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March 22, 2017

Department of City Planning
Case Studies Section
Los Angeles City Hall
200 N. Spring Street, Room 701
Los Angeles, CA 90012

Attn: Yi Lu

Re: CPC-2017-455-CA/Temporary Signs on
Construction Walls

Dear Sirs and Madams:

Our firm represents General Barricade, LLC (GB). GB has maintained various signs on temporary construction walls since the enactment in 2007 of Los Angeles Municipal Code (LAMC) section 14.4.17, which allows such signs at vacant lots and constructions sites. As part of its maintenance of these temporary signs, GB also has removed graffiti, illegal signs, litter, and trash on a daily basis from public property in thousands of acres of land in City neighborhoods, all at no cost to the City. GB also has maintained with the Department of Public Works' Office of Community Beautification the requisite \$10,000 bond to ensure proper performance of GB's graffiti and other neighborhood cleanup obligations.

I. Introduction. GB strongly opposes the Department of City Planning's (DCP) proposed amendment of LAMC section 14.4.17. The amendment, which would dramatically reduce the scope of the construction wall sign program and the graffiti removal and neighborhood cleanup benefits it provides, is not needed to ensure legitimate operations under the program. Indeed, the law as currently written provides the City all the tools it needs to ensure compliance with the programs rules and intentions. Moreover, it is unclear who and/or what has motivated this action. DCP's own presentation fails to indicate any specific concern that would require or justify eliminating construction signs around all operating businesses undergoing construction or renovation. Eliminating this category of construction signs would not only harm the businesses that benefit from the sign revenue and the advertisers (mostly LA's movie studios) that use temporary walls to advertise their products, but most significantly would eliminate the important graffiti and nuisance abatement benefits that motivated creation of the program in the first place. These matters are discussed further below.

II. Creation of the Temporary Wall Sign Program. The program as currently reflected in LAMC section 14.4.17 is the outgrowth of a two-year pilot program begun in 2001 in Council District 10. The purpose of the pilot was to test the concept of allowing private

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companies to maintain signage on temporary construction walls in exchange for cleaning and monitoring the surrounding public areas to keep them free from graffiti and illegal signs.

The pilot of this public-private partnership proved enormously successful. Indeed, over the next few years, the pilot project was extended for two more years in District 10, then extended to cover Council Districts 9 and 13, and then extended to cover Council Districts 1 and 8. In 2007, the program was authorized for permanent use Citywide.

As initially approved in 2001, the program authorized the placement of signs on temporary construction walls located on private property in commercial and industrial zones.¹ The signs could remain on the walls for as long as the building permit associated with the construction remained in effect. In return, the building permit holder was required to remove all graffiti and illegal signs on public property within a one-block radius of the construction site. Failure to remove the graffiti and illegal signs would result in revocation of the building permit. Operation Clean Sweep of the Department of Public Works (DPW) was to monitor and report on the effectiveness of the program. Subsequent extensions and expansions of the program included allowance of signs on fences surrounding vacant lots and protective sidewalk canopies. They also required the company operating the temporary signs to post a \$10,000 compliance bond with DPW.

As permanently authorized in 2007 in LAMC section 14.4.17, the program allowed temporary signs in two locations—(1) on walls or solid wood fences surrounding vacant lots, and (2) on temporary construction walls. All such locations have to be in commercial or industrial zones. Building permits have to be obtained for all temporary signs by either the property or sign company owner. Permits for signs around vacant lots are to be valid for up to one year. Permits for signs on construction walls are to be valid for lesser of the duration of the related construction building permit or 2 years.

As a condition of obtaining and maintaining a permit, the permit holder is required to conduct significant graffiti abatement and neighborhood cleanup in the surrounding area. Specifically, the permit holder is required to clean and maintain free from graffiti all public property and rights-of-way in the area within a 500 foot radius of the site. This area can be expanded by the Office of Community Beautification up to a radius of 1500 feet if the closer area does not constitute a public nuisance.

