

No. B220198

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

SUMMIT MEDIA LLC,
Plaintiff, Respondent and Cross-Appellant,

vs.

CITY OF LOS ANGELES,
Defendant and Cross-Respondents

CBS OUTDOOR INC. and
CLEAR CHANNEL OUTDOOR, INC.

Real Parties in Interest, Appellants and Cross-Respondents

On Appeal From The Los Angeles County Superior Court
Honorable Terry A. Green, Honorable James C. Chalfant
Case No. BS116611

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF;
AMICI CURIAE BRIEF OF THE WESTWOOD SOUTH OF SANTA
MONICA BLVD. AND WESTWOOD HOMEOWNERS
ASSOCIATIONS IN SUPPORT OF PLAINTIFF/PETITIONER,
RESPONDENT
& CROSS-APPELLANT SUMMIT MEDIA LLC**

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**APPLICATION FOR PERMISSION
TO FILE AMICI CURIAE BRIEF**

**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOR THE SECOND APPELLATE DISTRICT,
DIVISION TWO:**

Pursuant to California Rules of Court, Rule 8.200(c), the Westwood South of Santa Monica Blvd. Homeowners Association (“WSSM”) and The Westwood Homeowners Association (“WHA”) (together “*Amici*”) respectfully request permission to file an *Amici Curiae* brief in support of Respondent Summit Media.

STATEMENT OF INTEREST

Amici are comprised of large groups of homeowners who live in the areas that are directly affected by the private settlement agreement (“Settlement Agreement”) entered into between the City of Los Angeles (“the City”) and CBS Outdoor Inc./Clear Channel Outdoor, Inc. (“CBS/CC”), which agreement is at issue on appeal.

A. Westwood South of Santa Monica Blvd. Homeowners Association

WSSM is a non-profit homeowners association that represents over 3,800 residential property owners located between Santa Monica Boulevard (on the north), Pico Boulevard (on the south), Beverly Glen Boulevard (on the east) and Sepulveda Boulevard (on the west) in West Los Angeles.

B. The Westwood Homeowners Association

WHA is a non-profit homeowners association that represents approximately 2500-plus residential property owners located between Wilshire Boulevard (on the north), Santa Monica Boulevard (on the south),

Club View Drive (on the east) and Sepulveda Boulevard (on the west) in West Los Angeles.

WSSM and WHA are located in the areas governed by the Los Angeles Municipal Code (“LAMC”), as well as the Westwood/Pico Neighborhood Oriented District (“NOD”) and Westwood Boulevard Pedestrian Oriented District (“POD”), all of which govern land use in the area. Accordingly, *Amici*, and their constituent homeowners’ interests, are directly affected by the erection and/or digitalization of certain billboards purportedly allowed by the parties’ private Settlement Agreement, in contravention of the LAMC, NOD and POD regulations.

This litigation was initiated by one billboard company (Summit Media, LLC) against the City and two other billboard companies (CBS/CC) because the Settlement Agreement gives the two settling billboard companies a competitive advantage over the suing billboard company. Lost in the shuffle, and certainly not about to be brought up by these parties, are the legal interests of the ordinary citizens who are impacted adversely by the billboard companies’ and by the City’s illegal “agreement” allowing any or all of them to violate municipal codes and ordinances enacted to protect the citizens from harm. *Amici* represent the citizens who live in the area of immediate impact, whose homes and streets are detrimentally affected by the very existence of the billboards that all parties in the action seek to impose upon the landscape, by hook or by crook. *Amici* play an important role in bringing to the attention of the Court factors that neither the litigating billboard companies, nor the City, discuss, which is the underlying *raison d’être* for the codes and ordinances being violated by the devil’s bargain struck-- the prevention of blight, nuisance and harm.

Absent this Court’s voiding the private Settlement Agreement at issue, WSSM and WHA homeowners would be required to endure new and/or modified billboards promulgated pursuant to the parties’ private

Settlement Agreement, despite the fact that City codes and ordinances clearly prohibited, and still do prohibit, such billboards and digital variations thereof.

As a result, WSSM and WHA homeowners' community, property values and daily quality of life are directly and negatively impacted by the City and CBS/CC's illegal Settlement Agreement. Further, the ability of residents to rely on local ordinances and regulations, and the process by which they were and are promulgated, will be significantly diminished, if not extinguished, if the trial court decision were to be overturned.

