



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** September 14, 2018

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**SUBJECT: FILE NO. PP18-058. AN AMENDMENT TO THE ENVISION SAN JOSE 2040 GENERAL PLAN TO DELETE GENERAL PLAN LAND USE POLICY CD10.4, REVISE CITY COUNCIL POLICY 6-4, AND UPDATE SECTIONS 23.02.870 AND 23.02.1310 OF TITLE 23 (THE SIGN CODE) OF THE MUNICIPAL CODE TO ALLOW SIGNS ON CITY-OWNED PROPERTY, INCLUDING BILLBOARDS, PROGRAMMABLE ELECTRONIC SIGNS, AND SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH, AND TO MAKE UPDATES OR OTHER TECHNICAL, NON-SUBSTANTIVE CHANGES, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 23.**

## **RECOMMENDATION**

- a) Recommend that the City Council adopt a resolution to approve the Initial Study/Negative Declaration for amendment of the Envision San Jose 2040 General Plan to delete General Plan Land Use Policy CD 10.4, revision of City Council Policy 6-4, and an ordinance amending Sections 23.02.870 and 23.02.1310 of Title 23 of the San José Municipal Code to allow consideration of signs on city-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those sections of Title 23, for which an initial study was prepared, all in accordance with CEQA.
- b) Recommend that the City Council adopt a resolution approving an amendment to the Envision San Jose 2040 General Plan Land Use Policy CD-10.4.
- c) Recommend that the City Council adopt a resolution approving a new City Council Policy 6-4 entitled “Signs on City-owned land, including Billboards, Programmable Electronic Signs and Signs displaying off-site Commercial Speech,” and superseding existing City Council Policy 6-4.

- d) Recommend the City Council adopt an ordinance amending Title 23 of the Municipal Code (the Sign Code), specifically sections 23.02.870 and 23.02.1310, and make other technical, formatting or non-substantive changes within the Sign Code, as described above.

## **OUTCOME**

If the Council adopts staff's recommendation, the Office of Economic Development will proceed with the RFP/RFI process for city-owned sites as outlined in the staff report. If the Council were to approve the Planning Commission's recommendation, the RFP/RFI process could continue as planned for Phase 1, but the Planning Commission and Council could not consider implementation options for Phase 2 without further amendment of General Plan Policy CD-10.4.

## **BACKGROUND**

On August 22, 2018, the Planning Commission conducted a public hearing on the proposed amendments to the General Plan Policy, City Council Policy and Sign Code changes. Staff presented the proposed amendments to the General Plan Policy CD-10.4, and other accompanying sections.

### **Planning Commission Discussion**

The Planning Commission voted 4-2-1 (Commissioner Vora absent) to recommend City Council approve items *a*, *c*, *d*, as proposed by staff; and modify item *b* to amend the Land Use Policy CD-10.4 to only exempt City owned sites from the prohibition of billboards on freeways, grand boulevards and gateway locations.

Commissioner Yesney asked for clarification about signs promoting a positive image of the city and expressed concerns over the proposed deletion of the General Plan Policy that currently prohibits billboards on freeways, grand boulevards and gateway locations. Staff clarified that billboards and signs are used in big cities to promote vibrancy and a sense of identity; staff also noted the recent revival of billboards in Detroit and Cleveland as examples.

Staff from the Office of Economic Development added that the nine signs on the eight potential downtown sites could bring in a revenue of approximately \$200,000 annually. Staff noted that the billboards in downtown would be considered non-traditional billboards and include both building mounted and non-programmable signs.

Planning Staff also highlighted that the General Plan 2040 includes other Policies such as CD-1.30 and 1.31, which encourage signs city-wide. Title 23 of the San Jose Municipal Code currently allows the possibility for relocation of existing billboards from areas of visual blight and residential neighborhoods and also allows programmable on-site signs, whose operational requirements are not different from off-site signs. The phased approach would further impose

limitations on the total number of signs and exercise control over the development, aesthetics, and operation of signs. Staff also added that they were not able to identify a significant number of potential sites during the Phase I review because of State and federal regulations and limitations on location and placement.

Commissioner Ballard inquired about the original decisions to ban billboards citywide. Staff stated that citywide ban on billboards was in the 1970s, which perhaps grew out of the Highway Beautification incentives of the 1960's that were led by former first lady, Lady Bird Johnson. Commissioner Yesney added that in the 1980s billboards were still deemed unattractive, and the City did not gain any financial benefit from the advertising of off-site signs. This resulted in the City's further limitation of advertising to on-site signs. The existing prohibition in the General Plan was not added until the 2040 General Plan. Staff noted that Downtown and the North San Jose Area design guidelines include mitigating measures for signage development and added that the Outdoor Advertising Act does not permit off-site advertising along landscaped freeway sections. Most of the freeway segments in San Jose are designated as landscaped freeways, and therefore opportunities for off-site signage along those sections are limited.

Staff noted that art messaging was explored in cities like Denver. Staff also added that of the nine sites identified within Downtown, 14 signs are expected to be mounted on buildings within this boundary. The mounting of the signs would have to blend in with the architecture of the building and explore newer creative ways to adapt an existing façade.

Commissioner Ballard inquired about the content of the sign and also the safety aspects of the signs. Staff clarified that while the ability to regulate content on off-site signage is restricted by federal and State statutes, the sign design and presentation could be regulated through the RFP process. Staff also added that the criteria incorporated into the operational requirements of programmable signs, as regulated by Caltrans, is intended to address driver safety.

Commissioner Yesney asked if the Lick Observatory concerns related to the 15-degree tilt were addressed. During the outreach process, Lick Observatory had recommended operational criteria to minimize impact on dark sky. Staff indicated that discussions between Lick Observatory and the sign industry were conducted to explore if additional options could be considered which would mitigate the 15-degree tilt, and which could likely result in a consensus.

Commissioner Leyba said if the Downtown signs were deemed non-traditional signs, they could likely be installed without the deletion of the General Plan Policy. Commissioner Yesney supported the retention of the General Plan Policy and advocated for the exception from the prohibition to only city-owned sites. She recommended that Planning Commission review the removal of the prohibition during Phase 2 and review if the Policy should be amended at that time.

Commissioner Marquez supported staff recommendation, as proposed, and mentioned that during her prior work experience with Caltrans, it was clear that text messaging proved to be a

greater issue than sign design. Along with Commissioner Grisworld, she did not vote in favor of the recommendation to amend General Plan Policy CD-10.4.

### Public Testimony

Three members of the public spoke on the item. The first speaker, representing Clear Channel Outdoor, thanked staff and supported the proposed amendments, but had a question related to the required 15-degree tilt and if providing louvres is deemed equivalent to eliminate the upward glow. The second speaker, representing Orange Barrel, indicated that the company is primarily focused on downtowns and has signs in Denver, Atlanta and Boston. The final public speaker representing Hopkins Carley, commented on the required 150 feet distance from a dwelling unit. He mentioned that some sites, especially within Downtown, may not be able to meet that requirement.

### ANALYSIS

A complete analysis of the issues regarding the proposed General Plan Policy text, City Council Policy 6-4 and Sign Code amendments is contained in the attached Planning Commission Staff Report. However, several changes were made to the recommended Council Policy 6-4 after it was posted for the Planning Commission agenda. Also, the proposed Code language that was posted for the Planning Commission agenda was edited in preparation of the ordinance that is posted for the Council agenda ordinance to:

- (a) Delete reference to Part 6 of Chapter 23.04 of the Municipal Code, which is not being amended at this time;
- (b) Clarify that City Council will be Administrative Authority for signs approved under Council Policy 6-4 to clarify the application of the requirements of Council Policy 6-4, in lieu of the requirements of Title 23, to signs erected on City owned sites pursuant to Council Policy 6-4.

In addition, the Initial Study/Negative Declaration that was posted for the Planning Commission agenda was revised to reflect the above-mentioned changes to the Council Policy 6-4. The link to the revised Initial Study/Negative Declaration can be found here:

<http://www.sanjoseca.gov/index.aspx?NID=6126>

### POLICY ALTERNATIVES

***Alternative 1: Approve the recommended changes per the Planning Commission recommendation.***

**Pros:** Approval of the Planning Commission recommendation would allow the City to move forward with implementing billboards on City-owned sites (Phase I). If the proposed changes to the recommendation by the Planning Commission is approved, the amendment to the Envision

San Jose 2040 General Plan will not delete Land Use Policy CD-10.4; rather, the recommendation to amend this Policy will continue the prohibition of billboards on freeways, grand boulevards and gateway locations for non-city-owned sites.

**Cons:** The proposed amendments are intended to implement Council direction, including the direction to explore and bring back a recommendation related to Phase 2. The City Council would have to consider deletion of the General Plan Land Use Policy CD-10.4 during Phase 2, along with the other related Ordinance and Policy amendments in order to implement Phase 2.

**Reason for not recommending:** Staff was directed by Council to work on the Phase 1 and Phase 2 process. By deleting the General Plan Policy, staff will be able to present the full range of options for Phase 2 to the Council.

### **EVALUATION AND FOLLOW-UP**

If the proposed General Plan Policy text, City Council Policy and Ordinance amendments are approved by Council, the approved amendments will be effective 30 days after the second reading. At that time, the Office of Economic Development can issue an RFP/RFI to being the solicitation for signs on the approved City-owned sites.

### **PUBLIC OUTREACH**

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice, including the Planning Commission and City Council hearing dates, was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff posted the hearing notice, staff report, and draft ordinance on the PBCE Department website. Staff has been available to discuss the proposal with interested members of the public.

Staff conducted outreach efforts to gather public input on the proposed amendments, including two community meetings and four focus group meetings during the months of August-October 2017. Most recently in July 2018, staff facilitated discussions with the sign industry and the Lick Observatory.

### **COORDINATION**

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney's Office and the Office of Economic Development.

Additionally, the proposed ordinance was coordinated with the Airport Land Use Commission (ALUC). On June 27, 2018, the ALUC conducted a hearing and determined the project to be consistent with the Comprehensive Land Use Plan for San Jose International Airport (CLUP).

HONORABLE MAYOR AND CITY COUNCIL

September 14, 2018

**Subject: General Plan Policy, City Council Policy and Sign Code Amendments to allow Signs including Off-site commercial speech on city-owned sites**

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**CEQA**

File No. PP18-058: Initial Study/Negative Declaration for amendments to the General Plan, Municipal Code, and City Council Policy for consideration of signs on City-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech.

/s/

ROSALYNN HUGHEY, Secretary  
Planning Commission

For questions, please contact Lea Simvoulakis, Supervising Planner, at (408) 535-7837.

Attachment: Staff Report to Planning Commission  
Public correspondence



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** See Below

**DATE:** August 22, 2018

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**SUBJECT: File No. PP18-058. AN AMENDMENT TO THE ENVISION SAN JOSE 2040 GENERAL PLAN TO DELETE GENERAL PLAN LAND USE POLICY CD10.4, REVISE CITY COUNCIL POLICY 6-4, AND UPDATE SECTIONS 23.02.870 AND 23.02.1310 OF TITLE 23 (THE SIGN CODE) OF THE MUNICIPAL CODE TO ALLOW SIGNS ON CITY-OWNED PROPERTY, INCLUDING BILLBOARDS, PROGRAMMABLE ELECTRONIC SIGNS, AND SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH, AND TO MAKE UPDATES OR OTHER TECHNICAL, NON-SUBSTANTIVE CHANGES, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 23.**

## **RECOMMENDATION**

Staff recommends that the Planning Commission consider the [Initial Study/Negative Declaration](#) in accordance with CEQA, and recommend to the City Council that they:

1. Adopt a resolution adopting a Negative Declaration, for an amendment to the Envision San Jose 2040 General Plan to delete General Plan Land Use Policy CD 10.4, revision of City Council Policy 6-4, and an ordinance amending Sections 23.02.870 and 23.02.1310 of Title 23 of the San José Municipal Code to allow consideration of signs on city-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those sections of Title 23, for which an initial study was prepared, all in accordance with the California Environmental Quality Act,
2. Adopt a resolution approving an amendment to the Envision San José 2040 General Plan to delete Land Use Policy CD-10.4;
3. Adopt a resolution approving a new City Council Policy 6-4 entitled “Signs on City-owned Land, Including Billboards, Programmable Electronic Sign and Signs Displaying Off-site Commercial Speech,” and superseding existing City Council Policy 6-4;

4. Adopt an ordinance amending Title 23 of the Municipal Code (the Sign Code), specifically Sections 23.02.870, 23.02.1310 and 23.04.500; and making other technical, formatting or non-substantive changes within the Sign Code.

## **OUTCOME**

The four recommended actions would provide the City Council the ability to consider sign proposals on designated City-owned sites, in accordance with Council direction and in compliance with state and federal regulations. The types of signs for consideration include billboards, programmable electronic signs, and signs displaying off-site commercial speech. The recommended actions support the following objectives:

- *Revenue.* New sign proposals may generate revenue for the City, which could be used to support City-owned facilities, programs, or services.
- *Improved location of billboards.* The actions do not change existing policy to reduce visual clutter and blight by eliminating billboards from locations where they are unsightly or incompatible with surrounding land uses and may reduce the overall number of existing billboards in the City.
- *Commercial vibrancy.* Expanding the types of allowable signs on City owned sites may enhance commercial vibrancy in appropriate locations, such as the Downtown Sign Zone.
- *Exploration of best practices.* Allowing billboards, programmable electronic signs, and off-site displays on a limited number of City-owned sites in Phase 1 of this project enables staff to assess best practices and criteria should the City Council decide to proceed with a Phase 2 program on non-City-owned sites.

## **BACKGROUND**

The background to the proposed actions includes a history of prior Council actions; Council direction for the current project; and federal and state regulatory implications.

### **History of Prior Council Actions**

The City Council has been regulating signs and billboards for several decades. In 1969, the Council adopted an ordinance that comprehensively regulated signs and billboards and restricted locations of signs and billboards displaying off-site commercial speech.

Regarding billboards, in 1972, the Council approved Council Policy 6-4, prohibiting any future use of billboards on City-owned land and directing the removal of billboards from City-owned land within five years (see Attachment 1 for a copy of the 1972 Council Policy). In 1974, the Council adopted an ordinance prohibiting the placement of billboards within 500 feet of the right-of-way of certain freeways, if designed to be visible to the freeway. In 1985, the Council adopted a citywide ban on new billboards and continued the prohibition of other types of signs displaying off-site commercial speech.



In 1992, the City began permitting programmable electronic signs displaying on-site commercial speech at selected locations throughout the city.

In 2010, the Council held a public hearing to consider a staff presentation that outlined a preferred strategy for updating Title 23 of the San José Municipal Code (the Sign Code) to address billboards on private property. Following the hearing, Council approved maintaining the cap (ban) on the number of billboards in the City and directed staff to explore ways to move existing billboards from residential areas to commercial areas.

In December 2015, electronic digital off-site advertising signs and billboard installations were added to the Council Policy Priority list as a work item for staff. This item is currently number 6 on the Council Policy Priority List. This item is a first step in addressing this Council priority.

### **Council Direction for a Phased Work Plan for Signs**

On December 19, 2017, the Council accepted the Community and Economic Development Committee status report to implement a phased work plan recommended by staff to investigate removing existing barriers to off-premise (off-site) commercial advertising, allowing for:

1. New off-site advertising on City-owned sites, including the exchange of existing legal static billboards on other sites for new electronic billboards (Phase 1).
2. The exchange of existing legal static billboards to electronic billboards on non-City-owned freeway-facing sites and freeway-facing sites in the North San José Development Policy Area (Phase 2).
3. New off-site 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 and citywide (Phase 2).

At the meeting, Council further directed staff to undertake the following with the work plan:

1. Allow replacement of existing traditional billboards with a new electronic programmable billboard at a ratio of 4:1.
2. That staff continue to proactively consult with industry experts on the overall changes to the ordinance and the implementation of the program including:
  - a. The list of feasible sites for project development, and,
  - b. Require a take-down requirement for all new billboards on City and non-City owned property.
3. Report back no later than the first quarter of 2018 to the Community & Economic Development (CED) Committee with an update including current expenditures of the funding that has been allocated for this policy development.

***Phased Work Plan Status.*** Following the above Council direction and in compliance with state and federal regulations, staff developed a list of sites eligible for off-site signs (criteria is discussed later in this memorandum). The [Initial Study/Negative Declaration](#) for Phase 1 (prepared in June-July 2018 under Planning File No. PP18-058) evaluated the potential to allow up to 22 signs on 17 City-owned sites. As proposed by revised Council Policy 6-4, Phase 1 will primarily incorporate building-mounted signs within the Downtown Sign Zone Boundary. There is also potential for four freeway digital signs, including around the San José Mineta International Airport. See Attachment 6 for a map showing the sign locations.

If Council directs staff to proceed to Phase 2, that phase, which would require another Initial Study to determine the appropriate CEQA document, would evaluate non-City-owned sites citywide to potentially allow signs including billboards, programmable electronic signs, and signs displaying off-site commercial speech. Staff would further update the Billboard Relocation Program in the Sign Code to address electronic digital billboards, and to enable the swapping out of existing traditional billboards for new digital billboards at a pre-determined ratio.

### **Federal and State Regulatory Implications**

***Federal Regulations.*** The Federal Highway Beautification Act of 1965 (23 U.S.C.131) regulates outdoor advertising, including removal of certain types of signs along the interstate highway system. As of October 2012, the interstate highway system includes several principal arterials in San José as well as the freeways in San José (the complete map of federal interstate highways is known as MAP 21.) As part of its enforcement efforts under the Act, the Federal Highway Administration (FHWA) has entered into agreements with state departments of transportation.

***State Regulations.*** FHWA and the California Department of Transportation (Caltrans) have an agreement for the control of off-site displays along state highways. Such displays include those advertising products or services of businesses located on properties other than that on which the display is located, or displays which advertise a brand name, trade name, product or service only incidental to the principal activity conducted on the property, or from which the business or property owner derives rental income. Caltrans also exercises limited control over on-site signs. The California Outdoor Advertising Act (Business & Professions Code Section 5200 et seq) contains several provisions relating to the construction and operation of signs.

