

Planning and Building Agency  
 Planning Division  
 20 Civic Center Plaza  
 P.O. Box 1988 (M-20)  
 Santa Ana, CA 92702  
 (714) 647-5804  
 www.santa-ana.org

## SUPPLEMENTAL APPLICATION FOR DIGITAL BILLBOARD

Assessor's Parcel Number(s): \_\_\_\_\_

Property Address(es): \_\_\_\_\_

Present use of property: \_\_\_\_\_

Property Total Street Frontage: \_\_\_\_\_ Zoning: \_\_\_\_\_

Site Total Acreage: \_\_\_\_\_ Distance to nearest freeway edge of pavement: \_\_\_\_\_

*Please check the appropriate category for type of digital billboard application, below:*

- New digital billboard**
- Conversion/reconstruction of existing freeway-oriented static billboard**
- Conversion/reconstruction of existing freeway-oriented on-premise digital sign**
- Relocation of existing and approved static or digital billboard**

Provide a summary of the project and signage. Include descriptions of the design, dimensions, height, number of faces, and other pertinent details.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### APPLICANT INFORMATION

Name: \_\_\_\_\_ Company Name: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone No: \_\_\_\_\_ Email Address: \_\_\_\_\_

Property Owner's Name: \_\_\_\_\_ Phone No: \_\_\_\_\_

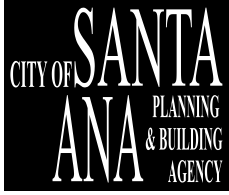
Property Owner's Mailing Address: \_\_\_\_\_

**Note:** A separate Submittal Affidavit from the recorded property owner(s) is required with all applications.

### DEPARTMENT USE ONLY

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

**Application No.:** \_\_\_\_\_



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### SUBMITTAL REQUIREMENTS

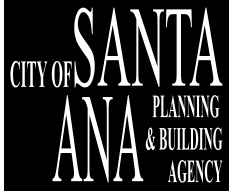
A.  All **Development Project Review application and supplemental materials.**

In addition to the plan drawings required by the Development Project Review application checklist, submitted plans shall contain the following **additional details**, as specified in Santa Ana Municipal Code (SAMC) Section 41-1111:

1. Project vicinity map depicting the location of all existing and proposed billboards (static or digital), any landmarks as designated on the General Plan that are within one thousand (1,000) feet of the proposed digital billboard, and the zoning designation of all sites within five hundred (500) feet of the boundaries of the subject property.
2. Detailed site plan indicating the location and type(s) of all existing and proposed signage.
3. Elevations showing existing conditions and proposed signage locations, and depicting the name of the person or company owning or maintaining the billboard, contact information for said person or company, and the billboard's identification number, to visible no less than from a 50-foot distance.
4. Photo-simulations of all proposed signage, including simulations at different ambient light conditions (including, but not limited to, dawn, daytime, evening, nighttime, and cloudy conditions).
5. Specifications for all existing and proposed signage, including materials, dimensions, colors, fonts, methods of attachment, and illumination details.
6. A three-dimensional (3D) massing study depicting the proposed digital billboard. The 3D study should include massing of proposed development, if any, on applicant's parcel as well as existing buildings and advertising signs within one thousand (1,000) feet of the proposed digital billboard.
7. If the application involves the exchange of existing billboards, a map depicting the location(s) of billboards to be removed; at least two photos of each billboard to be removed; and a summary of the size of each billboard face to be removed.
8. Comprehensive table of all existing, proposed, or relocated signage.

B.  Specifications of proposed **technology for electronic message displays (digital signs)**, including the following information:

1. Methods for minimizing visual and light-emitting intrusion onto properties zoned or used for residential purposes.
2. Methods for maximizing visibility from adjacent or nearby freeway corridors.
3. Technology for guaranteeing a maximum production of 0.3 foot-candles over ambient light levels (including, but not limited to, dawn, daytime, evening, nighttime, and cloudy conditions).
4. Technology for providing automatic dimming capabilities.
5. Methods for adjusting lighting/foot-candle and glare levels upon request by the City.
6. Screen transitions, if proposed.
7. Minimum display times (8-second minimum).
8. Phone number and email address for emergencies or complaints that are accessible 24 hours a day, seven days per week.



