



August 1, 2016

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:

On behalf of the Los Angeles Advertising Coalition (LAAC), we appreciate your 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. In that connection, we write to provide additional information for your consideration, after reviewing the Department of City Planning Staff Report dated May 19, 2016 (the “May 19th Report”). We understand that the Committee directed the Chief Legislative Analyst to analyze and report back on the issues regarding public benefits in connection with sign permitting, while the Department of City Planning was to analyze and report back on issues regarding physical location and siting. In this letter, we primarily address the City’s discretion in using sign relocation agreements to regulate billboards; considerations for a digital sign program that includes public property; and the adoption of development standards for sign relocations.

A. Sign Relocation Agreements

Relocation agreements pursuant to California Business & Professions Code Section 5412 are an existing tool that is expressly provided for and encouraged by state law to control and reduce off-site signage in California. Cities throughout California (and the nation) have used relocation agreements liberally – on both private and public property – to achieve sign reduction and other important public policy goals. We hope Staff’s future reports will expand their analysis to the dozens of other cities¹ that permit sign relocations through agreements involving both public and private property.

¹ E.g., Long Beach, San Jose, Oakland, Rancho Cordova, Roseville, Riverside, Martinez, Baldwin Park, Beaumont, Benicia, Colfax, Corona, Emeryville, Fontana, Garden Grove, Hayward, Milpitas, Oceanside, Ontario, Palm Springs, Rancho Cucamonga, Rocklin, South San Francisco, Santa Clara, Victorville, and Vista, as well as the County of Sacramento, among others.



The Coalition’s experience with other cities in California has provided extensive precedent for legally viable examples of how relocation agreements can be used to regulate, control, and reduce off-site signage. Such examples demonstrate the potential for Los Angeles to maintain its current ban on new offsite billboards outside of sign districts while permitting relocation of existing billboards in areas outside of sign districts both on public and private property.

As noted in testimony and correspondence submitted for your recent meetings, the Court of Appeal recently affirmed the use of relocation agreements in a jurisdiction in which off-site signs are generally prohibited and in an instance that did not involve eminent domain. In *City of Corona v. AMG Outdoor Advertising, Inc.* (2016) 244 Cal.App.4th 291 (publication requested by the City of Los Angeles on January 25, 2016), the Court of Appeal held that the City’s ordinance did not violate federal or state constitutional free speech protections, because the “new” signs in the City had been relocated pursuant to Section 5412 (California Business & Professions Code) and therefore were not considered to be “new” signs erected in violation of the City’s general sign ban.

Many cities in California have moreover utilized relocation agreements to permit removal of existing signs and reconstruction of signs with digital sign faces while at the same time providing for significant public benefits, including reduction of off-site sign face area, emergency and public service messaging, and monetary payments. Based on these precedents, it is clear that relocation agreements are an important part of any workable policy for digital signage that would result both in a substantial reduction of existing signs as well as opportunities for improvements to aesthetics and public safety, and revenue generation, among other public benefits, in Los Angeles communities.

1. The City has broad discretion over the terms of relocation agreements.

State law expressly grants the City broad discretion, subject to constitutional limits, to enter into relocation agreements. Section 5412 of the Business & Professions Code states in clear terms that “local entities are *specifically empowered* to enter into relocation agreements on *whatever terms are agreeable to the display owner and the city . . .*” (Emphasis added.) Moreover, cities with and without sign bans can use relocation agreements, and court decisions such as *City of Corona* have accepted that the use of relocation agreements does not render an overall sign ban unconstitutional.² Furthermore, as we have noted previously, the City’s discretion as it relates to relocation agreements is not limited to any specific contexts, such as eminent domain.³

As discussed at pages 4 and 5 of the May 19th Staff Report, relocation agreements can also require the provision of public benefits, not necessarily limited to a net reduction in off-site

² See, e.g., County of Sacramento, Cities of Baldwin Park, Beaumont, Benecia, Berkeley, Emeryville, Fontana, Hayward, Martinez, Ontario, Palm Springs, Placentia, Rancho Cordova, Rancho Cucamonga, Rocklin, Roseville, Sacramento, Santa Clara, and Victorville, among others.

³ Legislative Counsel Bureau, *Outdoor Advertising: Relocation Agreements - # 1308709* (Feb. 22, 2013).



signage area. Requirements for public benefits as part of sign relocation agreements are clearly contemplated by Business & Professions Code Section 5412's broad provisions for agreements for sign relocation.

2. Relocation agreements are freely negotiated contracts and do not require a nexus study to set the public benefits received by the City.