***Restrictions on Landscaped Freeways.*** Caltrans also controls signage along landscaped freeways. A landscaped freeway is a segment of freeway that is improved by the planting of lawns, trees, shrubs, flowers, or other ornamental vegetation requiring reasonable maintenance on one or both sides of the freeway (§5216). No new off-site advertising display may be placed or maintained on a property adjacent to a landscaped freeway if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway (§ 5440), except as part of a relocation agreement approved by Caltrans pursuant to §5412, or in one of the category of displays that have been expressly exempted from the landscaped freeway prohibition, such as certain advertising related to large arenas (§5272[b]).

**Implications.** Thirteen of the 17 City-owned sites on which new signs may be allowed as part of the Phase I project are subject to control under the general provisions of the Federal Highway Beautification Act and California Outdoor Advertising Act. Two of these 13 sites are also located on landscaped freeways, and accordingly can only be used for on-site advertising, large arena related advertising in accordance with Business & Profession Code §5272(b), or a relocation agreement approved by Caltrans.

## **ANALYSIS**

This analysis addresses the three proposed actions: 1) delete Community Design Policy CD-10.4 from the General Plan; 2) amend Sections 23.02.870 and 23.02.1310 of Title 23 of the Municipal Code; and 3) adopt new City Council Policy 6-4, including site selection criteria.

### **Delete Community Design Policy CD-10.4 from the General Plan**

The Envision San José 2040 General Plan has three policies related to billboards:

- *Community Design Policy CD-1.28:* To maintain and protect the integrity, character, and aesthetic environment of the streetscape in industrial, commercial, and residential neighborhoods, new billboards should be permitted only through a discretionary review process and only where they do not create visual clutter and blight. The relocation of existing billboards from impacted areas to locations where they would have a less visually blighting effect should be encouraged.
- *Community Design Policy CD-9.6:* Prohibit billboards adjacent to all Rural Scenic Routes.
- *Community Design Policy CD-10.4:* Prohibit billboards at Gateway locations and along freeways (including U.S. 101, I-880, I-680, I-280, SR85, and SR87) and Grand Boulevards within San José.

The proposed General Plan amendment retains policies CD-1.28 and CD-9.6, which maintain the discretionary review process for non-identified City-owned sites and privately-owned signs, and would delete Policy CD-10.4 in order to facilitate Council direction for Phase 1 (see Attachment 2). Nine of the 17 potential City-owned sites are near freeways or along a Grand Boulevard and would not be eligible for signs if this prohibition is left in the General Plan.

Removal of this prohibition is supported by General Plan goals and policies that acknowledge the value of creating a vibrant public interface while maintaining attractive transit corridors. The addition of billboards in certain areas of the City, such as Downtown, will create an ambience of active commerce, and a sense that San José is a “bright lights, big city” place. Community Design Goal CD-10 encourages the promotion of a positive image of the City through attractive Gateways and attractive major roads, and strategically placed signs can help achieve this goal. The use of proposed signs for artistic displays would also contribute to creating a positive, vibrant image of Downtown San José.

Deletion of Policy CD 10.4 from the General Plan does not enable new billboards throughout the city. New billboards will not be contemplated on privately-owned sites until Phase 2. Billboard proposals on City-owned sites, other than those listed in the Initial Study/Negative Declaration, will not be considered at this time.

## **1. Amend Sections 23.02.870 and 23.02.1310 of the Municipal Code**

Title 23 of the San José Municipal Code (the Sign Code) currently prohibits new billboards and signs with off-site commercial speech. To allow programmable electronic billboards and off-site displays on City-owned sites, two Code sections need to be amended. Attachment 3 identifies the proposed changes to clarify and streamline the code requirements and off-site sign permitting procedure for City-owned sites. The Code sections to be amended are:

- Administrative Authority; Appeals (Section 23.02.870) - Minor revisions for clarity.
- Exemption from Permit (Section 23.02.1310) - Clarification of required features.

Section 23.04.500 “Billboard Relocation” of the Sign Code, which provides consideration for the relocation of existing legal non-conforming billboards subject to specific criteria, and Section 23.04.500 “Rotating Message Billboards,” will be considered for amendment during Phase 2.

## **2. Revise City Council Policy 6-4, Including Site Selection Criteria**

City Council Policy 6-4 “Billboards on City-Owned Land” prohibits new billboards on City-owned property and requires removal of existing billboards from City-owned property within five years of the adoption date of the policy. The proposed replacement Policy 6-4 eliminates the prohibition of billboards on City-owned property for the 17 identified sites; see Attachment t 4. It also establishes criteria that Council may use to consider signs on other City properties and identifies design and operational standards for future signs.

**Site Selection Criteria.** In determining which City-owned sites would be eligible for Phase 1, staff applied the following criteria:

1. *Appropriate General Plan designation.* The site does not have a General Plan Land Use/Transportation Diagram designation of Open Space, Parkland, Habitat, or Lower Hillside, Agriculture, Private Recreation and Open Space, Open Hillside, Mixed-use Neighborhood, Transit Residential, Urban Residential or Residential Neighborhood. This category excludes public parks, natural preserves, riparian habitats and residential land uses to minimize impact to sensitive receptors.
2. *Appropriate Zoning designation.* The site is in a Zoning District other than OS, Open Space, or A, Agricultural, Zoning Districts.
3. *Compatible with riparian corridors and bird safe design.* The site must be consistent with Council Policy 6-34 (Riparian Corridor Protection and Bird Safe Design.)

4. *Historical resources.* A sign can be located on a site near to or on structures designated as historical resources (defined in CEQA Guidelines Section 15064.5, or historic landmarks or candidate historic landmarks by the City, state or federal government) as long it is consistent with City policies and design guidelines for development, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and Municipal Code Chapter 13.48 "Historic Preservation."
5. *Compatible with uses.* Locating a sign on the site must be compatible with any existing use on the site or any potential use of the site for purposes other than a sign. The method for evaluating compatibility is similar to that used during the Site Development Process.
6. *Fiscal compliance.* The City's Finance Department has determined that the site can be used for a sign without violating bond covenants or other financing restrictions.

***Outcomes of Applying the Criteria.*** Using the criteria, staff evaluated 1,062 City-owned parcels. A process of elimination resulted; see Table 1. After applying the General Plan designation criteria and Zoning criteria, the remaining 240 parcels were evaluated against the following restrictions:

1. City-owned sites are subject to parkland use restrictions, constraints associated with bond funding, and various other contractual obligations with third party operators, including private use, leasing, and sales constraints. Approximately 70 City facilities were removed from the eligibility list for such reasons. This included 11 community centers, 21 libraries, 15 fire stations, 23 public parking garages/lots, and water treatment facilities.
2. Of the 170 remaining parcels, some were small remnant parcels left from public right-of-way activities such as creating roads or sidewalks. Due to size or location, these remnant parcels were not feasible locations for a sign and are not counted among the remaining parcels.
3. Many parcels did not have the desired visibility criteria for a sign, such as not being situated along traffic corridors or having frontage along public rights-of-way. Approximately 65 sites were eliminated for these reasons.
4. Of the remaining 105 sites, another 40 were eliminated because they could not meet criteria in Council Policy 6-34 (Riparian Corridor Protection and Bird Safe Design), including not meeting the minimum separation distances from riparian corridors.
5. Of the 65 remaining parcels, 35 were deemed ineligible under state and federal rules.

The above restrictions resulted in 30 remaining parcels. Seventeen of these are the eligible sites discussed in this report. The remaining 13 sites are deemed undesirable due to their location in close proximity to Coyote Valley, the Regional Wastewater Facility, or residential neighborhoods where large-scale signs were not deemed appropriate.

*Table 1. Outcomes of Criteria Application to Determine Phase 1 Parcels*

<b>Apply General Plan designation criteria to total City-owned parcels</b>	<b>1062</b>
1. Eliminated parcels with GP Designation of Open Space, Parklands and Habitat	682
2. Eliminated parcels with GP Designations for Residential Neighborhood and other residential designations; removed from this list due to the potential negative impact on dwelling units (not eligible for signs)	140
<b>Remaining Parcels after GP designations: 240 parcels</b>	<b>240</b>
3. Eliminated parcels with financing, and private activity restrictions, including community centers, libraries, fire stations, etc.	70
4. Eliminated remnant parcels along public right-of-way and without public street frontage	65
5. Eliminated sites near riparian corridors and residential uses	40
6. Eliminated remnant sites located within 660 feet of landscaped freeways	35
<b>Remaining Parcels for Consideration: 30 parcels</b>	<b>30</b>
7. Eliminated parcels with additional restrictions related to physical location, development proposals currently on file, regional facilities, and proximity to other existing signage	13
<b>Number of Potential Parcels for Signs: 17 parcels</b>	<b>17</b>

Replacement Policy 6-4 does provide a path for reconsideration of previously screened properties or consideration of additional City properties using the site selection criteria; the Policy can be amended by Council action, subject to further review under the California Environmental Quality Act (CEQA).

Of the 17 City-owned sites that would be eligible for signs under replacement Policy 6-4, nine located within the Downtown Sign Zone boundary. Two sites, the Tech Museum and San José McEnery Convention Center, need further evaluation by the Bond Council regarding finance restrictions; one of the sites would not be eligible for a sign without a conforming rezoning. For these reasons, these three sites are designated as only potentially eligible for new signs; see Tables a and 3.

**Site Design and Operational Standards.** The recommended replacement Council Policy 6-4 includes requirements for sign location, size and type, height, quantity, illumination, and message limitations. The replacement Policy also outlines an approval process for soliciting proposals for signs to be approved pursuant to the Policy. These standards are described in the draft replacement Policy 6-4; see Attachment 4:

Table 2 shows the 17 City-owned sites that have been determined to meet the location requirements. Table 3 shows the three sites that still have bond restrictions or a zone restriction and require further clearance.

**Table 2. Potential City-Owned Sites for Proposed Signage Installation**

APN	CURRENT USE	ADDRESS	SIGNS
259-34-039	San Pedro Market Parking Garage	45 North Market Street	2
467-21-002	CSJ Parking Garage	95 North Third Street	1
259-43-064	Center for Performing Arts	255 Almaden Boulevard	2
467-46-109	Hammer Theater	101 Paseo San Antonio	2
467-46-097	CSJ Parking Garage	280 South Second Street	1
259-40-066	San José Museum of Art	110 South Market Street	1
259-28-043	SAP Center	525 West Santa Clara Street	2
254-01-004	Mabury Service Yard ***	1404 Mabury Road	1
259-06-054	CSJ Parking Lot	737 North San Pedro Street	1
259-04-019	CSJ Parking Lot	Hwy 87 and West Mission Street	1
101-03-009	Airport Facility ***	2500 Seaboard Avenue	1
230-01-058	Airport Facility	2200 Airport Boulevard	1
230-46-065	Airport Facility	1128 Coleman Avenue	1
230-02-021	Airport Facility ***	2341 Airport Boulevard	1

\*\* Requires financial/ bond restriction clearance prior to consideration

\*\*\* Restricted to signs displaying on-site commercial speech

**Table 3. Potential City-Owned Sites Subject to Additional Clearance**

APN	CURRENT USE	ADDRESS	SIGNS
259-42-023	The Tech **	201 South Market Street	1
230-37-020	Vacant Lot (Near National Guard) *	Hwy 87 and West Hedding Street	1
264-29-113	McEnery Convention Center **	150 West San Carlos Street	2

\* Requires rezoning clearance prior to consideration

\*\* Requires financial/bond restriction clearance prior to consideration

**Airport Sign Zone.** Four of the 17 identified City-owned sites are in the Airport Sign Zone and are listed as Norman Y. Mineta San José International Airport facilities. The following considerations are required for any proposed future signage on Airport property:

1. Director of Aviation permit approval.

2. Federal Aviation Administration (FAA) obstruction review.
3. Sign-specific CEQA clearance may also require a specialized lighting study to ensure no significant air safety impact.

***Airport Influence Area.*** Thirteen of the 17 sites are located within the Airport Land Use Commission (ALUC) Mineta Airport Influence Area (AIA). The AIA is composed of areas surrounding the Mineta Airport that are affected by noise, height, and other safety considerations, and these hazards are addressed in federal and state regulations as well as in land use regulations and policies in the Mineta Airport Comprehensive Land Use Plan (CLUP). Future proposals of signage on these City-owned sites may require notification to the FAA and be subject to height restrictions under Federal Aviation Regulations, Part 77. Sign-specific CEQA clearance may also require a lighting study to ensure there is no significant air safety impact. The ALUC held a public hearing on the proposed General Plan Amendment/Council Policy/Municipal Code revisions on June 27, 2018, and found the proposed actions consistent with the Mineta Airport CLUP, subject to the placement of no sign structures within an airport runway protection zone (which FAA regulations do not allow).

## **PUBLIC OUTREACH/INTEREST**

Staff followed Council Policy 6-30: Public Outreach Policy. Staff posted public hearing notices on the City website, published the notices in the San José Post-Record, and emailed notices to a list of interested groups and individuals. This staff report and attachments were also posted on the City website. Staff has been available to respond to questions from the public.

Staff facilitated three focus group meetings with broad stakeholder groups, a meeting with Lick Observatory stakeholders, two meetings with sign industry groups, and two citywide community meetings. Staff sought input on considerations for billboards and programmable electronic displays, including brightness, dimming possibilities, hours of operation, and location. The following is a summary of stakeholder input:

- a. Environmental Focus Group (August 28, 2017).*** This group indicated that new electronic programmable signs should not be located along fast-moving traffic and rail corridors, freeways, and primary arterials, near residential neighborhoods, or near parks or riparian corridors. The group noted that bright signage could impact birds and wildlife behavior and influence sleep cycles around habitats. The minimum distance requirements could be reduced if the display does not exceed the minimum illumination radius, or if it faces away from riparian corridors, is dimmed early in the evening, is turned off by 10:00 p.m., and is turned off August-November and March-May during bird migration season. Fewer objections were expressed on placing billboards next to regional shopping centers or on Downtown high-rises. This group offered two recommendations:
  - Require that billboard installation does not result in tree removal, unless the trees are identified as an invasive species.



- Billboards must not be located adjacent to sensitive areas, such as the Regional Wastewater Facility lands or within 1,000 feet of any riparian corridor.

The discussion related to the environmental impacts of the project and are further discussed in the CEQA section of this memo.

**b. *Historic Preservation Focus Group (August 31, 2017).*** This group stated billboards would impact the character and spirit of a neighborhood, particularly in Downtown's Historic District. However, they were open to discussing proposals on a case-by-case basis. The group was against new programmable electronic billboards along freeways and primary arterials due to traffic safety concerns, possibly distracting viewers. This group was less concerned about sign content and more concerned about the scale of the display. This group offered three recommendations:

- Reduce the scale of signage.
- Create a neon boulevard/sign district to accommodate existing historic signs with the potential for possible relocation.
- If the sign is designed to emulate vintage signs, the siting of new billboards may be more compatible in Downtown, but is not recommended within the Historic Landmark District boundary or in the immediate vicinity.

**c. *Businesses, Property Owners, VTA, and Sign Industry Focus Group (September 21, 2017).*** This group noted that the location of billboards is primarily driven by the goal of maximum exposure. New programmable billboards are desired along freeways because of the volume of vehicular traffic. Primary arterials do not provide the desired exposure or visibility for major sign companies, but areas with heavy pedestrian traffic might be desirable to some sign companies. The potential benefits of the billboard exchange provisions as the removal of existing static billboards from residential areas; decluttering of neighborhoods; replacement of existing static signs using newer and more efficient technology; community messaging including translation/subtitles; and City beautification programs on boulevards and primary arterial streets. The group supported the replacement of existing static billboards with better quality billboard structures and equipment at either a new or same location, and with remote handling of dimming/ switching off through automatic light sensors. The group reiterated that sign content was restricted in accordance with federal and state requirements. Stakeholders said two entities own approximately three quarters of the billboards within the City. Recommendations by these stakeholders:

- Valley Transportation Authority (VTA) representatives suggested exploring advertising along Light Rail platforms, bus shelters, and public rights-of-way.
- Community messaging, such as water conservation or civic events, can be incorporated on the programmable signage.
- Locations along freeways citywide were preferred over restricting electronic billboards to only North San José and Downtown San José.

*d. Additional Sign Industry Meetings.* Two meetings with stakeholders from sign companies were held again on July 24, 2018 and July 27, 2018. Stakeholders at the July 24 meeting felt that the list of potential sites for Phase 1 did not achieve the objective of revenue generation for the City, nor the objective of a reduction in the number of existing billboards. They expressed concerns about the low number of City-owned sites available during Phase I for private stakeholders. They felt the lack of a take-down requirement for signs in the Downtown Sign Zone was disadvantageous to sign companies who may be required to take down signs for more traditional billboards. They requested to have the same opportunity as other vendors to bid on the downtown sites without being required to take down existing billboards. They asked staff to recommend to the Planning Commission that the identified City-owned sites be substituted for other sites found by the stakeholder group. Staff responded that the City Council can amend the proposed policy to add sites to the current list at any time, assuming the sites meet the criteria for site selection and have environmental clearance. The stakeholders also supported allowing City-controlled sites to have off-site signs. City-controlled means that a site is privately owned, rented by the City, and then leased to another party by the City. Staff noted that there was no Council direction to explore City-controlled sites during Phase 1, and if the Council desired to pursue City-controlled sites, they may direct staff to do so. Staff also stated that Council could potentially incorporate an option in the RFP process to allow private stakeholders the opportunity to submit additional City-owned sites similar to the identified sites for off-site signs. Staff reiterated that any site which meets the policy criteria and comply with the financial restrictions and have appropriate environmental clearance could potentially be added to the list of sites in the Policy.

Stakeholders at the July 27 meeting offered staff the benefit of their sign industry knowledge and provided a constructive critique of the environmental document. The group discussed best practices and their expectations for Phase 2, when more sites will become available for private sign companies. The group expressed interest in working with Lick Observatory to find ways, practices, and technologies to best meet the intent of the Observatory's environmental concerns.

*e. Community Meetings (October 5, 2017; October 12, 2017).* Staff facilitated two community meetings on signage issues in October 2017 at City Hall and the Bascom Community Center. Attendees emphasized the need for improved signage within the City, particularly Downtown. Facing electronic programmable signs toward residential dwellings and along traffic corridors raised brightness concerns. A sign company representative who attended the meeting noted that the location of new billboards for potential exchange should be considered throughout the City, and that the potential locations for non-City-owned sites should not be pre-identified but possibly evaluated individually during project review of a specific proposal. Meeting attendees were generally supportive of future off-site advertising signs throughout the city.

