

January 26, 2016

Client-Matter: 26881-047

VIA E-MAIL

Los Angeles City Council
Planning and Land Use Management Committee
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012
Attention: Sharon Dickinson, Office of the City Clerk, Legislative Assistant

**Re: Citywide Sign Ordinance (CPC-2015-3059-CA/Council File 11-1705):
Sign Reduction Credits**

Dear Chair Huizar and Honorable Councilmembers:

On behalf of our client, Regency Outdoor Advertising, Inc. (“Regency”), we want to express our concern that the proposed Citywide Sign Ordinance (the “Ordinance”) misses a significant opportunity to facilitate the removal of existing billboards and other off-site signage throughout the entire City of Los Angeles (the “City”), which has been a frequently-stated goal of the City Council. Unfortunately, as it is currently drafted, the Ordinance provides absolutely no incentive to remove such signage throughout most of the Westside, South Los Angeles, the San Fernando Valley, and elsewhere. These areas of the City will greatly benefit from a further revision to the Ordinance that would encourage sign removal citywide, which is consistent with the preferred policy direction from the City Planning Commission (the “Planning Commission”).

The Ordinance purports to encourage the removal of off-site signage through the implementation of a “sign reduction credit” program. Specifically, in exchange for removing certain existing, static off-site signs, sign owners are granted credits toward the installation of either static or digital off-site signs within a Sign District. Under the most recent draft of the Ordinance, the sign reduction credits are automatically allocated at a fixed ratio of one (1) square foot of new static signage for every five (5) square feet of removed static signage; and one (1) square foot of new digital signage for every ten (10) square feet of removed static signage. In order to be eligible for sign reduction credits, the signage that is removed must be located within (i) the Sign District; (ii) an adjoining, to-be-defined, “sign impact area”; or (iii) “an area with a

Planning and Land Use Management Committee

January 26, 2016

Page 2

reasonable relationship to the new signage”.¹ The third clause was added to the Ordinance in response to feedback from the Planning Commission in support of broadening the geographic scope of the Ordinance’s sign reduction program. However, the geographical pre-requisites for obtaining sign reduction credits are problematic for a number of reasons.

First, the Ordinance imposes very strict limitations on the areas of the City that will even be eligible for Sign Districts, such that broad swaths of residential and commercial areas throughout the City cannot meet the applicable criteria. (See Exhibit A.) By limiting the eligibility for sign reduction credits to only signage removed from these very restricted geographical areas, the Ordinance will simply not accomplish the Planning Commission and City Council’s stated goal of sign reduction across the City. Instead, it will only encourage sign removal in a few isolated neighborhoods where new signage will subsequently be allowed, *while substantial portions of the City could reap absolutely no reduction benefit whatsoever*. Thus, the Ordinance’s sign reduction program would only reduce signage in the very areas of the City where signage is purportedly encouraged. This perverse result is both shortsighted and inconsistent with the practices in a number of other cities throughout the country that utilize sign reduction programs in order to concentrate signage where it makes sense to do so, and remove signage from residential and low density areas where signage may not be appropriate.

Moreover, the adoption of a citywide sign reduction credit provision is squarely within the City’s legal authority. It is well established that cities may regulate signage to promote their substantial interests in aesthetics and safety. (*Metromedia, Inc. v. City of San Diego* (1981) 453 U.S. 490, 507; *Metro Lights, L.L.C. v. City of Los Angeles* (2009) 551 F. 3d 898, 904; *World Wide Rush, LLC v. City of Los Angeles* (2010) 606 F. 3d 676, 685.) There is no legal requirement that the Ordinance incorporate any required geographical nexus between the removed signage and the installed signage. Instead, nexus requirements only arise in contexts that are easily distinguished from the Ordinance’s proposed sign reduction provision. For example, quasi-judicial, discretionary exactions in the form of site-specific dedications or fees must have an essential nexus to the impacts of the project upon which they are being imposed. (See *Nollan v. California Coastal Comm’n* (1987) 483 US 825, *Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 US ___, 133 S Ct 2586, 2599.) However, the proposed Ordinance’s sign reduction credit provision is *neither a dedication or a fee*. Moreover, the Ordinance’s proposed sign reduction credit provision *does not* establish a quasi-judicial process for imposing ad hoc, site-specific impact ratios for each new sign, but instead creates a generally applicable administrative procedure with sign reduction ratios that are fixed, irrespective of the impact of any new signage.

¹ The proposed sign reduction provision is set forth in Section 17 of Ordinance Version B+, amending Los Angeles Municipal Code Section (“LAMC”) 13.11 F(1). (See Planning Commission Corrected Letter of Determination, dated January 12, 2016.)