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## SUPPLEMENTAL APPLICATION FOR DIGITAL BILLBOARD

*Continued from Item B on the previous page.*

9. Description of proposed minimum amounts of display time to be used for public service announcements or warning signs as requested by the City.
  10. Statement of compliance with all other applicable federal, state, and local laws for electronic message displays.
- C.  Samples of **color and materials** for proposed signage.
- D.  Property owner/manager **stamp of approval** and **project/applicant name** on all submitted plans and materials.
- E.  Completed **Operating Agreement template** and any applicable Billboard Removal Plan and Economic and Community Benefits Plan (two printed copies, and electronic copy on USB flash drives).
- F.  All checklist items for the Supplemental Billboard Application and the Development Project Review checklist shall also be submitted in **digital format** (3 USB flash drives).
- G.  Submittal **fees**.

## BILLBOARD OPERATING AGREEMENT

This Billboard Operating Agreement (“**AGREEMENT**”) is dated \_\_\_\_\_, 20\_\_\_\_ between the City of Santa Ana, a charter city and municipal corporation (“**CITY**”) and \_\_\_\_\_, a \_\_\_\_\_ (“**OPERATOR**”), collectively referred to as “the Parties”. This **AGREEMENT** shall become effective on the date that **OPERATOR** is issued a Permit by **CITY** (the “Effective Date”) for the installation of a new digital billboard or conversion/reconstruction of an existing static billboard to a digital billboard at the following subject property location: \_\_\_\_\_, Santa Ana, California \_\_\_\_\_, referred to as the “Subject Property”.

### 1. Public Benefit.

A. Intent. The purpose of this **AGREEMENT** is to collect fees for the operation of freeway-oriented digital billboards and to provide fees for mitigation options to be used by **CITY** to compensate for impacts to **CITY** services, residents, and/or businesses as set forth in Santa Ana Municipal Code section 41-1100 et seq. The Parties agree that this **AGREEMENT** confers substantial private benefits on **OPERATOR** which should be balanced by commensurate public benefits. As part of the city’s billboard sign permit process, **OPERATOR** agrees to enter into this **AGREEMENT**. **OPERATOR** has elected to execute this **AGREEMENT** as it provides **OPERATOR** with important economic benefits. Accordingly, the Parties intend to provide consideration to the public to balance the private benefits conferred on **OPERATOR** by providing mitigation measures to the public and to pay for **economic and community-oriented** services using the operating agreement fees collected.

B. Local Hiring and Sourcing. In the construction, operation, and maintenance of its billboard, **OPERATOR** agrees to use its reasonable efforts to retain the services of qualified contractors and suppliers who are located in the City of Santa Ana or who employ a significant number of City of Santa Ana residents.

C. Existing Billboard Removal Plan or Economic and Community Benefits Plan. **OPERATOR** agrees to submit a Billboard Removal Plan (BRP) to remove existing static (non-digital) billboards within the City of Santa Ana for review and approval by **CITY** as part of its application for a new or converted/reconstructed digital billboard. The BRP must specify the minimum components listed below and must be attached to this **AGREEMENT** as Exhibit A. **OPERATOR** shall adequately document that it has met the BRP’s obligations and commitments as a condition of renewal/extension of this **AGREEMENT** upon expiration of the initial term and any extensions.

i. BRP Minimum components:

- (1) Location of existing billboards to be removed, including a street address, geo-coordinates, and accompanying map.
- (2) Size of existing billboards to be removed, including dimensions of the overall structure, number of billboard faces on the structure,

dimensions of the billboard face, square footage of the billboard face, and accompanying photographs.