- f. Other Meetings (September 12, 2017; September 13, 2017).* Focus group meetings with the San José Museum of Art, the Hammer Theatre, the Tech Museum of Innovation, Broadway San José, Team San José, San José State University, San José Downtown Association, and the Silicon Valley Organization were conducted to specifically discuss the concept of off-site signage on City-owned and non-City-owned buildings in the Downtown.

## **COORDINATION**

The preparation of the proposed General Plan Text Amendment, ordinance amendment, Council Policy 6-4 amendment and this staff report were coordinated with the City Attorney's Office, Airport Department, Finance Department, and the Office of Economic Development.

## **CEQA**

A Negative Declaration (ND) was prepared for File No. PP18-058 for amendments to the General Plan, Municipal Code, and City Council Policy for consideration of signs on City-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech. There is no significant impact from allowing electronic programmable signs on the identified City-owned sites. The circulation period for the Negative Declaration began on June 22, 2018 and closed on Wednesday, July 25, 2018.

Staff received comments from sign industry stakeholders, a tribal band, the State Department of Transportation, and Lick Observatory during the ND circulation period. Many of the comments from the sign industry were not related to environmental concerns and were discussed above in the Public Outreach section of this memorandum. The remaining concerns were CEQA related and included comments related to height and illumination standards, including tilt and background colors.

The environmental document included a recommendation related to illumination from the Lick Observatory staff. As such, staff conducted a meeting with the stakeholder groups and the Lick Observatory on August 7, 2018 to go over the illumination concerns.

Based on the feedback received, staff incorporated the following clarifying changes into the ND:

- a. Height: Stakeholders were concerned that the height of the sign structure would be limited by the 22-foot base requirement, especially along elevated freeway sections. Staff clarified that the height of the base only applies to freestanding monument signs. Staff also noted that the height exceptions listed in Title 23 for freeway signs would be applicable to any future freeway sign. This exception incorporates considerations for elevated freeways.
- b. Tilt: Stakeholders deemed that the 15 degrees tilt was unnecessary and current illumination mechanisms including louvers could mitigate that requirement. Lick Observatory team did not necessarily agree that the industry proposal for louvered lights would accomplish the same light mitigation, but they agreed that they were unaware of the improved technology.

PLANNING COMMISSION

August 22, 2018

**Subject: Amend the General Plan, Municipal Code, and Council Policy 6-4 to Allow Signs on City-Owned Sites, Including Billboards, Programmable Electronic Signs, and Off-Site Displays**

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Staff stated that the Council would be able to deem other methods of light attenuation appropriate during the review of signs.

- c. Background Color: Stakeholders objected to the restriction to white backgrounds. Lick Observatory indicated that bright backgrounds are detrimental to the astronomical observatory. Additionally, the Observatory clarified that the requirement for warmer colors and the restriction on white background was a recommendation for moving toward a standard that could be mutually beneficial to stakeholders, not a requirement. Staff agreed that this was not a requirement for future signs.
- d. Sign Orientation: The sign industry stakeholders were against any extension of the east facing prohibition outside the Alum Rock Planning Area. Staff is not recommending extending this boundary beyond what was indicated in the environmental document.



ROSALYNN HUGHEY, DIRECTOR  
Planning, Building and Code Enforcement

Attachments:

1. Council Policy 6-4, approved January 10, 1972
2. Draft General Plan Text Amendment
3. Draft mark-up of the Sign Code Amendment
4. Draft Replacement Council Policy 6-4
5. Public Correspondence
6. Map of City-Owned sites 'Regulated Highway Areas for Billboards'
7. Map of potential City-Owned sites 'Regulated Highway Areas for Signs on City-owned sites'
8. Draft General Plan Text Amendment Resolution
9. Draft CEQA Resolution

*City of San José, California*

**COUNCIL POLICY**

<b>TITLE</b> BILLBOARDS ON CITY-OWNED LAND	<b>PAGE</b> 1 of 1	<b>POLICY NUMBER</b> 6-4
<b>EFFECTIVE DATE</b> June 28, 1971	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>		January 10, 1972

**BACKGROUND**

On June 28, 1971, the City Council, being concerned with the visual image of the community, adopted a policy regarding the use of billboards on City-owned land. The City is thus setting the standard for community development by discontinuing the use of billboards on City-owned land.

**PURPOSE**

To state Council Policy regarding existing and future billboards on City-owned land.

**POLICY**

1. The City shall prohibit the future use of billboards on City-owned land.
2. All existing billboards on City-owned land shall be removed within a period of five (5) years.

## **General Plan Text Amendment – July 2018**

### General City Design

**Goal CD-1** – Attractive City: Create a well-designed, unique, and vibrant public realm with appropriate uses and facilities to maximize pedestrian activity; support community interaction; and attract residents, business, and visitors to San José.

**CD-1.28** To maintain and protect the integrity, character, and aesthetic environment of the streetscape in industrial, commercial, and residential neighborhoods, new billboards should be permitted only through a discretionary review process and only where they do not create visual clutter and blight. The relocation of existing billboards from impacted areas to locations where they would have a less visually blighting effect should be encouraged.

**Goal CD-9** – Access to Scenic Resources Preserve and enhance the visual access to scenic resources of San José and its environs through a system of scenic routes.

**CD-9.6** Prohibit billboards adjacent to all Rural Scenic Routes.

**Goal CD-10** – Attractive Gateways Create and maintain attractive Gateways into San José and attractive major roads through San José, including freeways and Grand Boulevards, to contribute towards the positive image of the City

**~~CD-10.4 Prohibit billboards at Gateway locations and along freeways (including U.S.101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87) and Grand Boulevards within San José.~~**

**Title 23 - Sign Code Updates – July 2018**

**23.02.800 - Policy.**

Signs are an important and necessary means of communication. When properly regulated, signs can serve as a great economic and aesthetic asset. They can be lively, colorful and exciting. In enacting this title, it is the intent of the City of San José to promote attractive signage and streetscapes, facilitate way-finding and traffic safety, promote commerce, and to comprehensively address community aesthetic concerns about visual clutter and visual blight in the environment. The regulation of signs in the City of San José is intended to promote an aesthetically pleasing environment with these concerns in mind. Sign regulation shall be consistent with land use patterns, and signs shall add to rather than detract from the architecture of the buildings where they are located. Signs shall be well maintained and, in addition, shall not create traffic safety hazards. The regulation of signs in the City of San José also is intended to be content neutral wherever required and to provide adequate opportunity for the presentation of messages of many varieties. (Ords. 24201, 26273, 27375, 28569, 28754, 29013, 29097, 29223.)

**23.02.810 - Application.**

Unless otherwise expressly provided in this title, this title shall apply only to signs visible from off-site or from any outdoor parking lot or outdoor pedestrian walkway accessible for use by the public. (Ord. 24201.)

**23.02.850 - Applicable regulations.**

A. The regulations for signs shall be set in accordance with the zoning district where a parcel is located, except for:

1. Parcels located in special sign zones, as set forth in Section 23.02.860;
2. Residential uses, regardless of where located, which shall be governed by Part 4 of Chapter 23.04;
3. Signs in the public right-of-way which shall be governed by Part 9 of Chapter 23.04; and
4. Signage allowed pursuant to a planned development permit as provided in Section 23.02.1080

B. All signs shall also conform to the provisions of this Chapter 23.02. (Ord. 24201.)

**23.02.870 - Administrative authority; appeals.**

A. Administrative authority for the implementation of the sign regulations set forth in this title and for the issuance of permits, pursuant to this title, if required under Part 4 of this chapter, shall be as follows:

District or Type of Sign	Administrative Authority
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CO, CP, CN, CG, IP, LI, HI, OS, A, R-1-RR, R-1-1, R-1-2, R-1-5, R-1-8, R-2, R-M and R-MH zoning districts; neighborhood business districts; downtown sign zone; urban mixed-use development area sign zone; Capitol Expressway Auto Mall signage area, billboard relocation; rotation message billboards; temporary signs	Department of Planning, Building and Code Enforcement
Public right-of-way signs	Department of transportation
<u>Signs on public property other than public right-of-way</u>	<u>Department of Public Works for signs at City facilities except for signs included in City Council Policy 6-4;</u> <u>Department of Parks, Recreation and Neighborhood Services for signs in parks</u>
<u>Signs within Airport Sign Zone</u>	<u>Airport Department</u>

"Director" as used in this title and not otherwise identified shall refer to the director of the applicable administrative authority.

B. Enforcement authority for this title shall be in the code enforcement division of the department of planning, building and code enforcement, except that the department of transportation shall have enforcement authority for signs in public right-of-way, the department of parks, recreation and neighborhood services shall have enforcement authority for signs in parks, the department of public works shall have enforcement authority for signs at city facilities, and the director of aviation shall have enforcement authority for signs in the airport sign zone. (Ords. 24201, 27375, 29324, 29747.)

23.02.1310 - Exemption from permit.

A. The following signs shall comply with all other requirements of this title but are exempted from the permit requirements of Section 23.02.1300, unless otherwise expressly required elsewhere:

1. Temporary signs.
2. Safety or directional signs of four square feet or less that are not programmable electronic signs.
3. Safety or directional signs regardless of size if erected by a public entity or public utility.

~~4. Signs erected by the city.~~

~~5. Election signs.~~



- ~~65.~~ Window signs.
- ~~76.~~ U.S. flags; any other flags displayed on flagpoles erected in conformance with all applicable laws.
- ~~87.~~ Required signs as described in Section 23.02.1030.
- ~~98.~~ Signage for residential uses where there are four or fewer residential occupancy units on the parcel.
- ~~109.~~ Signs allowed on outdoor vending facilities under Section 20.80.870 of Part 10 of Chapter 20.80 of Title 20 of this Code.
- ~~110.~~ Signs allowed on recycling facilities by Sections 20.80.1130.B.5. and C.11. of Part 13 of Chapter 20.80 of Title 20 of this Code.
- ~~121.~~ Signs allowed on temporary trailers by Section 20.80.1740F. of Part 18 of Chapter 20.80 of Title 20 of this Code

B. Signs erected by the City are exempt from permit requirements, but shall comply with all other requirements of this title, except that signs erected by the City or under contract with the City pursuant to City Council Policy 6-4 entitled “Off-Site Commercial Signs, including Billboards, on City-Owned land” shall comply with the requirements of Council Policy 6-4.

## ~~Part 6 – ROTATING MESSAGE BILLBOARDS~~

### ~~• 23.04.500 – Purpose.~~

~~The purpose of this part is to establish a pilot program enabling the city council, at its discretion, to permit a limited number of existing billboards to be converted to three-panel rotating message billboards compatible with the aesthetic goals of the city, to ensure that such rotating message billboards do not create visual clutter, visual blight or adversely impact traffic or pedestrian safety, and at the same time to reduce the total number of billboards in the city. This pilot program is part of the demonstrated commitment of the city council to the aesthetic enhancement of the city. (Ord. 24201.)~~

### ~~• 23.04.510 – Definition of rotating message billboard.~~

~~A rotating message billboard is a poster panel billboard of approximately three hundred square feet in sign area which has rotating panels with a maximum of three message faces. (Ord. 24201.)~~

### ~~• 23.04.520 – Pilot program.~~

~~A. This part is intended to be a pilot program. This part shall remain in effect until August 1, 1994, or until the number of billboards specified in subsections B. and C. below have been permitted, whichever first occurs.~~

~~B. A maximum of twenty existing billboards will be permitted to convert in accordance with this part, provided that for each existing billboard so converted, one other billboard is first removed.~~

~~C. In addition to the twenty conversions to rotating message billboards pursuant to subsection B., a maximum of ten additional existing billboards will be permitted to convert, provided that for each existing billboard so converted, one other billboard is first removed and three additional existing billboards are improved in a manner satisfactory to the city council so that the sign area of each of the three improved billboards is reduced by approximately twenty percent.~~

~~D. The termination of this pilot program shall not terminate any permit issued for any rotating message billboard prior to the termination of the pilot program. Such rotating message billboards shall become legal noneconforming signs upon termination of the pilot program. (Ord. 24201.)~~

~~• **23.04.530 – General requirements.**~~

~~A. No billboard may be converted to a rotating message billboard except as expressly permitted by a planned development (PD) rezoning adopted at the discretion of the city council, in accordance with:~~

~~B. Each such PD rezoning application shall be accompanied by:~~

- ~~1. A city-wide map identifying the location of all existing billboards owned and/or maintained by the applicant;~~
- ~~2. The location of the billboard proposed for removal;~~
- ~~3. If applicable, the location of the three additional billboards proposed for sign area reduction; and~~
- ~~4. A release and indemnification agreement holding the city harmless from any claim or action brought by a property owner of a parcel where the applicant is removing an existing billboard pursuant to this part.~~

~~C. Rotating message billboards located on the same street shall not be closer to each other than two thousand linear feet. Such distance shall be measured linearly along the centerline of the street on which the billboards are located, between perpendicular lines drawn to the centerline of the street from such billboards at the points of the billboards closest to each other.~~

~~D. No PD rezoning which approves a rotating message billboard shall result in a net increase of more than one message surface in the city.~~

~~E. No rotating message billboard shall have a sign area larger than three hundred square feet.~~

~~F. The PD permit for a rotating message billboard shall set forth conditions minimizing sign movement and distraction for vehicular traffic.~~

~~G. No PD rezoning for conversion of a billboard to a rotating message billboard shall be approved unless the city council concurrently approves the billboard proposed for removal and, if applicable, the three additional billboards proposed for sign area reduction. (Ord. 24201.)~~

~~• **23.04.540 – Removal and reduction.**~~

~~A. No PD permit for a rotating message billboard shall be effective until the removal of the designated billboard and, if applicable, the sign area reduction of all three billboards is completed.~~

~~B. In approving the proposed billboard for removal, the city council shall determine, based on assurances by the applicant, that the billboard proposed for removal is not likely to be subject to removal for reasons other than the pilot program established by this part, for example, that the billboard is not proposed to be converted in lieu of just compensation in connection with an eminent domain proceeding.~~

~~C. Although this pilot program is intended to be for a three-year period, it will be subject to review one year after its adoption and may be repealed, amended or extended if the council so desires. (Ord. 24201.)~~

DRAFT

*City of San José, California*

**COUNCIL POLICY**

<b>TITLE</b>	<b>PAGE</b>	<b>POLICY NUMBER</b>
<b>SIGNS ON CITY-OWNED LAND INCLUDING BILLBOARDS. PROGRAMMABLE ELECTRONIC SIGNS AND SIGNS DISPLAYING OFF SITE COMMERCIAL SPEECH</b>	<b>1 of 9</b>	<b>6-4</b>
<b>EFFECTIVE DATE November 9, 2018 (Replacement Policy 6-4)</b>	<b>REVISED DATE September 25, 2018</b>	
<b>APPROVED BY COUNCIL ACTION 1/10/72 (Original Policy 6-4); 9/25/18, Item X.X, Res. No. XXXXX (Replacement Policy 6-4)</b>		

**BACKGROUND**

Council Policy 6-4 was originally approved in 1972, prohibiting future use of billboards on City-owned land and directing the removal of billboards from City-owned land within five (5) years. In 1974, the City Council adopted an ordinance prohibiting the placement of billboards within five hundred (500) feet of the right-of-way of certain freeways if designed to be visible to the freeway. In 1985, the City Council adopted a citywide ban on new billboards and continued in effect its prohibitions of other types of signs displaying off-site commercial speech.

In 2010, the City Council conducted a public hearing to consider a staff presentation outlining a preferred strategy for updating Title 23 of the San José Municipal Code (the Sign Code) and addressing billboards on private property. At the conclusion of the public hearing, Council approved maintaining the cap on the number of billboards in the City and directed staff to explore opportunities for moving existing billboards from residential areas to commercial areas. In December 2015, electronic digital off-site advertising signs and billboard installations were added to the Council priority list as a work item for staff. This item has been one of the top ten Council priorities since March 7, 2017. On December 19, 2017, the Council accepted the Community and Economic Development Committee status report on implementing a phased work plan to investigate removing existing barriers to off-site commercial advertising on City-owned and non-City-owned sites in the City of San José, that could allow:

1. New off-site advertising on City-owned sites throughout the City, including the exchange of existing legal static billboards on other sites for new electronic billboards on City-owned sites (Phase 1);

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2. Exchange of existing legal static billboards 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 2);
3. New off-site 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 2).

[This Policy implements Phase 1 of the December 19, 2017 Council direction.](#)

## **DEFINITIONS**

Except where the context otherwise requires, the definitions set forth in Part 1 of Chapter 23.02 of Title 23 of the San José Municipal Code are incorporated by reference into this Council Policy. Where a word or phrase is not defined in Part 1 of Chapter 23.02 of Title 23 of the San José Municipal Code, the definitions set forth in Chapter 20.200 of Title 20 of the San José Municipal Code are incorporated by reference into this Council Policy.

## **PURPOSE**

To state Council Policy regarding existing and future use of Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech on City-owned land; to provide guidance regarding the implementation of a program that may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech, on City-owned land; and to confirm the City's continued interest in regulating Signs on City-owned land to promote an aesthetically pleasing environment.

## **POLICY**

1. The City will only allow the future use of Billboards and Signs displaying Off-Site Commercial Speech on City-owned land, as and where expressly allowed pursuant to this Council Policy 6-4.
2. The City may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech on City-owned land pursuant to this Council Policy 6-4 for any of the following purposes, where consistent with applicable State and federal law:
  - a. To generate revenue for the City, including revenue to support City-owned facilities, programs, or services; and/or eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide, or eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.
  - b. To explore opportunities to enhance the commercial vibrancy of the City in selected locations, including the Downtown Sign Zone, while maintaining an

<b>TITLE SIGNS ON CITY OWNED LAND</b>	<b>Page 3 of 9</b>	<b>POLICY NUMBER 6-4</b>
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aesthetically pleasing environment, by evaluating the effectiveness of location, design and operational criteria, and related requirements for City-owned land to assist in the development of criteria and best practices for non-City-owned sites, should the City Council decide to proceed with a program for additional Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech, on non-City-owned land.

