
**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 07/23/2013
Agenda Item: 8**

ACTION: Request for a Code Text Amendment within the Zoning and Development Code for FREESTANDING OFF-PREMISE FREEWAY SIGNS (PL130245). The applicant is the City of Tempe.

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: Staff – Approval

BACKGROUND INFORMATION: This Code Text Amendment within the Zoning and Development Code, is being generated in response to the resolution adopted June 27, 2013, by the City Council (Resolution 2013.88), authorizing the Mayor to sign the Development Agreement between the City of Tempe and CBS Outdoor regarding the removal of certain freestanding off-premises signs within Tempe, in exchange for the authority to erect off-premise freeway signs. The request includes the following:

ZOA13002 Code Text Amendment within Sections 3-503, 3-505, and 4-903(J) of the Zoning and Development Code.

ATTACHMENTS: Ordinance

STAFF CONTACT: Ryan Levesque, Senior Planner (480) 858-2393

Department Director: Lisa Collins, Interim Community Development Director
Legal review by: Judi R. Baumann, City Attorney
Prepared by: Ryan Levesque, Senior Planner

A handwritten signature in black ink, appearing to be 'RL' or similar initials.

ORDINANCE NO. 2013.xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTIONS 3-503 AND 3-505, AND PART 4 – DEVELOPMENT STANDARDS, SECTION 4-903, PERTAINING TO FREEWAY SIGNS.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

SECTION 1. That Section 3-503 of the Zoning and Development Code, pertaining to legal non-conforming development, is hereby amended to read as follows:

Section 3-503 Legal Non-Conforming Development.

All *developments* may be maintained but shall not be re-erected, relocated, or replaced unless brought into compliance with this Code. Freestanding off-premise signs which are legally non-conforming shall be maintained in place and may only be relocated in accordance with Section 4-903(J)(2) with a development agreement that may be entered into at the discretion of the City Council. IN THE CASE OF OFF-PREMISE SIGNS THE OWNER OF THE PHYSICAL SIGN, AND NOT THE PROPERTY OWNER, IS CONSIDERED THE OWNER OF THE NON-CONFORMING SIGN.

SECTION 2. That Section 3-505 of the Zoning and Development Code, pertaining to discontinuance of a legal non-conforming use, is hereby amended to read as follows:

Section 3-505 Discontinuance of a Legal Non-Conforming Use.

Whenever a *non-conforming use* has been abandoned or ceases to exist for a period in excess of one (1) year, such use shall not thereafter be re-established, as long as the period of non-use is attributable at least in part to the property owner, tenant or other person or entity in control of the use. For purposes of this Code, rental payments or lease payments and taxes shall not be considered as a continued use. LEGAL NON-CONFORMING DEVELOPMENT RIGHTS, INCLUDING BUT NOT LIMITED TO BUILDINGS, STRUCTURES, PARKING, SIGNS AND LANDSCAPE AS DEFINED IN SECTION 3-503, SHALL NOT BE GRANTED THE NON-CONFORMING USE TIME LIMITATIONS TO RE-ESTABLISH SUCH DEVELOPMENT.

SECTION 3. That Section 4-903(J) of the Zoning and Development Code, pertaining to freeway signs, is hereby amended to read as follows:

J. Freeway Sign. Freeway *sign* requirements are as follows:

1. Freestanding *On-Premise Freeway Sign*.

- a. Any *lot* with more than one thousand (1,000) feet of lineal frontage adjacent to a freeway right-of-way (I-10, US 60, Loop 202, Loop 101 and SR 143), may have such *signs*;
- b. One (1) *freestanding sign* per freeway frontage;
- c. Maximum height, including any supporting *structures*, shall be thirty-five (35) feet, and maximum *sign* area shall be one hundred twenty (120) square feet;
- d. *Sign* must be located within three hundred (300) feet of freeway right-of-way;
- e. May identify a center or *building*, and a maximum of four (4) tenants; and
- f. A *sign* permit is required.