PURPOSE OF THE PROPOSED BRIEF

Amici believe that the attached brief will assist the Court in evaluating and deciding this matter.

As briefly alluded to above, this case presents the question of whether this Court should affirm a trial court order striking the private Settlement Agreement reached between the City and CBS/CC, which agreement purports to allow CBS/CC to erect, maintain and/or digitalize (euphemistically phrased by the industry as "modernize") certain billboards and off-site signs, in direct conflict with the area's past, current and potentially future regulations, all of which are identified and discussed below.

Amici assists the Court by providing perspective on what the parties' Settlement Agreement really means for the local community and its residents, beyond the reasons provided by Respondent Summit Media (which is after all, a billboard company itself), as to why it should be set aside and voided. *Amici* speak in defense of the established land use planning process, which includes the public's participation in developing and revising planning documents and ordinances, including the 2000 and 2002 sign regulations promulgated by the City, including adopted, localized

planning directions (known as the “NOD” and the “POD,” discussed *post*) established specifically to govern, preserve, enhance and promote the character of the specified geographic areas. The surrounding residents relied on these regulations when purchasing and improving their properties and in planning for the future. Quite simply, development within a given jurisdiction must comply with the applicable municipal codes and these ordinances may be overruled or amended only by legislative action, not by private agreement. The City has overstepped its power by attempting to circumvent the formally adopted regulations related to the CBS/CC billboards within the stated areas, by exempting CBS/CC from their purview, and by contracting away its police power to CBS/CC. Because of the illegal Settlement Agreement, the residents within the surrounding communities, who remain governed by these laws, suffer permanent and severe negative impacts on their quality of life, home property values as well as the livability of their community, due to being improperly saddled with, illegal, intrusive and/or garish digitalized billboards throughout their community, with no help from the City and no available relief except through the courts.

DISCLOSURE STATEMENT

As counsel for *Amici*, we have reviewed the briefs filed in this case and believe this Court will benefit from additional briefing. We have attempted to supplement, but not duplicate, the parties’ briefs.

Pursuant to California Rules of Court, Rule 8.200(c), *Amici* state that no party or counsel for a party authored the proposed *Amici* in whole or in part and that no one (including a party or counsel for a party), other than *Amici* and their members, has made a monetary contribution to fund the preparation or submission of this proposed *Amici Curiae* brief.

This brief is timely, as it is filed within fourteen days after the last reply brief was filed. Accordingly, WSSM and WHA respectfully request that this Court accept and file the attached *Amici Curiae* brief.

Dated: April 4, 2012

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I. INTRODUCTION

Neither the City of Los Angeles (“the City”) on the one hand, nor CBS Outdoor, Inc./Clear Channel Outdoor, Inc. (“CBS/CC”) or Plaintiff/Respondent Summit Media, LLC, on the other, have fully and properly considered the impact that the private Settlement Agreement (“Settlement Agreement”) will have on the people who live and work in the communities affected by the new and/or digitalized billboards contemplated therein. Nor has any party recognized and accounted for the regulations promulgated by these very communities and adopted by the City to protect their neighborhoods, and how the settlement completely disregards and vitiates those, as well as future, regulations.

Here, the Los Angeles Municipal Code (“LAMC”), as well as two ordinances discussed below, prohibit the issuance of permits for, as well as the alteration of, billboards and off-site signs. (3 AA 698; 5 AA 1378-82; 6 AA 1453; 10 AA 2692-96 (L.A. Mun. Code, §§ 14.4(B)(11), 12.21(A)(7)(1).) The Westwood/Pico Neighborhood Oriented District (“NOD”) and Westwood Boulevard Pedestrian Oriented District (“POD”) further regulate certain conduct within their borders, including the erection, proliferation and alteration of billboards and off-site signs. (L.A. City Ord. Nos. 171859, 174260.) In exercising this power, the LAMC, NOD and POD specifically banned the erection of any new billboards, the erection of any new (or alteration of any existing) off-site signs, and banned any billboards and off-site signs which flash or involve the appearance of movement.

CBS/CC attempted to circumvent the express terms of the LAMC, NOD and POD regulations by entering into a private Settlement Agreement with the City. This is despite the fact that they cried “*Foul*” when Respondent Summit Media attempted to do the same thing. However, the law is clear that the City may not exempt CBS/CC from zoning laws such

as the LAMC, NOD and POD regulations, nor may it contract away its police powers, and its attempt to do so is null and void.

