

CITY OF OAKLAND

AGENDA REPORT

2010 MAY 13 PM 6:36

TO: Oakland City Council
FROM: Dan Lindheim, City Administrator
DATE: May 18, 2010

RE: **An Amendment To Ordinance No. 13003 C.M.S. (Authorizing A Billboard Agreement And Sublease Amendments With Clear Channel Outdoor, Inc. (Clear Channel) Relating To Three Signs At 165 98th Ave., Interstate 580 & Ettie Street, And Oakport & Hassler) Deleting The Requirements That The City Have: (1) Exclusive Use Of, And An Even (50/50) Split Of Revenue From, A Portion Of The Oakport & Hassler Sign; And (2) The Right To Use Unsold Advertising Space On All Three Signs, And Providing Instead That Clear Channel Allow The City To Use Fifty Percent (50%) Of Any Unsold Space On The Oakport & Hassler Sign**

SUMMARY

Staff are requesting City Council approval of an Ordinance to amend a previous Ordinance, which authorized the City Administrator to negotiate and enter into a billboard and sublease agreement with Clear Channel Outdoor, Inc. (Clear Channel). The previous Ordinance included terms which Clear Channel believed were not consistent with its discussions with the City prior to the April 1 adoption of the original Ordinance, and which, if left unchanged, would render the deal financially infeasible.

The proposed amendments to the Ordinance involve the City's "Advertising Right" to the free use of unsold advertising space on the three new signs, and the City's "Exclusive Use Terms" to share in revenue from the potential re-selling of the City's share of space on the Oakport sign. The amendments clarify that the City is entitled to the use of 50% of any unsold space on the Oakport sign to promote City and community events, but is not entitled to any revenue from the resale of any unsold space on that sign.

This proposed Ordinance would not affect the primary terms of the original Ordinance, which called for the removal of 37 existing billboards in Oakland, a one-time payment from Clear Channel of \$1 million to the City's General Fund, nor would it materially change the terms of the City's ongoing revenue share from the Oakport billboard sublease, which guarantee the City 30% of the annual revenue from that sign, or \$150,000 annually, whichever is greater.

Item: _____
City Council
May 18, 2010

FISCAL IMPACT

The revenue to the City of Oakland's General Fund from the original terms of the billboard agreement includes a one-time payment from Clear Channel of \$1 million, and increases the City's existing share of revenue from the Oakport billboard sublease to 30%, with a guaranteed minimum revenue share payment of \$150,000, whichever is greater. The annual revenue to the City from the 30% share of the Oakport sublease is estimated at \$300,000.

The original Ordinance included terms which granted the City the right to the use of some unsold advertising space on the Oakport sign, and if the City's right to the space was re-sold, to receive 50% of the revenue from that re-selling. The proposed new Ordinance would remove the right to revenue from any such re-sale of space, instead granting the City only the right to use 50% of unsold space on the Oakport sign free of charge, to promote City and community events. Since no revenue from any such potential re-sale of unused space was included in the expected positive fiscal impact from the original Ordinance, and because any such re-selling of unused space was speculative, staff do not believe that the revised terms proposed in these amendments will have any further fiscal impact on the City. The proposed new Ordinance also clarifies previous language that, except as explicitly stated in the Ordinance, the amendments authorized to the Oakport sublease agreement do not change the other terms and conditions of the existing Oakport sublease agreement.

BACKGROUND

On April 1, 2010, the City Council adopted Ordinance No. 13003 C.M.S., authorizing the City Administrator to negotiate and execute a Billboard Agreement with Clear Channel. The terms of this agreement would grant Clear Channel the right to: (1) convert one face of an existing freeway billboard on private property on Ettie Street to LED technology; (2) construct a new standard (non-digital) billboard on private property at 98th Avenue & Bigge Street; and (3) standardize the size of and convert the existing Oakport Sign to LED technology. In exchange, Clear Channel would agree to remove 37 existing billboards at locations throughout the City of Oakland, pay \$1 million to the City's General Fund, and agree to amend the existing Oakport sublease to increase the City's annual revenue share to 30%, including a guaranteed minimum annual amount of \$150,000 to the City.

In addition, Ordinance No. 13003 C.M.S. included terms which would grant the City Exclusive Use Terms to a significant portion of space on the newly-converted Oakport sign, including a 50% share of the revenue from any sale of unused space on that sign which was exclusively attributed to the City.