2. Freestanding *Off-Premise Freeway Sign*.

- a. A *lot* with more than five hundred (500) feet of lineal frontage adjacent to a freeway right-of-way (I-10, US 60, LOOP 202, LOOP 101 AND SR 143), may have such *sign*;
- b. ~~One (1) freestanding off-premise sign per lot;~~
- bc. *Sign* shall not be located within ~~one thousand three hundred twenty~~ FIVE HUNDRED (4,320 500) feet measured by FROM THE CENTER POINT OF THE SIGN'S BASE IN a straight line in any direction, ~~from~~ TO the *lot* line of any ~~residential district~~ LOT THAT IS USED FOR SINGLE-FAMILY RESIDENTIAL PURPOSES, that is on the same side of the freeway as the freeway right-of-way on which the sign is to be located; and the sign shall not be located on any city owned land;
- cd. *Sign* shall not be located within ~~one thousand~~ SEVEN HUNDRED FIFTY (1,000750) feet, measured from the CENTER POINT OF THE sign's ~~Centerpoint~~ base, TO THE CENTER POINT OF THE BASE OF any other ~~freestanding on-premise or off-premise freeway sign~~ ON THE SAME SIDE OF THE FREEWAY;
- de. *Sign* must be located within three hundred (300) feet of freeway right-of-way;
- ef. *Sign* shall be authorized through a development agreement that may be entered into at the discretion of the City Council. In addition to any other conditions imposed by the City Council, each development agreement shall describe criteria which includes but is not limited to the allowable *sign* height and size of the *sign* to be installed; and shall also provide for the removal of legally non-conforming *freestanding off-premise signs(s)* within the City of Tempe; ~~or the removal of no more than three (3) other legally non-conforming or legally conforming signs(s) or surrender of sign entitlements within the City of Tempe totaling~~ containing no less than six hundred ~~seventy-two (672600)~~ square feet of display area when combined for the purposes of

installing one *freestanding off-premise freeway sign* within the City of Tempe; and

fg. A ~~sign~~ BUILDING permit is required.

3. Building Mounted.

- a. Any *building*, except residential, located within three hundred (300) feet of a freeway right-of-way (I-10, US 60, Loop 202, Loop 101 and SR 143), may have such *signs*;
- b. The maximum total area for *building mounted freeway signs* on the premises may be equal to two (2) square feet of *sign* area for every lineal foot of *building* frontage adjacent to the freeway. Allocation of the total *sign* area to individual tenants shall be determined through a comprehensive *sign package*, approved through *development plan* review; and
- c. A *sign* permit is required.

SECTION 4. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2013.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

RESOLUTION NO 2013.88

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TEMPE AND CBS OUTDOOR, INC., REGARDING THE REMOVAL OF CERTAIN FREESTANDING OFF-PREMISES SIGNS WITHIN TEMPE IN EXCHANGE FOR THE AUTHORITY TO ERECT OFF-PREMISES FREEWAY SIGNS, CONSISTENT WITH RESOLUTION NO. 2013.29.

WHEREAS, the City of Tempe ("Tempe") has adopted, and from time to time amended, a Zoning and Development Code ("ZDC"), which comprehensively regulates land use in Tempe in a variety of areas, including signage; and,

WHEREAS, Tempe, beginning with Zoning Ordinance 808 and continuing to the present day, has prohibited freestanding off-premises signs, commonly known as billboards; and,

WHEREAS, under Arizona state law and the ZDC, all billboards in existence prior to the adoption of the ordinance prohibiting billboards are permitted to remain in existence indefinitely as a nonconforming use, provided certain criteria are met; and,

WHEREAS, all nonconforming billboards in the Tempe are currently owned by CBS Outdoor ("CBS"); and,

WHEREAS, in 2009 Tempe adopted an amendment to the ZDC permitting the erection of new freeway off-premises signs, provided that nonconforming billboards in the interior of the city be removed, and the parties agree to a development agreement; and,

WHEREAS, CBS wants to remove certain interior billboards in exchange for the authorization to build freeway off-premises signs; and,

WHEREAS, CBS has acquired or is in the process of acquiring properties along the freeway, some of which meet the criteria for freeway off-premises signs as specified in the 2009 amendments to the ZDC, and some which do not, and would thus require further amendments to the ZDC; and,