Neither the City, nor CBS/CC, nor Summit Media, has a practical, vested interest in complying with the LAMC, NOD and POD regulations. On the other hand, WSSM, WHA and their members are directly governed by the LAMC, NOD and POD regulations and are affected by the billboards at issue, and therefore have a vested interest in the proper outcome of this litigation.

The community relied on the LAMC, NOD and POD regulations to plan and build their future. Allowing the City and CBS/CC to disregard and evade the LAMC, NOD and POD regulations by an agreement side stepping zoning regulations is not only contrary to well-established law, it would also have a permanent and severe effect on the community and its residents. Accordingly, to preserve and uphold the enforceability of the regulations, *Amici* respectfully submit that the proper outcome is for this Court to affirm the trial court's decision to set aside and void the Settlement Agreement.

II. BRIEF FACTUAL AND PROCEDURAL BACKGROUND

A. The City's Regulation of Billboards

In 2000 and 2002, the City passed ordinances that banned the erection of new "off-site" signs and billboards. The ordinances also banned the renovation or alteration of existing signs ("Sign Ban"). (3 AA 698, 6 AA 1453 [L.A. Mun. Code, §§ 14.4.4(B)(11), 12.21(A)(7)(1)].) Off-site signs and billboards advertise businesses, products or services sold or offered elsewhere than the premises where the sign is located. (3 AA 696 [L.A. Mun. Code, § 14.4.2].)

Pursuant to the Sign Ban, the City also enacted an Off-Site Sign Inspection Program that required the annual inspection of all off-site signs on private property in Los Angeles, the payment of fees by sign owners and

the issuance of a certificate of compliance by the City. (6 AA 1674-1675 [L.A. Mun. Code, § 91.6205.18].)

B. The Westwood/Pico NOD & Westwood Boulevard POD Also Regulates Billboards.

In 1998, the City of Los Angeles passed an ordinance establishing the Westwood/Pico Neighborhood Oriented District (“NOD”) to preserve, enhance and promote the character of the Westwood/Pico area. (21 Appellants’ Appendix (“AA”) 3649-3656; L.A. City Ord. No. 171859.) In 2001, the City passed an ordinance establishing the Westwood Blvd. Pedestrian Oriented District (“POD”), a similar ordinance to the NOD that also was designed to encourage people in the surrounding neighborhoods to walk and shop along the designated streets. (21 AA 3651; L.A. City Ord. No. 174260.) Development within the NOD and POD must comply with NOD and POD regulations. (21 AA 3651-2652.) NOD and POD regulations specifically prohibit “off-site commercial signs” and signs that “flash, move or have the appearance of movement.” (21 AA 3655; L.A. City Ord. Nos. 171859, 174260.)

C. CBS/Clear Channel Initiates Litigation Over The City’s *Sign Inspection Program*.

In September 2002, CBS/CC filed suit against the City, claiming that the Off-Site Sign Inspection Program was invalid. (1 AA 185-216; 10 AA 2700-2716; 13 AA 3500-3519.)

D. Vista Initiates Litigation Over the City’s *Inspection Fees*.

In October 2002, Vista Media Group, Inc. (“Vista”) brought an action against the City, seeking to invalidate the City’s ordinance imposing a periodic inspection fee for off-site signs. (2 AA 534-73.)

E. Vista Attempts Settlement With The City.

In 2005, Vista and the City attempted settlement of their dispute. However, CBS/CC challenged the settlement reached by Vista and the City *on the grounds that it illegally attempted to contract away the City's police power.* (10 AA 2716-56.)

F. City and CBS/Clear Channel Enter Into Settlement Agreement

Subsequently, in November 2006, the City and CBS/CC entered into a settlement agreement to resolve their dispute ("Settlement Agreement"). (1 AA 25-52; 12 AA 3361, 3370.) Amazingly, the Settlement Agreement seeks to exempt CBS/CC from numerous zoning and building laws (past and future), including many provisions of the Sign Ban, the NOD and POD.