Relocation agreements are freely negotiated, arms-length contracts between public agencies and private parties. These agreements have included the monetary payments (e.g., Oakland, Montebello, Baldwin Park), sign takedowns (e.g., Santa Clara, Sacramento, Garden Grove), 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, S. San Francisco, Milpitas). Indeed, courts have upheld the use of relocation agreements as arms-length contracts in which cities and private parties are free to negotiate whatever terms that are agreeable to them. (See, e.g., *Desert Development, LLC v. City of Emeryville* (Alameda Super. Ct. July 22, 2010) No. RG10499954 [Section 5412 is an exercise of the police power, not the takings power].) The Legislature's express endorsement of the liberal use of relocation agreements to achieve signage control in California applies to signs on public property (e.g., Oakland), or private property (e.g., Garden Grove, S. San Francisco, Sacramento).

As voluntary agreements, sign relocation agreements do not constitute fees and exactions subject to the Mitigation Fee Act (Government Code, §§ 66000 et seq.). The Mitigation Fee Act is the State of California's codification of the constitutional nexus requirement. (See Gov. Code, § 66005.) The Mitigation Fee Act requires, among other things, that most fees or exactions relate to the "estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed." (*Ibid.*) In other words, the Mitigation Fee Act generally requires the municipality to demonstrate through a nexus study the relationship between the *fee collected* and the impacts of the proposed development. All benefits received by cities in exchange for approving development, however, are not "fees" subject to the Mitigation Fee Act. Key to the question is how the public benefit is provided. Nexus studies are only necessary when the collection of a fee is mandatory and, thus, the amount of the fee needs to be justified. That is not the case here.

Furthermore, a nexus study that only looks at the connection between a fee and potential impacts cannot possibly take into account the unique real estate aspects at issue regarding each individual sign's value. Rather, this analysis must be accomplished on a case-by-case basis that takes into account the specific location of the proposed sign and the other public benefits negotiated as part of the relocation agreement. In particular, an important factor that is not addressed by nexus studies is the value of sign leases, which relate to potential revenue for a particular sign location. Such lease value negotiations have been successfully conducted by many cities and private parties, leading to a range in value for individual agreements. Cities across California have been able to secure substantial public benefits in the form of funding or services in entering into sign relocation agreements – regardless of whether on public or private property– and they have been able to do so without the need for a nexus study. This is because the public benefits negotiated as part of any relocation agreement are based on the individual sign's value, which is a specific function of the sign's unique location.

Accordingly, a nexus study is not required, nor is it particularly useful, prior to a city's acceptance of public benefits directed towards aesthetic and traffic impacts in exchange for the right to relocate or install signs under a relocation agreement and Business & Professions Code



Section 5412. Rather, the City would only have to describe the public benefits, payments, or anything else provided pursuant to the relocation agreement and generally identify the purpose for which those benefits would be used as part of the relocation agreement.

B. Digital Offsite Signs on City Property Only

Among the policy options for allowing digital offsite signs outside of Sign Districts, members of the PLUM Committee have inquired about the feasibility of adopting an exception from the general ban on new off-site and digital signs exclusively for digital signs that would be located on City-owned property.

Limiting digital sign relocations to City-owned property would significantly reduce the public benefits available to the City as compared to a sign reduction and modernization program that allows sign relocations on both public and private property. Excluding private property would drastically reduce the number of sites available for digital signage. Few City-owned locations are likely to be appropriate for digital sign relocations. The limit on usable sites in turn would severely limit opportunities to advance local community priorities and to maximize public benefits, takedowns, and revenue available to the City.

Moreover, a program that allows an exception to the general ban for signs to be placed on *both* City-owned and private property will be more legally defensible than a program that allows digital signs exclusively on City-owned property. Court decisions over the past decade have generally recognized that the City may make exceptions to its general ban, provided that any exceptions are “narrowly tailored” to advancing the City’s substantial interests in promoting traffic safety and community aesthetics. *See, e.g., Metro Lights, LLC v. City of Los Angeles*, 551 F.3d 898 (9th Cir. 2009) and *Lamar Central Outdoor, LLC v. City of Los Angeles*, 245 Cal.App.4th 610 (2016). Thus, courts have held, for example, that City may allow off-site advertising on public transit infrastructure or pursuant to special use districts and, as discussed above, through relocation agreements.

However, if the City adopts a program that preferences its own property over similarly situated private property, the program could be vulnerable to constitutional challenge. The First Amendment prohibits government discrimination among speakers absent a very compelling reason. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010); *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 563-66 (2011). The City would have to demonstrate a compelling reason to grant itself monopoly status as the only property owner that can display digital signs outside of sign districts, and the City’s interest in maximizing revenue is unlikely to be adequate to justify the speech restriction. *Multimedia Pub. Co. of South Carolina, Inc. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154 (4th Cir. 1993) (invalidating ban on newspaper racks that airport district sought to justify based on revenue generation grounds); *Minneapolis Star & Tribune Co. v. Minnesota Com’r of Revenue*, 460 U.S. 575 (1983) (addressing speaker-based financial impacts). If the City’s goal is to limit overall digital installations or to advance community aesthetics, less restrictive means are available.

