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May 22, 2019

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**BILLBOARD BLIGHT REDUCTION POLICY, PUBLIC-ONLY RELOCATION AGREEMENT
OPTIONS, RELOCATION AGREEMENT EXAMPLES, RELOCATION AGREEMENT OPT-IN
OPTIONS, PROCEDURES FOR RELOCATION AGREEMENT PROCESS; CF 11-1705**

On December 12, 2017, the Planning and Land Use Management (PLUM) Committee considered reports from the Department of City Planning (DCP) and Department of Building & Safety (DBS) concerning proposed citywide sign regulations. During the discussion, the PLUM Committee continued the matter and instructed DCP to report back on the following items:

1. A draft billboard blight reduction policy guidance document;
2. In coordination with the City Attorney, City Administrative Officer (CAO), and Chief Legislative Analyst (CLA), a report on options for a public-only relocation agreement process including how a Request For Proposals process could be crafted and the criteria Council may consider in implementing this initiative, as well as a timeline on how this could be implemented as a pilot program with needed takedown requirements, community benefits, and lease options;
3. Examples of other local municipalities' use of relocation agreements for either private or public land, including examples in the public right of way;
4. In coordination with the City Attorney, a report on options for an opt-in requirement for the use of relocation agreements for signs outside of Sign Districts based on specific geography, such as Community Plan Areas or Council Districts, including information on what criteria would be used to allow for the opt-in system and determining the appropriate geography for this system; and,
5. In coordination with the City Attorney, a report on the legality and procedures for allowing for a relocation agreement process without a findings requirement.

In addition, the PLUM Committee requested that the City Attorney, in coordination with DCP, report on how recent and past litigation regarding signs can inform the draft of this ordinance. This report presents, for the Committee's consideration, options to address the above issues.

1. DRAFT BILLBOARD BLIGHT REDUCTION POLICY GUIDANCE DOCUMENT

The document is attached for the Council's consideration.

2. OPTIONS FOR A PUBLIC-ONLY RELOCATION AGREEMENT PROCESS

Contracts to erect off-site signs on City-owned sites can be awarded through individual ad-hoc agreements negotiated with unsolicited bidders, as well as through open bid solicitations.

Ad-hoc Agreement: Under the ad-hoc agreement process, a company makes an unsolicited offer to the City; the General Services Department (GSD) negotiates with the company on behalf of the City.

Open Solicitation: Under the terms of an open bid solicitation, the City would identify a City-owned site or range of sites that are eligible to host off-site signs, publicly advertise bidding opportunities by means of a Request for Qualifications (RFQ) and/or Request for Proposals (RFP), and select a preferred bidder based on pre-determined criteria. The process would be overseen primarily by the CAO with the assistance of GSD.

Site Identification: The CAO and GSD, in consultation with DCP, would determine eligible sites based on the City's adopted sign regulations. Once identified, the list of sites would be referred to the interagency Municipal Facilities Committee. The sites could be bid individually or packaged together into a publicly distributed RFP, and staff from the CAO and GSD would evaluate the bids.

Bid Solicitation Scenarios: The CAO would evaluate options and arrive at a decision as to whether and how to group different sites for the bid solicitation. Key considerations include how to offer opportunities to a wide range of companies, maximize City revenue, raise the value of less lucrative sites through unique, creative and technologically advanced designs, and create public benefits from less-lucrative as well as more-lucrative sites. The following bid solicitation scenarios are provided for consideration:

- *Scenario 1 (individual sites):* Bids could be solicited from pre-qualified vendors for each individual site. This option would afford prospective bidders maximum flexibility in selecting sites for which to bid and the high number of opportunities would likely lead to a greater diversity of vendors winning contracts. Allowing sites to be bid on individually will also enable the City to prioritize premium sites for the highest possible revenue or to prioritize public art or public service announcements in key locations throughout the City.
- *Scenario 2 (bundled sites):* Sites could be grouped into several bundles and bids solicited for each bundle. This would allow the City to package less-lucrative sites with more lucrative sites, increasing the likelihood of receiving revenue from the less-lucrative sites. This option can be combined with Scenario 1 in order to maximize revenue on premium sites while packaging the remaining sites into bundles.
- *Scenario 3 (all sites):* the City could offer all sites in a single bidding opportunity. This would ensure that all sites generate revenue, as bidders presumably would be motivated to gain access to the most lucrative sites and be willing to pay additional fees for the use

of less-lucrative sites. Although this option is less resource-intensive for the City due to the number of potential RFQs and RFPs that would need to be released, this option would award all of the sites to a single company and may also lower the overall value of the sites as it limits the selection pool to companies who can afford all the sites and also does not assess the true market value of the sites individually.

