

Background for Homework on Question 3: How do We Get There From Here?

Once the CWG has a vision (or visions) charted on where billboards should be allowed and what they should look like, we need to find some mechanisms to transition from what is on the ground today *towards that vision*. Said another way, what are the **most effective/appropriate mechanisms** that will enable the community to accomplish:

(1) a reduction in the total number of billboards in the City

(2) removal of billboards from areas where it is the highest priority to do so?

The goal is to identify a set of mechanisms that have consensus support of the CWG; this homework is the first step towards that goal.

The City Code¹

Since 1997, the City’s primary mechanism to reduce the number of billboards has been amortization of nonconforming billboards – removal of the structures, at the cost of the owner, without compensation, after a period of time (10 years). Clear Channel Outdoors (CCO) sued the City over the amortization provision in the 1997 code which led to the 2010 Settlement Agreement. The 2010 Settlement Agreement recognized CCO’s vested rights in its conforming and legally nonconforming signs and relocation permits and included an exchange program that would allow digital billboards. After community opposition to digital billboards, the City did not pass a digital ordinance but instead passed the 2012 code, which revived the prior 10-year amortization provision as a way to reduce the number of billboards (and other changes). The City filed a declaratory judgment action asking the Court to declare that the Settlement Agreement was not binding. In response, CCO countersued the City over the 2012 code, which led to the current Standstill Agreement. Key parameters are summarized in the table below:

1997 Code
<ul style="list-style-type: none">• 10 year amortization of all non-conforming billboards (by 8.1.07). Thereafter, nonconforming billboards would be required to be removed by owner w/o compensation from city.• Could exchange 2 or more smaller signs to make a conforming sign elsewhere.• Could move non-conforming billboards to conforming locations before end of amortization period.
The 2010 Settlement Agreement
<ul style="list-style-type: none">• Remove 54 faces (and related structures), locations identified, and in exchange CCO may build 10 digital BB.• Thereafter, for every 1 digital billboard, CCO will relinquish/move 15 other permits and/or faces (at least 5 faces must be removed for each sign).• After all relocation permits traded in, CCO must remove 8 faces in exchange for 1 digital structure.

¹ Note: Karen is the lead author of this document. This first section attempts to summarize key points of the Code history relative to the ways “how do we get here from here” has been addressed to date by the City and CCO. The City Attorney has not reviewed this final document, and it does not necessarily reflect the City’s views, or CCO’s.

<ul style="list-style-type: none">• In addition, CCO will remove 25 faces in the next 5 years regardless, selected at CCO discretion .
2012 Code
<ul style="list-style-type: none">• Relocation permits (to move non-conforming signs to approved areas) expired 9.1.12. None allowed in future.• Amortization period for <i>existing</i> non-conforming BB ends 3.1.12. BB must be removed thereafter without compensation.• <i>Future code changes</i> making BB non-conforming: 10 year amortization to remove BB or make it conforming.
Standstill Agreement (2012)
<ul style="list-style-type: none">• Litigation dismissed without prejudice.• 1997 code applies for now, except amortization provisions.• Parties will confer to find a permanent solution. Focus will be on <u>sign consolidation</u> to remove specific signs in exchange for bulletin sized static BB in mutually agreeable areas, and vested rights for existing BB.• Lawsuit may be reinstated if issues not resolved by deadline of August 15, 2014. Deadline subsequently extended by the parties for 1- year --- through August 15, 2015.• CCO relinquishes all 183 relocation permits.• CCO removes 31 specified BB faces (including structures). These removed billboards count towards any consolidation plan ultimately executed between the City and CCO to resolve the lawsuit.• CCO performs repair on 18 specified BB. <p style="text-align: center;">The CWG has been created as the first phase of the attempt to find a “consolidation plan” acceptable to both parties.</p>

Consistent with the history summarized above, CCO has stated in earlier CWG meetings that they do not believe amortization to be a valid regulatory approach without payment of just compensation and view it as an impermissible taking of property.

CCO has also said they expect that billboards removed in excess of the requirements of the Standstill Agreement will be considered in the “consolidation plan.”

The City believes that amortization is a valid regulatory approach (having included it in the 1997 and 2012 codes); however, the City expects that if the code retains an amortization provision and the City seeks to enforce it, then, based on history, there will continue to be legal challenges from CCO on the validity of this approach and/or the amount of compensation owed CCO.

Both the City and CCO agree that an alternative to amortization should be found—as contemplated in the 2012 Standstill Agreement. Specifically, the parties agreed to look for some sort of exchange mechanism and recognition of property rights of existing billboards.

Exchange Mechanisms

Per CCO, what they are most typically seeing in other communities desiring to reduce the number of billboards through a settlement rather than litigation is an exchange of removing static billboards for being allowed to construct digital billboards. Again, digital billboards are not being requested by CCO here.

However, exchange mechanisms could be constructed that do not include digital billboards.

Potential factors....could mix and match and add other factors into one or more exchange options...

LOCATION:	<p>X Number of faces removed from “High Value Removal Areas” in exchange for Y number of faces being moved to a “Receiving Area”</p> <ul style="list-style-type: none"> • The ratio might be different depending on the “value” to the community and CCO of the Removal Area and Receiving Area.
SIZE:	<p>X number of smaller faces being removed in exchange for a larger face being allowed somewhere else</p> <p style="text-align: center;"><i>OR</i></p> <p>X number of smaller faces being allowed in exchange for a larger face being removed</p>