## **IMPLEMENTATION**

### ***General***

The City may allow Signs on City-owned land including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech, under this Council Policy, and in compliance with State and federal regulations. Signs approved under this Council Policy shall be in addition to any other Signs that may be allowed on the City-owned property under Title 23 of the San José Municipal Code.

This Policy identifies selection criteria for City-owned land on which the City Council may consider allowing these additional Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech. Based on the identified selection criteria, this Policy also designates up to seventeen (17) sites, which may be eligible or potentially eligible for up to twenty-two (22) additional Signs. Additional City-owned land may be considered eligible or potentially eligible for additional Signs under this Policy, if the Policy is amended by action of the City Council, which will require further review under the California Environmental Quality Act. (CEQA).

This Policy further specifies minimum limitations on the location, number, type, size and height of Signs that may be allowed under this Policy, including illumination requirements. In addition, this Policy identifies message limitations that the City may impose on Signs approved pursuant to this Policy.

Finally, this Policy generally describes the process for the approval of additional Signs that may be allowed under the Policy.

### ***Site Selection Criteria***

The following site selection criteria have been used to designate City-owned land that is or may be potentially eligible for additional Signs under this Policy, and subject to direction of the City Council, to screen additional City-owned land for eligibility for such Signs.

1. The site, which may consist of parcels, a parcel, or a portion of a parcel, has a General Plan Land Use/Transportation Diagram designation other than Open Space, Parkland, Habitat, Lower Hillside, Agriculture, Private Recreation and Open Space, Open Hillside, Mixed-use Neighborhood, Transit Residential, Urban Residential or Residential Neighborhood.

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2. The site is in a Zoning District other than OS Open Space or A Agricultural.
3. A Sign can be located on the site consistent with Council Policy 6-34 (Riparian Corridor Protection and Bird Safe Design).
4. A Sign can be located on the site consistent with City policies and design guidelines for development in proximity to or on Structures designated as historical resources as defined in CEQA Guidelines Section 15064.5, or historic landmarks or candidate historic landmarks by the City, State, or Federal government, and shall conform to the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, as well as Chapter 13.48, “Historic Preservation,” of Title 13 of the Municipal Code.
5. Locating a Sign on the site would be compatible with any existing use on the site or any potential use of the site for purposes other than a Sign.
6. The Finance Department has determined that the site can, or may potentially be, used for a Sign without violating bond covenants or other financing restrictions. Final clearance from the Finance Department will be required prior to completion of the approval process for placement of a Sign on the site pursuant to the section of this Policy entitled “Sign Approval Process”.

***Designated Sites***

As of the date of this Policy, the sites that have been identified as eligible, or potentially eligible, for additional Signs under this Policy, based on the above selection criteria are identified in Attachment A. This Policy may be amended by action of the City Council to add sites that may be considered eligible or potentially eligible for Signs pursuant to this Policy, subject to further review under the California Environmental Quality Act (CEQA).

***Sign Location, Type, Size, Height and Number***

1. The Sign location must comply with all requirements of State and federal law.
2. Any Programmable Electronic Sign must be located on the site such that:
  - a. The Sign is not visible from any dwelling unit that is located within one hundred fifty (150) linear feet of the Sign; and
  - b. The Sign is greater than one hundred fifty (150) linear feet from the nearest boundary line of a Residential Zoning District.
3. Signs shall not have a total Sign Area in excess of twelve hundred (1,200) square feet.

TITLE <b>SIGNS ON CITY OWNED LAND</b>	Page 5 of 9	POLICY NUMBER 6-4
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4. Sign Area shall be computed as provided in Section 23.02.910 of the San José Municipal Code.
5. Freestanding Signs shall be subject to the following Height limitations, computed as provided in Section 23.02.930 of the San José Municipal Code:
  - a. Signage, including Supporting Structure, shall not exceed sixty (60) feet in Height above surrounding grade, except for Freestanding Freeway Signs meeting the criteria for a height exception specified in Section 23.04.035C.2 of the San José Municipal Code. Further Height limitations may apply based on other consideration, such as Federal Aviation Administration (FAA) criteria.
  - b. All Freestanding Monument Signs shall rest on a base of at least eighteen (18) inches in Height.
    - i. The Height to the top of the base of a Freestanding Monument Sign shall not be more than twenty-two (22) feet above grade.
    - ii. The base of a Freestanding Monument Sign shall be architecturally consistent with the largest building on the parcel and the Sign it supports. The base shall be constructed of durable materials and surrounded by landscaping, as needed for soil stability, drainage, site accessibility and architectural integrity.

***Sign Illumination***

1. All Programmable Electronic Signs shall operate in conformance with the operational requirements for Programmable Electronic Signs as specified in Section 23.02.905 of the San José Municipal Code, except that such Signs may display Off-Site Commercial Speech.
2. No Sign shall be in operation between the hours of 12:00 a.m. and 6:00 a.m., except that Signs may display emergency messages from local, state, and federal governments at any time.
3. Signs shall be constructed of high-quality and durable materials and shall be installed with sensors to automatically lower light output in accordance with atmospheric conditions. Throughout Sign operation, the dimness setting shall be automatically adjusted so that it does not exceed the level of illumination, as specified in Section 23.02.905 of the San José Municipal Code.
4. Illuminated Signs, including Billboards, and Programmable Electronic Signs, shall at a minimum meet the following additional requirements between the hours of sunset and 12:00 a.m. ~~and 6:00 a.m.~~:
  - a. The Signs must be tilted downward toward the ground by at least fifteen (15) degrees and provide a rimmed edge along the top of the Sign, or shall utilize



<b>TITLE SIGNS ON CITY OWNED LAND</b>	<b>Page 6 of 9</b>	<b>POLICY NUMBER 6-4</b>
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other alternative(s) which the City determines will provide equivalent attenuation of upward illumination.

- b. The Signs shall utilize warmer colors, or display a background with bright text and/or image(s), and restrict white or bright backgrounds.
- c. No new east-facing Programmable Electronic Signs or Billboards will be allowed in the Alum Rock Planning Area.

### ***Downtown Sign Zone***

All Signs approved in the Downtown Sign Zone pursuant to this Policy shall be subject to the following additional requirements:

1. Attached Signs shall not cover any portion of a window or door that is located less than seventy-five (75) feet above grade.
2. A Sign that is not a Programmable Electronic Sign may be internally lit, or externally lit only with downlighting that is shielded to minimize upward illumination.
3. Only one Sign will be allowed per site, except for the sites designated for up to two (2) Signs on Attachment A. An Attached Sign that covers all or any part of more than one (1) Building Façade shall be considered one (1) Sign provided that the total Sign area on all Building Facades does not exceed the maximum area stated above.

### ***Airport Influence Area***

All Signs approved in the Airport Influence Area pursuant to this Policy shall be subject to the following additional requirements:

1. No Sign shall be erected within any Airport Runway Protection Zone.
2. Signage located within an Airport Influence Area shall conform to illumination requirements, as specified in Section 23.04.250 of the San José Municipal Code.
3. Signage within Airport Influence Area must meet FAA criteria.

### ***All Zones other than Downtown Sign Zone***

Only Programmable Electronic Signs will be allowed under this Policy in zones other than the Downtown Sign Zone.

<b>TITLE SIGNS ON CITY OWNED LAND</b>	<b>Page 7 of 9</b>	<b>POLICY NUMBER 6-4</b>
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### ***Message Limitations***

1. No Sign approved pursuant to this Policy shall display a message that contains false advertising, speech inciting unlawful activity, defamatory speech, “fighting words” or obscene speech.
2. By approval of this Policy, the City does not intend to create a public forum on any of the sites that are or may be designated as potential Sign sites pursuant to this Policy. The City may limit any Sign or Signs approved pursuant to this Policy to only the display of commercial messages.
3. The City may develop a list of goods, products or services that may not be advertised on City-owned Signs. Such list will be subject to City Council approval and if approved will be included in the solicitation for proposals described below in the “Sign Approval Process” section of this Policy.
4. The City may require any Sign approved pursuant to this Policy to reserve message space or time for City government speech.

### ***Sign Approval Process***

1. The City will solicit proposals for Signs to be approved pursuant to this Policy. City Council direction will be obtained prior to the commencement of any solicitation process.
2. The City may approve placement of a Sign on City owned land pursuant to this Policy through approval of a lease or other contractual agreement. Development specific environmental clearance under CEQA and the issuance of a building permit for the approved Sign will be required; but no other regulatory permit issued by the City will be required, such as a site Development Permit. This Policy shall supersede Council Policy 6-16 with respect to permitting requirements for uses of Public Property, but the noticing requirements that would apply for a Site Development Permit shall apply to the Council consideration of any lease or other contractual agreement for a Sign pursuant to this Policy.
3. A sign is that is allowed pursuant to this Policy on a site that is subject to the requirements of Business and Professions Code Section 5272 (b) (freeway site for large arena sponsorship sign) shall be required to comply with all requirements of Business and Professions Code Section 5272 (b). Any lease for such sign shall incorporate provisions to implement the requirements of Business and Professions Code Section 5272 (b).
4. On City-owned sites that would be subject to a lease for another use at the time a Sign may be approved pursuant to this Policy, the City will coordinate the process for solicitation or approval of sign proposals with the lessee, and, if required, obtain the lessee’s consent.

<b>TITLE SIGNS ON CITY OWNED LAND</b>	<b>Page 8 of 9</b>	<b>POLICY NUMBER 6-4</b>
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5. The City may solicit proposals for any, some or all, of the following purposes pursuant to this Policy:
  - a. To generate revenue for the City;
  - b. To generate revenue to support City-owned facilities, programs, or services;
  - c. To eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide or eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.
6. If the City solicits proposals for reduction or elimination of existing Billboards, a minimum take down ratio of four (4) existing Billboards shall be required for each new Sign, including Billboard, Programmable Electronic Sign or Sign displaying Off-Site Commercial Speech.
7. To further the City's purpose of eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses, any entity with an existing Billboard or Sign displaying Off-site Commercial Speech will be required to identify such Billboards or Signs displaying Off-Site Commercial Speech as a condition of submitting a proposal to the City for Signs that may be approved pursuant to this Policy.

ATTACHMENT A

**List 1. Potential City-owned Sites for proposed Signage Installation**

APN	CURRENT USE	ADDRESS	SIGNS
259-34-039	San Pedro Market Parking Garage	45 North Market Street	2
467-21-002	CSJ Parking Garage	95 North Third Street	1
259-43-064	Center for Performing Arts	255 Almaden Boulevard	2
467-46-109	Hammer Theater	101 Paseo San Antonio	2
467-46-097	CSJ Parking Garage	280 South Second Street	1
259-40-066	San Jose Museum of Art	110 South Market Street	1
259-28-043	SAP Center	525 West Santa Clara Street	2
254-01-004	Mabury Service Yard *	1404 Mabury Road	1
259-06-054	CSJ Parking Lot	737 North San Pedro Street	1
259-04-019	CSJ Parking Lot	Hwy 87 and West Mission Street	1
101-03-009	Airport Facility <sup>1*</sup>	2500 Seaboard Avenue	1
230-01-058	Airport Facility <sup>1</sup>	2200 Airport Boulevard	1
230-46-065	Airport Facility <sup>1</sup>	1128 Coleman Avenue	1
230-02-021	Airport Facility <sup>1*</sup>	2341 Airport Boulevard	1

<sup>1</sup>FAA requires City receive fair market value for use of property

\*State law restricts to on-site commercial speech and large arena sponsorship signage.

**List 2. Potential City-owned Sites subject to additional clearance**

APN	CURRENT USE	ADDRESS	SIGNS
259-42-023	The Tech **	201 South Market Street	1
230-37-020	Vacant Lot (Near National Guard) *	Hwy 87 and West Hedding Street	1
264-29-113	McEnergy Convention Center **	150 West San Carlos Street	2

\* State law requires rezoning prior to consideration

\*\* Currently identified to require financial/ bond restriction clearance prior to consideration. All sites will require final clearance from the Finance Department prior to completion of the approval process for placement of the sign on the site pursuant to the section of this Policy entitled "Sign Approval Process."



July 12, 2018

Rosalynn Hughey  
Director  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 E. Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113

RE: Initial Study/Negative Declaration  
Signs on City-owned Sites, including Billboards, Programmable Electronic Signs  
and Signs Displaying Off-site Commercial Speech

Dear Rosalynn,

First and foremost, we want to thank you and staff for the willingness to work with us and for the ongoing dialogue regarding this project. We recognize the complex nature of this project and the multitude of issues surrounding the development of sound policy as it relates to enabling digital billboards to be placed on City-owned and controlled property. We believe that significant progress has been accomplished since this item was discussed in earnest in 2014.

In this same spirit of cooperation and in an effort to “strengthen and clarify” the City’s policy direction, we are writing to draw your attention to specific concerns we have identified in the above referenced, Initial Study/Negative Declaration:

1) Height

In order to allow sufficient visibility of the digital displays it will be necessary to increase the proposed height limits of 22’ to top of sign base or 60’ to top of sign. Retention of these limits will act to reduce the number and/or value of potentially viable sites.

2) Illumination – Hours of Operation

In order to optimize revenue it is important to limit dark hours to no greater than 12:00 a.m. to 5:00 a.m., rather than the proposed 12:00 a.m. to 6:00 a.m. Any further restriction will result in a reduction in revenue.

### 3) Illumination – Colors

The restriction on color selections and prohibition of white or bright backgrounds, like any constraint on content, will dramatically limit the pool of advertisers and their agencies, greatly reducing the revenue potential of the program. This restriction is unnecessary, as total sign brightness is controlled and limited to .3 ft candles above ambient lighting.

### 4) Illumination – Tilt

The requirement for a 15 degree or greater downward tilt will reduce the visibility of the signs, increase costs, and will not serve to reduce or contain light from the displays. Sign manufacturers deploy other types of lighting control, such as directed LEDs and louvers to control the direction of light while retaining optimal visibility, making this restriction unnecessary.

### 5) Proposed sites

The City has identified 17 sites for 22 signs. Of these, nine sites (14 signs) are located on City facilities in the Downtown Intensification area and not adjacent to freeways. Of the remaining eight sites adjacent to freeways, please note the following:

- Four sites are restricted by a Caltrans Landscape Designation
  - one of these four sites also appears to be in likely FAA conflict at the edge of a runway.
- Four sites are located on non-landscaped sections of freeway
  - Two sites are located within 450' of each other (the required distance between digital signs is 1,000')
  - One site appears to be zoned Residential
  - Leaving only two sites that are clear for required State permits.

If, as was discussed at the December 19<sup>th</sup> City Council meeting, the City offers two sites to the San Jose Sharks, there would effectively be no sites left to establish a digital network and prove out the revenue potential to the City through a pilot program. The good news is that our analysis has identified approximately 25 viable sites from which to select locations for this project.

In order to make this a successful pilot program of billboards on City-owned or controlled property, and recognizing the importance of maintaining the current schedule, we respectfully ask that the City add a provision to the program that allows for additional City-owned and controlled sites to be substituted. This would allow proposers to present prospective alternative sites to the City during the RFP process for consideration. This substitution mechanism would not increase the number of sites, but would allow bidder identified qualified sites that meet State and City criteria to be utilized in a successful pilot program. These alternative sites would potentially be subject to a separate CEQA/EIR process, the cost of which would be borne by the respective proposer. City Staff would qualify each substitute site and City Council would have final approval.

We would like to respectfully request a meeting with you and your team regarding these issues prior to July 18, 2018, so that we can discuss our concerns in more detail and answer any questions that you and or your staff may have.

Please let us know dates and times that will work for you. We look forward to hearing from you.

Best regards,



Jeff McCuen



John Foster



Alex Belenson

CC: Planning Staff: Lea Simvoulakis, Jenny Nusbaum, Sylvia Do

Planning Commission: Namrata Vora, Peter Allen, Shiloh Ballard, Michelle Yesney, Ada Marquez, John Leyba, Melanie Griswold

City Council: Mayor Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, Lan Diep, Magdalana Carrasco, Dev Davis, Tam Nguyen, Sylvia Arenas, Donald Rocha, Johnny Khamis

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

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July 23, 2018

SCH # 2018062053

GTS # 04-SCL-2018-00433

GTS ID: 11217

PM: SCL – VAR – VAR

Jenny Nusbaum  
City of San Jose  
801 N. First Street  
San Jose, CA 95110-1795

**General Plan, Ordinance, and Policy Amendments for Signs on City-Owned Parcels -  
Negative Declaration (ND)**

Dear Ms. Nusbaum:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the General Plan, Ordinance, and Policy Amendments for Signs on City-Owned Parcels. In tandem with the Metropolitan Transportation Commission's (MTC) Sustainable Communities Strategy (SCS), Caltrans' mission signals a modernization of our approach to evaluate and mitigate impacts to the State Transportation Network (STN). Caltrans' *Strategic Management Plan 2015-2020* aims to reduce Vehicle Miles Traveled (VMT) by tripling bicycle and doubling both pedestrian and transit travel by 2020. Our comments are based on the June 25, 2018 ND.

***Project Understanding***

City ordinance and policy changes to potentially allow up to twenty-two (22) additional signs on seventeen (17) City-owned sites, including billboards, programmable electronic signs and signs displaying off-site commercial speech, in accordance with Council direction, and in compliance with State and Federal regulations.

***Outdoor Advertising***

Any advertising structure visible from the National Highway System (NHS) is subject to the provisions of the California Outdoor Advertising Act outlined in Business and Professions Code Section 5200 et seq. Any advertising structure that displays off-premises commercial copy visible from the NHS will require a permit from the Office of Outdoor Advertising (ODA), contact information provided below.



Advertising structures that only advertise goods and services available on-premises will not require a permit from ODA, provided they adhere to the provisions of Business and Professions Code Section 5272 and 5274 and California Code of Regulations 2243 and 2246.

Each of the proposed advertising structures should refrain from operating in any of the conditions outlined in Business and Professions Code Section 5403, which details the conditions under which advertising displays are not authorized, including “(a) If within the right-of-way of any highway, (d) If not maintained in safe condition, and (h) If visible from a state regulated highway displaying any flashing, intermittent, or moving light or lights.”