- The Settlement Agreement requires the City to issue up to 10 permits monthly from each company (CBS and CC) upon request to "modernize" off-site signs by replacing existing billboards with new digital displays. (1 AA 30-32.) CBS/CC thereby digitalize the signs, use multi-colored LED lighting, and change the messages and content of the digitalized billboards as often as once every four seconds. (1 AA 32 (SA § 5(D)(i)).)

- The Settlement Agreement assigns such high priority to modernization permits, for CBS/CC only, such that if the City fails to process and issue the permits requested by CBS/CC within a given month, the City forfeits the ability to issue any and all building and demolition permits, to anyone:

"In the event that, despite its best efforts, the City is unable to process and act upon the permit applications within such time, and until the City has done so, the City shall refrain from acting upon any applications for building, demolition, or relocation permits for any structure, including but not limited to signs, submitted to it after the applicable Monthly Submission Date." (SA § 5(D)(ii).)

- The Settlement Agreement allows for non-compliant signs to remain, despite their non-compliance and conflict with LAMC Section 91.6205.18(3). (SA § 6(A).) The Settlement requires the City to provide CBS/CC with new permits for these illegal, but suddenly grandfathered, signs and, again, states that the City must issue permits for previously unpermitted signs upon request or forfeit its ability to issue any permits for demolition or construction in the entire City.

- The Settlement Agreement allows for new permits to be obtained by CBS/CC, despite the contradictory provisions of LAMC Sections 91.106.1, 96.205.1, and 91.6205.18 (9). (SA §§ 6(A)(i-ii), 7(A).)

- The Settlement Agreement mandates that permits issue to CBS/CC, without further review or opportunity to challenge and without a public process or public input, upon passing only an electrical and/or structural safety inspection. (10 AA 2657; SA § 5(B)(ii).)

- The Settlement Agreement also allows for the disregard of *future* zoning laws. (See, e.g., SA §§ 5(A)(iv), 6 (A)(iii)(c).)

The Settlement Agreement identifies some 10 separate City laws with which CBS/CC need not comply in undertaking the modernization of their signs. (1 AA 30-31; SA § 5(B)(ii).) The City agreed to issue these permits to CBS/CC only, and allow for the above despite the Sign Ban for new off-site signs, despite the City's strictly enforced ban on these sign improvements, despite the contradictory contents of the LAMC, NOD and POD, and despite the prior disallowed settlement agreement between the City and Vista.

G. *Amici* are Directly Impacted by Some of The Billboards at Issue

CC/CBS own billboards located within the WSSM and WHA communities. For example, CC owns a billboard located within the NOD at 2131 South Westwood Boulevard, just north of Olympic Boulevard ("CC Billboard"). Likewise, CBS owns a billboard located within the POD at

1333 South Westwood Boulevard, north of Rochester Avenue (“CBS Billboard”).

After the City and CC/CBS entered into the Settlement Agreement, CC/CBS proceeded with requesting permits for modernization and began their installation. Thereafter, CC/CBS began work to install necessary electrical service, constructed necessary reinforcements to support electronic screens and associated operating equipment for the CC and CBS Billboards, first for the 2131 S. Westwood Blvd. sign and later for the 1333 S. Westwood Blvd. sign. When all alterations to the existing static signs and their support structures had been made, hoisting equipment was brought in to lift and install the large LED digital screens. Gone were the static, wood billboard signs. In their place, the community received large LED screens with glaring, bright, multi-colored and changing lights. These new billboards are located near intersections, often capable of distracting drivers and pedestrians alike and creating what is often referred to as flashing and/or flickering, resulting in what has come to be known as a “24-hour digital sunrise” in the local residents’ community. This is not a minor alteration to an existing billboard creating minor inconvenience, but rather a major reconstruction and resulting in highly visible blight.

III. LEGAL DISCUSSION

Through their Settlement Agreement, CBS/CC and the City attempted to circumvent the LAMC, NOD and POD regulations. However, the trial court correctly ruled that neither party has the power to do so via private agreement. Further, the equities and public policy dictate that they be prevented from doing so. Accordingly, this Court should affirm the trial court’s decision to set aside and void the Settlement Agreement.

A. If the Settlement Agreement is Not Set Aside, It Will Have a Permanent and Severe Affect on the Community and Its Residents.