WHEREAS, in exchange for further amending the ZDC and permitting additional locations for freeway billboards, CBS has indicated it would take down more than the required square footage of interior nonconforming billboards at a faster rate of removal than the establishment of new freeway billboards; and,

WHEREAS, CBS has further proposed that they would want to keep two of their interior billboards, and would want to add a digital sign to the westward face of one interior billboard, located at or near the southwest corner of Elliot Road and Kyrene Road; and,

WHEREAS, Tempe and CBS have discussed what further consideration would be necessary to support the development agreement, including advertising time on certain digital billboards, landscaping and maintenance near the interior digital face, and other terms and conditions; and,

WHEREAS, Tempe and CBS have prepared a Development Agreement that includes the general terms and conditions that would constitute a framework within which to negotiate a development agreement mutually satisfactory to both parties, as required by Resolution No. 2013.29.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AS FOLLOWS:

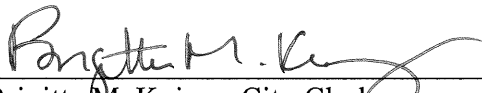
Section 1. That the Mayor is authorized to execute the Development Agreement and any other related documents referenced herein, substantially in the forms of such documents on file with the City Clerk's Office, and to take such further actions and execute such additional documents as are necessary to implement the intent of this Resolution and the Development Agreement.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 27th day of June, 2013.



Mark W. Mitchell, Mayor

ATTEST:



Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:



Judith R. Baumann, City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AGREEMENT

C2013.125

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the 27th day of June, 2013, between the City of Tempe, an Arizona municipal corporation (the “City”), and CBS Outdoor Inc., a Delaware corporation (“CBSO”).

R E C I T A L S

WHEREAS, under Arizona state law and the City of Tempe Zoning Code, all billboards in existence prior to the adoption of the ordinance prohibiting billboards are permitted to remain in existence indefinitely as a nonconforming use, provided certain criteria are met; and,

WHEREAS, all nonconforming billboards in the Tempe area are currently owned by CBSO; and,

WHEREAS, in 2009 the City adopted an amendment to the City of Tempe Zoning Code permitting the erection of new off-premise freeway signs, provided that nonconforming billboards in the interior of the City be removed, and the parties agree to a development agreement; and

WHEREAS, CBSO is willing to remove certain interior billboards in exchange for the authorization to build freeway off-premise signs; and,

WHEREAS, CBSO has acquired or is in the process of acquiring properties along the freeway, some of which meet the criteria for freeway off-premise signs as specified in the 2009 amendments to the City of Tempe Zoning Code, and some which do not, and would thus require further amendments to the City of Tempe Zoning Code; and,

WHEREAS, this Agreement is a development agreement pursuant to the provisions of A.R.S. §900.05 and Section 4-903.J of the City of Tempe Zoning Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A G R E E M E N T

1. **Definitions.** The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context indicates otherwise.

1.1 “City” shall mean the City of Tempe, an Arizona-municipal corporation, and any successor public body or entity.

1.2 “CBSO” shall mean CBS Outdoor Inc., a Delaware corporation.

1.3 “Parties” and “Party” shall mean all of the parties to this Agreement collectively or each of the parties individually, as the context may require.

1.4 “Property” shall mean real property at the southwest corner of the intersection of Kyrene and Elliot Roads, in Tempe, Arizona.

1.5 “Freeway Properties” shall mean eight (8) locations with seventeen (17) faces of new signage along freeways, which properties may be owned by the State of Arizona.

2. **Development Issues.**

2.1 **Conditions.** Subject to Section 2.3, and pursuant to Section 4-903.J of the Zoning Code, as amended from time to time, City hereby authorizes CBSO to construct, install, maintain, renovate, repair, rebuild and lease (to third parties for profit) freestanding off-premise signs on the Property and other freestanding off-premise freeway signs on the Freeway Properties, in compliance with the following limitations:

2.1.1 City will allow CBSO to install a total of seventeen (17) new faces on no more than eight (8) total structures along the freeway including the Property.