This clean-up obligation is rigorous and broad. The permit holder must patrol the abatement area every 24 hours and remove any graffiti—including spray paint on walls, poles, and fences on public property—within 24 hours of learning of its presence. The permit holder also must remove any posters/handbills on light poles, utility poles, bus stops, and any other

¹ As proposed, temporary signs would also be allowed on “nuisance walls,” which were freestanding walls or sides of buildings that, according to the Department of Public Works’ Operation Clean Sweep, continually displayed graffiti in such magnitudes as to negatively and materially impact the neighborhood in which they were located.

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illegal postings on public property. As well, at the time of graffiti removal, the permit holder must remove any trash, debris or rubbish from the public sidewalks within the abatement area.

III. Developments Leading to the City's Illegal Enforcement Effort. By all accounts, the temporary wall sign program has been a success since the time of its original enactment in 2001. Public facilities on thousands of acres of land throughout the City have been rid of graffiti, illegal signs, and trash, all at no expense to the City. Drug and gang activity have been prevented at numerous vacant lots. Additional advertising opportunities have been provided for important LA-based companies, most particularly the various LA-based movie studios which are the dominant advertisers on temporary wall signs. Needed additional revenue has been generated for numerous small businesses, including various nonprofits, to defray the costs of new construction and remodeling. All told, this program has been a model public-private partnership. Just as envisioned, it has provided significant public and private benefits alike, all at no expense to the City, all without significant public controversy.

Despite this record of success, at some point in 2016 City officials apparently received complaints that permit holders were maintaining signs on construction walls that had been erected but were not needed to protect the public from the related construction, or on walls where no construction was taking place on the enclosed lots. The source of these complaints is unknown. By some accounts, one active complaining party was another private company in the business of maintaining temporary signs. However, GB is not aware of documents identifying the source of the complaints and the matter, thus, remains unclear.

IV. The City's Illegal Enforcement Actions. Regardless of the source of the complaints, the City promptly took action--all of which was and remains illegal--to address the perceived abuses. Specifically, on October 26, 2016, DCP issued a memo indicating that temporary construction wall signs will no longer be allowed around "operational businesses (including operating parking lots)."

Simultaneously, the Department of Building and Safety (DBS) began issuing citations to companies operating signs on construction walls surrounding operating businesses. DCP and DBS took these actions without holding any public hearing or other meeting to determine the true nature and scope of the alleged problem. Indeed, nothing in the public record indicates that the City ever determined whether the alleged problem involved a few isolated cases or instead the entire category of construction signs around operating businesses; indeed, whether the real problem, assuming one exists at all, was a molehill rather than a mountain.

More significantly, though, DCP and DBS took these actions notwithstanding that LAMC section 14.4.17 contains no prohibition on temporary construction signs around operating businesses. Indeed, section 14.4.17 makes no distinction between sites that are the subject of new, ground-up construction, sites with existing businesses that are temporarily shut down during renovation, or sites with existing businesses that are able to remain open during renovation. Rather, section 14.4.17 inherently recognizes that construction walls around, and

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public facilities nearby, all of these sites are equally targets of graffiti, illegal signs, rubbish, and debris, and thus authorizes lawful temporary signs and their corresponding neighborhood cleanup benefits at all such sites.

Moreover, the DCP and DBS are required to authorize and allow temporary signs at all appropriate construction locations. Pursuant to section 14.4.17.C, signs placed on temporary construction walls pursuant to the terms of section 14.4.17 “shall be allowed to remain for as long as the building permit associated with the construction remains in effect or for a period of two years, whichever is less.”

DCP and DBS also took these actions despite the fact that the City has never before interpreted section 14.4.17 to contain any limitation on temporary construction signs around operating businesses. Indeed, at no time since 2001 has any City agency ever suggested any such interpretation. Further, since 2001, numerous temporary construction signs around lots with operational businesses have been routinely and properly permitted by the City, all the while providing public benefits to the surrounding neighborhoods.

For all these reasons, the DCP’s and DBS’ enforcement actions were not just overkill as a policy matter but blatantly illegal. See *Tower Lane Properties v. Bruce Karsh et al.*, 224 Cal. App. 4th 262 (2014) (City of LA prohibited from interpreting Zoning Code in a fashion inconsistent with Code’s clear language and City’s long-standing interpretation).