- (3) Timeline for removal of existing billboards identified, prior to release of utilities for any new or converted/reconstructed digital billboard identified in the application.
- (4) Provisions for advertising of any onsite available products or services, specified as a percentage of total hourly on- or offsite product or service advertisements.
- (5) Economic and Community Benefits Plan, if applicable as per item 7, below.
- (6) Documentation of any/all permit(s) required for removal.

ii. Billboard Removal Ratios for Existing Static Billboards (Except as Noted Below):

**Table 1: Billboard Removal Ratios for Nonconforming Billboards**

Project/Request	Required Removal
New Digital Billboard on a freeway	4 times the area of the proposed billboard*
Conversion/Reconstruction of Existing Static Billboard to Digital with No Expansion of Area	4 times the area of the proposed billboard
Conversion/Reconstruction of Existing Static Billboard to Digital Including Expansion of Area	4 times the area of the proposed billboard
Conversion of Existing Digital On-Premise Sign to Digital with No Expansion of Area	2 times the area of the proposed billboard*
Conversion of Existing Digital On-Premise Sign to Digital Including Expansion of Area	4 times the area of the proposed billboard*
New Digital Billboard with Mandatory On-Premise Advertising Associated with an On-Premise Regional Retail Commercial Business or a Regional Commercial Center	As determined under the Economic Community Benefits Plan
Conversion of Existing Digital On-Premise Sign to a Digital Billboard with Mandatory On-Premise Advertising Associated with an On-Premise Regional Automobile Dealership or Regional Commercial Center	As determined under the Economic Community Benefits Plan

\*May be reduced subject to approval of Community Benefits Plan

As used in this section, the terms stated below shall be defined as follows:

1. Regional Automobile Dealership: An automobile dealership licensed by the state that sells new or used automobiles or other motor vehicles in conjunction with new automobiles to the general public on an integrated site which fronts onto one or more freeways, is plainly visible from one or more freeways, or is on a site which is located within three hundred (300) feet of the point where a freeway exit centerline intersects with a city street.
2. Regional Business: A business or enterprise offering commodities, goods, or services, either wholesale or public, to the broader Orange County region, on an integrated site which fronts onto one or more freeways, is plainly visible from one or more freeways, or is on a site which is located within three hundred (300) feet of the point where a freeway exit centerline intersects with a city street.

Regional Commercial Center: A large commercial complex containing a variety of stores, restaurants and other businesses housed in a series of connected and/or adjacent buildings within an integrated campus that shares common areas and parking facilities, and which fronts onto one or more freeways. Said center must be located on a site of no less than fifteen (15) acres.

iii. Economic and Community Benefits Plan:

Except as required by Table 1 above, **OPERATOR** may exercise the option to reduce the billboard removal ratio for billboards that are nonconforming as resulting from the adoption of Ordinance No. NS-\_\_\_\_, subject to detailing provisions for economic and community benefits in an Economic and Community Benefits Plan in full accordance with Section 41-1113 of the Santa Ana Municipal Code as detailed and approved in the BRP. The terms of the Community Benefit Plan within the BRP shall be subject to review and approval by the City Manager as recommended by the City Attorney and Executive Director of the Planning and Building Agency.

For the proposed conversion of existing freeway-oriented on-premise digital signs to be considered for a reduction in or exemption from the required removal ratios as outlined in Table 1, the Subject Property shall contain an existing business that satisfies all of the criteria enumerated below:

- (1) Is a local tax revenue generating business, a retail mall, or a local taxable consumer goods retail district that is regional in nature and is able to reasonably demonstrate regional draw of consumers from neighboring cities and counties and competitiveness in the region; and
- (2) Is able to demonstrate annual gross taxable sales average of at least \$5,000,000 (five million); and
- (3) Is able to demonstrate making physical improvements to the property and onsite improvement within the three-year period prior to submitting an application to the **CITY** and a budgeted improvement plan for a minimum of a five (5) year period following final building approval; and
- (4) Is able to demonstrate an on-going business plan and a budget that include a marketing plan reaching out to customers in neighboring cities and counties for the three (3) year period prior to submitting an application to the **CITY** and a budgeted marketing plan for a minimum of a five (5) year period following final building approval; and
- (5) Has been continuously open to the public with reportable tax revenue for the five (5) year period prior to submitting an application to the **CITY**; and
- (6) Employs a minimum 20 percent (20%) of its employees who reside in Santa Ana; and
- (7) In receipt of a preliminary approval letter of conformance from Caltrans for an off-premise sign; and
- (8) Retain no less than thirty percent (30%) of time slots within and advertising cycle for advertising of the business and products available on the property; and
- (9) The applicant and business operator and the **CITY** shall enter into a Billboard Operating Agreement as set forth in Section 41-1113 of this Chapter.