- *Further options for encouraging a variety of companies:* Although Scenarios 1 and 2 offer multiple bidding opportunities, there nonetheless would be a possibility of a single company monopolizing all the advertising space on City-owned properties. Three options for addressing the potential impact of this possibility can be explored:
 - a) Limiting a single company from buying more than a pre-determined number of billboard sites.
 - b) Implementing a fee on companies that own more than a predetermined number of billboards.
 - c) Requiring that each company from a pre-qualified list be selected once before any company is selected twice.

Of these three options, the CAO has stated a preference for implementing the fee, per billboard, for single companies owning more than a pre-determined number of billboard sites. This option will not place limitations on well-resourced and experienced companies bidding on multiple sites and will also bring in additional revenue from larger companies.

RFQ Release: The City could release an RFQ, to identify qualified companies that meet the City's expectations and possess the skills necessary to build, maintain, and manage off-sites signs on City owned property. Developing a pre-qualified bench of companies would provide the flexibility to phase in additional sites over time, as well as create multiple bidding opportunities which guards against the probability of a single company monopolizing all of the off-site advertising space on City-owned properties.

RFP Release: The City could release individual, bundled, or a comprehensive RFP to build, maintain, and manage off-sites signs on City owned property. Any RFP should include a clear scope and objectives, detailed site information, expectations and required skills of a partner, performance measurements, legal considerations, and any policy considerations identified by the Mayor and City Council. Close attention to this phase of the process is necessary to ensure transparency.

RFP Criteria: Criteria to consider in the bid solicitation include:

- *Innovation:* The RFP may ask for details on the proposed sign's originality, technological innovation, and creativity, with special consideration for signs that can potentially raise the revenue stream for particular sites.
- *Cash payment:* The RFP may require the bidder to specify a cash payment amount, or the value of any benefits to be offered in-lieu of the cash payment.
- *Non-monetary benefits offered to the City:* Non-monetary benefits can include takedown of off-site signs in other locations; space or (in the case of digital signs) time dedicated to the display of public service announcements, advertising job opportunities with the City, and public art; and other considerations. The RFP may request information on these

benefits so that their value can be quantified in monetary terms and compared to other proposals.

- *Bidder's underwriting*: The RFP may ask for information on the bidder's assets, cash flow, and sources of financing to assess the bidder's ability to pay the fee.
- *Length of lease*: The RFP may ask the bidder to propose a finite term for any lease of City property for the purpose of erecting and managing off-site signs.
- *Payment terms*: The RFP may ask the bidder to propose payment terms, which could take the form of a lump sum paid up-front vs. a uniform series of payments made according to a specified rate.

RFP Evaluation and Bidder Selection: The CAO and GSD, in consultation with DCP, would evaluate the RFP responses. The evaluation would be used to select a preferred bidder to be recommended to the Mayor and Council for approval. The Mayor and Council would then consider the CAO's recommendation and make a decision regarding the awarding of a contract to the preferred bidder.

The CAO has extensive experience in monetizing City-owned assets along with the GSD, and also has the required experience to develop any bid solicitation in relation to the relocation of off-site signs to City-owned sites. Any such RFP will need to be initiated wholly in compliance with the adopted sign regulations.

3. EXAMPLES OF RELOCATION AGREEMENTS IN OTHER MUNICIPALITIES

A report prepared in November 2016 compiled information on the use of relocation agreements in 37 California jurisdictions that permit such agreements, including Los Angeles (see table below). All of the jurisdictions had enabling ordinances that appeared to allow the placement of new off-site signs in exchange for sign reduction, and 12 had actually entered into agreements explicitly containing this trade-off. At least 22 jurisdictions appeared to allow the placement of new off-site signs in exchange for providing specific services to the jurisdiction, while at least 20 appeared to allow the placement of new off-site signs in exchange for cash payments.