V. The Genesis of and Flawed Rationale for this Proposal. No doubt acutely aware of the illegality of its enforcement efforts, the City has hurriedly prepared this proposed amendment to section 14.4.17 in an effort to cure the lack of legal authority for its “no operating business” limitation. In doing so, however, the City still fails to provide a legitimate evidentiary or policy rationale to impose a blanket prohibition on construction wall signs around operating businesses. As well, the City offers no rationale as to why its existing enforcement powers are insufficient to prevent abuses.

DCP’s presentation at its March 8, 2017 public hearing on the proposed amendments make no mention of any abuse directly related to operating businesses. Rather, DCP’s presentation identified two “problems/issues.” The first involved construction walls that extended beyond the construction area to areas where no construction was taking place. The second involved the re-striping of a parking lot where a construction walls was not required.

A blanket prohibition on temporary signs around operating businesses is not needed or appropriate to address these two discrete issues. Both involve allegedly unnecessary construction walls—one allegedly unnecessary in part, the other in total. As an initial matter, the maintenance of unnecessary temporary construction walls around operating businesses would appear to be a relatively rare phenomenon. As a matter of logic, customer inconvenience concerns ostensibly would motivate business owners to minimize the size and duration of such walls.

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Regardless, the City already has the enforcement tools it needs to prevent signs on unnecessary construction walls. LAMC section 14.4.2 defines “temporary construction wall” as a wall maintained around a construction site pursuant to California Building Code (CBC) section 3303 (which requires pedestrian protection in the case of demolition sites). Construction walls also are subject to LAMC section 91.3306, which requires protection of pedestrians during construction, remodeling, and demolition activities as required by CBC table 3306.1. To the extent the City feels these provisions are somehow insufficient to prevent signs on unnecessary construction walls, the City’s proposed amendments to LAMC sections 14.4.2 (adding reference to LAMC 91.3306 in the definition of “temporary construction wall”) and 14.4.17.A (indicating a sign permit is to be issued only when a temporary wall is required for public safety under LAMC section 91.3306) certainly cure the problem.

Given the above, the proposed blanket ban on construction signs around operating businesses is a wholly arbitrary and irrational response to the problem as defined. Even if the problem was defined to include instances where signs are being maintained on sites where active construction is not yet taking place, the blanket ban is still unnecessary. Signs on construction walls around such sites could be policed under LAMC section 91.3306 and the amendments discussed immediately above. But, even those amendments once again are unnecessary since DBS already has the power to terminate construction permits after six months where no active construction has begun during that time. LAMC section 98.0602. Indeed, DBS’ enforcement efforts on the heels of DBS’ October 26, 2016 memo included not only citations of signs around operating businesses but also the cancellation of construction permits where construction had not commenced within six months of the issuance of the permits. Since a construction sign permit can only be issued based on a valid underlying construction permit, the ability to cancel construction permits effectively constitutes the ability to cancel related sign permits as well.

Beyond being unnecessary and unjustified, the proposed ban would be harmful to the City. It would deprive affected neighborhoods of the daily expense-free graffiti and other community clean-up benefits that are needed around construction sites, including those involving still operating businesses. The cost of providing those benefits would then fall on the City, which currently is facing a budget deficit. More likely than not, the benefits would never be delivered. In turn, the graffiti and other decay that invariably appear at temporary construction sites, but that are prevented by the current program, would once again proliferate. LA-based advertisers would be deprived of an effective and affordable advertising route. Businesses, including many nonprofits, would be deprived of the sign revenue that, in many cases, helps make the renovation and remodeling work affordable in the first place.

VI. A More Rational Approach. Rather than seek to restrict this proven public-private partnership program, the City more appropriately should consider expanding it. For example, the City should consider allowing temporary signs on permanent “nuisance walls”—i.e., permanent building and other walls identified by the City as ongoing neighborhood nuisances due to the frequent or continuous presence of graffiti—as proposed back in 2001. The City should also consider allowing temporary signage on permanent walls surrounding nonprofits. For these

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permanent wall situations, the City should consider expanding the requisite community benefits beyond graffiti abatement and neighborhood cleanup to include items such as sidewalks repairs, creation of community gardens, and the like.

We hope this information and analysis is helpful and leads to a reconsideration of the current proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip Recht". The signature is fluid and cursive, with the first name "Philip" being more prominent than the last name "Recht".

Philip Recht