

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING AND EXTENDING BY ONE YEAR, WITH AN OPTION FOR A SECOND YEAR, A NON-EXCLUSIVE FRANCHISE AGREEMENT WITH CLEAR CHANNEL OUTDOOR FOR A STREET FURNITURE PROGRAM AT AN ANNUAL NOT TO EXCEED COST OF \$480,000

WHEREAS, in 1996, City Council adopted a resolution supporting public transit and alternative modes, known as Oakland's Transit First Policy (Resolution No. 73036 CMS). This policy favors transit and alternative modes over private vehicles to reduce congestion and improve air quality, improve safety for people walking and bicycling, decrease parking demand, reduce individual transportation costs, and provide a balanced transportation system that supports many modes, making communities more livable; and

WHEREAS, bus shelters and benches are important public amenities that improve access to public transit by providing maps and wayfinding information, lighting, shade, shelter from rain and a place to rest. These amenities are particularly important for vulnerable communities such as seniors and persons with disabilities; and

WHEREAS, on September 18, 2001, the City Council of the City of Oakland adopted Ordinance No. 12355 C.S.M. awarding a non-exclusive franchise agreement to Adshel Inc., now Clear Channel Outdoor (CCO), for a street furniture program that includes bus shelters; and

WHEREAS, CCO submitted a proposal to install, maintain and replace 256 bus shelters at no cost to the City in exchange for certain specified advertising rights; and

WHEREAS, the actual number of bus shelters installed under the agreement never exceeded 165 and the present number of bus shelters installed and maintained by CCO is approximately 110; and

WHEREAS, CCO agrees to continue to comply with the City of Oakland's Local and Small Local Business Program requirements to achieve 50% local business participation; and remains committed to achieving 100% City of Oakland resident hiring and subcontractor utilization in the ongoing installation and maintenance of the street furniture program; and

WHEREAS, the City has the authority, pursuant to City Charter Section 1000. to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS, CCO has demonstrated to the City that it has the experience, financial capacity, responsibility, and qualifications to undertake the Street Furniture Program; and

WHEREAS, in October 2021 the Alameda County Transit Authority (AC Transit) Board of Directors, representing a Joint-Power Authority (JPA) for Bus Shelters consisting of many local jurisdictions throughout the county but not including the City of Oakland, authorized a single-source contract with CCO for a period not to exceed 12-months at a cost not to exceed \$1 million to ensure continuity of the JPA’s bus shelter program, including maintenance; and

WHEREAS, like the AC Transit-led JPA, the City Council recognizes that the cost of maintaining the bus shelter system have continued to increase while advertising revenues decreased because of factors such as the pandemic and the reduction of the total number of bus shelters (from 156 to 106), including a number of high value locations displaced by the recently completed AC Transit Bus Rapid Transit (BRT) system; and

WHEREAS, a one year extension of the contract with CCO will provide staff with the necessary time to thoroughly explore and evaluate all options for a long term contract to maintain and improve Oakland’s bus shelters; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act (“CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (the general rule), 15301 (minor changes to existing facilities), 15302 (replacement or reconstruction of structures), 15303 (new construction of small structures), and 15304 (minor alterations to land); and

WHEREAS, the City Council determines and finds that the public interest, health, safety and welfare would be best served if CCO were to continue to provide the bus shelters to the City and operate, maintain, repair and replace the street furniture.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council does hereby find and declare that the above recitals are true and correct and that the amendment and extension of the non-exclusive Franchise Agreement with CCO for a Street Furniture Program is a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the City.

SECTION 2. The City Council finds and determines that the requirements of the California Environmental Quality Act (“CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied, and this action on the part of the City Council is exempt from

CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (the general rule), 15301 (minor changes to existing facilities), 15302 (replacement or reconstruction of structures), 15303 (new construction of small structures), and 15304 (minor alterations to land). The City Council directs the City's Environmental Review Officer to file a Notice of Exemption.

SECTION 3. The City Administrator is authorized to finalize and execute an amendment to the non-exclusive Franchise Agreement with CCO, subject to the review and approval of the City Attorney, the terms of which shall include:

1. Term: April 1, 2022 for one year, with one more one year option by mutual agreement (with the aim of being concurrent with the JPA arrangement with CCO).
2. The City will compensate CCO up to \$480,000 annually to manage and maintain the shelters. Baseline resources and maintenance services to include:
 - a. 273 scans of shelters per week minimum. CCO will supply the City with a report monthly of scans as verification of services provided.
 - b. CCO will dedicate 2.5 Full Time Equivalent personnel. Optimally 88 hours for the minimum 273 scans plus 12 hours for miscellaneous visits for glass replacement, electrical, and other additional incremental needs.
 - c. To the extent hours need to exceed that figure for unforeseen issues, CCO and the City agree to work out a reimbursement for additional work/cost.
 - d. CCO to be reimbursed for non-customary repairs at the rate of \$90/staff hour. Examples would be civil unrest, replacement of acid etched glass. CCO would seek approval prior to making such repairs.
3. CCO will retain shelter ownership/liability during contract, with transfer of shelter ownership to the City at the end of the contract for \$100.00. Shelter removals would be the responsibility of the City as the new owner.
4. Revenue on advertising will be shared at 50%. This high revenue share rate should provide a significant offset to the City's cost. CCO estimates revenue on 106 shelters for 2022 to range from around \$400,000 to \$500,000. If \$480,000 in revenue is achieved, the City's net cost for the service would be offset by \$240,000 in revenue share.

SECTION 4. The City Administrator is further authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of the extended Franchise Agreement, including the authority to extend the amended agreement for a second year.

SECTION 5. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

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