The off-site digital signage financial analysis study prepared in December 2017 by Navigant Consulting includes detailed case studies of the history of digital billboards in eight jurisdictions in the United States and Canada. Among California cities reviewed in the report, those whose regulations provide for the use of relocation agreements include Sacramento and Long Beach.

Sacramento: The City of Sacramento allows the construction and operation of digital off-site signs on certain City-owned properties under either relocation agreements requiring permanent removal of existing off-site signs or funding agreements that provide funding for a City-owned facility capable of hosting major professional sports. The latter option is aimed mainly at the recently constructed arena for the Sacramento Kings. An agreement can authorize the construction of up to six digital billboards on City-owned parcels that are either freeway-adjacent or in certain commercial or industrial zones. There are additional restrictions on the size and placement of new billboards erected as part of these agreements (Navigant 2017 report).

Long Beach: The City of Long Beach allows new off-site signs under Conditional Use Permits, subject to the following takedown requirements:

- 8:1 for new digital billboards
- 6:1 for new static billboards

- 4:1 for static billboards that are converted to digital
- 8:1 for static billboards that are enlarged and converted to digital

Each advertising company must meet its takedown requirement using its existing inventory of non-compliant off-site signs. Companies that do not have enough existing off-site signs to remove may still install a new digital billboard, but only under a separate development agreement containing public benefits. Once all nonconforming billboards are removed, new conversions to digital may be done on a 1:1 basis. Additional development standards pertaining to size, height, spacing and location apply to new off-site signs (Navigant 2017 report).

Summary of California Local Relocation Agreement Programs
(CAO Report, November 2016)

<u>Jurisdiction</u>	<u>Public Benefits (Sign Reduction)</u>	<u>Public Benefits (Services)</u>	<u>Public Benefits (Funding)</u>
Baldwin Park	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Belmont	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Beaumont	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Berkeley	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Buena Park	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Carson	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Colfax	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Corona	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Daly City	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Not allowed
Eastvale	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available

<u>Jurisdiction</u>	<u>Public Benefits (Sign Reduction)</u>	<u>Public Benefits (Services)</u>	<u>Public Benefits (Funding)</u>
Emeryville	Allowed by enabling ordinance; no explicit agreements	Not allowed	Allowed by enabling ordinance; no explicit agreements
Fontana	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Garden Grove	Permitted by explicit agreement	Allowed by enabling ordinance; no explicit agreements	Individual agreement information is not available
Hayward	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Not allowed
Hesperia	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Inglewood	Permitted by explicit agreement	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Jurupa Valley	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Long Beach	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Los Angeles (City)	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Not allowed
Martinez	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Montebello	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
Newark	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Oakland	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements

<u>Jurisdiction</u>	<u>Public Benefits (Sign Reduction)</u>	<u>Public Benefits (Services)</u>	<u>Public Benefits (Funding)</u>
Ontario	Permitted by explicit agreement	Allowed by enabling ordinance; no explicit agreements	Individual agreement information is not available
Perris	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Not allowed
Rancho Cucamonga	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	TBD
Rancho Cordova	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Riverside (County)	Allowed by enabling ordinance; no explicit agreements	Not allowed	Allowed by enabling ordinance; no explicit agreements
Rocklin	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Roseville	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Sacramento (City)	Allowed by enabling ordinance; no explicit agreements	Not allowed	Allowed by enabling ordinance; no explicit agreements
San Bernardino (City)	Allowed by enabling ordinance; no explicit agreements	Individual agreement information is not available	Allowed by enabling ordinance; no explicit agreements
San Jose	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available
San Francisco	Allowed by enabling ordinance; no explicit agreements	Not allowed	Allowed by enabling ordinance; no explicit agreements
Santa Clara (City)	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements	Allowed by enabling ordinance; no explicit agreements
Vacaville	Permitted by explicit agreement	Individual agreement information is not available	Individual agreement information is not available

<u>Jurisdiction</u>	<u>Public Benefits (Sign Reduction)</u>	<u>Public Benefits (Services)</u>	<u>Public Benefits (Funding)</u>
Victorville	Allowed by enabling ordinance; no explicit agreements	Not allowed	Not allowed

Options for Relocation Agreements Allowing Off-Site Signs in the Public Right-of-Way

The City Council also inquired about the use of a relocation agreement to establish off-site signs in the public right-of-way. The following photo is an example of a digital off-site sign installed in the median of La Cienega Boulevard just north of Century Boulevard in the City of Inglewood. While it is not the outcome of a relocation agreement, it is illustrative of how such an arrangement may look. The sign was approved in 2015 as part of an agreement between the City of Inglewood and WOW Media, Inc. allowing for the installation of 10 off-site sign displays at designated locations.

