August 16, 2011

City Council Members
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012

Re: City-Wide Bus Bench Program
Council File No. 11-1068, Item #23 on Aug. 16, 2011 Agenda

Dear Councilmembers:

The Brentwood Residents Coalition ("BRC")[1] asks that the Council delay consideration of the City-Wide Bus Bench Program (the "Program") pending further review of the legal issues raised in this letter. The Program, as currently presented, violates the City's own Planning Documents and the California Environmental Quality Act ("CEQA").

1. The Program Violates Planning Documents That Prohibit Off-Site Advertising In Specific Plan Areas and Along Scenic Highways.

The City's Planning Documents, including the General Plan, Community Plans, and Specific Plans, govern land use in the areas covered by such plans. Many areas covered by these planning documents prohibit or restrict the placement of outdoor advertising, including the type of off-site advertising that would be permitted under the Program. The purpose of these planning restrictions on off-site advertising is to preserve and enhance the visual character of protected areas by prohibiting or strictly limiting the placement of outdoor advertisements.

The City's **General Plan** explicitly restricts the placement of signs and outdoor advertisements on Scenic Highways, which include roadways designed under the General Plan or Community or Specific Plans as "Scenic Highways," a category of protected roadways that includes Sunset Boulevard, portions of Santa Monica Boulevard, Avenue of the Stars, and portions of Wilshire Boulevard. The General Plan provides that (1) "Only traffic, information, and identification signs shall be permitted within the public right-of-way of a Scenic Highway;" and (2) "Off-site outdoor advertising is prohibited in the public right-

[1] The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

of-way of, and on public-owned land within five hundred feet of the center line of, a Scenic Highway." General Plan, Transportation Element, Section D, subd. (4)(a).

Similarly, **Specific Plans** have been enacted that likewise prohibit or strictly limit the placement of off-site advertisements in the following areas, among others: The San Vicente Scenic Corridor, the Mulholland Scenic Parkway, the Pacific Palisades Commercial Village and Neighborhoods, Westwood Village, the Westwood Boulevard Pedestrian Oriented District, the Westwood Pico Neighborhood Oriented District, and the Santa Monica Boulevard Transit Parkway.

While the Department of Public Works has authority over the public right of way, that authority is not exclusive where, as in this instance, the installation of advertisements would violate zoning restrictions, such as those reflected in City Planning Documents. The intent of zoning restrictions set forth in Planning Documents is to preclude off-site advertising in such protected areas. That intention would be undermined by allowing off-site advertising along public rights of way within areas subject to such zoning protection.

We understand that some have asserted that Planning Documents do not cover advertising on public streets, sidewalks or rights of way, because such zoning restrictions apply only to the use of private property. That interpretation not only conflicts with the clear intention of the Planning Documents to regulate visual blight in scenic areas, it would also violate a cardinal rule of statutory construction by nullifying express language from the General Plan and certain Specific Plans.

Under this erroneous interpretation, Section D(4)(a) of the General Plan's Transportation Element would be a *nullity* because it expressly prohibits advertising on and along Scenic Highways and rights of way. Specifically, the following restrictions would be *completely ineffective* if the General Plan only restricts the use of private property: (1) "Only traffic, information, and identification signs shall be permitted **within the public right-of-way of a Scenic Highway**;" and (2) "Off-site outdoor advertising is prohibited **in the public right-of-way** of, and **on public-owned land within five hundred feet of the center line of**, a Scenic Highway."