Item: _____
City Council
May 18, 2010

KEY ISSUES AND IMPACTS

As described above, the major points of the agreement terms previously approved by the City Council would not be changed by these proposed amendments. Clear Channel would still receive rights to convert the Ettie Street sign to LED technology, to construct a new non-digital sign at 98th Avenue and Bigge Street, and to standardize and convert the existing Oakport sign, and Clear Channel would still remove 37 existing billboards in Oakland, pay the City \$1 million, and agree to an increased revenue share on the Oakport sign.

In the process of negotiating the agreement with Clear Channel following the approval of Ordinance No. 13003 C.M.S., the City Administrator became aware of Clear Channel's concerns that Exclusive Use Terms were not consistent with what Clear Channel believed had been agreed upon prior to the Council's April 1 action. In particular, Clear Channel believed that the Exclusive Use Terms language regarding City revenue shares from the re-sale of space on the Oakport sign was not consistent with its discussions with the City prior to the April 1 adoption, and that as written, the Exclusive Use Terms on the Oakport sign could be a substantial barrier to the financial feasibility of the entire agreement. In addition, the terms from the original Ordinance regarding the City's Advertising Right to use of space on all three signs also did not conform to Clear Channel's understanding, in that the 98th Avenue and Ettie Street signs are privately held.

The proposed revised Ordinance addresses these concerns by clarifying that the agreement would guarantee the City the right to use 50% of unsold space on the Oakport sign only, that the City would not have the right to revenue from any re-selling of that unused space, and that the City would not have rights to the use of space on the other privately held signs. The proposed revised Ordinance does not change any of the major financial terms of the agreement, and the City will still receive a \$1 million payment to the General Fund, a 30% share of the annual revenue from the Oakport sign (with a guaranteed minimum annual amount of \$150,000), and Clear Channel will still remove 37 existing billboards within the City of Oakland.

For its part, the City had not included the speculative potential of revenue from the re-sale of unused space in its calculations of the positive revenue impact of this agreement. To that end, staff believes that the proposed amendments to the previous terms do not represent an appreciable loss to the City's revenue.

SUSTAINABLE OPPORTUNITIES

Economic: The amended Ordinance will retain the provisions of the agreement that will bolster the City's General Fund by one million dollars (\$1,000,000) for the current year, and will provide ongoing revenue until the termination of the Oakport Sublease.

Item: _____
City Council
May 18, 2010

Environmental: The removal of the 37 billboards will improve the appearance of impacted neighborhoods, and light levels on the new signs will be comparable to the existing signs or, at times, will be less bright.

Social Equity: The City Council and the Mayor can use revenues from this agreement to fund vital city programs that provide social support to City residents.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no issues of access to disabled persons and senior citizens raised in this report.

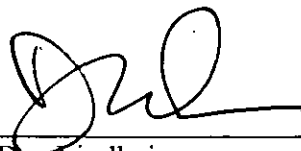
RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the Ordinance amending the terms of Ordinance No. 13003 C.M.S., to preserve the benefits to the City derived from the agreement with Clear Channel, while clarifying the terms of the City's rights to advertising on unused billboard space and preserving the economic viability of the agreement for all parties.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council approve the proposed Ordinance.

Respectfully submitted,



Dan Lindheim
City Administrator

Item: _____
City Council
May 18, 2010

FILED
OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCIL MEMBER _____
MAY 13 PM 6:36

APPROVED AS TO FORM AND LEGALITY

William Miller

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN AMENDMENT TO ORDINANCE NO. 13003 C.M.S. (AUTHORIZING A BILLBOARD AGREEMENT AND SUBLEASE AMENDMENTS WITH CLEAR CHANNEL OUTDOOR, INC. (CLEAR CHANNEL) RELATING TO THREE SIGNS AT 165 98TH AVE., INTERSTATE 580 & ETTIE STREET, AND OAKPORT & HASSLER) DELETING THE REQUIREMENTS THAT THE CITY HAVE: (1) EXCLUSIVE USE OF, AND AN EVEN (50/50) SPLIT OF REVENUE FROM, A PORTION OF THE OAKPORT & HASSLER SIGN; AND (2) THE RIGHT TO USE UNSOLD ADVERTISING SPACE ON ALL THREE SIGNS, AND PROVIDING INSTEAD THAT CLEAR CHANNEL ALLOW THE CITY TO USE FIFTY PERCENT (50%) OF ANY UNSOLD SPACE ON THE OAKPORT & HASSLER SIGN.

