

RESOLUTION NO. 2012-387

Adopted by the Sacramento City Council

November 13, 2012

ADOPTING FINDINGS OF FACT AND APPROVING THE DISPLAY WAY AND FEE DRIVE SIGN RELOCATION PROJECT (P11-006)

BACKGROUND

- A. October 11, 2012, the City Planning and Design Commission conducted a public hearing on, and forwarded to the City Council, a recommendation to approve the Display Way and Fee Drive Sign Relocation Project (P11-006) (the "Project").
- B. On November 13, 2012, the City Council conducted a public hearing on the Project, for which notice was given under Sacramento City Code section 17.200.010, subsection (C)(1) (a) and (c) (publication and mail (500 feet)), and during the hearing the City Council received and considered evidence concerning the Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Based on the oral and documentary evidence received at the hearing on the Project, the City Council hereby approves the Relocation Agreement as attached in Exhibit A, based on the findings of fact as set forth below:

- A. The new off-site signs comply with the purpose and requirements of Sacramento City Code chapter 15.148, including section 15.148.815.

The news signs comply with City Code chapter 15.148 regarding signs. Though the signs do exceed the maximum detached sign height for the M-1 zone, a variance to allow the additional height has been granted under section 15.148.1040 of the City Code

- B. The new signs are compatible with the uses and structures on the new sites and in the surrounding areas, including parks, trails, and other public facilities and amenities.

The new signs are compatible with their respective subject sites. Both signs will be placed on industrially zoned properties and will not significantly impact residential development.

- C. The new signs will not interfere with onsite access, circulation, or visibility.

Both signs are located on their sites such that they will not interfere with the day-to-day operations or visibility on the site.

D. The new signs will not create a traffic or safety hazard.

The new signs will not create traffic or safety hazards. They are both static signs that will have a constant illumination (no blinking or flashing lights) at night.

E. The new signs will not result in any undue or significant increase in visual clutter in the areas surrounding the new off-site signs.

The new signs will not result in any undue or significant increase in visual clutter. The sign at 575 Display Way will not be located near any existing off-site signs. There is a smaller, on-site detached sign 175 feet to the east of the proposed sign. Adding an off-site sign at Display Way will not significantly increase visual clutter. The sign proposed at 1235 Fee Drive will be smaller and lower than existing signs in the vicinity. Furthermore, the applicant will be removing a large, unsightly off-site sign within a half mile of the subject site (909 Fee Drive).

Adopted by the City of Sacramento City Council on November 13, 2012 by the following vote:

Ayes: Councilmembers Ashby, D Fong, McCarty, Pannell, Schenirer, Sheedy and Mayor Johnson

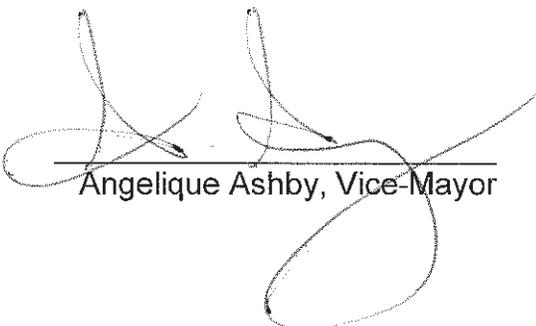
Noes: None.

Abstain: Councilmember R. Fong (Recused)

Absent: Councilmember Cohn

Attest:


Shirley Concolino, City Clerk


Angelique Ashby, Vice-Mayor

Billboard Relocation Agreement

City of Sacramento and Clear Channel Outdoor

This agreement, dated November 13, 2012, for purposes of identification, is between the CITY OF SACRAMENTO (the “City”), a California municipal corporation; and CLEAR CHANNEL OUTDOOR, INC. (“CCO”), a Delaware corporation.

Background

On October 16, 2007, the Sacramento City Council adopted Ordinance No. 2007-079, which prohibits the construction and operation of new billboards within the City. Ordinance No. 2007-079 also provides, however, that this prohibition does not limit the City’s ability to enter into relocation agreements under which new billboards may be constructed in exchange for the permanent removal of existing billboards, as encouraged by the Outdoor Advertising Act.¹ Section 15.148.815 of the Sacramento City Code (“**Section 15.148.815**”) prescribes when and how the City may enter into a relocation agreement.

