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February 22, 2013

Mr. Robert R. Ovrom
General Manager
Department of Building and Safety
201 N. Figueroa Street
Los Angeles, CA 90012

Re: Request for Assistance from Department of Building and Safety

Dear Mr. Ovrom:

I write to you today to request a determination by the Department of Building and Safety (“DBS”), in the event the California Supreme Court denies review of the decision by the Court of Appeal in *Summit Media, LLC v. City of Los Angeles* (2012) 211 Cal. App. 4th 921. If review is denied, Clear Channel Outdoor, Inc. will initiate proceedings before DBS as to the 84 digital signs constructed by our company pursuant to permits issued by your Department. As summarized in my letter to City officials attached hereto, Clear Channel hopes that the City will work cooperatively and in good faith to avoid confusion and costly potential further litigation as to these signs.

As explained below, we believe that the permits for Clear Channel’s 84 digital signs were validated under Ordinance No. 180841 (codified at Section 14.4.4.B.11 of the Los Angeles Municipal Code), because “both substantial liabilities have been incurred, and substantial work has been performed” in connection with such permits as of August 14, 2009, the effective date of the ordinance. We also believe that Clear Channel’s permits were permissible alterations under Section 91.6216.4.3 of the Municipal Code, and are presumptively lawful under Cal. Bus. & Prof. Code § 5216.1.

I. Clear Channel’s Existing Digital Sign Permits

Since 2007, Clear Channel has installed 84 digital signs in Los Angeles pursuant to permits issued under the Municipal Code consistent with a process set forth in both a 2006 settlement agreement between Clear Channel and the City and a stipulated judgment entered in *Vista Media Group, Inc. v. City of Los Angeles*, No. BC 282832. In those agreements, the City made representations and warranties as to the process Clear Channel should follow to obtain such permits, and Clear Channel relied upon those representations and warranties in good faith.

Accordingly, in 2007 and 2008, Clear Channel applied to the Department of Building and Safety (“DBS”) for permits to convert many of its traditional vinyl signs to digital signs pursuant to the City’s process. DBS issued these permits only after an individualized review had determined that each sign complied with all relevant building and zoning codes, and each sign was fully and finally inspected by DBS upon payment of all application and inspection fees. As

you may know, a competitor sign company sued the City to challenge the validity of the City's settlement agreement with Clear Channel, and the status of these permits is unresolved following. Under the current provisions of the Municipal Code, DBS has a number of options, not addressed by the Court of Appeal, to confirm that the permits issued to Clear Channel for its 84 digital signs remain valid.

II. DBS Has A Number Of Options To Confirm That Clear Channel's Permits Remain Valid

A. The City's 2008 and 2009 New Sign Ordinances Validated The Permits

Pursuant to ordinances adopted by the City in 2008 and 2009, Clear Channel's digital sign permits are valid because Clear Channel incurred substantial liabilities and performed substantial work under the permits issued by DBS.

1. The City's 2008 and 2009 Ordinances

In 2008 and 2009 the City enacted ordinances that prohibited the issuance of new permits for offsite signs, but recognized as valid all existing sign permits for which the owner had incurred substantial liabilities and performed substantial work. Pursuant to these ordinances, Clear Channel's digital sign permits are valid because Clear Channel incurred substantial liabilities and performed substantial work under the permits issued by DBS.

In 2008, the Council first enacted a series of interim control ordinances ("ICOs") and extensions to preserve the status quo while it considered a permanent sign ordinance. *See* Ordinance Nos. 180445, 180745. The interim ordinances acknowledged that "the City entered into settlement agreements" with Clear Channel and other sign companies. *See, e.g.*, Ordinance No. 180445, at 1. The Council recognized that "the companies that settled...are in the process of converting *existing* conventional Off-Site Signs to Digital Displays," and that "*new* Off-Site Signs, some with Digital Displays, might be erected." *Id.* at 2 (emphasis added). In response, the Council adopted ICOs to "prohibit[] the issuance of permits for new Off-Site Signs, including Digital Displays." *Id.* New digital sign permits, and erection of digital signs based on existing permits, were not allowed after the effective date of the first ICO on December 26, 2008. But the ICOs contained an exception that validated existing permits if DBS had issued a permit and conducted at least one inspection of the work performed pursuant to that permit.

The Council ordinance adopted by the Council in 2009 to add a similar prohibition to the Municipal Code drew the same distinction between new and existing digital signs. It prohibited the issuance of permits for new digital signs, as well as the erection or alteration of off-site signs pursuant to permits issued before the ordinance's August 14, 2009 effective date. But, like the ICOs, the permanent ordinance recognized that existing digital signs should be allowed to persist. Accordingly, it validated "any building permit issued prior to the effective date of this ordinance if the Department of Building and Safety determines that both substantial liabilities have been incurred, and substantial work has been performed on site, in accordance with the terms of that permit." Ordinance No. 180841, at 2 (codified at Los Angeles Municipal Code § 14.4.4.B.11).

In its urgency declaration, the ordinance made clear that the Council intended to “remove any uncertainty about the status of the City’s sign regulations” and to “prohibit[] any *new* off-site signs, including off-site digital displays.” *Id.*, at 3-4 (emphasis added). And it amended the Code to provide that one “purpose” of the City’s sign regulations was to “conform to judicial decisions, thereby limiting further costly litigation and facilitating enforcement of these regulations.” *Id.*, at 1 (codified at LAMC § 14.4.1.F).