For new digital billboards signs to be considered for a reduction in or exemption from the required removal ratios as outlined in Table 1, the Subject Property shall satisfy all of the criteria enumerated below:

- (1) Propose in conjunction with the development of a new or an existing tax revenue generating business, a retail mall, or a local taxable consumer goods retail district that is regional in nature and is able to reasonably demonstrate regional draw of consumers from neighboring cities and counties and competitiveness in the region, or is an established business with a national presence having at least fifty (50) or more locations nationally demonstrating the following economic benefits:
  - a. Projected annual gross taxable revenue average of at least \$5,000,000 (five million); and
  - b. Commit to employing at least forty (40) full-time employees, of which a minimum 20 percent (20%) of its employees who reside in Santa Ana; and
- (2) Retain no less than thirty percent (30%) of time slots within advertising cycle for advertising of the business and products available on the Subject Property; and
- (3) In receipt of a preliminary approval letter of conformance from Caltrans for an off-premise sign; and
- (4) The applicant and business operator and the **CITY** shall enter into a Billboard Operating Agreement as set forth in Section 41-1113 of this Chapter.

## **2. Effect of City Regulations on Development of Project.**

Except as expressly provided in this **AGREEMENT**, all substantive and procedural requirements and provisions contained in **CITY's** ordinances, specific plans, design guidelines, rules and regulations, including, but not limited to zoning and building codes and approved billboard designs on file with the Planning and Building Agency, in effect as of the effective date of this **AGREEMENT**, shall apply to the construction and development of the Subject Property.

## **3. Operating Requirements**

The following covenants shall run with the sites until such time as the billboards are removed from the sites:

- A. Covenants Regarding Operation and Maintenance. **OPERATOR** shall operate and maintain the billboards in good working order and in accordance with all applicable laws, including without limitation, the California Outdoor Advertising Act (California Business and Professions Code Section 5200, *et seq.*) and California Department of Transportation regulations and specifications adopted pursuant thereto (Title 4 California Code of Regulations, Section 2240, *et seq.*).
- B. Maintenance. **OPERATOR** shall, at **OPERATOR's** sole cost and expense, maintain and repair or cause to be maintained and repaired the billboards and any and all security lighting or appliances installed in accordance with any entitlements and building permits issued by the **CITY** and any and all other applicable laws. The billboards and the sites

shall be kept free from the accumulation of debris and waste materials. All exterior painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking, peeling and defacing marks. All broken lights shall be immediately repaired in order to prevent hazardous conditions and/or invitation for trespassers and malicious mischief. Except during periods of construction, no lumber, trash, discarded equipment or other debris shall be stored in areas visible from the street.

- C. Graffiti Removal. All graffiti and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed within 24 hours of the **OPERATOR** becoming aware of the graffiti or the **CITY** reporting the graffiti to the **OPEARTOR**.
- D. Design of potential graffiti-attracting surfaces. **OPERATOR** shall design the billboards and all associated structures visible from any public or quasi-public place in such a manner to consider prevention of graffiti in accordance with the Santa Ana Municipal Code section 41-638.2(b) as the same may be amended from time-to-time hereafter.
- E. Non-Operation and Removal. **OPERATOR** shall promptly repair the billboards in the event of damage, defect or other cause so as to maintain operations in accordance with this **AGREEMENT**. In the event that **OPERATOR** anticipates that a repair will require more than 30 days to complete, **OPERATOR** shall notify City in writing of the anticipated schedule and the cause of the delayed repair.