Any ordinance or other legislative enactment must of course also comply with guarantees of Equal Protection under the U.S. and California Constitutions. At a minimum, laws which draw distinctions among classes of people must be rationally related to a legitimate governmental function. Where a protected activity like speech is implicated, even higher scrutiny applies, and the government must show a compelling reason for discrimination and any special exemption or



restriction must be narrowly tailored to achieving the relevant ends. *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 101 (1972). Thus, the City would have to demonstrate a compelling reason for favoring itself and those advertisers that it contracts with over private property owners and other sign companies. *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 659 (1994) (“Regulations that discriminate among media, or among different speakers within a single medium, often present serious First Amendment concerns.”).

These Constitutional protections do not prevent the City from taking full advantage of digital opportunities on its own property. But the City should not privilege itself over private property owners and speakers. The City must also be sensitive to difficult policy choices and legal challenges it may face in any effort to regulate the types of messages that it will allow to be displayed on its property.

C. Development Standards for the Permitting Process

Provided that the City’s sign code requires the appropriate permitting officials to consider an appropriate set of objective criteria, such as development standards or operational standards, the fact that the City exercises some measure of discretion in the use of relocation agreements or in the determination of required public benefits does not render the sign code unconstitutional. *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1085-86 (9th Cir. 2006) (a city’s permitting process *not* unconstitutional due to the “reasonable subjectivity of the design review process”); *see also id.* at 1084 (“Although the design review criteria are somewhat elastic and require reasonable discretion to be exercised by the permitting authority, this alone does not make the Sign Code an unconstitutional prior restraint.”) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989) (“While these standards are undoubtedly flexible, and the officials implementing them will exercise considerable discretion, perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.”)); Long Beach Sign Ordinance (permitting off-site signs through a conditional use permit and development agreement process).

The May 19th Report also recommends that off-site signage, including digital displays, be subject to specific development standards to ensure protection of residential communities and neighborhoods. We agree. Minimum standards should be specified in any adopted revised sign ordinance. However, the state law provisions are sufficient for relocation agreements and cities have entered into relocation agreements simply by relying on state law (e.g., Hayward, Emeryville).

Moreover, Staff’s proposed development standards should be revised to ensure reasonable opportunities for sign reduction and public benefits while protecting single family neighborhoods. The May 19th Report’s recommendation to prohibit signs within 500 feet of any residential areas is too restrictive, as is demonstrated by the facts of the existing locations of signs in the City. Existing signs line most major boulevards and many back up onto residential streets. Accordingly, the opportunity for relocation would be prohibited in many areas even though the relocated signs would not be visible from residential uses. Rather, we propose that a digital sign should comply with certain other restrictions that will achieve the stated goal of protecting residences.

Incorporating the May 19th Report’s recommendations at page 5 (listing generally



“[a]dditional components for signs with digital displays outside of sign districts”), protective standards that we recommend for digital displays include the following:

1. Located in a CR, C, or M zone, or on City-owned property located in a PF zone adjacent to CR, C, or M-zoned property, or in a Specific Plan area or Supplemental Use District that permits digital displays;
2. Must front a public street;
3. Must not be viewed primarily from an R zone;
4. Must comply with specified illumination limitations;
5. Must observe a minimum duration of 8 seconds for each message;
6. Must require that the message remain static between transitions;
7. Must require instant transition between messages;
8. Must require that the message not at any time go blank during a transition;
9. Must conform to specific spacing requirements, such as a requirement that no digital display may be on the same side of the street and face the same direction as another off-site digital display within 500 linear feet.

* * *

In sum, the City’s sign ordinance could make great strides in achieving the City’s goals of sign reduction and community benefits if the ordinance is designed to permit off-site digital signs on both public and private property via relocation agreements, subject to community protection standards regarding factors such as location, illumination, a requirement that there should be no net increase in sign area, and a requirement for the provision of public benefits. All of this can be accomplished by relying on existing state law and consistent with the City’s goals and enhancing community aesthetics and traffic safety.

We look forward to working with you as the City further considers the potential role of relocation agreements in sign regulation and reduction and the discretion that the City has to appropriately regulate off-site signs, including digital displays, in Los Angeles. Precedent from other cities should be reviewed to complete an objective and comprehensive analysis of how relocation agreements could be further incorporated into City policy and practice to achieve a sensible and workable sign control program in Los Angeles.

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.

Sincerely,

Stacy Miller
Los Angeles Advertising Coalition (LAAC)