WHEREAS, on April 20, 2010, the City Council passed Ordinance No. 13003 C.M.S., that authorized the City Administrator to negotiate and execute a Billboard/Franchise Agreement ("Billboard Agreement") and amendments to a sublease (the "Oakport Sublease") of City-leased land on which Clear Channel operates an existing billboard at Oakport Street and Hassler Way (the "Oakport Sign"), to allow Clear Channel to construct or convert three billboards in the City; and

WHEREAS, Ordinance No. 13003 C.M.S., among other things, authorized the Billboard Agreement and Oakport Sublease amendments in exchange for Clear Channel's agreement to: (1) remove 37 existing advertising signs in the City, (2) pay to the City One Million Dollars (\$1,000,000), and (3) let the City use free of charge any unsold advertising space on the three new signs ("City Advertising Right"); and

WHEREAS, Ordinance No. 13003 C.M.S. also authorized amendments to the Oakport Sublease allowing Clear Channel to convert the existing Oakport Sign to a more updated digital LED advertising sign in exchange for an increased revenue share to the City of 30%, with a minimum annual guarantee of \$150,000, whichever is greater; and

WHEREAS, Ordinance No. 13003 C.M.S. also provided that the Oakport Sublease amendments would give the City the right to have exclusive use of some significant portion (to be negotiated) of the newly-converted LED Oakport Sign, and to share equally (50/50 split) the revenue generated from any unused space exclusively attributed to the City that Clear Channel sells for advertising (collectively the "Exclusive Use Terms"); and

WHEREAS, Clear Channel has advised staff that the City Advertising Right and the Exclusive Use Terms in Ordinance No. 13003 C.M.S. were not consistent with their deal discussions with staff and, if required to be implemented, would make the transaction not

economically feasible for Clear Channel; and

WHEREAS, the City wishes to successfully finalize the Billboard Agreement and Oakport Sublease amendments with Clear Channel to obtain, among other things, the following benefits to the City: (1) removal of 37 billboards throughout the City; (2) a \$1,000,000 payment to the City's general fund; and (3) an increased revenue share under the Oakport Sublease; and

WHEREAS, to make the deal economically feasible for Clear Channel, and to obtain the substantial benefits to the City as described herein, the City agrees that it will be necessary to delete from the transaction the Exclusive Use Terms and to modify the City Advertising Right, now, therefore,

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1 . Ordinance No. 13003 C.M.S. is hereby amended as follows:

(A) That portion of the tenth (10th) "WHEREAS" clause that reads: "... (2) the right to use unsold advertising space to promote City and community events at no cost to the City on the billboards..." is hereby amended to read as follows:

"... (2) the right to use fifty percent (50%) of any unsold advertising space to promote City and community events at no cost to the City on the Oakport Sign..."

(B) The last "WHEREAS" clause is hereby deleted and the following substituted therefor:

"**WHEREAS**, the amendments to the Oakport Sublease will, among other things, delete the City's right to space or revenue from any exclusive portion of the LED-converted Oakport Sign; and

"**WHEREAS**, except as otherwise specified herein, this Ordinance does not change the terms and conditions of the existing Oakport Sublease; now, therefore,"

SECTION 2. Except as amended by this Ordinance, in all other respects, Ordinance No. 13003 C.M.S. remains in full force and effect.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 MAY 13 PM 6:37

NOTICE AND DIGEST

AN AMENDMENT TO ORDINANCE NO. 13003 C.M.S. (AUTHORIZING A BILLBOARD AGREEMENT AND SUBLEASE AMENDMENTS WITH CLEAR CHANNEL OUTDOOR, INC. (CLEAR CHANNEL) RELATING TO THREE SIGNS AT 165 98TH AVE., INTERSTATE 580 & ETTIE STREET, AND OAKPORT & HASSLER) DELETING THE REQUIREMENTS THAT THE CITY HAVE: (1) EXCLUSIVE USE OF, AND AN EVEN (50/50) SPLIT OF REVENUE FROM, A PORTION OF THE OAKPORT & HASSLER SIGN; AND (2) THE RIGHT TO USE UNSOLD ADVERTISING SPACE ON ALL THREE SIGNS, AND PROVIDING INSTEAD THAT CLEAR CHANNEL ALLOW THE CITY TO USE FIFTY PERCENT (50%) OF ANY UNSOLD SPACE ON THE OAKPORT & HASSLER SIGN

This ordinance amends Ordinance No. 13003 C.M.S. (which authorizes the City Administrator to negotiate and execute a billboard agreement and amendments to a sublease of City-leased property at Oakport St. and Hassler Way in Oakland with Clear Channel Outdoor, Inc. regarding advertising signs) to delete or modify certain required terms of the proposed agreement and sublease amendments.

SECTION 3. This Ordinance shall become effective immediately on the 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, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES-BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____