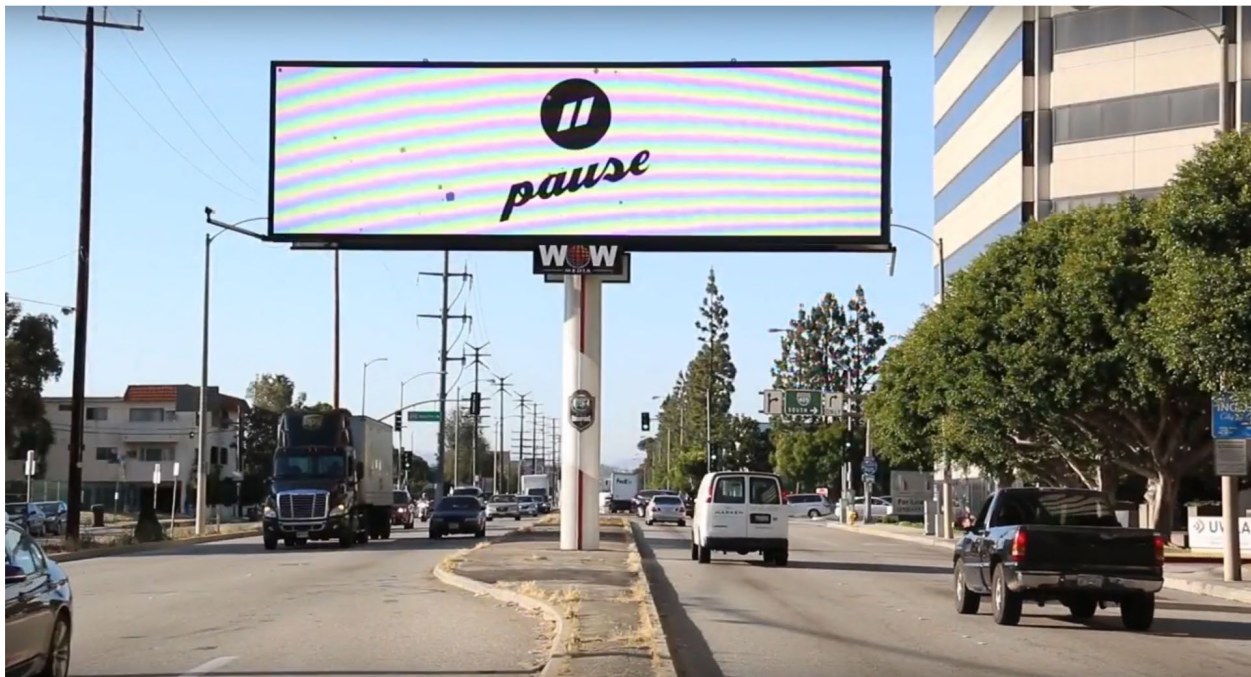


Image credit: Pause Fest (YouTube screen capture March 28, 2018)
<https://www.youtube.com/watch?v=9j84mKKdmtA>

According to a November 3, 2015 recommendation report from Inglewood's Economic Development Department to the Inglewood City Council, the agreement identified a one-time signing bonus of \$3.1 million (\$100,000-\$250,000 per face) payable to the City of Inglewood and established a two-tier media payment scenario with a minimum 50 percent gross media payment that could increase to 80 percent if certain revenue thresholds are met. The agreement also requires a monthly rent of between \$5,000 and \$10,000 per face for each installed sign. The agreement specifies that up to 10 percent of total advertising time on each face is to be made available to the City of Inglewood for public service announcements.

It is conceivable that a relocation agreement to allow off-site signs in the public right-of-way in the City of Los Angeles could include similar terms, with possible adjustments to account for the

required takedown of existing off-site signs. Up to this point, however, DCP's evaluation of options for the use of relocation agreements has been focused on privately- and publicly-owned parcels. Allowing such signs within the public right-of-way would constitute a new form of commercialization of streets and roadways, and potentially create additional traffic safety concerns. Furthermore, the City has a Coordinated Street Furniture Agreement in effect with a media company that prohibits competing signage in the public right-of-way. As such, DCP continues to recommend exploring the use of relocation agreements to allow off-site signs on privately- or publicly-owned parcels only.