For questions related to the ODA permit application process please contact Kenneth Parmelee at (916) 651-9327. for more information about ODA and design guidelines please visit the links below:

- <http://www.dot.ca.gov/trafficops/oda/>
- <http://www.dot.ca.gov/design/lap/livability/docs/class-1s-fwy-and-outdoor-advertising-displays.pdf>

### ***Lead Agency***

As the Lead Agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to the STN. The project’s fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### ***Encroachment Permit***

Please be advised that any work or traffic control that encroaches onto the state ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating state ROW must be submitted to: Office of Permits, California DOT, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. See the website link below for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>.

Ms. Nusbaum, City of San Jose  
July 23, 2018  
Page 3

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Jake Freedman at 510-286-5518 or [jake.freedman@dot.ca.gov](mailto:jake.freedman@dot.ca.gov).

Sincerely,



PATRICIA MAURICE  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse

**From:** Val Lopez [mailto:vlopez@amahmutsun.org]

**Sent:** Sunday, July 08, 2018 6:13 PM

**To:** Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>

**Subject:** Re: Public Review Draft Negative Declaration: General Plan, Ordinance, and Policy Amendments for Signs on City-Owned Parcels (PP18-058)

Dear Thai-Chau,

This project is outside our traditional tribal territory, we have no comment.

Thank you,

Valentin Lopez, Chair  
Amah Mutsun Tribal Band



July 25, 2018

Jenny Nusbaum, Principal Planner  
City of San José  
Department of Planning, Building & Code Enforcement  
200 East Santa Clara Street  
San José, CA 95113

Dear Ms. Nusbaum:

Clear Channel Outdoor (CCO) submits the following letter as public comment related to the draft negative declaration for File No. PP18-058 General Plan, Ordinance, and Policy Amendments for Signs on City-Owned Parcels.

As the largest owner and operator of billboard advertising structures in the City of San José with just under 300 billboard sign faces on approximately 200 structures located throughout most city council districts, CCO would like to express our appreciation to the City for undertaking a process to update your sign ordinance. The first phase of the ordinance change begins with the prospect of allowing signs on City-owned parcels, though we also believe the next phase that considers a broader area of the city and privately owned sites as well will provide the best opportunity to dramatically reduce the total number of billboards within areas of the city.

CCO is also the owner and operator of 29 digital billboards throughout the Bay Area which include both city-owned and privately-owned sites. In all instances, we have worked closely with each city to negotiate detailed development agreements and conditions of approval to address the range of issues and quality of life protections which we know exist and must be respected within the City of San José, as well as generate new revenue. In addition to the revenue, each of these cities has used the public messaging abilities of these signs to advance civic interests, information and public participation with great success at no cost to the city. Our electronic billboard partnerships include the following cities:

- Belmont
- Daly City
- Fairfield
- Hayward
- Milpitas
- Newark
- Oakland
- San Carlos
- Santa Clara
- South San Francisco

As you undertake this comprehensive approach to evaluating off-premise commercial advertising on city-owned and non-city-owned sites, we would like to provide you with our feedback on this first negative declaration document.

Our goal with the following comments is to provide industry expertise and identify best practices in order to help the City maximize success across all phases of this process, specifically regarding the following sections in the negative declaration and municipal code:

PAGE #	SECTION	EXISTING TEXT	COMMENT
5	3.2 Federal	Transition Time: Transition between messages is generally between one (1) and four (4) seconds; one (1) to two (2) seconds is recommended.	This is potentially too long. Advertising messages must have a transition time, which should be no longer than one second in order to seem instantaneous to the human eye.
8	1. B Location	The site is not ineligible for a sign under State or federal law.	<b>Suggest modify text to:</b> The site is not ineligible for a sign under State or federal law at the time of installation.
8	2. C Height	1. Signage, including supporting structure, shall not exceed sixty (60) feet in height above surrounding grade.	Onerous and unnecessary restriction which may limit viability. Height allowances should be considered on a site-by-site basis specific to the conditions and incorporated into a development agreement. Also, this condition is potentially problematic for City-owned locations 10 & 13 (Hwy. 87) and 14 thru 17 (San Jose Airport).
8	2. C Height	2. i. The height to the top of the base shall not be more than twenty-two (22) feet above grade.	Onerous and unnecessary restriction which may limit viability and height allowances should be considered on a site-by-site basis specific to the conditions and incorporated into a development agreement. Also, potentially problematic for City-owned locations 10 & 13 (Hwy. 87) and 14 thru 17 (San Jose Airport).
8	2. C Height	2. ii. The base shall be architecturally consistent with the main building of the parcel and the freeway sign it supports. The base shall be constructed of durable materials and surrounded by landscaping, as needed.	Landscaping considerations should be site specific where appropriate. This may be an onerous restriction which may unnecessarily limit viability of otherwise acceptable locations and also be in conflict with Caltrans regulations.
8	3. Illumination	1. All programmable electronic signs, including billboards shall operate in conformance with the operational requirements for digital signs as specified in Section 23.02.905 of the San José Municipal Code, except that such signs may display off-site commercial speech.	23.02.905 only pertains to programmable electronic signs, which are on-site signs. As digital billboards are off-site signs, we wish to clarify that the brightness limitations in 23.02.905 will apply to the subject digital billboards.
9	3. Illumination	3. Signs shall be constructed of high-	<b>Suggest modify text to:</b>

		quality and durable materials, and shall be installed with sensors to automatically lower light output in accordance with atmospheric conditions. Throughout sign operation, the dimness setting shall be automatically adjusted so that it does not exceed the level of illumination.	Signs shall be constructed of high-quality and durable materials, and shall be installed with sensors to automatically adjust light output in accordance with ambient light conditions. Throughout sign operation, the dimness shall be automatically adjusted so that it does not exceed a level of illumination as specified in Section 23.02.905 of the San José Municipal Code.
9	3. Illumination	5. i. The signs must be tilted downwards to the ground by at least fifteen (15) degrees.	Restriction ignores and undermines the technical engineering and purpose of the sign and length of visibility. Digital sign engineering is specific to the application; tilting undermines this design. No city throughout the U.S. has this restriction. This is unnecessary for brightness control once the other limitations are in place.  <b>Suggest modify text to:</b> The signs shall use LED diodes to focus the emitted light directionally; and the signs shall contain horizontal louvers manufactured as part of the sign face to reduce upward illumination.
		5. ii. The signs shall utilize warmer colors, or display a background with bright text, and restrict white or bright backgrounds.	This restriction is prohibitive and without precedent. Unnecessary restrictions to address unsubstantiated concerns would prohibitively restrict advertising purpose. This prohibitive restriction should be eliminated.
Muni Code	23.02.410 - Programmable electronic sign	Programmable electronic sign" means a type of animated sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means. The elements may be internally illuminated or may be illuminated by reflected light. The sign may be part of a permanent sign that is not a programmable electronic sign. "Programmable electronic sign" includes sign display screens	The existing text does not specify if on or off premise type. The definition does not specify if it allows motion or not.  We request clarifying language to ensure that digital billboards are not classified as programmable electronic signage.

		commonly known as liquid crystal display (LCD), plasma and digital displays, and their functional equivalents. This definition applies whether the display is used to produce a series of still images, or images that appear to move on the display screen. (Ords. 24201, 28641, 28754, 29324.)	
Muni Code	23.02.905 - Limitations on programmable electronic signs	A. No sign shall display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.	We agree this is an industry best practice. There should be no movement, animation, flashing, scintillation in any digital messages on electronic signs.
Muni Code	23.02.905 - Limitations on programmable electronic signs	I. Programmable electronic signs may display only on-site commercial or non-commercial messages.	This restriction may be appropriate for on-premise advertising. However, any off-premise advertising for digital billboards must allow for the display of off premise commercial and non-commercial messages.

We look forward to the confirmation of the proposed staff timeline which anticipates bringing Phase One to the Planning Commission in August and the City Council in September.

CCO has worked with many other Bay Area cities on public/private partnerships to install modern electronic billboards on both city-owned and non-city-owned sites. In that process, cities have successfully created new revenue, promoted city public service announcements, and facilitated the removal of older existing billboards in exchange for the right to build new billboards in locations appropriate for city standards.

Attached are several examples of city-sponsored public service announcements created and advertised on digital billboards working with CCO and the City of Oakland, City of South San Francisco and City of Belmont to raise awareness for city priorities. South San Francisco saw great results in increasing use of their newly remodeled library as a result of this free advertising. In the City of Oakland, the Oakland Promise program is intended to increase the college graduation rates of Oakland students and already the city is seeing increasing rates of college completion in this important community goal. Oakland also is informing the public about its anti-littering and dumping campaigns to help keep the streets clean. Belmont is using hashtags to inform the public about its local amenities.

For reference, we have also provided the project level negative declaration for the newly constructed digital billboard on a city-owned parcel in the City of Belmont adjacent to Highway 101. CCO removed multiple billboards throughout the city and entered into a Relocation Agreement with the City of Belmont that is considered a great success and advancement of community goals by the city.

Please do not hesitate to contact me with any questions or for additional information referenced in this comment letter. We look forward to supporting the City of San Jose throughout this process.



Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Qualls', with a long horizontal flourish extending to the right.

Bruce Qualls  
Vice President, Real Estate and Public Affairs  
Clear Channel Outdoor

Cc: Rosalynn Hughey, Director of Planning, Building and Code Enforcement Department  
Aparna Aankola, Project Manager  
Lea C. Simvoulakis, Planner IV- Supervising Planner  
Mayor Liccardo and City Council Members





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July 25, 2018

Via Electronic Mail:

[jenny.nusbaum@sanjoseca.gov](mailto:jenny.nusbaum@sanjoseca.gov)

Ms. Jenny Nusbaum

Principal Planner

City of San Jose, Department of Planning, Building & Code Enforcement

200 E. Santa Clara Street, 3<sup>rd</sup> Floor Tower

San Jose, CA 95112

RE: Sharks Sports & Entertainment Comments Regarding Initial Study/Negative Declaration for Signs on City-owned Sites, including Billboards, Programmable Electronic Signs and Signs Displaying Off-site Commercial Speech, General Plan Text, Municipal Code and Council Policy Amendments  
File No.: PP18-058

Dear Ms. Nusbaum:

Sharks Sports & Entertainment (SSE) respectfully submits the following comments on the Initial Study/Negative Declaration for Signs on City-owned Sites, including Billboards, Programmable Electronic Signs and Signs Displaying Off-site Commercial Speech Project (the Sign Project). SSE supports the City Council's desire to consider such signs on City-owned properties, especially those in the Downtown Growth Area, in which the SAP Center is located. SSE also supports the installation of billboards on other City-owned properties along the major highways in the San Jose area.

#### INTRODUCTION

The SAP Center, which will be celebrating its 25<sup>th</sup> Anniversary on September 7, 2018, has been one of San Jose's most consistent and impactful economic catalysts, as well as a source of civic pride and spirit for City residents. Since its opening in 1993, the Arena has hosted over 3,900 events (including over 1,000 NHL games), has welcomed over 36,500,000 people through its doors, and has contributed significantly to the world-wide name recognition of San Jose. The Arena's economic impact to San Jose in the last decade alone is estimated to be at least \$3 Billion.

Although SSE has successfully maintained SAP Center as a relevant, competitive and successful venue, we are facing serious challenges. With new sports and entertainment venues opening in our region (many of which have on-site freeway visibility), we must find new opportunities to generate more exposure, including expansion of marketing and sponsorship advertising opportunities. And in order to keep up with the level of facilities, equipment and amenities offered by newer arenas and stadiums, we must continually fund improvement projects – we have spent over \$21 Million of our own funds for

SSE Comments to Initial Study for Sign Project

City File No. PP18-058

July 25, 2018

Page 2 of 5

enhancements to the City-owned arena building since 2015 alone. To continue this successful operation without the use of public financing, we must find new sources of revenue. On-site and off-site outdoor advertising will help us meet these needs.

The City of San Jose has supported these endeavors as well. When the City and SSE renegotiated the agreement for the SAP Center in 2015, the City committed to work with SSE to find two mutually acceptable locations along local freeways where SSE could install digital signage structures. The City also agreed that SSE would be entitled to generate new revenues from additional on-site signage per a new advertising plan based on current industry practices. The approvals currently before the City Council, as described in the Initial Study, are an important step in allowing SSE to make these promises a reality.

The Initial Study / Negative Declaration is clearly the culmination of years of hard work by City staff and officials, and we greatly appreciate those efforts. However, given the significant capital investment required to entitle, design, construct and operate a digital signage structure (upwards of \$1.5 Million), we would like to suggest a few changes that we believe will help improve the Sign Project by helping ensure that the signs will be more economical and effective, without creating any negative effect on the environment. We have limited our comments below to only those items that we believe would specifically affect SSE's ability to achieve its goals for state-of-the-art, industry-standard signage designed to advertise events at SAP Center and Solar4America Ice, and promote the Sharks, the Barracuda, and their sponsors.

## COMMENTS ON SPECIFIC SECTIONS

### Section 3.3 PROPOSED PROJECT

#### Section 3.3.4

The sections described below begin on page 8 of the Initial Study, which describes the restrictions on the size, types, and locations of signs that would be allowed under the proposed Approval of Revised Council Policy 6-4.

Section 2.C.1: It is stated that "Signage, including supporting structure, shall not exceed sixty (60) feet in height above surrounding grade." However, this criteria will not work for all of the sites. For example, State Route 87 (SR 87) is elevated through most of its alignment between US 101 (north) and Interstate 880 (south). Therefore, in order for free-standing signs to be seen from the most elevated portions of SR 87, they must be higher than 60 feet above surrounding grade. We suggest that the language be revised as follows:

SSE Comments to Initial Study for Sign Project  
City File No. PP18-058  
July 25, 2018  
Page 3 of 5

“Signage, including supporting structure, shall not exceed sixty (60) feet in height above surrounding grade; provided, however, that a freeway-oriented sign shall not exceed sixty (60) feet in height above the adjacent freeway road bed surface.”

This change will require minor revisions to Section 4.1 *Aesthetics*, Section 4.17 *Utilities and Services*, and Section 4.18 *Mandatory Findings of Significance*; however, the viewable portion of the proposed signs along SR 87 would continue to be similar to those that have an overall height of 60 feet above the ground elevation. Therefore, impacts would not be significantly different than described in Sections 4.1.2, 4.17.2, and 4.18.2 of the Initial Study.

Section 2.C.2: There is no definition of “sign base” in the City’s Municipal Code. Section C.2 states that “All freestanding signs shall have a base of at least eighteen (18) inches in height.” Would this preclude the use of monument signs on City-owned property, many of which do not have a “base” as it would commonly be defined? Further, Section C.2.i states that “The height to the top of the base shall not be more than twenty-two (22) feet above grade.” As stated above, along elevated portions of SR 87, billboard “bases” would be required to be taller than this to be visible from the freeway.

Section 3.2: This section states that “All signs shall cease operation between the hours of 12:00 a.m. and 6:00 p.m., except that signs may display emergency messages from local, state, and federal governments at any time.” This requirement does not appear to be pertinent to billboards along freeways. As commute times become longer, the loss of advertising opportunities during these hours reduces the value of the billboard. In addition, light sources along the intensely developed freeway corridors are fairly bright even during the evening hours, including lit buildings, businesses, overhead street lights, and directional signage. The incremental impact is negligible. We request that this requirement be modified so that it does not apply to freeway signs.

Section 5.i: This section (on page 9) states that “The signs must be tilted downwards to the ground by at least fifteen (15) degrees.” In the lighting industry, this is no longer necessary to avoid light displacement from signage. The internal lights can all be adjusted or louvered to give the appearance of a downcast light without the expense of tilting the actual sign. We ask that this requirement be modified to allow for internal lighting adjustments that achieve the functional equivalent of the required downward tilt.

Section 5.ii: This section states that “The signs shall utilize warmer colors, or display a background with bright text, and restrict white or bright backgrounds.” New LED technology allows illuminated signs to project softer white or bright backgrounds without adding to light pollution concerns. Illumination can



SSE Comments to Initial Study for Sign Project

City File No. PP18-058

July 25, 2018

Page 4 of 5

also be timed to reduce the projection of these brighter lights. Especially along freeways or in business areas, this should not be a concern. We ask that this requirement be modified accordingly.

This change will require revisions to Section 4.1.2 (page 12) of the Initial Study related to requiring electronic programmable signs "be dominated by dark colors or a dark background with bright text. Display with white or bright background will be restricted." This section can include modified requirements such that there would be no significant environmental impact not previously identified in the Initial Study.

#### **APPENDIX 4 GENERAL PLAN TEXT AND CODE AMENDMENTS**

The proposed changes to Municipal Code Chapter 23.02.870 related Administrative Authority for signs on public property other than public right-of-way states that the Department of Public Works has administrative authority except for signs in parks and signs on City-owned property approved pursuant to City Council Policy 6-4. Signs in parks are under the authority of PRNS; however, it is not stated which department has authority for signs on City-owned property approved pursuant to City Council Policy 6-4, and it would be helpful to know.

Also in the Appendix under changes to Municipal Code Chapter 23.02.1310 B, it is stated that "Signs erected by the City are exempt from permit requirements, but shall comply with all other requirements of this Title, except that signs erected by the City, including under contract to the City, pursuant to City Council Policy 6-4 shall comply with the requirements of Council Policy." The underlined phrase is confusing, because it is not clear whether all signs on City-owned property would fall under the category of "signs erected by the City." We propose that the underlined phrase be deleted and a new Section C be added to read as follows:

- "C. Signs erected on City-owned property are exempt from permit requirements if they are approved pursuant to Council Policy 6-4, in which case such signs shall be required to comply only with the requirements of Council Policy 6-4."

#### **CONCLUSION**

In summary, SSE supports the City's desire to allow billboards, programmable signs, and off-site commercial speech on the identified City-owned properties. We believe that revisions to the Initial

SSE Comments to Initial Study for Sign Project

City File No. PP18-058

July 25, 2018

Page 5 of 5

Study based on the comments above are in keeping with current industry practices and will allow the financing, installation and operation of such signs to be more economically feasible and successful.