The City has consistently recognized that off-site advertising creates visual blight and impairs traffic safety, while the courts have recognized that the City (and by extension, the LAMC) has a legitimate interest in protecting against such commercial blight and safety hazards. (*Metro Lights LLC v. Los Angeles* (9th Cir. 2009) 551 F.3d 898, 901-902.)

Further, several studies have been conducted to determine the impact that the digitalized billboards have on safety in the community. (See, e.g., P. Cairney and T. Gunatillake, *Roadside Advertising Signs – A Review of the Literature and Recommendations for Policy* (2000), Contract Report for RACV (Royal Automobile Club of Victoria); D.D., Beijer, Department of Mechanical and Industrial Engineering, University of Toronto, *Driver Distraction due to Roadside Advertising* (2002); CTC & Associates, *Transportation Synthesis Report*, Bureau of Highway Operations, Division of Transportation Infrastructure Development, Wisconsin Department of Transportation, *Electronic Billboards and Highway Safety* (2003); SWOV, Dutch National Road Safety Research Institute, *Advertising and Information Alongside the Road*, (2006), Fact Sheet, Leidschendam, The Netherlands; D. Crundall, E. Van Loon, and G. Underwood., *Attraction and Distraction of Attention with Roadside Advertisements* (2006) *Accident Analysis and Prevention*, 38 (4), 671-677.)

These studies conclude that billboards, and in particular digital billboards with changeable message displays, present an increased degree of hazard to drivers. (See, e.g., CTC & Associates, Bureau of Highway Operations, Division of Transportation Infrastructure Development, Wisconsin Department of Transportation, *Electronic Billboards and Highway Safety* (2003) *Transportation Synthesis Report*, at p. 5; P. Cairney

and T. Gunatillake, Roadside Advertising Signs – A Review of the Literature and Recommendations for Policy (2000) Contract Report for RACV, at pp. 3, 9; SWOV (Dutch National Road Safety Research Institute), Advertising and Information Alongside the Road (2006) Fact Sheet, Leidschendam, The Netherlands, at pp. 2, 4.) Because drivers tend to spend more time looking at these digital billboards than a regular static, wood billboard, especially at or near intersections, they are more likely to be involved in a traffic collision or similar incident. (*Ibid.*) These findings also have implications for pedestrian safety, since distracted drivers may be dangerous to all roadway users, including people traveling by foot or bicycle. The potential safety issues have a direct, adverse affect on the quality of life for residents who live and work in the area. In fact, studies of the effects and dangers of digital billboards continues to this day, due to significant and lingering concerns related to their placement, displays, and resulting effect on drivers and surrounding communities. (U.S. Dept. of Transportation, Federal Highway Administration, *The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update*, Publication No. FHWA-HRT-09-018, pp. 11-12, 29 <<http://fhwa.dot.gov/realestate/CEVMS.pdf>> [as of April 2, 2012].)

An unregulated proliferation of signage within the surrounding communities also detracts from the underlying character and appeal of the neighborhoods. Residential use is allowed in all of the City's commercial zones, and, in fact, is often encouraged as part of urban development. Digital signage, such as the signs owned by CBS/CC within the surrounding communities, often create "sky glow" and can glare through residential windows and into homes, disturbing sleep and adding unwanted brightness and commercial messages around and within the home, which negatively impacts the quality of life for residents. Further, this unwanted

intrusion around and into the home (“light trespass”) is particularly burdensome at night when digital displays tend to dominate the visual environment. (See, e.g., *Digital Billboards: New Regulations for New Technology*, Illinois Coalition for Responsible Outdoor Lighting (May 2010) <<http://illinoislighting.org/billboards.html>> [as of Apr. 2, 2012]; Ian Lewin, *Digital Billboards Recommendations and Comparisons to Conventional Billboards* (2009) <<http://www.polcouncil.org/polc2/DigitalBillboardsIanLewin.pdf>> [as of Apr. 2, 2012].)

Since visually appealing communities tend to attract investment, those communities with more signage and visual blight face lower property values and decreasing economic vitality. (Jonathan Snyder, *Beyond Aesthetics: How Billboards Affect Economic Prosperity* (2011) <<http://scenic.org/blog/134-new-study-shows-billboards-hurt-nearby-property-values>> [as of Jan. 12, 2012].) Experienced realtors in the WSSM and WHA areas have also indicated that the value and desirability of homes adjacent to properties with digital billboards have been and will be diminished as a result of this proximity.

