Communication from Public

Name: Theodore J. Boutrous Jr.
Date Submitted: 12/06/2019 09:09 AM
Council File No: 19-0104-S1
Comments for Public Posting: Please see the attached letter, which we respectfully request be added to the file in this matter. Thank you.

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December 6, 2019

VIA ELECTRONIC SUBMISSION

Clerk and Members of the Transportation Committee
Los Angeles City Council
200 North Spring Street, City Hall, Room 1010
Los Angeles, CA 90012

RE: Council File 19-0104-S1

Dear Councilmembers Bonin, Martinez, and Koretz,

I write as counsel for Firefly Systems Inc. to elaborate on my testimony to the Transportation Committee on November 13, 2019 concerning the above-referenced motion.

During that testimony, I explained that Los Angeles Municipal Code section 87.54 applies to only a limited class of vehicles whose primary purpose is advertising; section 87.54 does not apply to Firefly devices, which are installed on vehicles whose primary purpose is something other than advertising (i.e., vehicles primarily used to transport passengers); and any assertion to the contrary by the City of Los Angeles would contradict the City Attorney's prior interpretations of section 87.54 and prior representations to multiple federal courts. As the City considers the policy considerations around digital rooftop advertising on taxis, it is important that the City maintain an accurate and consistent interpretation of section 87.54.

First, the City's mobile billboard regulations, including section 87.54, have always been understood as being directed at vehicles whose "primary purpose" is advertising. This is what distinguishes (a) the particular nuisance of unsightly large billboards attached to trucks or trailers parked or left standing for hours or days with no intent but to advertise, that were the actual target of these ordinances, from (b) vehicles that incidentally happen to bear some sort of message while engaged primarily or solely in transportation, whether magnets on the car's side that advertise housekeeping services, a Lakers flag, or, here, advertisements atop taxis.

This is presumably why the City codified its mobile-billboard regulations (sections 87.53 and 87.54) in the Municipal Code's subsection on "Unusual Types of Vehicles

Creating Traffic Problems." Were it otherwise, section 87.54 would arguably criminalize the display of any rooftop sign, such as those used by pizza delivery drivers or food trucks, or indeed every Los Angeles taxicab with the required taxi top light that reads "TAXI" or "VACANT."

Second, any assertion by the City Attorney's office that section 87.54 applies beyond vehicles whose primary purpose is advertising would contradict the City Attorney's representations, on behalf of the City of Los Angeles, to multiple federal courts. Specifically, the City Attorney's office asserted to Judge Otis D. Wright II of the United States District Court for the Central District of California that section 87.54 applies only to vehicles whose primary purpose is advertising, when the City successfully resisted a First Amendment challenge to section 87.54. For instance, the City Attorney's office asserted in that proceeding that section 87.54 governed only those vehicles left parked or standing on the streets "*solely for the purpose of advertising*."[1] That office also emphasized that section 87.54 "distinguish[ed] between vehicles whose *primary purpose is advertising* and those that have a different primary purpose, such as carrying passengers."[2]

Later, when Judge Wright's decision was on appeal in the United States Court of Appeals for the Ninth Circuit, the City Attorney again suggested that section 87.54 applied only to vehicles whose primary purpose was advertising. For example, the City Attorney explained that a vehicle "that is parked on the city streets for days at a time, for the sole purpose of advertising a business, has a primary purpose of transporting and displaying advertising, and no other practical purpose. This is in contrast to a sign painted on the side of a delivery vehicle or U-Haul trailer that is primarily used for other purposes."[3]

Notably, in affirming Judge Wright's decision, the Ninth Circuit appears to have relied on the very distinction advocated by the City Attorney. The court noted that the City's

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1 City of Los Angeles Memorandum in Opp'n to Pl.'s Mot. for Summ. Judgment, *Lone Start Sec. & Video, Inc. v. City of Los Angeles*, 2013 WL 12303890 (C.D. Cal. Nov. 18, 2013) (emphasis added).

2 *Id.* (citing *Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 520 F. App'x 505, 506 (9th Cir. 2013)) (emphasis added).