Although the sign reduction program is not a fee, the established caselaw on fees is nevertheless helpful in illustrating the City's broad latitude to adopt a citywide sign reduction program that allocates credits on a formulaic basis rather than an ad hoc basis. Courts distinguish between the level of scrutiny applied to individualized, discretionary fees and formulaic, legislatively mandated fees, the latter of which are subject to the more deferential standard of review "generally accorded to legislative determinations." *Santa Monica Beach, Ltd. V. Superior Court* (1999) 19 Cal.4th 952, 966. (See also *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854; *Landgate, Inc. v. California Coastal Comm'n.* (1998) 17 Cal. 4th 1006, 1022 [heightened scrutiny applies to "development fees imposed on a property owner on an individual and discretionary basis"]; *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 671.) The *San Remo Hotel* Court explained that the reason for this distinction "between ad hoc exactions and legislatively mandated, formulaic mitigation fees" is that:

"generally applicable legislation is subject to the ordinary restraints of the democratic political process. A city council that charged extortionate fees for all property development, unjustifiable by mitigation needs, would likely face widespread and well-financed opposition at the next election. Ad hoc individual monetary exactions deserve special judicial scrutiny mainly because, affecting fewer citizens and evading systematic assessment, they are more likely to escape such political controls." *San Remo Hotel, supra*, 27 Cal.4th 643 at 672.

There are no legal grounds prohibiting a sign reduction program that grants credit for signs removed citywide. In fact, the proposed sign reduction provision is more akin to a general land use regulation, such as a parking requirement or a lighting standard, rather than a fee. In essence a performance standard and/or aesthetic condition, a sign reduction requirement would be a "valid exercise[] of the city's traditional police power." (See *Ehrlich v. City of Culver City, supra*, 12 Cal. 4th at 886 [holding that a city's generally applicable requirement that new development contribute public art or pay one percent of the total building valuation toward the same purpose was a valid exercise of the city's traditional police power that was not a development exaction subject to the nexus requirements of *Nollan v. Coastal Comm'n, supra*. 483 US 825].) If the sign reduction credit provision were a fee subject to the Mitigation Fee Act, the City would be required to justify the proposed sign reduction ratio (i.e., 5:1 for new static off-site signage and 10:1 for new digital off-site signage) in relation to a substantiated impact.² However, no such impact analysis was performed to establish these ratios. Instead, these ratios were simply recommended by the Planning Commission as a matter of legislative prerogative. In short, because the sign reduction credit provision is not a fee or a dedication, there is no nexus requirement. Instead, it is well within the City Council's broad legislative authority and police power to find that granting sign reduction credits for signage removed citywide would generate

² Gov't Code §66001, subd. (a).

aesthetic and safety benefits to the residents of the City and to adopt a sign reduction provision that accomplishes these objectives.

Finally, the current iteration of the Ordinance's sign reduction provision does not adequately incorporate substantive feedback from the Planning Commission. At its September 24, 2015 meeting, the Planning Commission directed City Planning Department staff to obtain additional information on sign reduction provisions in other cities. This information was presented in the Supplemental Recommendation Report dated October 22, 2015 (the "October Staff Report"). Based on our research of those cities surveyed in the October Staff Report that require a reduction in sign area to offset new signage, there is generally no limitation on the location of the removed signage in relation to the new signage. Cities as diverse as Miami, Cleveland, Sacramento, Long Beach, San Antonio, El Paso and Santa Clarita have no requirement that removals occur in the immediate vicinity of the new signage. In other words, these cities utilize their sign reduction provisions as a mechanism for reducing off-site signage citywide, thereby broadly distributing sign removal.

At the Planning Commission's meeting on October 22, 2015, the Commissioners articulated broad support for revising the Ordinance to allow credit for off-site signage removed throughout the City. The Commissioners recognized the significant benefits this would confer upon the City, particularly for low-income and minority communities. For example, various Commissioners expressed concern that if the scope of permitted sign reduction credits is drawn too narrowly, the City won't accomplish its objective of removing certain unwanted signage, particularly near residential areas. Commissioner John Mack also expressly indicated his support for a citywide approach to sign reduction, stating that, "I think there should be some consideration given to reduction with particular emphasis on neighborhoods and parts of the community and the City that are disproportionately suffering . . . [the] reality is that low income, more limited neighborhoods, are frequently the place where you find these . . . billboards all over the place." Planning Commission Chair David Ambroz agreed, stating that, "[w]e don't want to disadvantage communities that may not end up as a sign district, which are disproportionately impacted currently."