Respectfully submitted,

Sharks Sports & Entertainment LLC



John Tortora  
President

cc: City Staff: Nanci Klein, Lea Simvoulakis, Sylvia Do, Aparna Ankola

Planning Commission: Namrata Vora, Peter Allen, Shiloh Ballard, Michelle Yesney, Ada Marquez, John Leyba, Melanie Griswold

City Council: Mayor Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, Lan Diep, Magdalena Carrasco, Dev Davis, Tam Nguyen, Sylvia Arenas, Don Rocha, Johnny Khamis

----- Forwarded message -----

From: **plynam**<[plynam@ucolick.org](mailto:plynam@ucolick.org)>

Date: Tue, Jul 17, 2018 at 12:12 PM

Subject: Re: Fwd: Query

To: Puragra Guhathakurta <[raja@ucolick.org](mailto:raja@ucolick.org)>

Cc: Claire Max <[max@ucolick.org](mailto:max@ucolick.org)>, Bob Kibrick <[kibrick@ucolick.org](mailto:kibrick@ucolick.org)>, graeme <[graeme@ucolick.org](mailto:graeme@ucolick.org)>

Hi Raja,

+ I disagree with the statement that "None of the potential sites identified within this list are within the 15 mile radius from Lick Observatory". I cannot be absolutely sure of the online measuring tools I used, but if City Hall is within 13.5 miles, then 13 of the proposed 17 billboard sites are within 15 miles. The only sites that are not within that radius are the airport sites. How are their distances being measured, because on the basis of their statement, I suspect they are not as-the-crow-flies (or as photons travel).

Please see attached image which shows a blue circle of 15 miles radius from the Mt Hamilton Diner.

+ In the Initial Study/Negative Declaration document:

General:

I do not see UCO/Lick Observatory cited or referenced anywhere.

I do not see IDA cited or referenced anywhere.

I do not see any discussion of mechanical shielding for these signs (e.g. putting a 'hat' on their tops) as a mitigation method.

Page 9, Point 5, subsection ii:

"The signs shall utilize warmer colors, or display a background with bright text..." --- I'm not really sure if this properly expresses our recommendations.

Page 9, Point 5, subsection iii:

"No new east-facing programmable signs ... in the Alum Rock Planning Area" --- I think we would prefer no new east-facing signs at all! Better still, no new signs facing Mount Hamilton.

I have to say, the environmental checklist(s) is a bit of a whitewash/joke.

Page 11; Aesthetics: For all 4 points a "less than significant impact" is reported (even though in section 3.0 Background, on Page 3 it is reported that "community concerns about visual clutter and blight" prompted a 1985 citywide ban on new billboards...?)

Page 19, Cultural Resources:

To this section, the only thing that comes to mind is the UNESCO declaration,

the tone of which has obviously not been appreciated by whoever performed the environmental checklist:

An unpolluted night sky that allows the enjoyment and contemplation of the firmament should be considered an inalienable right of humankind equivalent to all other environmental, social, and cultural rights.

Page 47 et seq:

a) Does the project have the potential to degrade the quality of the environment...?

--- I would argue that the response to this should be "Potentially significant impact, or Less than significant impact with mitigation incorporated.

b) Does the project have impacts that are ... cumulatively considerable (incremental effects in connection with the effects of \*probable future projects\*)?

--- From the observatory's metaphorical and literal viewpoint, this has to be Potentially Significant Impact.

The contribution of wasted light and light pollution associated with the development of the Santa Clara County conurbations has a noticeable impact on observatory research, education, public outreach and technology development operations. Continued uncontrolled development of this sort will not only have Significant Impact on the activities of the observatory, it will have a deleterious impact on the annual activities of some 200+ researchers and 35,000+ visiting public. Ultimately, this will degrade the existing worldwide recognition of Santa Clara county as a unique and inspirational incubator of pioneering, cutting edge astronomical science and technology.

"The presence of an astronomer is the sign of a healthy ecosystem; that when the sky is too bright for astronomy and the astronomers go away, you know you have a polluted sky, and whatever has polluted that sky will eventually pollute other resources, given time."

--- The End of Night (2013) by Paul Brogard (p 256)

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

--- This also has to be a Potentially Significant Impact, not only for the arguments outlined immediately above, but also given the increasing evidence of light at night as a human health risk. An increasing number of studies have made a compelling case for a link between light at night and cancer, especially hormone influenced cancers such as breast and prostate.



July 27, 2018

Rosalynn Hughey  
Director  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 E. Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113

RE: Initial Study/Negative Declaration  
Signs on City-owned Sites, including Billboards, Programmable Electronic Signs  
and Signs Displaying Off-site Commercial Speech

Dear Rosalynn,

It was a pleasure to see Lea, Aparna and you on Tuesday, July 24. Thank you for making time to meet with us to hear our concerns regarding aspects of the Initial Study and for explaining the City's preliminary site selection process for arriving at the included sites, developing the sign specifications and options for moving forward with Phase I.

We want to again acknowledge and recognize the significant work that Staff has put into the current process to change City Policies and Codes to allow digital off-premise signage on City property and to reiterate our concern that the list of sites does not provide an avenue for the City to achieve two key objectives of the program – generation of revenue for the City and a reduction of legacy billboard inventory.

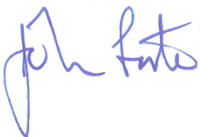
As discussed, our primary concern is the insufficient number of viable freeway sites included in the Initial Study to generate revenue for the City. Based upon our evaluation of the eight non-Downtown Intensification sites, there effectively would be no freeway sites in Phase I, since only two qualify for State Outdoor Advertising Permits, and the City has committed these sites to the San Jose Sharks .

After further reviewing City Council direction, we were unable to find an authorization for the fourteen Downtown Intensification signs to be installed without takedowns. Should the City Council change course and direct Staff to proceed with no takedown requirements for Downtown Intensification signs, we expect we will be afforded the same opportunity as other vendors to bid on Downtown Intensification signs without a takedown requirement.

Thank you for providing additional detail and insight into the process. We look forward to seeing the Memorandum outlining options for the City Council to consider in their decisionmaking process. Per our discussion, it is our understanding that Staff will include, as part of its recommendation to City Council, the option for City Council to direct for the RFP process to allow respondents to submit alternate and/or additional sites for review, qualification, and consideration by the City. Further to our discussion and ss outlined in our previous correspondence, allowing proposers to present a pool of alternate and/or additional sites for the City to consider and run through its filters will provide the City the greatest flexibility and best opportunity to create a well-designed program that generates revenue from new digital billboards and reduces the number of existing legacy static billboards in the City of San Jose.

We remain committed to this program and are available to answer questions, discuss options, and support Staff in unlocking the full value and potential a well constructed program can deliver for the City.

Best regards,



John Foster



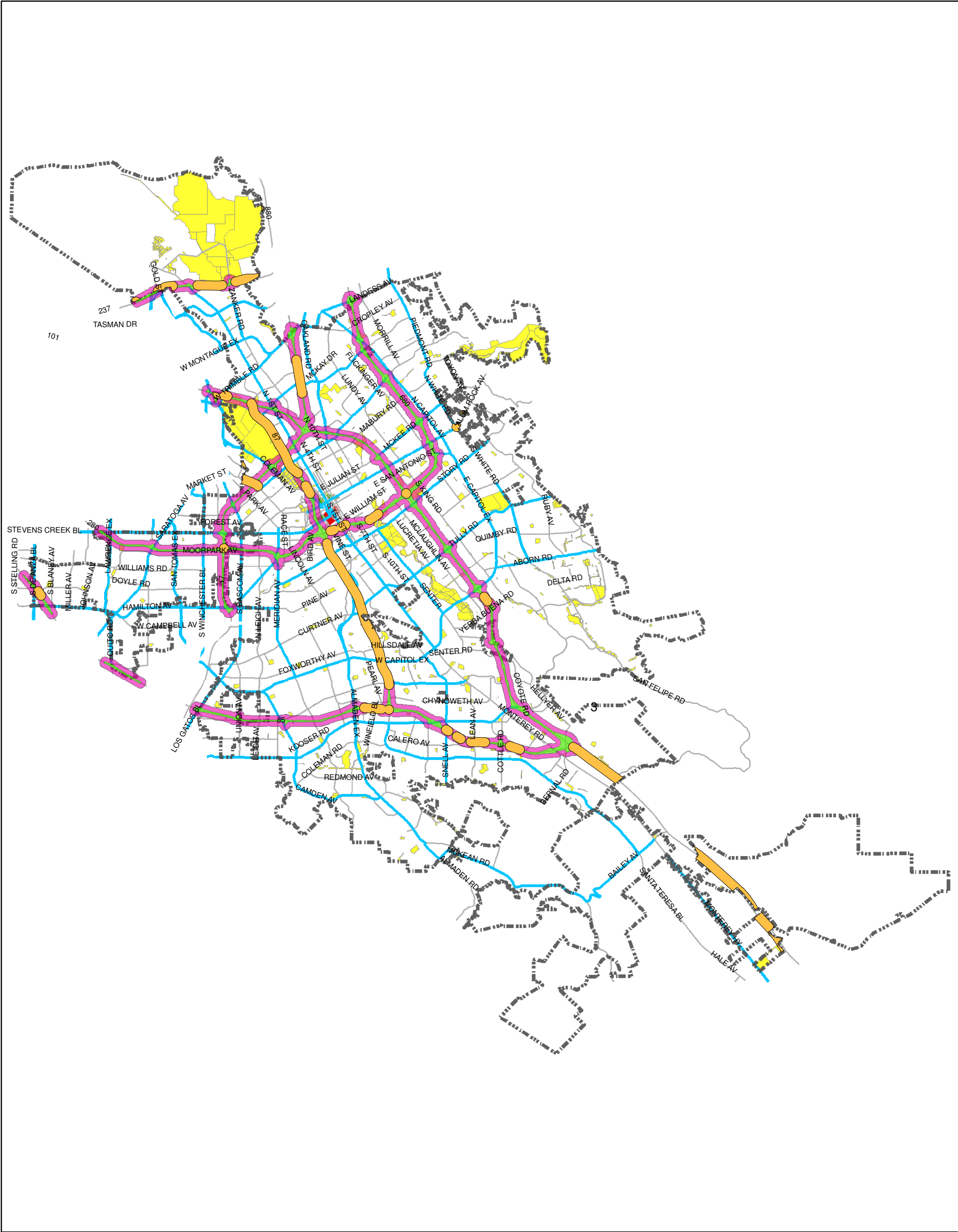
Jeff McCuen



Alex Belenson

CC: Planning Staff: Lea Simvoulakis, Aparna Ankola

# Regulated Highway Areas for Billboards



- Freeway Non-Landscaped Area Penalty Buffered
- City Owned Parcels
- Principal Arterials
- Freeway Landscaped Area
- Freeway Landscaped Buffered

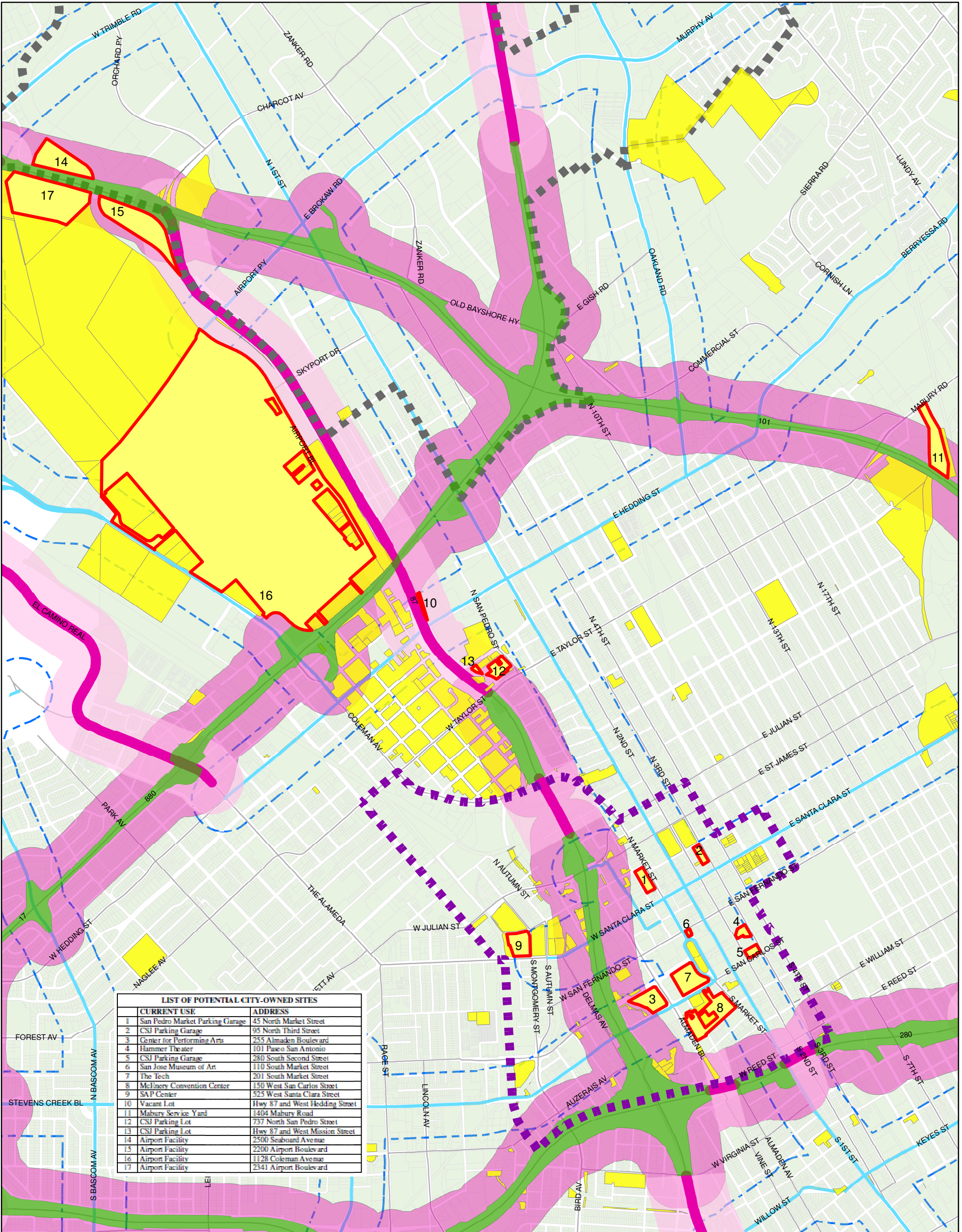
**ILLUSTRATIVE ONLY**  
**NOT TO BE USED FOR ANY LEGAL PURPOSE**  
 Map is a snapshot in time that reflects best available data as of October 19, 2017



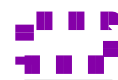
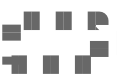






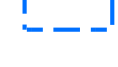
*Planning, Building and Code Enforcement*



# Regulated Highway Areas for Signs on City-Owned Sites



**ILLUSTRATIVE ONLY**  
 NOT TO BE USED FOR ANY LEGAL PURPOSE  
 Map is a snapshot in time that reflects best available data as of July 18, 2018

-  Downtown Sign Boundary
-  North San Jose Sign Area Boundary
-  City-Owned Sites
-  Freeway Landscaped Area
-  Potential City-Owned Sites
-  Freeway Landscaped Buffered
-  Principal Arterials
-  Freeway Non-Landscaped Area Penalty Buffered
-  Principal Arterials Buffered



Planning, Building and Code Enforcement

0 1,250 2,500 5,000 Feet





RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE ENVISION SAN JOSE 2040 GENERAL PLAN PURSUANT TO TITLE 18 OF THE SAN JOSE MUNICIPAL CODE TO AMEND POLICY CD-10.4**

**Fall 2018 General Plan Amendment Cycle (Cycle 3)**

**GPT18-002**

**WHEREAS**, the City Council is authorized by Title 18 of the San Jose Municipal Code and state law to adopt and, from time to time, amend the General Plan governing the physical development of the City of San José; and

**WHEREAS**, on November 1, 2011, the City Council adopted the General Plan entitled, "Envision San Jose 2040 General Plan, San José, California" by Resolution No. 76042, which General Plan has been amended from time to time (hereinafter the "General Plan"); and

**WHEREAS**, in accordance with Title 18 of the San José Municipal Code, all general and specific plan amendment proposals are referred to the Planning Commission of the City of San José for review and recommendation prior to City Council consideration of the amendments; and

**WHEREAS**, on August 22, 2018, the Planning Commission held a public hearing to consider the proposed text amendment to the General Plan pertaining to the amendment of Policy CD-10.4, File No. GPT18-002 specified in Exhibit "A" hereto ("General Plan Amendment"), at which hearing interested persons were given the opportunity to appear and present their views with respect to said proposed amendment; and

**WHEREAS**, at the conclusion of the public hearing, the Planning Commission transmitted its recommendations to the City Council on the proposed General Plan Amendment; and

**WHEREAS**, on September 25, 2018, the Council held a duly noticed public hearing; and

**WHEREAS**, a copy of the proposed General Plan Amendment is on file in the office of the Director of Planning, Building and Code Enforcement of the City, with copies submitted to the City Council for its consideration; and

**WHEREAS**, pursuant to Title 18 of the San José Municipal Code, public notice was given that on November 14, 2017 at 6:00 p.m. in the Council Chambers at City Hall, 200 East Santa Clara Street, San Jose, California, the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment (Exhibit "A"); and

**WHEREAS**, prior to making its determination on the General Plan Amendment, the Council reviewed and considered an Initial Study/Negative Declaration for an amendment to the Envision San Jose 2040 General Plan to Delete General Plan Land Use Policy CD-10.4, to revise City Council Policy 6-4; and update Section 23.02.870 and 23.02.1310 of Title 23 (The Sign Code of the Municipal Code to Allow Signs on City-owned property, including Billboards, programmable electronic signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those sections of Title 23 ; and

**WHEREAS**, the Council of the City of San José is the decision-making body for the proposed General Plan Amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:**

**SECTION 1.** The Council's determinations regarding General Plan Amendment GPT18-002 is hereby specified and set forth in Exhibit "A," attached hereto and incorporated herein by reference.