Courts have recognized the validity and purpose of this distinction. As the Ninth Circuit has explained, “[t]he City is certainly entitled to treat signs permitted before the offsite and supergraphic sign bans differently than other signs both because preserving legally nonconforming billboards...further[s] the [City’s] significant interest in reducing blight and increasing traffic safety,...and because the City may have to pay the owners to take legal nonconforming billboards down.” *Vanguard Outdoor, LLC v. City of Los Angeles*, 648 F.3d 737, 745 (9th Cir. 2011) (internal quotation marks omitted). “Without [a validating] exemption, the state would have to pay just compensation to the billboard owners....” *Id.* (quoting *Maldonado v. Morales*, 556 F.3d 1037, 1048 (9th Cir. 2009)).

2. The 2008 and 2009 Ordinances Validated Clear Channel’s Digital Sign Permits

Clear Channel’s digital sign permits plainly fall within the scope of the exemption to the 2009 sign ordinance’s validation clause:

“[N]otwithstanding the provisions of Section 12.26 A 3 of this Code, this prohibition shall not apply to any building permit issued prior to the effective date of this ordinance if the Department of Building and Safety determines that both substantial liabilities have been incurred, and substantial work has been performed on site, in accordance with the terms of that permit pursuant to Section 91.106.4.3.1.”

Each of the digital sign permits for Clear Channel’s 84 digital signs was issued before the effective date of the 2009 ordinance (and even before the effective date of the first ICO). And there is no doubt that Clear Channel had incurred substantial liabilities and performed substantial work in connection with each permit. Moreover, the modernization of the signs from vinyl to digital had progressed “in accordance with the terms of [the] permit pursuant to Section 91.106.4.3.1.” LAMC § 14.4.4.B.11. Section 91.106.4.3.1 provides that the “issuance of a permit is not an approval or an authorization of the work specified[, but] merely an application for inspection.” DBS clearly had determined, as of the ordinance’s effective date, that Clear Channel had incurred substantial liabilities and performed substantial work: Each sign passed not only its initial inspection, but its final inspection as well.

With permits received, inspections passed, and fees paid, the digital signs were precisely the sort of existing sign the Council meant to recognize as valid and lawful. Whatever the status of the settlement agreement, therefore, all of the permits issued by DBS for Clear Channel’s digital signs were lawful as of the August 14, 2009, effective date of the ordinance.

The Court of Appeal’s decision in *Summit Media* does not alter this analysis. That case concerns only the City’s authority to enter into the settlement agreement in 2006—an issue that is entirely separate from the question whether the City Council validated existing signs in 2009. Nothing in *Summit Media* precludes a determination that the digital sign permits issued to Clear

Channel are valid under current law; in fact, a proper reading of the 2009 ordinance requires DBS to make that determination. Importantly, the City was aware of the *Summit Media* case – which was first filed in federal court in 2007 and in state court in 2008 – at the time it enacted the 2009 ordinance and nevertheless determined to affirm the validity of Clear Channel Outdoor's digital sign permits. To determine otherwise would effectively nullify the validation clause.

B. Other Grounds Exist to Confirm the Validity of Clear Channel's Digital Sign Permits, Including Permissible Alterations of Signs

In addition to the approach discussed above, the existing digital displays were lawful alterations in conformance with Section 91.6216 of the Municipal Code. Pursuant to Section 91.6216.4.2, existing off-site signs may be altered if “the cost of the work does not exceed 50 percent of the replacement cost of both the sign and sign support structure” and the sign is not relocated, reoriented, or increased in area or height, and all new construction meets the City's requirements.

Each of the 84 digital signs installed by Clear Channel replaced a previously-existing traditional sign. Clear Channel did not increase the size or height, or change the location or orientation of any of the signs that were converted to digital signs. In order to determine whether these signs are also exempt from the prohibition in Section 14.4.4.B.11 as permissible alterations, evidence will be provided as to the “cost of the work” performed by Clear Channel to install the digital display on the sign structure. In connection with making such a request that DBS confirm the validity of its digital sign permits, Clear Channel will work with DBS to ascertain the value of the work performed and the replacement value of the sign and support structures of the 84 converted signs.

Additionally, there is “a rebuttable presumption . . . that an advertising display is lawfully erected if it has been in existence for a period of five years or longer without the owner having received written notice during that period from a governmental entity stating that the display was not lawfully erected.” Cal. Bus. & Prof. Code § 5216.1. Clear Channel's digital signs are presumptively lawful under this provision because those signs have been in continuous existence for more than five years, and, during that period, Clear Channel never received any written notice from the City or any other “governmental entity” that any of those signs was unlawful.

Please do not hesitate to contact me if you require any additional information to make the requested determination. I appreciate your consideration of this matter.

Very truly yours,



Sara Lee Keller
Executive Vice President and General Counsel
Clear Channel Outdoor, Inc.

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Enclosure (without attachments)

cc: Raymond Chan, Executive Officer, Department of Building and Safety
Frank Bush, Code Enforcement Bureau Chief, Department of Building and Safety
City Attorney Carmen Trutanich
Chief Deputy City Attorney William Carter
Special Assistant City Attorney Jane Usher
Deputy City Attorney Kim Rodgers Westhoff