4. OPTIONS FOR AN OPT-IN PROVISION FOR THE USE OF RELOCATION AGREEMENTS FOR SIGNS OUTSIDE OF SIGN DISTRICTS

An opt-in requirement for the use of relocation agreements to establish off-site signs outside of sign districts could be accomplished by amending the proposed ordinance to specify the geographies in which the use of such agreements would be allowed.

Certain geographies could be identified that would allow the use of relocation agreements to establish off-site signs outside of sign districts. This approach mirrors the method by which the City allows for the erection of original art murals on properties developed with single-family homes – such murals are permitted only if they are located within one of the Council Districts specified in the regulations. If, at a later date, the City Council wished to modify the geographic extent of the eligible areas, it would need to consider and adopt further legislation to that effect.

Conversely, the proposed ordinance could be amended to exclude specific geographies from allowing the use of relocation agreements.

5. LEGALITY AND PROCEDURES FOR ALLOWING FOR A RELOCATION AGREEMENT PROCESS WITHOUT A FINDINGS REQUIREMENT

The relocation agreement process currently under consideration is quasi-judicial in nature and as such, findings would be a mandatory component of the City Council's action to approve or disapprove an agreement. If the City Council is seeking a relocation agreement process that does not require findings, that process would need to be ministerial in nature, with objective standards that preclude any exercise of discretion on the part of the City.

While the California Outdoor Advertising Act (Business and Professions Code Section 5412) contains provisions that provide for relocation agreements, that program is materially different than the relocation agreement program proposed in the City's citywide sign ordinance, despite using the same terminology. The California Outdoor Advertising Act requires that display owners be compensated for the mandatory removal of any lawfully erected displays and authorizes local entities to enter into relocation agreements with display owners as compensation for the removal of existing, legally erected off-site signs. The intent of this authority is to provide a compensation option to applicants who are mandated to remove an existing display for a public purpose, such as widening a highway.

In its January 27, 2017 report to PLUM, the Planning Department recommended, if the City wishes to pursue such relocation agreements, that the City establish its own relocation agreement authority and process to serve its unique needs, instead of relying on the State's relocation agreement authority, which was established for a different reason. In contrast to the State provisions, the proposed relocation agreement provisions in the City's citywide sign ordinance would provide an exception to the City's ban on off-site signs for applicants that comply with the

off-site sign reduction requirements. The City's proposed relocation agreement process is a voluntary program that allows outdoor advertising companies to establish new off-site signs under the City's ban in exchange for sign reduction; this relocation agreement authority has nothing to do with compensation to a display owner who is being compelled by a public entity to move a legally existing off-site sign.

As currently drafted, the City's relocation agreement process provides the City Council with limited discretion. It has been the City's practice, based on case law, that discretionary actions be accompanied by a set of findings to be made by the decision-maker. Findings serve to focus the decision-maker's deliberations, circumscribe the decision-maker's discretion, and encourage the consistent application of that discretion in each case. In addition, findings provide a public record of the reasoning that led the decision-maker to make a particular determination in light of a particular set of facts – information that can prove vital if the decision is challenged in court.

In its decision in the case of *Topanga Assn. for a Scenic Community v. County of Los Angeles*, the California Court of Appeal for the 3rd District held that quasi-judicial decisions must be accompanied by findings, stating: "[a]mong other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis." [11 Cal.3d 506 (1974)].

While the City Council is a legislative body, in the case of the relocation agreement process currently under consideration, it would be acting in a quasi-judicial capacity as the decision-maker for a land use entitlement, and thus would be subject to the findings requirement established in the *Topanga* decision. If the City Council wishes to dispense with findings as a component of the relocation agreement process, it is recommended that the provisions be written to ministerially allow relocation agreements that meet a set of objective standards, with no discretion exercised by the City Council or any other decision-maker.

Should you have any questions regarding this report, please do not hesitate to contact Phyllis Nathanson of my staff at (213) 978-1474.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in blue ink, appearing to read "K. J. Keller", with a stylized flourish at the end.

Kevin J. Keller, AICP
Executive Officer

VPB:KJK:ALV:TR:nhh

Enclosure