#### **4. Operating Fee Rates for Billboards; Payment.**

**OPERATOR** shall pay billboard operating fees to **CITY** as follows:

- A. **OPERATOR** shall pay **CITY** an annual operating fee, which shall be the greater of the Revenue Share generated from the Advertising Inventory or the minimum annual guarantee ("MAG"). The Revenue Share is defined as 30 percent of the Net Advertising Revenue. Net Advertising Revenue is defined as gross revenue received from the sale of Advertising Inventory, less bad debt only (not to exceed two percent of gross revenue). The minimum annual fee shall be no less than \$90,000 per face of the digital billboard being constructed, subject to three percent increases annually on the anniversary month of the Commencement Date.
- B. The annual operating fee shall be paid in equal monthly installments (the "Monthly Operating Fee"), due on the first day of the month in which the Commencement Date occurs. When the first day of the month falls on a City Holiday or City Hall Closure Day, then the reporting/remittance date shall fall on the next City business day following. The Monthly Operating Fee shall be acknowledged and agreed by **CITY** to be paid timely if paid on said date. When reporting/remitting is made by mail, the postmark date shall serve as proof of timely reporting/remittance.
- C. **OPERATOR** shall not add any ancillary use to the new digital billboard and shall not derive any ancillary revenue from the Subject Property other than advertising revenue unless agreed to in writing and approved by the City. Any approved ancillary revenue shall be referred to as Approved Ancillary Revenue. The terms of any Approved Ancillary



Revenue shall be mutually agreed on by **CITY** and **OPERATOR** by a separate writing, provided that the revenue share for Approved Ancillary Revenue shall not be less than 30 percent of gross ancillary revenue received less bad debt only (not to exceed two percent of gross ancillary revenue).

- D. The "Commencement Date" is the day that all of the following are true: (i) **OPERATOR** has obtained all Development Approvals, (ii) the billboard is fully constructed and operational and has electrical power from a permanent source, and (iii) the billboard has passed the City's final inspection. The Monthly Operating Fee shall be paid to **CITY** on the first day of the month that it is due. If the Commencement Date is other than the first day of a month, the first monthly payment of the Monthly Operating Fee shall be due on the first day of the month after the Commencement Date occurred.

## **5. Remittance and Reporting.**

Beginning as set forth above and annually thereafter, **OPERATOR** shall report and remit payment to **CITY** of the applicable billboard operating fees set forth in Section 4 of this **AGREEMENT**.

On a twice-yearly basis, **OPERATOR** shall provide to the City advertising revenue reports (the "Advertising Reports" for all advertising sales at the Subject Property. Reports shall include gross revenue collected, advertisers, advertising rates, and occupancy rates for the preceding period.

**OPERATOR** shall maintain or cause to be maintained adequate accounting systems and controls to insure that all gross revenue is recorded. **OPERATOR** shall keep or cause to be kept true and accurate books and records for a period of seven years after end of the Term as defined in Section 8 and all business transactions related to the Subject Property, and City shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to **OPERATOR**, to inspect such books and records. If such books and records are not kept and maintained within a radius of 50 miles from the main office of the City, upon request of City, **OPERATOR** shall make such books and records available to City for inspection and audit at a location within that radius or **OPERATOR** shall pay to City the reasonable and actual costs incurred by City in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs.

## **6. Past due date – Past due penalty; Late interest.**

A. Any **OPERATOR** entity or individual who fails to pay the billboard operating fees required by this **AGREEMENT** when due shall be subject to past due penalties and interest as set forth herein.

- i. **OPERATOR** shall be considered past due if the required yearly operating agreement fee is not paid by the last day of the month following the month for which it is due.
- ii. For failure to fully pay any monthly fee when due, the following past due penalty and late interest charges shall be added to the unpaid balance amount owing:
  - 1) A past due penalty of Ten Percent (10%) per month;

2) A late interest charge of One and One Half Percent (1.5%) per month added to the unpaid balance amount owing, inclusive of any prior past due penalty or late interest charges accrued.

B. **CITY** is not required to send a past due notice or other bill or invoice to **OPERATOR**, or any other person subject to the provisions of this **AGREEMENT**, and failure to send such notice, bill or invoice shall not affect the validity of any operating fee, late penalty or late interest charge due under the provisions of this **AGREEMENT**.

