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LATHAM & WATKINS LLP

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Council File No: 11-1705
Item No.: 3

December 12, 2017

Communication from Public

VIA HAND DELIVERY

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

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File No. 042897-0010

Re: City Sign Ordinance Update (CF 11-1705)

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

We are writing on behalf of our client, Clear Channel Outdoor, Inc., regarding the proposed revisions to the City's sign code. The significant progress toward including a relocation agreement process is much appreciated though some final issues should be addressed to complete the sign ordinance updates as soon as possible.

The December 7, 2017 draft proposed ordinance is encouraging in that it recognizes the clear benefits that relocation agreements can play in helping the City achieve its goals of reducing the number of existing signs, improving neighborhood aesthetics, and generating revenue for the City. The initial draft appears to offer an appropriate framework and process under which the City may consider relocation agreement applications. We note that the ordinance is just that, a framework – the ordinance does not approve a single new sign.

Because the ordinance establishes a framework and mandates sign reduction, and does not approve any new signs, staff's prior findings for a CEQA Exemption for the ordinance should be reconfirmed. We do not agree that an Initial Study, which could lead to requiring an EIR, is necessary under these facts, and would appreciate clarification from the Committee.

An additional clarification would be helpful as to the draft ordinance's inclusion of a new definition for "Legally Existing Signs" since the draft should not redefine the status of legally existing nonconforming signs. As to other issues raised over the years that this ordinance has been under review, our prior comments as to the administrative process and penalty provisions remain unaddressed and the Department of Building and Safety has now issued comments on this issue which require further review. In addition, suggestions to assist the City with procedures to address lack of historical records of existing off-site signs are also not included in this draft. Each of these points is detailed further below.

1. The draft ordinance qualifies for CEQA exemptions since it creates procedures without approving any signs, and should not be treated differently from similar procedural ordinances.

The proposed ordinance does not result in any physical change to the environment and does not approve any signs. It establishes a process by which sign reduction in the City is guaranteed and establishes restrictive standards on the approval of relocation agreements.

The Planning Department previously determined that the 2013 then-proposed draft sign ordinance was exempt from CEQA and demonstrated the applicability of two of CEQA's categorical exemptions (i.e. Classes 3 and 8). Their reasoning -- that even though the draft ordinance would permit new digital and non-digital off-site signage across the City, the revisions were more restrictive than existing regulations -- remains true for the current draft ordinance. This ordinance's framework would result in more sign reduction than existing law or previously proposed amendments. It also drastically reduces the areas of the City that could be eligible for sign districts compared to the existing ordinance.

The Class 3 exemption under the CEQA guidelines (14 C.C.R. §§ 15303) is for the "construction or conversion of small structures" (Class 3), which clearly applies to signs. The draft ordinance includes extensive takedown requirements and location protections for single-family neighborhoods, as well as restrictions on lighting and other characteristics; accordingly the ordinance also qualifies for a Class 8 exemption (14 C.C.R. §§ 15308). The ordinance is an action to "assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment" (Class 8). One example of why this ordinance is more restrictive than existing law is that relocation agreements exist under the City's current sign ordinance as an exemption to the City's off-site sign ban but this ordinance established regulatory procedures for protection of the environment in the form of requirements for relocation agreements.

The City has typically relied on CEQA exemptions when adopting this kind of ordinance. Ordinances similarly determined to be exempt from CEQA review include the Greater Downtown Housing Incentive Area ordinance (179,076) and the retaining wall ordinance (No. 176,445), among others. Like the newly released proposed ordinance, these previous ordinances established a process and requirements for future discretionary approvals but did not themselves approve any specific project. Many other local jurisdictions that have adopted ordinances establishing a process for relocation agreements have also exempted them from review under CEQA (examples include Long Beach and Alameda County).

Under these circumstances, no further delay is required for CEQA compliance and the Council's legislative process should proceed based on CEQA exemptions, similar to other comparable ordinances. ***Ordinances that merely create frameworks for project-specific approvals (and do not approve a single project themselves) are exempt from CEQA.*** This is because CEQA review will occur at the appropriate time when details about a project-specific approval are available, as with the proposed sign ordinance, which may not even qualify as a "project" under CEQA because it does not result in any direct or indirect change in the physical

environment. (E.g., *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.)

2. The proposed ordinance includes areas where clarification is needed.

Given the importance and the complexity of the issue of existing non-conforming signs, further clarification is needed in the proposed new definition for “Legally Existing Sign.” Rather than defining it as a “sign authorized by all necessary permits,” (Sec. 14.4.2 at p. 14) it should be clear that such permit requirements are limited to those that were in place when the sign was built. This definition may be unnecessary since the ordinance already regulates legal nonconforming signs and since state law establishes a rebuttable presumption of lawfulness. If the new definition is to be retained, its intention should be clarified in light of proposed Section 14.4.24 (pertaining to the continuation of nonconforming signs).

The PLUM Committee’s direction at the May meeting included instructions to define procedural and filing requirements for relocation applications. Such procedures are not included in this ordinance, and Section 21 of the proposed ordinance, which sets forth fees for various applications, does not include a filing fee for relocation agreement applications under proposed section 14.4.25. These issues should be further addressed in connection with the ordinance’s adoption.

