

OAKLAND CITY COUNCIL
== 77561 ==
RESOLUTION No. _____ C.M.S.

MPCW

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF ELLER MEDIA COMPANY/INFINITY OUTDOOR V. CITY OF OAKLAND (U.S. DISTRICT COURT CASE NO. C-98-02237 WHA; U.S. NINTH CIRCUIT COURT OF APPEALS NOS. 01-15210, 01-15354 & 01-15722; OUR FILE NO. 98244) WITH RESPECT TO INFINITY OOUTDOOR (VIACOM) ONLY, RELATING TO THE CITY'S ALCOHOL/TOBACCO BILLBOARD REGULATION PROGRAM, INCLUDING PERMITTING RELOCATION OF AN EXISTING BILLBOARD

WHEREAS, on December 16, 1997, the City Council adopted Ordinance No. 12025 C.M.S. ("Ordinance"), which restricted the location of billboards exhibiting alcohol and tobacco advertising based upon General Plan Designations and proximity to sensitive land uses (within 1,000 feet of schools, playgrounds, places of worship, licensed day care centers);

WHEREAS, Eller Media Company and Infinity Outdoor (now called Clear Channel and Viacom, respectively) brought a lawsuit challenging the adoption of the Ordinance (as it relates to alcohol but not tobacco) contending it violated their First Amendment (free speech) rights and that the City was prohibited from adopting such regulations because the field of alcoholic beverage control was preempted by the state;

WHEREAS, in October 1998 the City amended the Ordinance (Ordinance No. 12085 C.M.S.) to clarify its application to non-commercial speech;

WHEREAS, on December 7, 2000, the United States District Court granted the City's motion for summary judgment;

WHEREAS, Eller/Infinity filed appeals to the Ninth Circuit Court of Appeals;

WHEREAS, the appeals have been stayed pending settlement discussions among the parties;

WHEREAS, on July 24, 2001, the City Council approved, via Ordinance No. 12351 C.M.S., a settlement with Eller;

WHEREAS, it is in the interest of all the parties to expeditiously approve a settlement with Infinity Outdoor that allows the City's Alcohol/Tobacco Billboard Regulation Program to proceed as applied to Infinity Outdoor; **NOW, THEREFORE, BE IT**

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Eller Media Company v. City of Oakland, United States District Court Case No. C-98-02237 WHA; U.S. Ninth Circuit Court of Appeals Nos. 01-15210, 01-15354 & 01-15722; Our File No. 98244), with respect to Infinity Outdoor (Viacom) only, relating to the City's Alcohol/Tobacco Billboard Regulations; and be it

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps may be necessary to effect said settlement, including without limitation negotiating and executing a settlement agreement that provides for (1) Viacom to dismiss the lawsuit; (2) the City's restrictions on alcohol/tobacco billboard advertising to remain in place for a period of ten (10) years regardless of subsequent court cases, as applied to Viacom only; (3) Viacom to absorb its own attorneys' fees and costs; (4) the relocation of one existing, non-amortizable billboard to be mutually agreed upon; (5) the relocated new billboard will be a double-sided 14' x 48' advertising structure, at a specific location to be mutually agreed upon, adjacent to I-880 between the Bay Bridge and 98th Avenue; and (6) the relocated billboard will not be allowed to advertise alcohol, tobacco, or firearm products; and be it

FURTHER RESOLVED: That the locations of the non-amortizable relocated billboard and the newly constructed billboard shall not be brought back to the City Council if the councilmember in whose District the billboards are located approves of such locations.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 10 2002

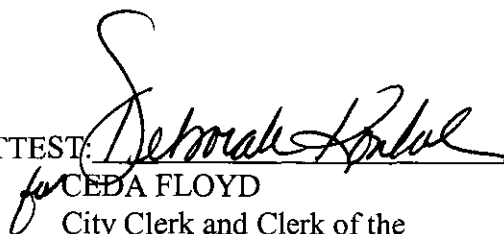
PASSED BY THE FOLLOWING VOTE:

AYES- ~~Brunner~~, CHANG, NADEL, REID, SPEES, WAN, MAYNE AND
PRESIDENT DE LA FUENTE - 7

NOES- Brunner - 1

ABSENT- 0

ABSTENTION- 0

ATTEST: 
for CEDRA FLOYD
City Clerk and Clerk of the
Council of the City of
Oakland, California