



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** March 12, 2020

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Approved /s/  
Kim Walesh

Date 3/11/20

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**SUBJECT: CITY POLICY PRIORITY #3: ELECTRONIC BILLBOARDS - PHASE 2  
UPDATE ON NEW PROGRAMMABLE ELECTRONIC SIGNS, AND  
SIGNS DISPLAYING OFF-SITE COMMERCIAL SPEECH ON NON-CITY-  
OWNED SITES**

## **RECOMMENDATION**

Accept the status report on Phase 2 of Council Policy Priority #3 on new programmable electronic signs, and signs displaying off-site commercial speech on non-City-owned sites.

## **BACKGROUND**

On December 19, 2017, the City Council directed staff to investigate removing existing barriers to off-premise (off-site) commercial advertising within the City of San José, and implement a phased work plan to allow the following:

- a. Phase 1: New off-site advertising on City-owned sites.
- b. Phase 2: New off-site advertising on non-City-owned (privately-owned and publicly owned) freeway-facing sites citywide; additional offsite advertising options for sites in the Downtown Sign Intensification Zone and in the North San Jose Development Area; and signage opportunities within the public right-of-way.

On September 25, 2018, the City Council approved General Plan Text Amendment, Municipal Code, and Council Policy amendments for Phase 1, to allow signs specifically on City-owned sites. These signs are anticipated to include billboards, programmable electronic signs, and signs displaying offsite commercial speech. Staff analysis identified 17 city-owned sites that could accommodate up to 22 signs.

The City Council further directed staff to proceed with Phase 2 of the work plan to evaluate non-City-owned sites, modify the definition of City-owned land to include City right-of-way and

remnant property, remove or modify the restriction on white or bright backgrounds, and change the hours of non-operation to between 12:00 a.m. to 5:00 am.

### ***Project Description***

The Phase 2 work plan would amend Title 23 of the San José Municipal Code (Sign Ordinance) to allow free standing billboards and/or building-mounted programmable signs and signs displaying off-site commercial speech on non-City-owned sites in exchange for removing existing legal static billboards, in accordance with prior City Council direction and applicable State and federal regulations. Staff is determining citywide opportunities for offsite advertising on freeway-facing sites and additional offsite advertising options for sites in the Downtown Sign Intensification Zone and in the North San Jose Development Area. The replacement of existing traditional static billboards with new electronic billboards would be allowed at a ratio of 4:1.

The non-City-owned properties may include private property and property owned or controlled by other public agencies such as the County of Santa Clara, the State, the Federal Government, public school districts, public transportation agencies, and the Santa Clara Valley Water District. Staff is also exploring signage within public right-of-way that would allow off-premise commercial advertising along non-City-owned amenities, such as street furniture and transit facilities (including light rail station platforms and bus shelters).

The project would further evaluate illumination parameters for desired modification of tilt requirement to allow mitigation with alternative use of technology and removal of restriction on white or bright backgrounds. Currently, illuminated and programmable signs are required to be completely shut off between 12:00 a.m. and 6:00 a.m. The City Council directed staff to evaluate alternatives to allow illuminated and programmable signs to begin operation at 5:00 a.m.

### ***Non-City-Owned Sites***

The consultant agreement for the Phase 2 work plan was completed in May 2019. Subsequently, staff evaluated potential freeway-facing non-City-owned sites eligible for off-site signage, applying the same preliminary selection criteria utilized for Phase 1, as listed below:

- a. *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.
- b. *Appropriate Zoning designation.* The site is in a Zoning District other than OS, Open Space, or A, Agricultural, Zoning Districts.
- c. *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.)

- d. *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."
- e. *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.

Additional off-site advertising restrictions on landscaped freeway segments and compliance with other State and federal regulations would also apply. Based on preliminary evaluation, as well as visibility and siting parameters, up to 90 potential non-City-owned sites with freeway-facing frontages were identified. This number will be refined through further analysis, including an analysis to determine if these sites are located within the signage buffer radii of existing on-site programmable signs or potential off-site signs for City-owned sites. Further evaluation of the Downtown Sign Intensification Zone may include additional opportunities for potential building mounted programmable signs.

### ***Public-Right-of-Way Signage***

Staff will continue to identify key locations for installation of off-site advertising along sections of non-arterial streets within the public right-of-way, in compliance with applicable federal regulations for principal arterials identified in Map 21 (Moving Ahead for Progress in the 21<sup>st</sup> Century Act). In addition to the limitations provided in the California Vehicle Code, advertising within Caltrans rights-of-way is only allowed on bus shelters and bus benches. Further, encroachment resulting from signage could adversely affect primary use of right-of-way for pedestrian and vehicular access.

The potential non-City-owned sites will be subject to the same restrictions as the previously identified City-owned parcels and will be subject to federal and State Outdoor Advertising regulations. The State and federal regulations govern the placement and type of off-site commercial advertising including landscaped freeways and primary arterials. The siting of any new off-site signage, including size and spacing of signs is subject to Caltrans review and approval, if visible *and* located within 660 linear feet from the edge of the right-of-way of an interstate or primary highway.

## **ENVIRONMENTAL ANALYSIS**

Completing the environmental analysis of potential non-City-owned sites is a major component of Phase 2. An Environmental Impact Report (EIR) is being prepared which includes mapping of potential sites. The Notice of Preparation is scheduled to be released by March 13, 2020, and a

joint community and EIR Scoping meeting is scheduled for March 30, 2020 at City Hall. The public comment period will end on April 13, 2020.

### **PROJECT SCHEDULE**

Once the EIR public comment period ends, staff will prepare responses to comments and will bring the Sign Ordinance changes to Council by early fall 2020. The previously established timeline to bring the Sign Ordinance changes to Council in Spring 2020 has been delayed due to ongoing litigation involving the Sign Ordinance and coordination with the City Attorney's Office. Assuming there are no unanticipated delays, staff believes the EIR will be completed by the late summer/early fall 2020.

### **FOLLOW UP**

Staff will complete Phase 2 and bring the Sign Ordinance changes to City Council by early fall 2020.

This memorandum will be posted on the City's website for the March 23, 2020, Community and Economic Development Committee meeting.

### **COORDINATION**

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

### **CEQA**

PP20-004 City Administrative Activities. This memorandum is an information report that is not a project pursuant to the California Environmental Quality Act. Additional information on the Notice of Preparation is available at this link: [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs). Please refer to Attachment 1 for map indicating potential signage locations for non-City-owned freeway-facing sites.

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

For general questions, please contact Michael Brilliot, Deputy Director, at (408) 535-7831.

Attachment 1: *Freeway buffered areas for City of San Jose*: Map indicating potential signage locations for non-City-owned sites