Moreover, the use of digital billboards negatively affects the environment, requiring thousands of diodes – the LED version of a bulb – be lit, and to change, 24 hours a day. These billboards are also computer operated, and often contain additional accessories, which in turn necessitates cooling by air conditioners or fans, which consume more energy. Thus, these billboards hinder communities’ ability to become greener and more environmentally friendly. (See, e.g., Gregory Young, *Illuminating Issues, Digital Signage and Philadelphia’s Green Future* (2010) <http://Scenic.org/storage/docuemtns/Digital_Signage_Final_Dec_14_2010.pdf> [as of April 2, 2012.]

For these reasons, several other cities have banned digital billboards, including San Francisco, Denver, Houston, Austin, and most recently, Tacoma, Washington, Durham, N.C. and Rapid City, S.D., as well as the states of Maine, Hawaii, Vermont and Alaska. (Maine, Me. Rev. Stat. Ann., Tit. 23, § 1901 et seq. (1980); Hawaii, Haw. Rev. Stat. § 264-71 et seq., § 445-111 et seq. (1976); Vermont, Vt. Stat. Ann., Tit. 10, § 488 et seq. (1973); Christopher Osher, *Denver Bans New LED Billboards* (Mar. 9, 2010) <http://www.denverpost.com/breakingnews/ci_14638259> [as of Jan. 3, 2012]; Ramona Du Houx, *Attack on Maine's Billboard Ban* (Apr. 26, 2011) <<http://www.maineinsights.com/perma/lepages-billboard-by-randell-berry>> [as of Jan. 12, 2012]; Larry Copeland, *More Cities Ban Digital Billboards* (Mar. 24, 2010) <http://www.usatoday.com/news/nation/2010-03-22-visual-soup_N.htm> [as of Jan. 3, 2012].)

In addition, the federal government prohibits billboards on federal land, and enacted the federal Highway Beautification Act of 1965, which requires that States eliminate billboards from areas adjacent to certain highways constructed with federal funds in order to “protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.” (23 U.S.C., § 131; 34 CFR § 2921.0-6 (a) (1980).)

The very purpose of the LAMC, NOD and POD is to govern and preserve the character of the community, while encouraging people in the surrounding areas to walk and shop along the streets. The regulations are specifically designed to fulfill this purpose. Accordingly, CBS/CC's ability to disregard the LAMC, NOD and POD through the Settlement Agreement directly thwarts the purpose of the regulations. Moreover, the Settlement Agreement renders the LAMC, NOD and POD virtually meaningless, since a select group is exempted from complying with past and future zoning

laws. This establishes a dangerous precedent that cannot be allowed to stand. Because of the negative impact this Settlement Agreement will directly have on Los Angeles residents, this Court should affirm the trial court's decision to set aside and void the Settlement Agreement.

B. The Settlement Agreement Constitutes an *Ultra Vires* Act and Must Be Set Aside.

The Settlement Agreement was invalid when it was made and is void as a matter of public policy.

1. The City Cannot Contract Away its Police Power.

It is well settled that the City cannot contract away its police power. Because land use regulations such as zoning laws involve the exercise of government police power, the government may not contract away its right to exercise its police power. (See *Delucchi v. County of Santa Cruz* (1986) 179 Cal.App.3d 814, 823 [225 Cal.Rptr. 43]; *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 [132 Cal.Rptr. 386] [superseded by statute on other grounds].) “Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of public. Any such agreement to circumvent applicable zoning laws is invalid and unenforceable.” (*League of Residential Neighborhood Advocates v. City of Los Angeles* (9th Cir. 2007) 498 F.3d 1052, 1056.) Accordingly, allowance or issuance of a permit that is inconsistent with an existing zoning ordinance is invalid as *ultra vires* and must be set aside. (See *Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 959 [271 Cal.Rptr. 909] (“*Land Waste Management*”).)

In passing establishing the LAMS, the NOD and the POD, the City and its residents defined specific regulations, for all, governing land use conduct, including the erection, placement and operation of billboards. The

LAMC, NOD and POD may be overturned only through the legislative process. (*Land Waste Management, supra*, 222 Cal.App.3d 950, 957-958.)