3 *Ammari v. City of Los Angeles,* Appellee's Supp. Br., No. 14-55050, Dkt. 28 (Nov. 25, 2015).

mobile billboard ordinances (including section 87.54) merely "remov[e] from city streets vehicles that have no purpose other than advertising . . . ," and are thus narrowly tailored not to restrict other types of vehicles. *Lone Star Security & Video, Inc. v. City of Los Angeles*, 827 F.3d 1192, 1201 (9th Cir. 2016); *see also id.* ("the utility of mobile billboards stems from owners' ability to park them for periods of hours or days at a time").

In short, by the City Attorney's own assertions in federal court, Los Angeles Municipal Code section 87.54 does not apply to taxis and other vehicles used primary for the purpose of transportation. If the City were to disavow this position now, that would call into question the rulings by Judge Wright and the Ninth Circuit upholding the constitutionality of section 87.54. That is because if section 87.54 were *not* limited to vehicles that function as wheeled advertising nuisances, but instead covered all vehicles no matter their primary purpose (advertising or transportation), then the courts would need to undertake an entirely different analysis under the First Amendment—which protects advertising.

I also want to underscore an important point regarding the application of state law that is relevant to Council File 19-0104-S1. As discussed during testimony to the Transportation Committee, there are no obstacles under state law to the City allowing digital rooftop advertising on taxis—contrary to what has been asserted by the City Attorney's Office.

The City Attorney's Office has argued that state law only authorizes digital signs on current bus pilot programs. That position is evidently premised on an inference that statutes authorizing some public bus lines to display digital ads *implicitly* barred any digital advertising on private vehicles in the state. That suggestion is untenable.

California passed these bus-related statutes to authorize digital advertising on public buses only because public buses previously had been *specifically disallowed* from displaying such ads. Legislation authorizing digital advertising on certain public bus lines cannot support a sweeping inference about digital ads in contexts *other than* public buses. General principles of California statutory construction forbid a law in one context from being read to impliedly create dramatic legal changes in other contexts—yet this is the City Attorney's apparent argument. *See Cal. Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231, 260-61 (2011) ("It would be unusual in the extreme...to adopt such a fundamental change only by way of implication…. [D]rafters of legislation do not, one might say, hide elephants in

mouseholes."); *Cal. Chamber of Commerce v. State Air Res. Bd*., 10 Cal. App. 5th 604, 625 (2017) ("We are not persuaded the Legislature would have silently, or at best obscurely, decided so important and controversial a public policy matter.").

This conclusion has been confirmed by a written opinion issued by the State Legislature's Legislative Counsel Bureau on August 22, 2019. The Bureau concluded that a Vehicle Code provision authorizing a digital-advertisement pilot on buses does not prohibit digital rooftop advertising signs on private passenger vehicles that comply with the requirements in state Vehicle Code, division 12. The California Supreme Court has ruled that opinions of the Legislative Counsel on the interpretation of state law have the same persuasive effect as Attorney General opinions. *See California Assn. of Psychology Providers v. Rank*, 51 Cal. 3d 1, 17 (1990). Therefore, the Legislative Counsel's conclusion should be highly persuasive, if not dispositive authority to you on this issue of California state law.

We would be happy to answer any questions on these issues as the City considers how best to proceed with digital rooftop advertising on taxis. We appreciate your time and consideration.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

/s Theodore J. Boutrous Jr.

Communication from Public

Name: Joshua Pretsky
Date Submitted: 12/06/2019 02:44 PM
Council File No: 19-0104-S1
Comments for Public Posting: Next week, the full council is taking up a motion by members Martinez and O'Farrell that would enable the creation of a pilot program to put changing digital signs on L.A. taxicabs. This is Council File 11-0104-S1. I oppose this measure for many reasons. The signs are ugly and intrusive. Some of them are even electronically sensitive and can lift information from passengers' cell phones or location data. They will take digital advertising into literally every neighborhood of LA. Moreover, the City Attorney has determined that the signs are illegal under state law and previous city ordinance. I urge the Council Member to vote against this measure, which will make Los Angeles a much less pleasant place to work and visit. These signs are a blight that adversely impacts our citizens' social and psychological health. Let's put our well-being in front of short-sided financial interests.