CCO desires to construct, maintain, and operate two new billboards on privately owned land within the City’s jurisdiction, at CCO’s sole expense (the “**New Billboards**”). The first column of Exhibit A to this agreement identifies the lands on which CCO proposes to locate the New Billboards (the “**New Billboard Sites**”). CCO owns the existing billboards identified in the second column of Exhibit A, each of which is located on privately owned land within the City’s jurisdiction (the “**Existing Billboards**”). To fulfill the requirement that CCO remove existing billboards in return for the right to construct, operate, and maintain the New Billboards on the New Billboard Sites, CCO applied to the City for a relocation agreement covering the Existing Billboards (Project No. P11-006). Removal of the Existing Billboards and construction of the New Billboards will result in a net reduction within the City of both (1) the total number of lawfully permitted offsite signs and (2) the total square footage of lawfully permitted offsite signage, as required by Section 15.148.815.

In accordance with Section 15.148.815, on October 11, 2012, the City’s Planning and Design Commission held a public hearing on CCO’s application for a relocation agreement and then forwarded a recommendation of approval to the City Council; and on November 13, 2012, the City Council held a public hearing on the application and approved it based on the findings of fact, and subject to the conditions of approval (if any), set out in Resolution No. 2012-___.

With these background facts in mind, the parties agree as follows:

1. Removal of Existing Billboards. In return for the City’s approval of the New Billboards (Project No. P11-006), and to comply with Ordinance No. 2007-079, Section 15.148.815, and the Outdoor Advertising Act, CCO shall remove the Existing Billboards according to the schedule set forth in the second column of Exhibit A.

¹ Chapter 2 (beginning with section 5200) in division 3 of the California Business and Professions Code.

2. Compliance with Law. While removing the Existing Billboards and while constructing, operating, and maintaining the New Billboards on the New Billboard Sites, CCO shall comply with all conditions of approval set out in Resolution No. 2012-___ and with valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Existing Billboards, the New Billboards, or the New Billboard Sites, including Section 15.148.815 and the Outdoor Advertising Act, whether enacted or issued before, on, or after the effective date of this agreement (see section 6(h), below).

3. Waiver of Compensation. CCO hereby waives and releases all claims for compensation CCO has or may have in the future that are against the City or the City's elected officials, officers, employees, or agents and are related to, or connected with, CCO's removal of the Existing Billboards. This waiver and release includes any claims made or arising under the California Government Claims Act,² the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965,³ or the United States Constitution.

4. Release of Claims. CCO unconditionally and forever releases and discharges the City and the City's elected officials, officers, employees, and agents from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that in any way arise from, or are connected with, CCO's removal of the Existing Billboards. This release and discharge covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind, past, present, and future, whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or unmatured. CCO hereby waives all rights it has or may have in the future under section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor."

5. Indemnity. CCO shall indemnify, defend (upon the City's written request), protect, and hold the City and the City's elected officials, officers, employees, and agents harmless against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through appeal) that arise in any way from either or both of the following:

- (a) The acts or omissions of CCO or CCO's officers, employees, or agents in removing the Existing Billboards.
- (b) The City's processing and approval of CCO's application for this relocation agreement. CCO's obligation under this section 5(b) includes all claims by the owner of property from which an Existing Billboard is removed, including claims based on the California

² Parts 1 through 7 (beginning with section 810) in division 3.6 of title 1 of the California Government Code.

³ Title 23 United States Code section 131.

Government Claims Act, the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965, or the United States Constitution.