The Planning Commission's preferred approach, which would allow for sign reduction credits citywide, would directly advance these legitimate interests and would be well within the City's valid authority to regulate signage. As acknowledged by the City Attorney's Office at the Commission's October 22, 2015 meeting, *there is no established caselaw* imposing a requirement for a nexus between the location of removed signage and the location of new signage to be installed pursuant to a legislatively-adopted sign reduction credit program. Instead, the City's legitimate interests in aesthetics and safety citywide are well served by a signage ordinance that encourages sign removal citywide, which a citywide sign reduction program

would substantially advance. The City Attorney's Office has not articulated any legal risks to the City that such a citywide sign reduction provision would create.

Apparently in response to input from the Planning Commission at its October 22, 2015 meeting, the Planning Department revised the Ordinance's proposed sign reduction provision to also allow credit for signage removed from "an area with a reasonable relationship to the new signage." While recognizing the Planning Commission's clear intent to broaden the scope of the Ordinance's sign reduction provision, this proposed language is problematic for a variety of reasons. Most importantly, it does not address the central directive from the Commission that (i) removing and consolidating off-site signage citywide has broad aesthetic, safety and other benefits to the City's residents; (ii) these are legitimate objectives of City policy; and (iii) in order for the sign reduction provision to be effective and equitable in accomplishing these objectives and providing these benefits, it needs to extend beyond the immediate vicinity of future Sign Districts. Instead, the revision ignores the fact that City residents will broadly benefit from the removal of existing off-site signage that is not necessarily in proximity to new off-site signage, and that no such geographic nexus is required under the law.

Moreover, the proposed revision will be very difficult to implement without further refinement and distinction between what constitutes a "sign impact area", as opposed to "an area with a reasonable relationship to the new signage." Although apparently intended as two separate and distinct geographical areas from which signage may be removed in exchange for sign reduction credits, these could be construed as essentially the same thing, despite the directive from the Planning Commission to expand the scope of the Ordinance's sign reduction provision. As a result of the ambiguity, sign companies, property owners, City staff and the general public will lack the necessary certainty concerning whether or not existing signage is eligible for sign reduction credits, inevitably leading to confusion and the potential for widely disparate treatment of different signage applications based on varying interpretations by City staff.

Accordingly, Regency respectfully requests that the Planning and Land Use Management Committee follow the Planning Commission's intent by modifying the Ordinance's sign reduction provision to allow credit for off-site signage removed throughout the City, rather than only within Sign Districts, adjoining sign impact areas, or "areas with a reasonable relationship to the new signage." Specifically, proposed LAMC Section 13.11 F should be revised as shown on Exhibit B.³ This modification of the Ordinance would significantly contribute to the City Council's stated goal of reducing off-site signage throughout the City, is squarely within the City's legal authority, and is consistent with programs in other cities throughout the country.

³ The proposed revisions also include a minor technical revision clarifying the City's intent to establish fixed ratios that would apply to the sign reduction credit programs for new off-site signage in all Sign Districts.

Planning and Land Use Management Committee
January 26, 2016
Page 6

Thank you for your consideration.

