

MICHAEL N. FEUER
CITY ATTORNEY

February 20, 2015

Honorable Members of the
Planning and Land Use Management Committee
200 N. Spring Street
Los Angeles, CA 90012

Re: Statutory Rebuttable Presumption Related to Illegal Billboards

Dear Honorable Members of the Planning and Land Use Management Committee:

At its December 16, 2014, meeting, the Planning and Land Use Management (PLUM) Committee requested that the Planning Department and the City Attorney report back on the status of the 937 billboard structures that either have no City permit or are constructed in violation of City permits in light of the state law rebuttable presumption. Under the rebuttable presumption, a billboard is deemed lawfully erected if no enforcement action has been taken on the billboard within the preceding five years.

As explained in greater detail below, it is important to understand that the statutory rebuttable presumption does not preclude the City from taking enforcement action against the 937 billboards. Specifically, the City can take action on 391 of the 937 billboard structures that have been altered in violation of their permits. Additionally, depending on the facts, the rebuttable presumption may not prevent enforcement action with respect to at least some of the remaining 546 structures that lack permits. Our Office is prepared to aggressively enforce against these signs as notice of violations are referred to us from the Department of Building and Safety.

I. California Law Imposes a Rebuttable Presumption that Billboards Were Lawfully Erected if the Billboard Has Been in Existence for Five Years or Longer Without Notice from the Government that the Billboard Was not Lawfully Erected

California's Outdoor Advertising Act contains several provisions that provide special protection for billboard structures. For example, Business and Professions Code Section 5412 states that a government entity may not compel the removal of billboards that were "lawfully erected" without paying just compensation for the billboard. This just compensation requirement applies "regardless of whether the [billboards] have become nonconforming or have been provided an amortization period." Cal. Bus. & Prof. Code § 5412.

Business and Professions Code Section 5216.1 defines "lawfully erected" billboards as those "which were erected in compliance with state laws and local ordinances in effect at the time of their erection or which were subsequently brought into full compliance with state laws and local ordinances, except that the term does not apply to any advertising display whose use is modified after erection in a manner which causes it to become illegal."

Section 5216.1 also states that there "shall be a rebuttable presumption pursuant to Section 606 of the Evidence Code that an advertising display is lawfully erected if it has been in existence for a period of five years or longer without the owner having received written notice during that period from a governmental entity stating that the display was not lawfully erected."

II. Case Law Demonstrates that in some Instances it Is Possible to Rebut the Presumption that a Long-Standing Billboard Was Lawfully Erected

Case law is clear that section 5216.1's rebuttable presumption "does not provide a complete defense" to an enforcement action; "it merely shifts the burden of proof." *West Washington Properties, LLC v. Department of Transportation*, 210 Cal. App. 4th 1136, 1144 (2012). Thus, even where the rebuttable presumption applies, the City would still have the opportunity to introduce evidence rebutting the presumption, such as permits, historical photographs, code provisions, and other documents, to demonstrate that the sign is not lawfully erected.

For example, in *West Washington Properties, LLC*, the Court of Appeal found that Caltrans was not required to pay just compensation for requiring removal of a billboard because Caltrans had overcome the rebuttable presumption that the billboard was lawfully erected. In the underlying administrative proceeding, the parties had stipulated that the billboard in question was erected in 1984 without a permit, was approximately 8,000 square feet, and was within 660 feet of an interstate highway. Yet in 1984, the Outdoor Advertising Act prohibited advertising displays larger than 1,200 square feet in area and required the sign operator to secure a permit from Caltrans before erecting the display. The Court of Appeal found that these stipulated facts were "substantial evidence that, despite Caltrans's failure to issue a notice of violation, the

[billboard] was not ‘lawfully erected,’ in that it was not in compliance with state law in effect at the time it was erected.” *West Washington Properties, LLC*, 210 Cal. App. 4th at 1144. The court, therefore, concluded that Caltrans could require the billboard’s removal without paying compensation to the billboard operator.

III. The Rebuttable Presumption Does not Prevent the City from Taking Enforcement Action Against Several Hundred Billboards

The Department of Building and Safety reports that there are 937 billboard structures that violate City requirements. Of this total, 546 structures lack permits. The remaining 391 structures have permits, but the existing signs are not in compliance with their permits, typically because the billboard structure has two sign faces, while the permit only authorizes one sign face.

There is no reason that the City cannot initiate enforcement actions with respect to the 391 structures that are not in compliance with their permits. First, the rebuttable presumption does not apply to the structures because, as noted above, Business and Professions Code Section 5216.1 provides that the term “lawfully erected” does “not apply to any advertising display whose use is modified after erection in a manner which causes it to become illegal.” Second, under *West Washington*, even if the rebuttable presumption did apply, the City would have a reasonable chance of overcoming the presumption by demonstrating that the sign’s second face violates the City’s requirement that permits be obtained for sign alterations.

The City may also be able to take enforcement action against at least some of the 546 structures that lack permits. A careful inspection of each sign, coupled with a careful review of the City’s historic billboard regulations, could yield information demonstrating that at least some of these signs were not lawfully erected. The Department of Building and Safety concurs, but believes that such a review would be labor intensive, and would likely yield sufficient information to take enforcement action against only a “handful” of these 546 billboard structures.


Potential remedies for erecting illegal billboards include not only the removal of the offending sign or sign face, but also statutory penalties under Section 11 of the Los Angeles Municipal Code up to \$2,500 per day, per violation.

Hon. Jose Huizar, Chair
and Honorable Members of the
Planning and Land Use Management Committee
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Our Office continues to be available to assist Building and Safety in its enforcement efforts, including aggressively pursuing any violations that are referred to us by the department.

If you would like to discuss the matter in greater detail, please contact the undersigned at (213) 978-8068 or Kenneth T. Fong at (213) 978-8235.

Very truly yours,


MICHAEL J. BOSTROM
Deputy City Attorney

MJB:zra

cc: Honorable Councilmembers
Honorable Eric Garcetti, Mayor
Sharon Tso, Chief Legislative Analyst
Ray Chan, General Manager of Building & Safety
Mike LoGrande, Director of Planning
Miguel A. Santana, Chief Administrative Officer