6. Miscellaneous.

- (a) *Notices.* Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 6(a) to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If to the City:

City of Sacramento
Community Development Department
Planning Division
300 Richards Boulevard, Third Floor
Sacramento, California 95811
Attention:
Antonio Ablog
Associate Planner

If to CCO:

Clear Channel Outdoor, Inc.
401 Slobe Avenue
Sacramento, California 95815
Attention:
Susan Holshouser
Market President
Clear Channel Outdoor Sacramento

- (b) *Assignment.* A party may not assign or otherwise transfer this agreement or any interest in it without the other party's written consent. An assignment or other transfer made contrary to this section 6(b) is void.
- (c) *Successors and Assigns.* This agreement binds and inures to the benefit of the successors and assigns of the parties. This section 6(c) does not constitute the City's consent to any assignment of this agreement or any interest in this agreement.
- (d) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, without regard to conflict-of-law principles, subject to the following:
- (1) Sections 3, 4, and 5 of this agreement are to be interpreted so as to provide the City and the City's elected officials, officers, employees, and agents with the maximum protection possible against any obligation or liability that in any way arises from, or is connected with, CCO's removal of the Existing Billboards.
 - (2) The rule of interpretation in Civil Code section 1654 will not apply.

- (3) “Include” and its variants are terms of enlargement rather than of limitation. For example, “includes” means “includes but not limited to,” and “including” means “including but not limited to.”
- (4) Exhibit A is part of this agreement.
- (e) *Waiver of Breach.* A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party’s breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of the other party’s breach of any term or provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- (f) *Severability.* If a court with jurisdiction holds any nonmaterial provision of this agreement to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.
- (g) *Counterparts.* The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- (h) *Effective Date.* This agreement is effective as of the date on which both the City and CCO have signed it, as indicated by the dates in the signature blocks below.
- (i) *Time of Essence.* Time is of the essence of this agreement.
- (j) *Integration and Modification.* This agreement sets forth the parties’ entire understanding regarding the matters addressed. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

By: _____
John F. Shirey
City Manager
Dated: November __, 2012

Clear Channel Outdoor, Inc.

By: Susan Holshouser
Susan Holshouser
Market President
Clear Channel Outdoor Sacramento
Dated: November 6, 2012

Attest:
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

**Exhibit A to Billboard Relocation Agreement
City of Sacramento and Clear Channel Outdoor**

New Billboards	Existing Billboards
<p>New Billboard 1 <i>General Location:</i> 575 Display Way <i>APN:</i> 250-0040-064 <i>Zoning:</i> M-1 (Light Industrial) <i>General Description:</i> two-sided billboard (14' X 48') <i>Total Display Area:</i> 1,344 square feet</p> <p>New Billboard 2 <i>General Location:</i> 1235 Fee Drive <i>APN:</i> 250-0040-064 <i>Zoning:</i> M-1 (Light Industrial) <i>General Description:</i> two-sided billboard (14' X 48') <i>Total Display Area:</i> 1,344 square feet</p> <hr/> <p>Total Number of Sign Structures: 2 Total Number of Display Faces: 4 Total Display Area: 2,688 square feet</p>	<p>CCO shall permanently remove these Existing Billboards from the indicated locations <i>before</i> CCO begins constructing the New Billboards:</p> <p>Existing Billboard 1 <i>General Location:</i> 2452 Del Paso Boulevard <i>APN:</i> 265-0296-021-0000 <i>Zoning:</i> C-2 <i>CCO Location Number:</i> 4057 <i>General Description:</i> one-sided billboard (12' X 25') <i>Total Display Area:</i> 300 square feet</p> <p>Existing Billboard 2 <i>General Location:</i> 1537 Grand Avenue <i>APN:</i> 251-0083-014 <i>Zoning:</i> C-1 <i>CCO Location Number:</i> 4223 / 4224 <i>General Description:</i> two-sided billboard (12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 3 <i>General Location:</i> 3330 Marysville Boulevard <i>APN:</i> 251-0230-041-0000 <i>Zoning:</i> Mixed <i>CCO Location Number:</i> 4285 / 4286 <i>General Description:</i> two-sided billboard (12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 4 <i>General Location:</i> 909 Fee Drive <i>APN:</i> 277-0241-033-0000 <i>Zoning:</i> M-1 <i>CCO Location Number:</i> 2432 <i>General Description:</i> two-sided billboard (23.2' X 65.5') <i>Total Display Area:</i> 3,039.2 square feet</p> <hr/> <p>Total Number of Sign Structures: 4 Total Number of Display Faces: 7 Total Display Area: 4,539.2 square feet</p>

Net Reduction in Number of Sign Structures:	2 signs
Net Reduction in Number of Display Faces:	3 faces
Net Reduction in Display Area:	1,851.2 square feet