Sincerely,

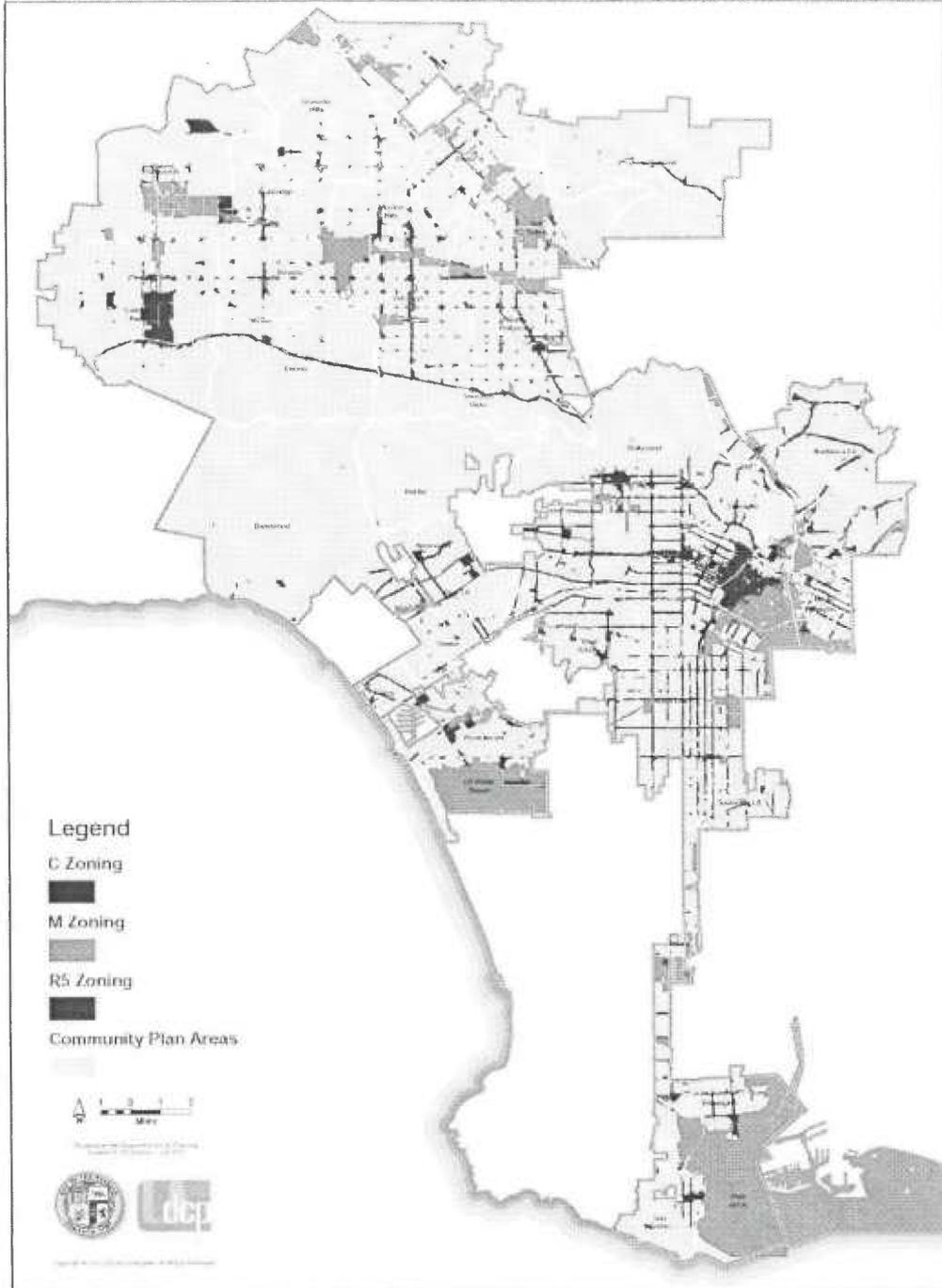


C.J. Laffer

cc: Lisa Webber, AICP, City Planning Department, Deputy Director
Tom Rothman, City Planning Department, Senior City Planner
Phyllis Nathanson, City Planning Department, City Planning Associate
Michael Bostrom, Esq., City Attorney's Office, Deputy City Attorney
Victor De la Cruz, Esq., Manatt, Phelps & Phillips, LLP