**SECTION 2.** This Resolution shall take effect thirty (30) days following the adoption of this Resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SANTA CLARA )

I hereby certify that the text amendments to the San Jose General Plan specified in the attached Exhibit "A" were adopted by the City Council of the City of San Jose on \_\_\_\_\_, as stated in its Resolution No. \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

## EXHIBIT "A"

**File No. GPT18-002.** General Plan Policy CD-10.4 is hereby deleted:

**~~Policy CD-10.4~~** ~~Prohibit billboards at Gateway locations and along freeways (including U.S. 101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87) and Grand Boulevards within San Jose.~~

Council District: Citywide.

CEQA: Initial Study/Negative Declaration for an amendment to the Envision San Jose 2040 General Plan to Delete General Plan Land Use Policy CD-10.4, to revise City Council Policy 6-4; and update Section 23.02.870 and 23.02.1310 of Title 23 (The Sign Code of the Municipal Code to Allow Signs on City-owned property, including Billboards, programmable electronic signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those sections of Title 23

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE ADOPTING A NEGATIVE DECLARATION FOR AN AMENDMENT TO THE ENVISION SAN JOSE 2040 GENERAL PLAN TO DELETE GENERAL PLAN LAND USE POLICY CD10.4, REVISION OF CITY COUNCIL POLICY 6-4, AND AN ORDINANCE AMENDING SECTIONS 23.02.870 AND 23.02.1310 OF TITLE 23 (THE SIGN CODE) OF THE MUNICIPAL CODE TO ALLOW CONSIDERATION OF SIGNS ON CITY-OWNED PROPERTY, INCLUDING BILLBOARDS, PROGRAMMABLE ELECTRONIC SIGNS, AND SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH, AND TO MAKE UPDATES OR OTHER TECHNICAL, NON-SUBSTANTIVE CHANGES, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 23, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Negative Declaration for a General Plan Text Amendment, Ordinance amending the San José Municipal Code. a revision of City Council Policy 6-4 for Signs on City-Owned Sites, Including Billboards, Programmable Electronic Signs and Signs Displaying Off-site Commercial Speech under Planning File No. PP18-058 (the “Initial Study/Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

**WHEREAS**, the allowing of off-site signs on City-owned land (the “Project”) analyzed under the Initial Study/Negative Declaration consists of an amendment to the Envision San José 2040 General Plan to delete General Plan Policy CD10.4, revise City Council

Policy 6-4, and update Sections 23.02.870 and 23.02.1310 of Title 23 (the Sign Code) of the Municipal Code to allow signs on City-owned property including Billboards, Programmable Electronic Signs, and signs displaying off-site commercial speech, and to make updates or other technical, non-substantive changes, or formatting changes within those Sections of Title 23; and

**WHEREAS**, the Initial Study/Negative Declaration concluded that implementation of the Project would not result in any significant effects on the environment; and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the Initial Study/Negative Declaration for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the Initial Study/Negative Declaration for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Negative Declaration and other information in the record and has considered the information contained therein, prior to

acting upon or approving the Project, (2) the Initial Study/Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, Tower, 3rd Floor, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Negative Declaration prepared for the Project (File No. PP18-058). The Initial Study/Negative Declaration is: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.



ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

The following  
items were  
received after  
packets were  
distributed.

**From:** Leticia O. Cvietkovich [<mailto:lcvietkovich@hopkinscarley.com>]

**Sent:** Tuesday, August 21, 2018 10:16 AM

**To:** Planning Commission 3 <[PlanningCom3@sanjoseca.gov](mailto:PlanningCom3@sanjoseca.gov)>; Planning Commission 4 <[PlanningCom4@sanjoseca.gov](mailto:PlanningCom4@sanjoseca.gov)>; Planning Commission 7 <[PlanningCom7@sanjoseca.gov](mailto:PlanningCom7@sanjoseca.gov)>; Planning Commission 6 <[PlanningCom6@sanjoseca.gov](mailto:PlanningCom6@sanjoseca.gov)>; Planning Commission 1 <[PlanningCom1@sanjoseca.gov](mailto:PlanningCom1@sanjoseca.gov)>; Planning Commission 2 <[PlanningCom2@sanjoseca.gov](mailto:PlanningCom2@sanjoseca.gov)>; Planning Commission 5 <[PlanningCom5@sanjoseca.gov](mailto:PlanningCom5@sanjoseca.gov)>; Hughey, Rosalynn <[Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov)>; Do, Sylvia <[sylvia.do@sanjoseca.gov](mailto:sylvia.do@sanjoseca.gov)>

**Cc:** Chuck R. Reed <[chuckreed@hopkinscarley.com](mailto:chuckreed@hopkinscarley.com)>; [cgreene@orangebarrelmedia.com](mailto:cgreene@orangebarrelmedia.com); [Jerry@strangis.com](mailto:Jerry@strangis.com)

**Subject:** Planning Commission, August 22, Item 5a, Downtown Signs

**Sent on behalf of Chuck Reed**

Good Morning:

Please see attached correspondence from Chuck Reed dated August 21, 2018.

Sincerely,

**Leticia O. Cvietkovich**

Legal Secretary



**Hopkins & Carley** | A Law Corporation

San Jose | Palo Alto

70 South First Street | San Jose, CA 95113

Direct: 408.299.1361 | Main: 408.286.9800

[lcvietkovich@hopkinscarley.com](mailto:lcvietkovich@hopkinscarley.com)

[hopkinscarley.com](http://hopkinscarley.com)

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If you are not the intended recipient, please contact the sender immediately and permanently

delete the original and any copies of this email and any attachments thereto. For more information about Hopkins & Carley, visit us at <http://www.hopkinscarley.com/>.

August 21, 2018

Chuck Reed  
chuckreed@hopkinscarley.com  
T. 408.299.1409  
F. 408.998.4790

San Jose Planning Commission  
Planning, Building and Code Enforcement  
200 East Santa Clara Street  
Tower, Third Floor  
San Jose, CA 95113

**Re: Planning Commission Meeting: August 22, 2018  
Agenda Item: 5a, Downtown Sign Program**

Planning Commissioners,

I am submitting this letter on behalf of Orange Barrel Media, a national leader in unique outdoor media that adds to the character of urban places. Orange Barrel Media works with municipal governments to permit and develop advertising properties that the public finds attractive and exciting.

Two of the four objectives of this planning effort, Revenue and Commercial Vibrancy (Staff Report, page 2), will be negatively affected by the site location criteria relative to residential zoning and dwellings which use a 150 foot setback requirement. An illumination maximum requirement would provide better protection for residents, allow more flexibility in locations, and eliminate future zoning conflicts.

The draft Council Policy includes the following:

***Sign Location, Type, Size, Height and Number***

2. Any Programmable Electronic Sign must be located on the site such that:
  - a. The Sign is not visible from any dwelling unit that is located within one hundred fifty (150) linear feet of the Sign; and
  - b. The Sign is greater than one hundred fifty (150) linear feet from the nearest boundary line of a Residential Zoning District.

(Draft Council Policy 6-4, page 4)

In most of the Downtown Sign Zone, residences are allowed and encouraged by the General Plan land use designation of Downtown:

**Downtown**

Density: Up to 800 DU/AC; FAR Up to 30.0 (3 to 30 stories)

This designation includes office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatibility with other major policies within the *Envision General Plan* (such as Historic Preservation Policies) indicates otherwise.

This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use.

(Envision San Jose 2040 General Plan, Land Use Designations, Chapter 5, page 6)

As a consequence, many of the privately owned sites that might be available to meet the city objectives of Revenue and Commercial Vibrancy will not be able to participate in the program, undercutting the City objectives substantially. Also, as we build more housing downtown, approved sites, both City and private, could be impacted by new housing, making the program unworkable and the policy obsolete.

Other cities have faced this problem and have resolved it by requiring lighting studies for electronic signs to demonstrate they meet a maximum illumination standard. Such a standard provides both protection and flexibility in locations. Atlanta, Columbus and several other cities, allow new signage to increase ambient light by a maximum of .3 foot candles at 250 feet from the sign array. This standard minimizes any impact on dwelling units no matter the distance because it is based on marginal difference versus an arbitrary absolute distance.

This is the standard set by Atlanta in its downtown Arts and Entertainment District:

Lighting Study – analysis of the proposed luminance of the sign during both the daytime and nighttime including, but not limited to a photometric analysis (light study) employing light modeling software that evaluates the sign's impact on the surrounding area, with an aerial map depicting illumination expressed as foot candles (fc) and demonstrating that signage shall not exceed 0.3 fc above ambient light conditions as measured at 250 feet from the signage; (Atlanta Arts & Entertainment District Sign Concept Agreement, Section II, A.7, page 4)

The draft Council Policy 6-4 should be amended to follow the direction of Atlanta in our own Downtown Sign Zone by inserting the underlined provision in the Location criteria:

2. Except for Signs in the Downtown Sign Zone that will not exceed 0.3 foot candles of illumination above ambient light conditions as measured at 250 feet from the signage, any Programmable Electronic Sign must be located on the site such that:
  - a. The Sign is not visible from any dwelling unit that is located within one hundred fifty (150) linear feet of the Sign; and
  - b. The Sign is greater than one hundred fifty (150) linear feet from the nearest boundary line of a Residential Zoning District.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation



Chuck Reed

cc: Rosalynn Hughey  
Sylvia Do

**From:** Leticia O. Cvietkovich <[lcvietkovich@hopkinscarley.com](mailto:lcvietkovich@hopkinscarley.com)>

**Sent:** Tuesday, August 21, 2018 1:57 PM

**To:** Hughey, Rosalynn

**Cc:** Planning Commission 3; Planning Commission 4; Planning Commission 7; Planning Commission 6; Planning Commission 1; Planning Commission 2; Planning Commission 5; Do, Sylvia; Nusbaum, Jenny; Simvoulakis, Lea; Chuck R. Reed; [cgreene@orangebarrelmedia.com](mailto:cgreene@orangebarrelmedia.com); [Jerry@strangis.com](mailto:Jerry@strangis.com)

**Subject:** Planning Commission, August 22, Item 5a, Downtown Signs

## Sent on behalf of Chris Greene

Good Afternoon

Please see attached correspondence from Chris Greene dated August 21, 2018.

Sincerely,

**Leticia O. Cvietkovich**

Legal Secretary



**Hopkins & Carley** | A Law Corporation

San Jose | Palo Alto

70 South First Street | San Jose, CA 95113

Direct: 408.299.1361 | Main: 408.286.9800

[\*\*lcvietkovich@hopkinscarley.com\*\*](mailto:lcvietkovich@hopkinscarley.com)

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# ORANGE BARREL | MEDIA

Landmark Advertising

orangebarrelmedia.com  
250 N. Hartford Avenue  
Columbus, Ohio 43222  
P 614.294.4898

August 21<sup>st</sup>, 2018

Rosalynn Hughey, Director  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 E. Santa Clara Street, Tower, 3<sup>rd</sup> Floor  
San Jose, CA 95113

**RE: PC AGENDA: 8-22-18 ITEM: 5.a Downtown Sign Program.**

For more than 15 years, OBM has been creating value for municipal clients and the cities they serve by designing, constructing and implementing innovative digital outdoor experiences that add to the character of urban places. Integral to our success is the high value we place on developing projects that balance public and private objectives in such a way that we enhance communities through our partnerships.

Orange Barrel Media wanted to take this opportunity to compliment staff on its work in creating a downtown sign program for the City of San Jose. The process has been extremely thorough and thoughtful and Orange Barrel Media looks forward to the opportunity to offer its proposals for signs on the selected city owned sites.

Orange Barrel Media has a history of working in partnership with cities around the country in offering ideas on best practices for the creation of similar ordinances. Our attorney, Chuck Reed, has submitted a letter recommending a minor change in the location criteria based on what has been done in other cities.

We have seen the benefits both economic and aesthetic in enacting these programs and are looking forward to helping San Jose achieve its objectives of revenue and commercial vibrancy downtown.

Thank you very much for your hard work on this program.

Best regards,

Chris Greene  
Managing Director

CC: Planning Staff: Sylvia Do, Jenny Nusbaum, Lea Simvoulakis  
Planning Commission: Peter Allen, Shiloh Ballard, John Leyba, Melanie Griswold, Ada Marquez, Michelle Yesney, Namrata Vora



**From:** Pete Carrillo [<mailto:pete@siliconvalleyadvisors.com>]

**Sent:** Tuesday, August 21, 2018 8:45 PM

**To:** Hughey, Rosalynn <[Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov)>

**Cc:** Ankola, Aparna <[aparna.ankola@sanjoseca.gov](mailto:aparna.ankola@sanjoseca.gov)>; Planning Commission 1 <[PlanningCom1@sanjoseca.gov](mailto:PlanningCom1@sanjoseca.gov)>; Planning Commission 3 <[PlanningCom3@sanjoseca.gov](mailto:PlanningCom3@sanjoseca.gov)>; Planning Commission 2 <[PlanningCom2@sanjoseca.gov](mailto:PlanningCom2@sanjoseca.gov)>; Planning Commission 4 <[PlanningCom4@sanjoseca.gov](mailto:PlanningCom4@sanjoseca.gov)>; Planning Commission 5 <[PlanningCom5@sanjoseca.gov](mailto:PlanningCom5@sanjoseca.gov)>; Planning Commission 6 <[PlanningCom6@sanjoseca.gov](mailto:PlanningCom6@sanjoseca.gov)>; Planning Commission 7 <[PlanningCom7@sanjoseca.gov](mailto:PlanningCom7@sanjoseca.gov)>; Jeff McCuen <[jeff.mccuen@outfrontmedia.com](mailto:jeff.mccuen@outfrontmedia.com)>; John Foster <[john@fosterinterstate.com](mailto:john@fosterinterstate.com)>; Alex Belenson <[abelenson@Allvision.com](mailto:abelenson@Allvision.com)>

**Subject:** Letter re: Planning Commission Meeting Item#5

Hi Rosalyn:

Below please find a letter from Outfront Media and it's partners, as well as recommendations to Policy Number 6-4. Please let us know if you should have any questions. Thank you for working with us to address our concerns. Much appreciated.

*City of San Jose, California*

**COUNCIL POLICY**

<b>TITLE</b>	<b>PAGE</b>	<b>POLICY NUMBER</b>
<b>SIGNS ON CITY-OWNED LAND INCLUDING BILLBOARDS. PROGRAMMABLE ELECTRIC SIGNS AND SIGNS DISPLAYING OFF SITE COMMERCIAL SPEECH</b>	<b>1 of 9</b>	<b>6-4</b>
<b>EFFECTIVE DATE November 9, 2018 (Replacement Policy 6-4)</b>	<b>REVISED DATE September 25, 2018</b>	
<b>APPROVED BY COUNCIL ACTION 1/10/72 (Original Policy 6-4); 9/25/18, Item X.X, Res. No. XXXXX (Replacement Policy 6-4)</b>		

**BACKGROUND**

Council Policy 6-4 was originally approved in 1972, prohibiting future use of billboards on City-owned land and directing the removal of billboards from City-owned land within five (5) years. In 1974, the City Council adopted an ordinance prohibiting the placement of billboards within five hundred (500) feet of the right-of-way of certain freeways if designed to be visible to the freeway. In 1985, the City Council adopted a citywide ban on new billboards and continued in effect its prohibitions of other types of signs displaying off-site commercial speech. In 2010, the City Council conducted a public hearing to consider a staff presentation outlining a preferred strategy for updating Title 23 of the San Jose Municipal Code (the Sign Code) and addressing billboards on private property. At the conclusion of the public hearing, Council approved maintaining the cap on the number of billboards in the City and directed staff to explore opportunities for moving existing billboards from residential areas to commercial areas. In December 2015, electronic digital off-site advertising signs and billboard installations were added to the Council priority list as a work item for staff. This item has been one of the top ten Council priorities since March 7, 2017. On December 19, 2017, the Council accepted the Community and Economic Development Committee status report on implementing a phased work plan to investigate removing existing barriers to off-site commercial advertising on City-owned and non-City-owned sites in the City of San Jose, that could allow:

1. New off-site advertising on City-owned sites throughout the City, including the exchange of existing legal static billboards on other sites for new electronic billboards on City-owned sites (Phase 1);
2. Exchange of existing legal static billboards to electronic billboards on non-City-owned existing freeway-facing sites and new freeway-facing sites in the North San Jose Development Policy Area (Phase 2);

3. New off-site 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 2).

This Policy implements Phase 1 of the December 19, 2017 Council direction.

## DEFINITIONS

Except where the context otherwise requires, the definitions set forth in Part 1 of Chapter 23.02 of Title 23 of the San Jose Municipal Code are incorporated by reference into this Council Policy. Where a word or phrase is not defined in Part 1 of Chapter 23.02 of Title 23 of the San Jose Municipal Code, the definitions set forth in Chapter 20.200 of Title 20 of the San Jose Municipal Code are incorporated by reference into this Council Policy.

## PURPOSE

To state Council Policy regarding existing and future use of Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech on City-owned land, [where City-owned land shall include without limitation City rights of way and remnant City property](#); to provide guidance regarding the implementation of a program that may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-site Commercial Speech, on City-owned land; and to confirm the City's continued interest in regulating Signs on City-owned land to promote an aesthetically pleasing environment.

## POLICY

1. The City will only allow the future use of Billboards and Signs displaying Off-Site Commercial Speech on City-owned land, as and where expressly allowed pursuant to this Council Policy 6-4.
2. The City may allow Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech on City-owned land pursuant to this Council Policy 6-4 for any of the following purposes, where consistent with applicable State and federal law:
  - a. To generate revenue for the City, including revenue to support City-owned facilities, programs, or services; and/or eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide, or eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.
  - b. To explore opportunities to enhance the commercial vibrancy of the City in selected locations, including the Downtown Sign Zone, while maintaining an aesthetically pleasing environment, by evaluating the effectiveness of location, design and operational criteria, and related requirements for City-owned land to assist in the development of criteria and best practices for non-City-owned sites, should the City Council decide to proceed with a program for additional Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech, on non-City-owned land.

## IMPLEMENTATION

### ***General***

The City may allow Signs on City-owned land including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech, under this Council Policy, and in compliance with State and federal regulations. Signs approved under this Council Policy shall be in addition to any other Signs that may be allowed on the City-owned property under Title 23 of the San Jose Municipal Code.