The LAMC, NOD and POD regulations clearly prohibit the erection of new billboards or the alteration of existing billboards or off-site signs. Yet, pursuant to the Settlement Agreement, the City must selectively allow CBS/CC to disregard, and/or violate some 10 separate City laws, and also disregard future laws. (1 AA 30-31; SA §§ 5(A)(iv), 5(B)(ii-iv), 6(A)(iii)(c).) This is improper; it is the very definition of illegally contracting away the City's police power.

Notably, and abhorrently, the Settlement Agreement also provides that, if any delays are experienced, the City agrees to process and approve CBS/CC's permits before anyone else's. (SA § 5(D)(ii).) Thus, we have here not only an illegal contracting away of police power, but also a contracting away of the manner in which the police power will be effectuated, as well as the (disparate) order in which citizens will be treated by the City. This type of private, preferential arrangement is not only illegal, it is the type of arrangement that will only exacerbate the current tenuous state of our economy should the issuance of permits to others actually be delayed or come to a halt.

2. The City Cannot Contradict its Current, or Future, Zoning Laws.

Additionally, the City cannot enter into an agreement which contradicts, or allows the contradiction of, current or future zoning laws.

The Settlement Agreement requires the City to issue new permits to allow CBS/CC to "modernize" off-site signs by replacing existing billboards with new digital LED displays. (1 AA 30-32.) However, the LAMC prohibits such activities. (3 AA 698, 5 AA 1378-82, 6 AA 1453, 10 AA 2692-96 (L.A. Mun. Code, §§ 14.4(B)(11), 12.21(A)(7)(1).) The NOD and POD also prevent "off-site commercial signs," as well as

billboards which “flash, move or have the appearance of movement.” (21 AR 3655; L.A. City Ord. Nos. 171859, 174260.) Yet, the private Settlement Agreement expressly calls for the permitting or re-permitting of signs which move, with no discretion, further review or input, in direct contrast to such regulations. (See, e.g., SA §§ 5(A), 5(B)(i) [“tri-vision structures... with *moving* three-sided slats”; “[signs]...change more than once”](emphasis added).)

The Settlement Agreement also allows non-compliant signs to remain, despite their non-compliance and being in conflict with LAMC Section 91.6205.18(3). (SA § 6(A).) The Settlement Agreement similarly allows new permits to be obtained by CBS/CC, despite the contradictory provisions of LAMC Sections 91.106.1, 96.205.1, and 91.6205.18 (9). (SA §§ 6(A)(ii), 7(A).)

The Settlement Agreement also mandates that permits issue to CBS/CC, *without further review/opposition*, upon passing only an electrical and/or structural safety inspection. (10 AA 2657.) However, the applicable regulations not only prohibit the erection of new billboards or the alteration of existing billboards or off-site signs, they certainly do not, and would not, restrict their current or future review to such limited and impractical criteria. (1 AA 30-31; 3 AA 698; 5 AA 1378-82; 6 AA 1453; 10 AA 2692-96; L.A. Mun. Code, §§ 14.4(B)(11), 12.21(A)(7)(1); SA §§ 5(B)(ii-iv), 6(A)(iii)(c).)

By agreeing to the above exemptions, the City has improperly attempted to give CBS/CC the right to disregard applicable regulations and erect, or alter, their billboards and signs, in direct conflict with existing (and future) regulations, while everyone else is explicitly prohibited from doing so. The law is clear that the City does not have the authority to circumvent the regulations via private settlement agreement. (See *Hansen Brothers v. Board of Supervisors* (1996) 12 Cal.4th 533, 564 [48 Cal.Rptr.

2d 778]; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 181-182 [41 Cal.Rptr.3d 200] (“*Trancas*”); *Smith v. City & County of San Francisco* (1990) 225 Cal.App.3d 38, 55 [275 Cal.Rptr. 17]; *League of Residential Neighborhood Advocates v. City of Los Angeles* (9th Cir. 2007) 498 F.3d 1052, 1056.)

Accordingly, for all of these reasons, this Court should affirm the trial court’s decision to set aside and void the illegal Settlement Agreement.

3. The Courts Have The Power to Set Aside & Void The Settlement Agreement.

The courts have the power to set aside and void the Settlement Agreement. In light of all of the above, this court should affirm the lower court’s decision to do so.

a. The Remedy is Authorized & Proper.