Similarly, the advertising restrictions within Specific Plan areas, such as the San Vicente Scenic Corridor Specific Plan, would be nullified in part. The San Vicente Specific Plan prohibits the placement of off-site advertisements within "the San Vicente Scenic Corridor," an area defined to encompass "[t]he land area visible from and normally contiguous to, a Scenic Highway which can realistically be subjected to protective land use controls. Minimally it will incorporate the Scenic Highway [San Vicente Boulevard in Brentwood] and the adjacent lots but may extend to the line of sight." San Vicente Corridor Specific Plan, Section 6(A)(1) & Section 3. Further, the construction holding that such zoning regulations apply only to private property would nullify the Specific Plan provision regulating the dimensions of public sidewalks, requiring 12-foot sidewalks, and the maintenance of an

"unobstructed width of 10 feet for pedestrian access." *Id.* Section 9(A)(1). These Specific Plan regulations were drafted to control aesthetic aspects within the public rights of way, which would be completely nullified if the restrictions only applied to private property.

Any interpretation that would limit the scope of Planning Documents to the regulation of land uses on private (but not public) property would violate a central "canon" of statutory interpretation. This basic tenet "generally preclude[s] judicial construction that renders part of the statute 'meaningless or inoperative.' [Citation.]" *Anders v. Superior Court*, 192 Cal.App.4th 579, 587 (2011) (quoting *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 715–716 (2003)). Here, the Planning Documents can and must be construed as applying to public and private property, as the plain meaning of such ordinances require, and the Charter's specification of Public Work's jurisdiction must be construed as non-exclusive with respect to matters of zoning.

For these reasons, the Program and proposed contract must be revised to clarify that such advertisements cannot be installed within Scenic Highway or Specific Plan areas where Planning Documents prohibit off-site advertising.

2. The Program Cannot Be Approved Without An Environmental Impact Report.

The City has consistently recognized that the installation of outdoor advertising signs create visual blight and impair traffic safety. *Metro Lights LLC v. City of Los Angeles*, 551 F.3d 898, 901-902 (9th Cir. 2009). The Program would result in the installation of hundreds of new off-site advertisements in areas where such advertising is prohibited by the General Plan and Community and Specific Plans. Even if the Planning Documents are deemed inapplicable within rights of way, which they are not, the Program's likely significant environmental impacts would trigger CEQA's mandate that the City prepare an environmental impact report before approving the Program.

Under the Program, Martin Outdoor Media, LLC ("Martin") would receive a "blanket permit" to install off-site advertising throughout the City, without any public process governing the placement of such advertising. *See* Contract for 10 Year Bus Bench Program (rev. 6/14/11) ("Contract"), Sections 5.1, 6.2.6, 8.4. The Program, which would authorize the installation of outdoor advertisements throughout the City, constitutes a "project" under CEQA because it is an activity that may cause a direct physical change in the environment. Pub. Res. Code Section 21065. The granting of a blanket permit, as under the Contract, is a discretionary determination and therefore subject to CEQA review. Pub. Res. Code Section 21080(a). Because the blanketing of the City with such off-site advertisements may have a potentially significant impact on the environment – in terms of both the aesthetic and traffic impacts (*Metro Lights*, 551 F.3d at 901-902) – an EIR is required under CEQA. See *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 938-940 (2004) (holding that project's

potentially significant aesthetic impacts require EIR); *Mejia v. City of Los Angeles*, 130 Cal.App.4th 322, 340, 342 (2005) (holding that EIR was required to assess potentially significant traffic impacts).

The Program is not subject to a categorical exemption, even if a category would otherwise appear applicable, because the installation of off-site advertising on this scale would create far more than a reasonable possibility of a significant environmental impact. That potentially significant impact precludes application of a categorical exemption. 14 Cal. Code Regs. Section 15300.2(b), (c). That is particularly true in this case, given the cumulative impacts of the many installations throughout the City. *Committee to Save Hollywoodland Specific Plan v. City of Los Angeles*, 161 Cal.App.4th 1168, 1186-87 (2008).

For these reasons, the Program cannot be approved in its current form. The Program must be revised to remove areas in which Planning Documents preclude or restrict the installation of off-site advertising. The BRC therefore recommends that the Council defer its decision on this matter pending further analysis by the Office of the City Attorney, addressing the issues raised in this letter.

Respectfully submitted,

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