## **7. Requirements for All Digital Billboards.**

A. Civic Promotions. **OPERATOR** agrees to provide free advertising time on the Digital Billboard to City for the promotion of community events, tourism activity and events, and other civic interests of the City.

i. Amount of Advertising Time for Civic Promotions. Following the Commencement Date, **OPERATOR** shall permit City to use a minimum of 5% of the advertising inventory, up to one (1) spot in a standard eight (8) spot rotation on the Digital Billboard, for the entire Term of the **AGREEMENT** for civic promotions and public service announcements as supplied by **CITY**, without charge for advertising space (the "Free Advertising Space"). **OPERATOR** shall provide the Free Advertising Space evenly across all days and day parts. The foregoing obligation of **OPERATOR** to provide Free Advertising Space to City for Civic Promotions shall be and remain in effect only during those periods **OPERATOR** is operating the Digital Billboard with electronic/digital technology. In the event **OPERATOR** removes or is unable to operate the Digital Billboard for any reason, **OPERATOR'S** obligation to provide Free Advertising Space to City for any reason shall be suspended for the period of time it is not operating the Digital Billboard.

ii. Process for City Requests to Utilize Advertising Space for Civic Promotions. City shall be responsible for providing **OPERATOR** with its Civic Promotions, which may be updated by City at any time, and for any costs associated with providing **OPERATOR** with associated artwork in acceptable format. City shall notify Operator at least thirty (30) days before the proposed display date of a Civic Promotion. City must submit "camera ready art" utilizing formats and protocols acceptable to **OPERATOR**. All copy shall be submitted to **OPERATOR** at least ten (10) business days in advance.

iii. Limitations on City. City shall not charge for, or exchange goods or services for, any advertising space on the Digital Billboard provided by **OPERATOR** to City pursuant to this **AGREEMENT**; provided, however, that this limitation shall not be construed to prevent City from entering into agreements to promote properties within the City in conjunction with its tourism promotion activities, so long as City does not sell advertising for profit. In addition, it is expressly understood and agreed that Civic Promotions may not include any names, logos, marks, products, or services associated with any commercial entity, any campaign for public office in the City, or any third party non-governmental person or entity that is not located in, sponsored by or affiliated with the City. The foregoing limitation shall not be construed to prohibit the display of names, logos, or marks of organizations associated with City events or activities.

- B. Public Safety Announcements. **OPERATOR** shall utilize the advertising space on the Digital Billboards for regional emergency announcements and alerts, including but not limited to Amber Alerts and “wanted” criminal postings from law enforcement, without charge, as reasonably requested by the City of Santa Ana, in accordance with applicable local, regional, and/or state protocols.
- C. Unacceptable Content. **OPERATOR** agrees not to utilize the Digital Billboard to advertise tobacco products, adult entertainment businesses, as defined in the Santa Ana Municipal Code, conferences/conventions for any of the foregoing prohibited uses, sexually explicit messages, or any violent, hate, or other obscene messaging.

**8. Term.**

This **AGREEMENT** shall continue in full force and effect for a fifteen (15) year period commencing on the Commencement Date (“Term”). **OPERATOR** may notify City up to twelve months prior to the expiration date of this **AGREEMENT** of its desire to extend the term of this **AGREEMENT**, and City and **OPERATOR** shall enter into negotiations and may agree to extend the term of this **AGREEMENT** pursuant to a mutual agreement in writing upon terms acceptable to both parties. Following termination or expiration of this **AGREEMENT** and provided no extension of this **AGREEMENT** is agreed to, within ninety (90) days after the date of the termination or expiration of this **AGREEMENT**, **OPERATOR** shall, at its sole cost and expense, secure all required permits to, and shall, remove and properly transport the billboard from the Subject Property, shall return the Subject Property to its original condition, and shall not store any portion of the removed billboard on the Subject Property or any other location within City's jurisdictional boundaries. The billboard shall be deemed to have been satisfactorily removed for purposes of this Section 8 so long as no remnants of the sign structures remain visible above ground, all utilities are capped, and the site is graded, secured, landscaped, and irrigated to a condition satisfactory to **CITY**. If **CITY** is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then **CITY** shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by **CITY** in exercising its rights under this subsection within no more than ten (10) days following **CITY'S** delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against **CITY** or its agents, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to **CITY'S** entry onto the site to accomplish such removal.

