City, traffic and aesthetics-related public benefits, further site-specific CEQA review, etc. – and would not approve a single relocation agreement by right or create a by-right approval process for relocation agreements. Accordingly, the proposed ordinance is exempt under CEQA’s Class 8 exemption.

¹ City of Los Angeles, *California Environmental Quality Act (CEQA) Narrative: ENV 2009-0009-CE*, at 17 (Sept. 13, 2013) [hereinafter CEQA Narrative].

The clear intention of the proposed sign ordinance is to improve the environment, specifically by reducing off-site sign area in the City, relocating existing signage to more appropriate locations, and otherwise providing the City with resources to improve the visual environment and address related traffic-related, infrastructure, and aesthetic impacts. Because there is no possibility of an increase in off-site sign area in the City with the proposed ordinance and there is no reasonably foreseeable possibility that the provision of a relatively restrictive sign-by-sign discretionary process for approving any new sign will have a significant, adverse effect on the environment, the proposed ordinance is exempt from CEQA under the Class 8 categorical exemption.

C. The proposed ordinance is exempt under CEQA’s “common sense” exemption.

The proposed ordinance is also exempt under CEQA’s so-called “common sense” exemption. CEQA does not apply only “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment” CEQA Guidelines, § 15061(b)(3). In other words, where common sense dictates that an activity has no possibility of causing a significant effect on the environment, CEQA does not apply. The common sense exemption applies to the proposed sign ordinance because the proposed ordinance merely establishes a process under which the City can consider proposals to reduce existing signs and approve limited numbers of digital signs and, in doing so, places new strict restrictions for relocation agreements in the City.

Critical to the common sense exemption inquiry is the appropriate baseline upon which environmental review is evaluated. Here, the baseline for the proposed ordinance is the existing environment against the context of the existing Municipal Code. The existing Municipal Code freely permits signs constructed pursuant to relocation agreements without any additional restrictions. Because the existing Municipal Code contains no restrictions on relocation agreements in the City and because the proposed ordinance merely enacts additional restrictions on such relocation agreements, including the guaranteed reduction in off-site sign area in the City as a result of any relocation agreement and the provision of traffic, aesthetics, or other related public benefits, there is no possibility of a significant effect on the environment by the proposed ordinance, when properly evaluated against the baseline of the existing Municipal Code.

The fact that there may be individual instances where greater environmental concerns are implicated does not change this conclusion. Because the proposed sign ordinance merely prescribes a general program and process for relocation agreement – but does not approve any specific relocation agreement, does not provide for any by-right approval, and does not provide any exemption from any future necessary CEQA review – mere speculation as to specific project sites does not remove the proposed ordinance from the scope of the common sense exemption.

D. CEQA does not apply to the proposed ordinance because it is not a “project.”

Under CEQA, “[a]n activity that is not a ‘project’ as defined in the Public Resources

Code (see § 21065) and the CEQA Guidelines (see § 15378) is not subject to CEQA. (CEQA Guidelines, § 15060, subd. (c)(3).)” *Muzzy Ranch Co. v. Solano County Airport Land Use Com.*, 41 Cal. 4th 372, 380 (2007). A “[p]roject” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” *Id.* at 381-82.

The proposed sign ordinance does not qualify as a “project” under CEQA because, there is no possibility that they will result in “a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed sign ordinance does not approve any specific relocation agreement site and do not provide for by-right approval of any relocation agreement. The proposed sign ordinance only adds restrictions to relocation agreements within the City, which are currently broadly permitted by the Municipal Code and under state law.

In similar circumstances, the City has adopted various amendments to the Los Angeles Municipal Code that it had determined were not “projects” under CEQA. For example:

- Ord. 184,505, Categorical Exemption ENV-2015-2329-CE: LAMC amendments to incorporate park fee requirements to mitigate park and open space-related impacts of new residential development (though subject to multiple exemptions, determined not to be a CEQA project) – similarly, the proposed ordinance includes funding mechanisms to mitigate impacts of off-site signage;
- Ord. 179,681, Categorical Exemption ENV-2005-1102-CE: LAMC amendments to incorporate state law provisions regarding density bonuses for affordable housing development – similarly, the proposed ordinance includes specific requirements to implement state law provisions allowing for off-site sign relocation agreements;
- Ord. 179,076, Categorical Exemption ENV 2005-0362-CE: LAMC amendments to provide incentives for the production of new housing in the Greater Downtown Housing Incentive Area – similarly, the proposed ordinance provides a process to incentivize the reduction of off-site signage throughout the City through the use of relocation agreements;
- Ord. 176,545, Council File No. 02-2054: LAMC amendments to provide for a process for applications for child care facilities; and Ord. 177,120: LAMC amendments to permit wireless antennas and associated equipment cabinets on rooftops – similarly, the proposed ordinance provides a process for the siting, review, and discretionary approval of off-site signs; and
- Ord. 176,445, Council File No. 03-0238: LAMC amendments related to locations and sizes of retaining walls – similarly, the proposed ordinance provides for detailed restrictions on the locations and sizes (among other things) of off-site signs.

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1. A superior court decision regarding the “hybrid industrial ordinance” does not change this analysis.

The trial court decision regarding the hybrid industrial ordinance in *Bar-Zemer v. City of Los Angeles* (Case No. BS161448) (which may not be cited in the courts as precedential or persuasive authority) does not affect the conclusion that the proposed sign ordinance is categorically exempt from CEQA. *Bar-Zemer* is distinguishable for the following reasons:

- The *Bar-Zemer* ordinance involved the Class 6 exemption for “information collection” – this is not proposed as applicable for the proposed sign ordinance here.
- The new “HI” zone did not include any required provisions for environmental and other benefits – the proposed ordinance merely provides a process for approving relocation agreements; any specific individual relocation agreement will undergo CEQA review at the appropriate time.

For the proposed ordinance, by contrast, the “overall net square footage of sign displays within the City will therefore be reduced, while the Community Benefits Program will serve to positively impact the scenic environment” so these “aforementioned elements within the ordinance will ensure that scenic vistas, views, landscapes, and environments will be minimally impacted.” CEQA Narrative at 19, 28. The nature of the proposed sign ordinance, which *guarantees* sign reduction in the City and the provision of related public benefits, are fundamentally distinguishable from the new zoning designation at issue in *Bar-Zemer*.

* * *

We appreciate the continued effort and significant steps that this Committee, the Planning Department, and other departments have taken to move forward this needed update to the City’s sign code. We look forward to working with you, and please do not hesitate to contact us with any questions that you may have concerning these issues.

Very truly yours,



Benjamin Hanelin
of LATHAM & WATKINS LLP

cc: Office of the Los Angeles City Attorney
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