



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh
Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: December 15, 2017

Approved

D. D. S. Y. L.

Date

12/18/17

SUPPLEMENTAL

SUBJECT: OFF-PREMISE COMMERCIAL ADVERTISING ON CITY-OWNED SITES AND NON-CITY-OWNED SITES

REASON FOR THE SUPPLEMENTAL

This memorandum provides additional analysis that supplements the memorandum dated November 15, 2017 that was submitted to the Community and Economic Development (CED) Committee (11/15/17 memorandum). At the CED Committee meeting held on November 27, 2017, the Committee recommended to Council the staff recommendation with the addition of considering publicly-owned sites such as those owned by the Santa Clara Valley Transportation Authority (VTA) being expedited, the addition of working with the advertising entities, and refining the timeline.

RECOMMENDATION

1. Accept a status report on implementing the work plan to investigate removing existing barriers to off-premise (off-site) commercial advertising on City-owned and non-City-owned sites in the City of San José.
2. Direct staff to implement a phased work plan that could allow:
 - a) New off-site advertising on City-owned sites throughout the City, including exchange of existing legal static billboards on other sites for new electronic billboards on City-owned sites (Phase I);

- b) Exchange of existing legal static to electronic billboards on non-City-owned existing freeway-facing sites and new freeway-facing sites in the North San José Development Policy Area; (Phase II) and
 - c) New offsite advertising on non-City-owned sites in the Downtown Sign Zone, including exchange of existing legal static billboards on other sites for new electronic billboards in the Downtown Sign Zone (Phase II).
3. As recommended by CED Committee, consider including other sites owned and controlled by other public agencies/entities in the first phase of the off-site advertising work plan.

OUTCOME

If the Council adopts staff’s recommended work plan for off-premise commercial advertising, then staff will continue implementing the work plan according to the schedule for Phase I and Phase II as outlined in the November 15, 2017 memorandum. If the Council were to revise the work plan to expedite off-premise advertising for other publicly-owned sites in Phase I, in addition to City-owned sites, then staff proposes an expanded timeline as shown in the “Phase I Alternative” column in the following table. As a point of comparison, this table also includes the Phase 1 approach recommend by staff.

Table 1: Projected Timeline for task completion - Electronic Billboards

Phase	Item	CEQA	GPA	Zoning, Policy Updates	RFI/RFP	Implementation
Phase I (staff rec)	City-owned sites citywide including in Downtown	Summer 2018 (assuming ND)	Summer 2018	Fall 2018	Fall 2018	Spring 2019
Phase I alternative	City-owned sites city-wide and publicly-owned sites citywide, including in Downtown	Fall 2019	Fall 2019	Fall 2019	Spring 2020	Spring 2020

BACKGROUND

At the City Council public hearing held on May 16, 2017, the Council unanimously directed staff to implement the work plan for City-owned and controlled sites as identified in the April 12,

2017 memorandum from staff to the CED Committee. Council also directed staff to report back to the CED Committee in November 2017 with recommendations related to allowing off-premise advertising on non-City-owned and controlled sites in the Downtown Sign Zone, updating the existing Billboard Relocation Program to address electronic digital billboards, and revising regulation of public right-of-way signage.

On November 27, 2017, staff provided a report to the CED Committee on: 1) the status of Phase I of the work plan, and 2) recommendations related to allowing new off-premise advertising on non-City owned sites in the Downtown Sign Zone, updating the existing Billboard Relocation Program to address electronic digital billboards, and revising regulation of public right-of-way signage, as identified in Phase II of the work plan (see 11/15/17 memorandum for additional background). Public comments made at the meeting include statements from a representative of the VTA and from a representative of the Metropolitan School District, to expand Phase I of the work plan to include sites owned by other public entities in addition to City-owned sites. Other public comments made at the Committee meeting included statements from representatives of billboard companies to have staff work with the advertising industry to expedite the timeline.

The CED Committee passed a motion to recommend to the City Council the staff recommendation with the addition of looking at the possibility for publicly-owned sites such as those owned by the VTA being expedited, the addition of working with the advertising entities, and on refining the timeline.