3. Issues Raised in Prior Correspondence.

While the progress in the revised sign ordinance is much appreciated, two issues that have been raised at many prior meetings of the Committee still need to be addressed.

Administrative penalty provisions and procedures. Due process concerns remain with this version of the proposed ordinance. Clear Channel Outdoor supports strict enforcement of the City’s sign regulations and the tolling of all penalties during the entirety of the City’s administrative appeal process. The proposed ordinance maintains the intent in prior drafts to toll the penalties during the administrative process; however it is unclear whether penalties are tolled if the Administrative Hearing Officer’s determination is appealed under the proposed section 14.4.27.E.6. We ask that the ordinance be clarified to make clear that all civil penalties are tolled during the entirety of the City’s administrative appeal process. The City should also clarify that administrative penalties are tolled during judicial review of Compliance Orders. Building and Safety’s comments should also be addressed.

Incomplete permit records for older off-site signs. The December proposed ordinance fails to address the problems created by the City’s incomplete permitting records for off-site signs and fails to acknowledge the provisions of state law on these issues. Most of the existing signs in the City were built well before the adoption of more recent restrictions. Notably, we have previously proposed a replacement permitting system substantially similar to a program implemented by the City of San Francisco, where fees can be paid and documentation provided in a procedure to update records. This type of program could provide a well-defined, clear, and fair process that would facilitate the City’s resolution of the difficulties resulting from shortcomings in its historic records.

LATHAM & WATKINS^{LLP}

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We appreciate the significant steps that this Committee and the Planning Department and others have taken to move forward this needed update to the City's sign code, and look forward to working with you.

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: Mr. Greg McGrath
Mr. Layne Lawson
Katrin de Marneffe, Esq.
Lucinda Starrett, Esq.
James Arnone, Esq.



*Public Affairs Department
Southern California Division*

December 12, 2017

Honorable Jose Huizar, Chair
Honorable Marqueece Harris-Dawson, Vice Chair
Honorable Mitchell Englander
Honorable Bob Blumenfield
Honorable Curren D. Price, Jr.
Planning and Land Use Management Committee
City of Los Angeles
200 N. Spring Street, Room 430
Los Angeles, CA 90012

Re: Council File 11-1705, Citywide Sign Regulations, 2017 Navigant Study

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

Clear Channel Outdoor appreciates your continuing efforts on signage regulations, and our counsel will be responding to the recently issued staff report including proposed ordinance language. Given that our signage experience in Los Angeles dates back over a century, and our position as an industry leader in outdoor advertising, we write to provide brief comments on the draft *Off-site Digital Signage Financial Analysis Study* prepared by Navigant Consulting which was posted by staff last week.

The report further validates the Committee's direction to implement procedures for relocation agreements, noting that "many cities in California and throughout North America have used relocation agreements as an avenue to control the number of digital signs that are constructed while also reducing billboard blight and generating revenue for the city." (Navigant study at p. 8.) In our view, however, the study misses the mark in critical areas, including creating the misimpression that limiting digital signs to only public property could generate the necessary magnitude of benefits to the City, including sign removal and public benefits, compared to the potential for a relocation agreement process applicable to both private and public property.

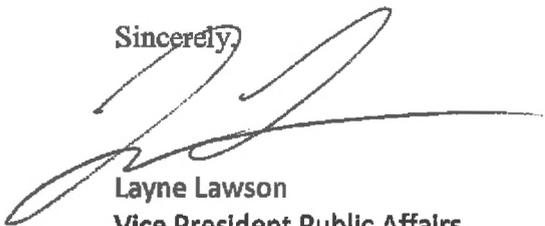
Since it is obvious that excluding existing signage on private property and limiting relocation agreements to public property must reduce the opportunities for signage takedown and revenue, the study's implications reflect a number of incorrect assumptions. Though the study represents that the so-called "Public Option" provides a number of public property locations where digital signage could be placed, the study assumes that all of these public property locations are commercially viable. That is simply not the case. While some text references in the study acknowledge that this assumption is unrealistic, revenue estimates are not reduced to reflect this reality. No market advice or expert review is cited in the study as to the viability of all public property locations, and thus it is not realistic that advertisers would generate sufficient

revenue to justify digital signs at each of these locations. The revenue share that other public agencies would retain given their ownership of potential sign locations, such as Metro or City proprietary agencies such as DWP or the Port, before sharing funds with the City, is also not reflected in the analysis. Nor are additional public policy limitations acknowledged, such as the recommendation in the December 7th draft ordinance to further limit available public property by prohibiting a variety of locations such as parks, libraries, civic buildings, and others.

As we have always stated, Clear Channel Outdoor is open to public property being available to accept relocated signs as one part of any revised sign ordinance. However, in order for the City to meet its overall goals, including the encouragement of a large number of takedowns as well as generation of public benefits and revenue while protecting neighborhoods and maintaining land use principles, a blended, comprehensive approach will be required that includes both private and public properties as eligible for relocation agreements.

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 workable policy and regulations for off-site signage in Los Angeles.

Sincerely,

A handwritten signature in black ink, appearing to read 'Layne Lawson', with a long horizontal flourish extending to the right.

Layne Lawson
Vice President Public Affairs
Clear Channel Outdoor, Southern California Division