This Policy identifies selection criteria for City-owned land on which the City Council may consider allowing these additional Signs, including Billboards, Programmable Electronic Signs and Signs displaying Off-Site Commercial Speech. Based on the identified selection criteria, this Policy also designates up to seventeen (17) sites, which may be eligible or potentially eligible for up to twenty-two (22) additional Signs. Additional City-owned land may be considered eligible or potentially eligible for additional Signs under this Policy, if the Policy is amended by action of the City Council, which will require further review under the California Environmental Quality Act. (CEQA).

This Policy further specifies minimum limitations on the location, number, type, size and height of Signs that may be allowed under this Policy, including illumination requirements. In addition, this Policy identifies message limitations that the City may impose on Signs approved pursuant to this Policy.

Finally, this Policy generally describes the process for the approval of additional Signs that may be allowed under the Policy.

### ***Site Selection Criteria***

The following site selection criteria have been used to designate City-owned land that is or may be potentially eligible for additional Signs under this Policy, and subject to direction of the City Council, to screen additional City-owned land for eligibility for such Signs.

1. The site, which may consist of parcels, a parcel, or a portion of a parcel, has a General Plan Land Use/Transportation Diagram designation other than Open Space, Parkland, Habitat, Lower Hillside, Agriculture, Private Recreation and Open Space, Open Hillside, Mixed-use Neighborhood, Transit Residential, Urban Residential or Residential Neighborhood.
2. The site is in a Zoning District other than OS Open Space or A Agricultural.
3. A Sign can be located on the site consistent with Council Policy 6-34 {Riparian Corridor Protection and Bird Safe Design}.
4. A Sign can be located on the site consistent with City policies and design guidelines for development in proximity to or on Structures designated as historical resources as defined in CEQA Guidelines Section 15064.5, or historic landmarks or candidate historic landmarks by the City, State, or Federal government, and shall conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as well as Chapter 13.48, "Historic Preservation," of Title 13 of the Municipal Code.
5. Locating a Sign on the site would be compatible with any existing use on the site or any potential use of the site for purposes other than a Sign.

6. The Finance Department has determined that the site can, or may potentially be, used for a Sign without violating bond covenants or other financing restrictions. Final clearance from the Finance Department will be required prior to completion of the approval process for placement of a Sign on the site pursuant to the section of this Policy entitled "Sign Approval Process".

### ***Designated Sites***

As of the date of this Policy, the sites that have been identified as eligible, or potentially eligible, for additional Signs under this Policy, based on the above selection criteria are identified in Attachment A. This Policy may be amended by action of the City Council to add sites that may be considered eligible or potentially eligible for Signs pursuant to this Policy, subject to further review under the California Environmental Quality Act (CEQA).

### ***Sign Location, Type, Size, Height and Number***

1. The Sign location must comply with all requirements of State and federal law.
2. Any Programmable Electronic Sign must be located on the site such that:
  - a. The Sign is not visible from any dwelling unit that is located within one hundred fifty (150) linear feet of the Sign; and
  - b. The Sign is greater than one hundred fifty (150) linear feet from the nearest boundary line of a Residential Zoning District.
3. Signs shall not have a total Sign Area in excess of twelve hundred (1,200) square feet.
4. Sign Area shall be computed as provided in Section 23.02.910 of the San Jose Municipal Code.
5. Freestanding Signs shall be subject to the following Height limitations, computed as provided in Section 23.02.930 of the San Jose Municipal Code:
  - a. Signage, including Supporting Structure, shall not exceed sixty (60) feet in Height above surrounding grade, except for Freestanding Freeway Signs meeting the criteria for a height exception specified in Section 23.04.035C.2 of the San Jose Municipal Code. Further Height limitations may apply based on other consideration, such as Federal Aviation Administration (FAA) criteria.
  - b. All Freestanding Monument Signs shall rest on a base of at least eighteen (18) inches in Height.
    - i. The Height to the top of the base of a Freestanding Monument Sign shall not be more than twenty-two (22) feet above grade.
    - ii. The base of a Freestanding Monument Sign shall be architecturally consistent with the largest building on the parcel and the Sign it supports. The base shall be constructed of durable materials and surrounded by landscaping, as needed for soil stability, drainage, site accessibility and architectural integrity.

**Sign Illumination**

1. All Programmable Electronic Signs shall operate in conformance with the operational requirements for Programmable Electronic Signs as specified in Section 23.02.905 of the San Jose Municipal Code, except that such Signs may display Off-Site Commercial Speech.
2. No Sign shall be in operation between the hours of 12:00 a.m. and ~~65~~:00 a.m., except that Signs may display emergency messages from local, state, and federal governments at any time.
3. Signs shall be constructed of high-quality and durable materials and shall be installed with sensors to automatically lower light output in accordance with atmospheric conditions. Throughout Sign operation, the dimness setting shall be automatically adjusted so that it does not exceed the level of illumination, as specified in Section 23.02.905 of the San Jose Municipal Code.
4. Illuminated Signs, including Billboards, and Programmable Electronic Signs, shall at a minimum meet the following additional requirements between the hours of 12:00 a.m. and ~~65~~:00 a.m.:
  - a. The Signs must be ~~tilted downward toward the ground by at least fifteen (15) degrees and provide a rimmed edge along the top of the Sign, or shall utilize other alternative(s) which the City determines will provide equivalent attenuation of designed to attenuate~~ upward illumination.
  - ~~b. The Signs shall utilize warmer colors, or display a background with bright text and/or image(s), and restrict white or bright backgrounds.~~
  - ~~e.b.~~ No new east-facing Programmable Electronic Signs or Billboards will be allowed in the Alum Rock Planning Area.

**Downtown Sign Zone**

All Signs approved in the Downtown Sign Zone pursuant to this Policy shall be subject to the following additional requirements:

1. Attached Signs shall not cover any portion of a window or door that is located less than seventy-five (75) feet above grade.
2. A Sign that is not a Programmable Electronic Sign may be internally lit, or externally lit only with downlighting that is shielded to minimize upward illumination.
3. Only one Sign will be allowed per site, except for the sites designated for up to two (2) Signs on Attachment A. An Attached Sign that covers all or any part of more than one (1) Building Facade shall be considered one (1) Sign provided that the total Sign area on all Building Facades does not exceed the maximum area stated above.

**Airport Influence Area**

All Signs approved in the Airport Influence Area pursuant to this Policy shall be subject to the following additional requirements:

1. No Sign shall be erected within any Airport Runway Protection Zone.
2. Signage located within an Airport Influence Area shall conform to illumination requirements, as specified in Section 23.04.250 of the San Jose Municipal Code.
3. Signage within Airport Influence Area must meet FAA criteria.

### **All Zones other than Downtown Sign Zone**

Only Programmable Electronic Signs will be allowed under this Policy in zones other than the Downtown Sign Zone.

### **Message Limitations**

1. No Sign approved pursuant to this Policy shall display a message that contains ~~false advertising~~, speech inciting unlawful activity, defamatory speech, "fighting words," ~~or~~ obscene speech, or false advertising, where false advertising means messages that are inherently false, misleading, or deceptive (i.e., speech that is incapable of being presented in a manner that is not misleading).
2. By approval of this Policy, the City does not intend to create a public forum on any of the sites that are or may be designated as potential Sign sites pursuant to this Policy. The City may limit any Sign or Signs approved pursuant to this Policy to only the display of commercial messages.
3. The City may develop a list of goods, products or services that may not be advertised on Signs located on City-owned land-Signs. Such list will be subject to City Council approval and if approved will be included in the solicitation for proposals described below in the "Sign Approval Process" section of this Policy.
4. The City may require any Sign approved pursuant to this Policy to reserve message space or time for City government speech.

### **Sign Approval Process**

1. The City will solicit proposals for Signs to be approved pursuant to this Policy. City Council direction will be obtained prior to the commencement of any solicitation process.
2. The City may approve placement of a Sign on City-owned land pursuant to this Policy through approval of a lease or other contractual agreement. Development specific environmental clearance under CEQA and the issuance of a building permit for the approved Sign will be required; but no other regulatory permit issued by the City will be required, such as a site Development Permit. This Policy shall supersede Council Policy 6-16 with respect to permitting requirements for uses of Public Property, but the noticing requirements that would apply for a Site Development Permit shall apply to the Council consideration of any lease or other contractual agreement for a Sign pursuant to this Policy.
3. A sign is that is allowed pursuant to this Policy on a site that is subject to the requirements of Business and Professions Code Section 5272 (b) (freeway site for large arena sponsorship sign) shall be required to comply with all requirements of Business and Professions Code Section 5272 (b). Any lease for such sign shall incorporate provisions to implement the requirements of Business and Professions Code Section 5272 (b).

4. On City-owned sites that would be subject to a lease for another use at the time a Sign may be approved pursuant to this Policy, the City will coordinate the process for solicitation or approval of sign proposals with the lessee, and, if required, obtain the lessee's consent.
5. The City may solicit proposals for any, some or all, of the following purposes pursuant to this Policy:
  - a. To generate revenue for the City;
  - b. To generate revenue to support City-owned facilities, programs, or services;
  - c. To eliminate visual clutter and blight by reducing the overall number of existing Billboards City-wide or eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses.
6. If the City solicits proposals for reduction or elimination of existing Billboards, a minimum take down ratio of four (4) existing Billboards shall be required for each new Sign, including Billboard, Programmable Electronic Sign or Sign displaying Off-Site Commercial Speech. To the extent the City solicits proposals for a new Programmable Electric Sign or Billboard and does not require the foregoing take down ratio, such terms shall be equally available to all entities or persons, regardless of whether they have any existing Billboards or Signs displaying Off-site Commercial Speech.
7. To further the City's purpose of eliminating existing Billboards from locations where they are particularly unsightly or incompatible with surrounding land uses, any entity with an existing Billboard or Sign displaying Off-site Commercial Speech will be required to identify such Billboards or Signs displaying Off-Site Commercial Speech as a condition of submitting a proposal to the City for Signs that may be approved pursuant to this Policy.





August 21, 2018

Rosalynn Hughey  
Director  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 E. Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113

RE: Proposed Revisions to Policy Number 6-4  
Signs on City-owned Land, including Billboards, Programmable Electric Signs  
and Signs Displaying Off-site Commercial Speech

Dear Rosalynn,

We appreciate the significant work that you and your Staff have put into the current process to change City Policies and Codes to allow digital off-premise signage on City property.

We have reviewed draft Council Policy Number 6-4 and would like to propose the attached revisions for consideration. We believe the proposed changes will help the City achieve two key objectives of the program – generation of revenue for the City and a reduction of legacy billboard inventory.

We remain committed to this program and are available to answer questions, discuss options, and support Staff in making this program a success.

Best regards,

A handwritten signature in blue ink, appearing to read "John Foster".

John Foster

A handwritten signature in black ink, appearing to read "Jeff McCuen".

Jeff McCuen

A handwritten signature in black ink, appearing to read "Alex Belenson".

Alex Belenson

Cc: Planning Commission

August 31, 2018

Via Electronic Mail:

[lea.simvoulakis@sanjoseca.gov](mailto:lea.simvoulakis@sanjoseca.gov)

Lea Simvoulakis  
Planner IV  
City of San Jose  
Department of Planning, Building and Code Enforcement  
200 E. Santa Clara Street  
San Jose, CA 95113

RE: Initial Study/Negative Declaration for Signs on City-owned Sites, including Billboards, Programmable Electronic Signs and Signs Displaying Off-site Commercial Speech, General Plan Text, Municipal Code and Council Policy Amendments, File No.: PP18-058

Dear Lea:

Sharks Sports & Entertainment (SSE) submitted a comment letter dated July 25, 2018, supporting the City's sign project as described in the Initial Study/Negative Declaration (IS/ND). As stated in the letter, SSE plans to install two digital billboards along local freeways, to generate more exposure for SAP Center through new advertising opportunities. Although the capital investment necessary to construct a single billboard is estimated to be well over \$1,000,000, we believe that such investment can, under the right circumstances, produce additional revenues to help keep the SAP Center relevant and successful in an increasingly competitive market area.

The purpose of this letter is to ask the City to reconsider two of the requirements in the proposed Council Policy that would materially impact SSE's ability to generate revenues from the billboards. Specifically, SSE requests that the City revise the proposed Policy as follows:

- (1) Delete the requirement that the signs "utilize warmer colors, or display a background with bright text and/or image(s), and restrict white or bright backgrounds"; and
- (2) Change the "go dark" hours to be from 12:00 a.m. to 5:00 a.m., rather than 6:00 a.m.

Our understanding is that the above requirements were based, at least in part, on comments provided by representatives from the Lick Observatory, and are designed to reduce sky glow that interferes with their research. However, at the meeting held by the City on August 7, 2018 (which included representatives from Lick Observatory, the billboard industry and SSE), the Lick Observatory representatives acknowledged that illumination from the new billboards would have

minimal impact on their activities compared to other sources of night-time lighting (such as the City's LED street lights).

SSE supports the goal of implementing reasonable measures to preserve the night sky for astronomical research. However, we believe that the implementation of the above-referenced requirements would have an almost imperceptible effect on the activities at the Lick Observatory. Further, revising the above requirements as we have suggested would have no adverse impact on the environment at all. In contrast, retaining such requirements could significantly reduce the return on SSE's substantial investment needed to construct the billboards, thereby reducing the potential benefits of installing billboards in the first place.

These two requirements, and the reasons for our proposed revisions, are discussed in more detail below.

### **Billboard Colors**

The proposed Council Policy states that "The Signs shall utilize warmer colors, or display a background with bright text, and restrict white or bright backgrounds."

We agree with the representatives from the billboard industry who have strongly urged that this requirement be deleted:

Outfront Media letter dated July 12, 2018: "The restriction on color selections and prohibition of white or bright backgrounds, like any constraint on content, will dramatically limit the pool of advertisers and their agencies, greatly reducing the revenue potential of the program. This restriction is unnecessary, as total sign brightness is controlled and limited to .3 ft candles above ambient lighting.

Clear Channel letter dated July 25, 2018: "This restriction is prohibitive and without precedent. Unnecessary restrictions to address unsubstantiated concerns would prohibitively restrict advertising purpose. This prohibitive restriction should be eliminated."

As the participants explained at the August 7 meeting, (i) this type of restriction is extremely unusual and difficult to deal with; (ii) national advertisers typically employ an integrated ad campaign across the country, and are not able to modify the color scheme of their ad copy in order to satisfy a specific color requirement imposed by a local jurisdiction; and (iii) this restriction could make selling advertising spots to national advertisers very difficult.

From a regulatory standpoint, the billboard representatives were concerned that (i) the restriction is vague, subjective and ambiguous; (ii) compliance with the restriction would be difficult to

measure and enforce; and (iii) this requirement could prevent the operation of billboards consistent with industry standards and practices.

In terms of environmental impacts, a distinction must be made between the color temperature of light (measured by a Kelvin rating), and the actual brightness of the light, or amount of light emitted (measured for billboards in foot candles). The higher the degrees Kelvin, the whiter the color temperature. Although the whiter lights will appear “brighter” than those of a lower Kelvin reading, the amount of foot candles (brightness) does not change, and true brightness is not affected by the color temperature.

The restrictions in the proposed Council Policy should focus on reducing impacts related to the overall brightness (or light output) of billboards, rather than the environmental effects of different colors (which do not affect the amount of light emitted). Fortunately, current LED technology not only uses less power than traditional billboards, it allows illuminated signs to project softer white or bright backgrounds without adding to light pollution concerns.

If the City still believes that it is appropriate and necessary to include a restriction regarding the use of specific color schemes, then the Policy should provide for procedures or standards under which a billboard developer, prior to investing large amounts of capital to entitle and construct a billboard, will be able to determine that advertising time on the billboard can be marketed and sold consistent with current industry practices.

### **Billboard Hours**

The proposed Policy states that “No Sign shall be in operation between the hours of 12:00 a.m. and 6:00 a.m., except that Signs may display emergency messages from local, state, and federal governments at any time.”

We agree with comments from Outfront Media and Allvision in their letter of July 12, 2018: “In order to optimize revenue it is important to limit dark hours to no greater than 12:00 a.m. to 5:00 a.m., rather than the proposed 12:00 a.m. to 6:00 a.m. Any further restriction will result in a reduction in revenue.”

As we previously stated in our July 25, 2018 comment letter, this requirement does not appear to be a material environmental factor for electronic billboards along freeways. Light sources along the intensely developed freeway corridors along which billboards are contemplated (up to four on US 101 and three on State Route 87) include buildings, businesses, overhead street lights, and directional signage which are all lit 24 hours a day. The incremental impact of the new billboards would be negligible. The City already limits billboard brightness (Municipal Code Chapter 23.02.905) to the industry standard of 0.3 foot candles above ambient lighting conditions and

Lea Simvoulakis  
Planner IV  
City File No. PP18-058  
August 31, 2018  
Page 4 of 4

requires that signs utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light.

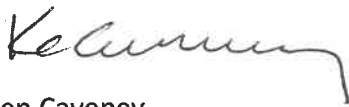
In addition, brightness levels are determined perpendicular to the sign – a view point rarely seen by sign viewers. At any viewing point away from or off the forward angle, the apparent brightness will be reduced. Therefore, motorists on the highways or businesses in the areas of the signs will not perceive nighttime sign brightness at its full level. Today's signs utilize photocells/light sensors to adjust their brightness over the course of the day, dimming from 100% during a bright sunny afternoon, to around 4% (depending on manufacturer and model) during the darkest night. This means the sign is only 4% as bright at night as during the daytime.

Allowing these electronic signs along freeway corridors to be illuminated as early as 5:00 a.m. would not result in any additional environmental impacts than those described in the IS/ND because neither residential neighborhoods nor open space areas would be affected. In addition, the project includes limits on illumination and requires the use of automatic dimming technology, providing further reasons why the lighting hours do not need to be so severely restricted.

In summary, SSE continues to support the City's desire to allow billboards, programmable signs, and off-site commercial speech on the identified City-owned properties. We believe that revisions to the proposed Council Policy based on the comments above enable the City to approve billboards that are in line with current industry practices while meeting the needs of involved stakeholders.

Sincerely,

Sharks Sports & Entertainment LLC



Ken Caveney  
Vice-President, Finance

cc: Nanci Klein  
Aparna Ankola  
Mollie Dent  
Liz Klotz