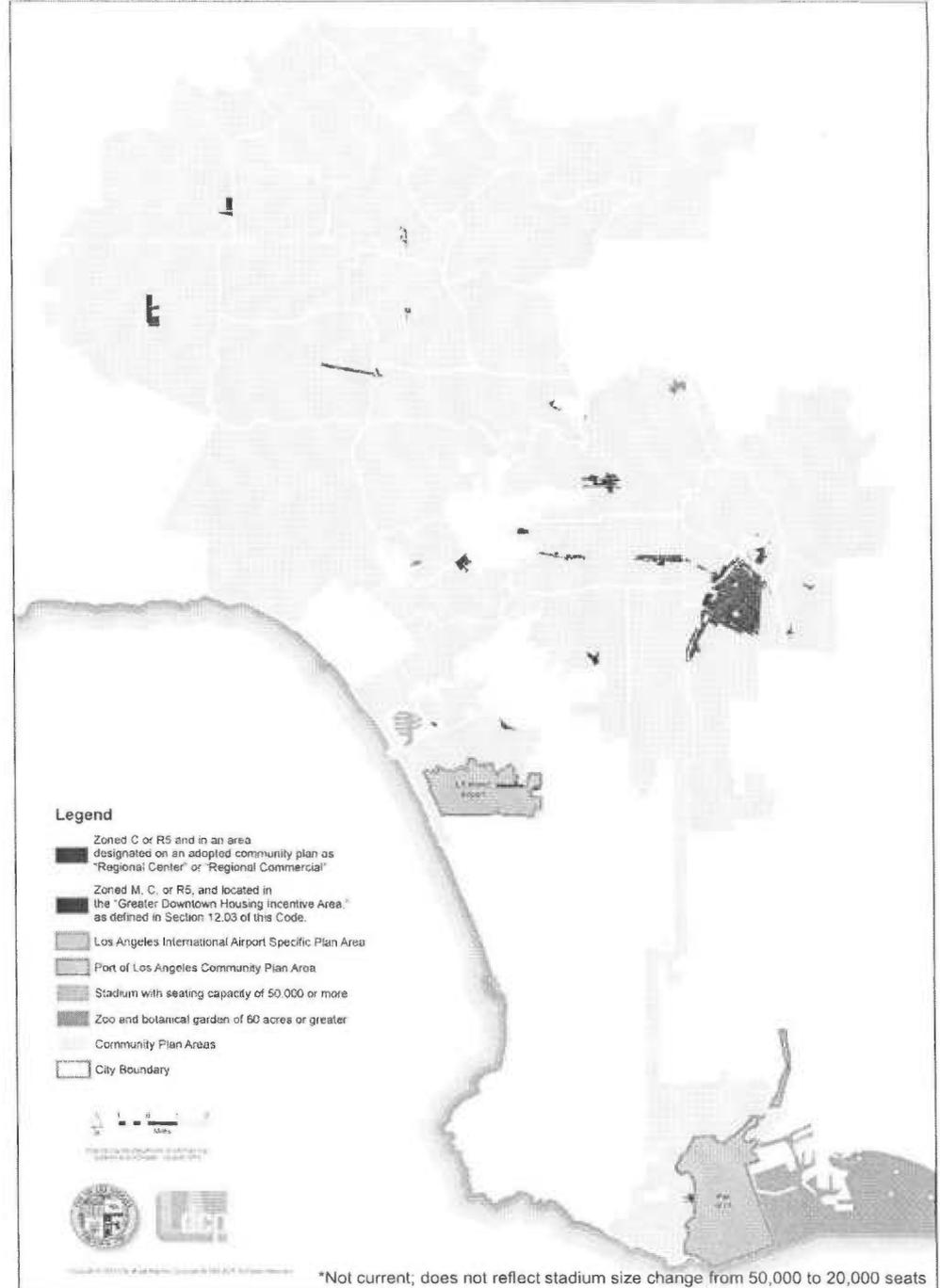
EXHIBIT A

Areas Eligible for Sign Districts (current)



Areas Eligible for Sign Districts (proposed)

As of Date: 10/28/2012



*Not current; does not reflect stadium size change from 50,000 to 20,000 seats

EXHIBIT B

F. Sign Reduction and Community Benefits.

1. Sign Reduction. If the ordinance establishing a Tier 1 Sign District allows off-site signs, which are otherwise prohibited by Section 14.4.4 D 9 of this Code, then the ordinance shall:

(a) Identify the boundaries of a "sign impact area," which shall have at least one boundary adjacent to the Sign District.

(b) Require, at a minimum, that every square foot of sign area of a new off-site sign be offset by a reduction of ~~more than~~ five square feet of existing off-site sign area, or a reduction of ~~more than~~ ten square feet of existing off-site sign area if the new off-site sign has a digital display. The reduction of off-site sign area must may occur within either the Sign District, the "sign impact area", or an area with a reasonable relationship to the new signage. anywhere within the City.

(c) Establish procedures for sign reduction credits, to include the following requirements:

(i) Credits for reduction of off-site sign area shall be assigned to the owner of the sign from which sign area is being reduced. Credits are transferrable and can be used to acquire rights to establish new off-site signage within the boundaries of the Sign District.

(ii) Any credit for reduction of off-site sign area shall be requested by the sign owner from the Director of Planning through a Project Permit Compliance application pursuant to Section 11.5.7 C of this Code. Any application for sign reduction credit shall include a signed statement under penalty of perjury that the applicant is the sign owner.

(iii) Notice of the Director's determination on the Project Permit Compliance application shall be provided to the sign owner, the owner of the property on which the sign is located, and any other parties as required by Section 11.5.7 of this Code. Notice shall also be provided to the sign operator if the sign operator is identified in the application or in the off-site sign inventory maintained by the Department of Building and Safety pursuant to Section 91.6205.18.5 of this Code. Such determination shall inform the aforementioned parties of their right to appeal and contain instructions for filing an appeal.

(iv) Any appeal of a determination on sign reduction credits shall be filed pursuant to Paragraph 6 of Subsection C of Section 11.5.7 of this Code.

(d) The sign reduction requirement established by this subsection can only be met through the removal of existing, legally permitted off-site signs, including nonconforming off-site signs, in existence as of the effective date of the ordinance establishing the Sign District. The reduction in existing sign area shall be accomplished prior to issuance of a building permit for the new off-site sign. The applicant shall obtain the required demolition permits from the Department of Building and Safety prior to any demolition work.