ANALYSIS

Title 23 of the San José Municipal Code (the Sign Code) currently does not allow new permanent off-premise commercial advertising under the City of San José's jurisdiction. Commercial advertising that is under the City's jurisdiction includes commercial advertising on: 1) City-owned property; 2) privately-owned property; and 3) hundreds of properties owned or controlled by public entities other than the City, itself. These properties include but are not limited to parcels owned or controlled by the County of Santa Clara, the State, the Federal Government, public school districts, public transportation agencies, and the Santa Clara Valley Water District.

Federal and State law greatly limit the siting of off-premise commercial advertising in the City, but allow the City to address commercial advertising on its own City-owned sites in a different manner than commercial advertising on all other sites that are under the City's jurisdiction. This means that the City can prioritize commercial advertising on City-owned sites, over other sites, within the limited number of viable sites that are eligible under Federal and State law for off-site commercial advertising.

There are a very large number of public-entity-owned properties under the City's jurisdiction that are not owned or controlled by the City. Under the First Amendment, advertising on these public-entity-owned properties must be treated by the City in the same manner as privately-owned properties. Therefore, staff recommends that Phase I of the Council-directed work plan

remain as is so that this phase still only covers City-owned sites for policy and code changes to allow new permanent off-premise commercial advertising. Phase II would continue to address policy and code changes that could allow off-premise commercial advertising on other publicly-owned sites such as those owned by VTA.

Staff recommends against treating sites owned by other public entities differently than non-City owned sites for the following reasons:

1. Proceeding with a first phase of City-owned sites only for new off-site signage will allow the City to use its experience with the City-owned properties to develop the criteria that it needs to regulate such signage on non-City owned sites, including other public entity sites. For the City to allow off-site advertising on some non-City owned sites, but continue to ban off-site advertising on other non-City owned sites, the City must comply with First Amendment requirements, which go beyond what is required for typical land use regulations. It is clear that the City can allow off-site signs on non-City owned property only in some sign zones or only on property with certain physical characteristics. However, in order to create or revise a sign zone or describe the characteristics of the properties where such signs are allowed, the City must: 1) articulate the substantial public interest(s) that are served by exempting some properties from the off-site sign; 2) show that the City's interests are directly advanced by the exception(s) that it creates to the ban; and 3) that creation of the exception(s) reaches no further than necessary to accomplish the City's interests. In order to meet this First Amendment standard for sign regulation of non-city owned property, cities typically describe only time, place and manner exceptions; and they avoid exceptions that appear to favor a particular speaker, or group of speakers, or to create too many new exceptions to a general ban.
2. By adding publicly-owned sites (public properties) to the scope of Phase I of the work plan, the scope of this phase would greatly expand beyond the "pilot" scale of only City-owned sites. In addition to the need to create the regulatory framework discussed above, consideration of other public-entity-owned sites in the first phase would complicate the identification of siting opportunities for billboards on City-owned sites and for on-site programmable signs, due to State and Federal minimum spacing requirements for highway-facing signs.
3. As indicated in the November 15, 2017, memorandum, expanding the scope of Phase I would also delay the CEQA timeline, because the CEQA work could not be started until appropriate criteria for non-City owned site selections have been developed. For example, selecting the non-City owned sites based purely on the identity of the entity that owns the property may result in identification of sites with significant constraints.

EVALUATION AND FOLLOW UP

The work plan scope and timeline as recommended by staff for Phase I and Phase II are summarized in the November 15, 2017 memorandum and are consistent with Council direction

to staff on May 16, 2017. If the Council now revises direction to staff in order to have staff analyze an expanded scope in Phase I, staff anticipates a greater amount of time and staff resources to complete Phase I analysis as previously explained. Depending on the scope of changes, CEQA review might be completed by Fall 2019. Scheduling public hearings for General Plan amendments would then be coordinated within one of the up to four General Plan Amendment hearing cycles that the City may hold each year.

Based on stakeholder input and Committee member discussion on November 27, 2017, staff proposes that billboard takedown/conversion ratios for City-owned sites do not need to be defined by the Municipal Code, and can be determined through recommended guidance in a proposed City Council Policy regarding off-site advertising on City-owned sites.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

CEQA

Not a Project, File No. PP17-010 City Administrative Activities. This memorandum is an information report that is not a project pursuant to the California Environmental Quality Act.

/s/
KIM WALESH
Deputy City Manager
Director of Economic Development

/s/
ROSALYNN HUGHEY
Interim Director of Planning, Building
and Code Enforcement

For general questions, please contact Jenny Nusbaum, Principal Planner, at (408) 535-7872.