**9. Business License Required.**

A valid City of Santa Ana Business License is required for all entities engaged in operating digital billboards in the City of Santa Ana. It is unlawful for any person or legal entity to display advertising on a billboard in the City of Santa Ana without first having procured a City of Santa Ana business license.

**10. Regulation by other Public Agencies.**

It is acknowledged by the Parties that other public agencies not subject to control by the City, including, but not limited to, Caltrans, may possess authority to regulate aspects of the digital billboard as contemplated herein, and this **AGREEMENT** does not limit the authority

of any of those other public agencies. **OPERATOR** acknowledges and represents, in addition to City's regulations, **OPERATOR** shall, at all times, comply with all applicable Federal, State, local, and other public agency laws and regulations applicable to the billboard. To the extent any such other public agency or agencies preclude development or maintenance of the billboard, **OPERATOR** shall have the right to terminate this **AGREEMENT** by delivery to City of notice of termination, along with evidence reasonably satisfactory to City that the development and/or maintenance of the billboard has been precluded by another agency or agencies. Upon delivery of such evidence and notice of termination to the City, this **AGREEMENT** shall be deemed terminated and **OPERATOR** shall not be further obligated under this **AGREEMENT**; provided, however, that such termination shall not affect the **OPERATOR'S** obligation to pay any Development Review or Impact Fees that have already accrued, to indemnify and defend the City and any of its agents or consultants acting on its behalf for any Indemnified Claims and Liabilities pursuant to Section 11, and/or to remove the billboards from the site in accordance with Section 8 of this **AGREEMENT**, if applicable.

**11. OPERATOR Indemnification of City.**

- A. **OPERATOR** will defend, indemnify and hold **harmless CITY** from any claims, damages, injuries, or liabilities of any kind whatsoever sustained or incurred by **CITY** resulting from this **AGREEMENT**, or **OPERATOR'S** performance and/or breach of this **AGREEMENT**.
- B. **OPERATOR** agrees to defend, at its sole expense, any action against **CITY**, its agents or consultants, officers, and employees related to this **AGREEMENT**. **OPERATOR** agrees to indemnify and reimburse **CITY** for any court costs and attorney fees that **CITY** may be required to pay as a result of any legal challenge related to this **AGREEMENT** and/or **CITY'S** approval of a Billboard Permit or Conditional Use Permit. **CITY** may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the **OPERATOR** of its obligation hereunder.

**12. Annual Review**

During the term of this **AGREEMENT**, **CITY** shall annually review the extent of good faith compliance by **OPERATOR** with the terms of this **AGREEMENT**. **OPERATOR** shall file an annual report with the **CITY containing** detailed information regarding compliance with the terms of this **AGREEMENT** no later than March 15 of each calendar year.

**13. Default and Termination for Cause.**

This **AGREEMENT** may be terminated, for good cause, by City or **OPERATOR** if either gives the other Party written notice of default and if that default is not corrected (i) on or before ten (10) days after receipt of the notice for non-payment of any amount due or (ii) within thirty (30) days after receipt of the notice for any other default (except in connection with a default which cannot be remedied or cured within said 30-day period, in which event said 30-day period shall be extended for such time as shall be deemed mutually agreeable by City and **OPERATOR** necessary to cure the same, but only if the defaulting Party, within such 30-day period, shall promptly commence and thereafter proceed diligently and continuously to cure such default. In no event shall the period be extended beyond 90 days.).