2.1.2 Each permitted display face will be limited to a face display size of 13’6.5”x 47’8” (hereafter described as 14’x 48’) and a height not more than eighty-five (85) feet above the ground at the base of the sign post;

2.1.3 CBSO shall submit the requisite sign and building permit for every structure installed;

2.1.4 The sign on the Property shall consist of a single monopole structure with not more than three (3) faces, having one static 14’ x 48’ face, one digital display face(s) size of 14’x 48’ and one 10’6” x 22’1” face at a height of not more than forty-five (45) feet above street grade at the base of the sign post;

- 2.1.5 No advertising is allowed on any portion of any off-premise sign that is not directly located within the approved sign faces, including any structural element; and
- 2.1.6 Construction of the sign and landscaping on the Property are each expressly contingent on CBSO securing prior approval from the property owner or Lessor, and/or Salt River Project.

2.2 **CBSO's Obligations.**

- 2.2.1 Improvement of Property. CBSO will contribute to the aesthetics on the Property for the benefit of the public and the City by contributing to the City a lump sum of Twenty-Five Thousand Dollars (\$25,000.00) on or before December 1, 2013. The City will use the funds to install landscaping as determined by the City in its reasonable discretion but which shall in no way block the visibility of the sign. Maintenance and preservation of landscaping following installation shall be the sole responsibility of the City.
- 2.2.2 City Use of Property Sign. CBSO will provide to the City one (1) flip of advertising on the digital sign located on the Property for twenty-four (24) weeks each calendar year. The City may use these weeks at any time with sixty (60) days prior notice, except in cases of emergency as set forth in Section 2.2.3 herein. Minimum use is one (1) week (Monday at 12:01 a.m. to Sunday at 12:00 a.m.) at a time. Weeks can be used for multiple flips, i.e. 2 flips for 12 weeks, 4 flips for 6 weeks, etc. The City may advertise only City of Tempe sponsored events, services or divisions (examples would be Block Party, parks, golf, hazardous waste facility, etc.). The City's rights may not be sold, bartered or otherwise monetized in any way. Unused space will not carry over to the next year and partial years will be prorated. CBSO will have the right to approve or disapprove any and all copy at its sole discretion.
- 2.2.3 Public Safety Access; Display Criteria. CBSO shall make the sign on the Property and other signs on Freeway Properties operated by it, available to the City and its various departments for use during emergency situations, the exact parameters of such emergency use to include messaging that overrides advertising copy for one (1) hour and repeats for at least eight (8) seconds every one (1) minute until the emergency has passed. Emergency messages may include, but shall not be limited to, AMBER alerts, evacuation notices, homeland security and/or public safety messages, and the like. Routine traffic alerts or notices shall not constitute emergency messages for the purposes of this Agreement and the sign shall not be utilized for that purpose.

- 2.2.4 Design Approvals. The signs shall be consistent from a design standpoint with City standards, and the final location and design shall be reviewed and approved in writing by the Development Services Manager prior to construction and installation. The Development Services Manager shall not unreasonably withhold such review and/or approval.
- 2.2.5 Technical Operation of Digital Sign(s). The sign copy image shall be static with no animation and no flashing, blinking, or moving lights; In the transition between copy changes, CBSO shall endeavor to minimize any visible movement from one image to the next; In the event of an electronic malfunction the sign shall be shut off until repairs have been made to restore the electronic messaging system; a dimmer on the sign shall be set in the evening hours from sunset to 11:00 p.m. and shall not exceed 300 NITS for signs that are fourteen (14) feet by forty-eight (48) feet and three hundred forty two (342) NITS for signs that are ten (10) feet by thirty (30) feet to ensure compliance with current ordinance standard for illumination, unless otherwise specified by the zoning administrator. Sign copy changes shall not occur more frequently than every eight (8) seconds unless otherwise authorized by the City.
- 2.2.6 From 11 pm until sunrise all sign illumination shall be extinguished and sign shall be equipped with an automatic device to assure compliance. The only exception to this will be for emergency messages, unless otherwise specified by the City.
- 2.2.7 Conditions Precedent. CBSO may not install the signs until City receives written confirmation of compliance with the proposed takedown schedule provided to the City Attorney. Failure to take down nonconforming billboards in compliance with the proposed takedown schedule shall be considered an event of default pursuant to Section 4.1., herein. CBSO shall also provide documents describing the exact locations of the signs on the Property and Freeway Properties, as referenced herein, to City Attorney, within thirty (30) days of the recording date of this Agreement.
- 2.3 Compliance with Laws; Standards. CBSO shall comply with all laws, rules and regulations applicable to the sign, including without limitation Section 4-903.J of the Zoning Code, as amended from time to time. The sign may only be used for graphic display of information or products that are consistent with the community and moral standards of the City.
- 2.4 General Cooperation. City and CBSO acknowledge and agree that they shall cooperate in good faith with each other and use their respective good faith and commercially reasonable efforts to perform their respective obligations under this Agreement.
3. **Indemnification of City.** CBSO shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees and agents, from any and all claims,

demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders and judgments for damage to persons (including injury and death) or property resulting from the negligent or willful misconduct of CBSO and CBSO's employees, contractors, or agents during their construction, operation, maintenance and removal of the signs installed by or for CBSO pursuant to Section 2 of this Agreement, except to the extent resulting from the gross negligence or willful misconduct of City or any of its employees, contractors, or agents.

4. **Default; Remedies; Termination.**

4.1 **Default.** It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

4.2 **City's Remedies; Right to Terminate Agreement.** If, after the passage of any applicable cure period, CBSO remains in default under this Agreement, and the parties do not resolve any dispute pursuant to Section 5.2 of this Agreement, then the City shall have the right and option, without obligation, to (a) terminate this Agreement immediately upon written notice to the CBSO, and/or (b) exercise such other remedies as are available at law or in equity for breach of contract. On any such termination, this Agreement shall be of no further force or effect other than the indemnification provisions which shall survive the expiration or termination of this Agreement. Upon termination CBSO will no longer be able to build new signs but may retain any sign previously permitted.

4.3 **CBSO's Remedies.** If the City is in default under this Agreement and the parties do not resolve any dispute pursuant to Section 5.2 of this Agreement, CBSO shall have the right to terminate this Agreement upon written notice to the City or seek specific performance of this Agreement by City. Within sixty (60) days after any such termination, at its sole discretion CBSO may remove the signs.

5. **General Provisions.**

5.1 **Notices.** All Notices which shall or may be given pursuant to this Agreement shall be in writing and may be given in person or transmitted by registered or certified mail, return receipt requested, addressed as follows:

TO CBSO:

***CBS Outdoor Inc.
3150 S. 48th ST. Suite 200
Phoenix, Arizona 85018***

With a copy to: ***Charles Huellmantel***
Huellmantel & Affiliates
PO Box 1833
Tempe, Arizona 85280-1833

TO THE CITY: City Manager
City of Tempe
P. O. Box 5002
31 East 5th Street
Tempe, Arizona 85281

With a copy to: ***City Attorney***
Tempe City Attorney's Office
P. O. Box 5002
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written notice of such change in the manner described above.

- 5.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to meet in a good faith attempt to settle the dispute before commencement of litigation. Any litigation between the parties pursuant to this Agreement shall be subject to and initiated in the Superior Court of Maricopa County, Arizona.
- 5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.
- 5.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- 5.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.
- 5.6 Attorneys' Fees. In the event of any litigation between the parties in connection with this Agreement, excluding the dispute resolution process pursuant to Section 5.2, the party prevailing in such action shall be entitled to recover from the other party all of its costs, expenses and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

- 5.7 Severability; No Merger. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this agreement are not vitiated.
- 5.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.
- 5.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.
- 5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- 5.11 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.
- 5.12 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.
- 5.13 Conflict. This Agreement is subject to cancellation per ARS 38-511.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

Brigitta M. Kuiper, City Clerk

By _____
Mark W. Mitchell, Mayor

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

CBS Outdoor Inc.,
a Delaware corporation

By _____
Its _____