

RESOLUTION NO. 2015-0098

Adopted by the Sacramento City Council

April 23, 2015

ADOPTING FINDINGS OF FACT APPROVING THE DISPLAY WAY BILLBOARD-RELOCATION AGREEMENT (P14-057)

BACKGROUND

- A. On March 26, 2015, the City Planning and Design Commission conducted a hearing on the Display Way Billboard Relocation Project (P14-057), which consists of the construction of a double-faced off-site sign with a total display area of 1,344 square feet (the “**Project**”). At the conclusion of the hearing, the Commission forwarded the Project to the City Council with a recommendation to approve.
- B. On April 23, 2015, the City Council conducted a public hearing, and received and considered evidence concerning the Project. Notice of the public hearing was given as required by City Code § 17.812.010(A).
- C. The City’s Environmental Planning staff reviewed the Project and determined that it is categorically exempt from the California Environmental Quality Act (14 Cal. Code Regs. § 15303 [new construction of small facilities and structures]).

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 public 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 relocated signage complies with the purpose and requirements of [City Code § 15.148.815] and [City Code chapter 15.148].”

The new sign complies with City Code chapter 15.148 regarding signs.

- (b) “The relocated signage is compatible with the uses and structures on the site and in the surrounding area, including parks, trails and other public facilities and amenities.”

The new sign is compatible with its site. It will be placed on property zoned for industrial uses and will not significantly affect residential development.

- (c) “The relocated signage will not interfere with on-site access, circulation or visibility.”

The new sign is located on its site such that it will not interfere with the day-to-day operations of other uses on or near the site or with visibility on or near the site.

- (d) “The relocated signage will not create a traffic or safety hazard.”

The new sign will not create traffic or safety hazards. It is static sign that will have a constant illumination at night (no blinking or flashing lights).

- (e) “The relocated signage will not result in any undue or significant increase in visual clutter in the area surrounding the new site.”

The new sign will not result in any undue or significant increase in visual clutter. The sign will be smaller and lower than other existing off-site signs in the vicinity.

Table of Contents:

Exhibit A – Relocation Agreement

Adopted by the City of Sacramento City Council on April 23, 2015, by the following vote:

Ayes: Members Ashby, Carr, Hansen, Harris, Jennings, Schenirer and Warren

Noes: None

Abstain: None

Absent: Mayor Kevin Johnson

Vacant: District 6

Attest:

Shirley Concolino Digitally signed by Shirley Concolino
DN: cn=Shirley Concolino, o=City of Sacramento, ou=City
Clerk, email=sconcolino@cityofsacramento.org, c=US
Date: 2015.05.05 15:57:12 -07'00'

Shirley Concolino, City Clerk

Billboard Relocation Agreement
City of Sacramento and Clear Channel Outdoor
(575 Display Way)

This agreement, dated April 23, 2015, 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 a new billboard on privately owned land within the City’s jurisdiction, at CCO’s sole expense (the “New Billboard”). The first column of Exhibit A to this agreement identifies the land on which CCO proposes to locate the New Billboard (the “New Billboard Site”). 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 Billboard on the New Billboard Site, CCO applied to the City for a relocation agreement covering the Existing Billboards (Project No. P14-057). Removal of the Existing Billboards and construction of the New Billboard 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 March 26, 2015, 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 April 23, 2015, 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. 2015-____.

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 Billboard (Project No. P14-057), 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 Billboard on the New Billboard Site, CCO shall comply with all conditions of approval set out in Resolution No. 2015-____ and with valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Existing Billboards, the New Billboard, or the New Billboard Site, 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.

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.

- (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 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:
Elise Gumm
Associate Planner

If to CCO:

Clear Channel Outdoor, Inc.
401 Slobe Avenue
Sacramento, California 95815
Attention:
Susan Holshouser
Branch President - Sacramento
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 set forth above and is intended to be their final, complete, and exclusive expression of those matters. 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

Clear Channel Outdoor, Inc.

By: _____
John F. Shirey
City Manager
Dated: April ____, 2015

By: _____
Susan Holshouser
Branch President - Sacramento
Clear Channel Outdoor Sacramento
Dated: April ____, 2015

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
575 Display Way**

New Billboard	Existing Billboards
<p><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 (each 14' X 48') <i>Total Display Area:</i> 1,344 square feet</p> <hr/> <p>Total Number of Sign Structures: 1 Total Number of Display Faces: 2 Total Display Area: 1,344 square feet</p>	<p>CCO shall permanently remove these Existing Billboards from the indicated locations <i>before</i> CCO begins constructing the New Billboard:</p> <p>Existing Billboard 1 <i>General Location:</i> 1200 Arden Way <i>APN:</i> 277-0241-079-0000 <i>Zoning:</i> M-1 <i>CCO Location Numbers:</i> 4528 & 4529 <i>General Description:</i> two-sided billboard (each 12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 2 <i>General Location:</i> 1604 Auburn Boulevard <i>APN:</i> 266-0271-010-0000 <i>Zoning:</i> M-1 <i>CCO Location Numbers:</i> 4024 & 4025 <i>General Description:</i> two-sided billboard (each 12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 3 <i>General Location:</i> Highway 160 @ Canterbury Lane <i>APN:</i> 275-0240-105-0000 <i>Zoning:</i> C-2-LI <i>CCO Location Number:</i> 4301 / 4302 <i>General Description:</i> two-sided billboard (each 12' X 25') <i>Total Display Area:</i> 600 square feet</p> <hr/> <p>Total Number of Sign Structures: 3 Total Number of Display Faces: 6 Total Display Area: 1,800 square feet</p>

Net Reduction in Number of Sign Structures:	2 signs
Net Reduction in Number of Display Faces:	4 faces
Net Reduction in Display Area:	456 square feet