It is indisputable that mandamus is an appropriate remedy and is available where a violation of law is to be corrected, such as revoking a permit issued in violation of applicable laws or setting aside an illegal agreement. (See *Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619 [339 P.2d 914]; *Transdyn/Cresci v. City & County of San Francisco* (1999) 72 Cal.App.4th 746, 752 [85 Cal.Rptr.2d 512]; *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 [68 Cal.Rptr.3d 882] (“*Neighbors in Support of Appropriate Land Use*”); *Trancas, supra*, 138 Cal.App.4th 172, 188.) Accordingly, such relief should be affirmed here.

b. No Equities or Estoppel Arguments Exist Which Favor CBS/CC, Nor May They Overcome Public Policy.

In addition to the above, a balancing of the equities and public policy dictate that the private Settlement Agreement be set aside.

First, CBS/CC knew going into the Settlement Agreement that it was *ultra vires*. Indeed, they had already challenged Vista's settlement with the City as such. (10 AA 2716-56.) Further, an agreement to allow the issuance of permits or licenses which violate zoning laws is void as a matter of law. (L.A. Mun. Code, §§ 11.02; 91.106.4.3.2; see also *Trancas, supra*, 138 Cal.App.4th, 172, 181-182, 188; *Horowitz. v. City of Los Angeles* (2004) 124 Cal.App.4th 1344, 1356 [22 Cal.Rptr.3d 295]; *Neighbors in Support of Appropriate Land Use, supra*, 17 Cal.App.4th 997 [68 Cal.Rptr.3d 882], 1004.) Thus, CBS/CC cannot credibly argue that they did not know they were entering into an illegal contract, or that setting aside the Settlement Agreement is improper.

Further, failure to affirm the lower court decision would result in injury to the very public the zoning laws were designed to protect. The homeowners in the area affected, *i.e.*, WSSM and WHA, are foremost among the citizens for whom the zoning laws were meant to afford reliance and protection; to allow a private commercial interest to swallow and digest the wider public interest would be improper. (See, e.g., *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813, 819, 823-824 [110 Cal.Rptr. 262]; *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 262 [80 Cal.Rptr.3d 876]; *People ex rel. Dept. Pub. Wks. v. Ryan Outdoor Advertising, Inc.* (1974) 39 Cal.App.3d 804, 808, 812 [114 Cal.Rptr. 499].)

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IV. CONCLUSION

The City may not contract away its police powers and allow CBS/CC to circumvent, contradict or violate past and future zoning regulations. Because the Settlement Agreement does just that, the trial court properly set aside and voided the Settlement Agreement. WSSM and WHA respectfully request that this Court affirm the trial court's decision, to set aside and void the private Settlement Agreement.

Dated: April 4, 2012

ANDREWS · LAGASSE · BRANCH & BELL LLP

By:  _____

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BLVD. HOMEOWNERS ASSOCIATION AND
THE WESTWOOD HOMEOWNERS
ASSOCIATION


CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1).)

Pursuant to California Rules of Court, Rule 8.204(c)(1), counsel for *Amici* hereby certifies that the text of this *Amici Curiae* brief consists of 7,076 words, including footnotes and excluding the caption, tables, signature block, and this certification, as counted by the Microsoft Word version 2010 word processing program used to generate the brief. Other than the proof of service, the font size is 13 point.

Dated: April 4, 2012

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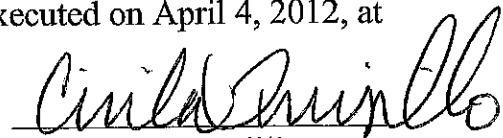
I, the undersigned, declare that I am a citizen of the United States and am employed in the City and County of San Diego, State of California. I am over the age of 18 and not a party to this action; my business address is: 4365 Executive Drive, Suite 950, San Diego, California 92121.

On the execution date indicated below I served the documents (s) described as: **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF THE WESTWOOD SOUTH OF SANTA MONICA BLVD. AND WESTWOOD HOMEOWNERS ASSOCIATIONS IN SUPPORT OF PLAINTIFF/PETITIONER, RESPONDENT & CROSS-APPELLANT SUMMIT MEDIA LLC** in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 4, 2012, at San Diego, California.


Cirila Trujillo

Summit Media, LLC v. City of Los Angeles, et al.
Second Appellate District, Division Two – Case No. B220198
(Los Angeles County Superior Court – Case No. BS116611)

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