If this **AGREEMENT** terminates due to non-performance by **OPERATOR**, then (i) any remaining unpaid Monthly Operating Fee that was due for any period before the date of that termination shall be immediately due and payable to City and (ii) **OPERATOR** at its sole cost, shall immediately remove the billboard and visible supporting equipment installed pursuant to this **AGREEMENT** and shall return the site to an acceptable condition wherein the billboard and its accompanying equipment and improvements are removed, and the site is graded, landscaped, irrigated, and secured; provided, that if **OPERATOR** fails to remove any of the billboard within ninety (90) days after this **AGREEMENT** is terminated pursuant to this subsection, then City shall be entitled to remove the remaining billboard and dispose of same. If City is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then City shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by City in exercising its rights under this subsection within no more than ten (10) days following City's delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against any or all City Parties, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to City's entry onto the site to accomplish such removal.

#### **14. Termination Without Cause.**

This **AGREEMENT** may be terminated for convenience by the City upon twelve (12) months written notice of termination, provided that such termination cannot occur within the initial ten (10) years from the Commencement Date. In such event, City shall be entitled to receive, and the **OPERATOR** shall pay City, compensation for all Monthly Operating Fees due to the City up to the termination date.

If this **AGREEMENT** terminates due to non-performance by **OPERATOR**, then (i) any remaining unpaid Monthly Operating Fee that was due for any period before the date of that termination shall be immediately due and payable to City and (ii) **OPERATOR** at its sole cost, shall immediately remove the billboard and visible supporting equipment installed pursuant to this **AGREEMENT** and shall return the site to an acceptable condition wherein the billboard and its accompanying equipment and improvements are removed, and the site is graded, landscaped, irrigated, and secured; provided, that if **OPERATOR** fails to remove any of the billboard within ninety (90) days after this **AGREEMENT** is terminated pursuant to this subsection, then City shall be entitled to remove the remaining billboard and dispose of same. If City is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then City shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by City in exercising its rights under this subsection within no more than ten (10) days following City's delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against any or all City Parties, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to City's entry onto the site to accomplish such removal.

#### **15. Termination - Effect on Prior Obligations.**

Upon any termination of this **AGREEMENT**, **OPERATOR'S** obligation to remit operating agreement fees due and payable under the terms of this **AGREEMENT** for operation of a

billboard prior to termination of this **AGREEMENT** shall continue to be in effect. Past due penalties and late interest charges shall continue to accrue and be applicable until all operating fees due under this **AGREEMENT** are paid in full. **OPERATOR's** liability for any remaining unpaid past due penalties and/or late interest charges shall continue until fully satisfied.

**16. Reimbursement Clause.**

In consideration of the time and costs incurred by **CITY** in the drafting and implementation of this **AGREEMENT**, **OPERATOR** agrees to pay \$2,500.00 to **CITY** within thirty (30) days of execution of this **AGREEMENT**.

**17. Attorney Fees and Costs.**

In any action or proceeding between **CITY** and **OPERATOR** brought to interpret or enforce this **AGREEMENT**, or which in any way arises out of the existence of this **AGREEMENT** or is based upon any term or provision contained herein, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled pursuant to this **AGREEMENT**, the prevailing party's reasonable attorneys' fees and litigation costs. Fees and costs recoverable pursuant to this Section 17 include those incurred during any appeal from an underlying judgment and in the enforcement of any judgment rendered in any such action or proceeding.

**18. Notice.**

Any notice, tender, demand, delivery, or other communication pursuant to this **AGREEMENT** shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this section, to the following persons:

To **CITY**: Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax 714-647-6956

Copies to: Executive Director – Planning and Building Agency  
City of Santa Ana  
20 Civic Center Plaza (M-20)  
P.O. Box 1988  
Santa Ana, California 92702-1988  
Fax 714-973-1461

City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)

P.O. Box 1988  
Santa Ana, California 92702-1988  
Fax 714-647-6515

To **OPERATOR**:

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A party may change its address by giving signed notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) business days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax or email document attachment, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays, or City Hall closure dates shall be excluded.

**19. Exclusivity and Amendment.**

This **AGREEMENT** represents the complete and exclusive statement between **CITY** and **OPERATOR** for the applicable Subject Property identified on page one of this agreement, and supersedes any and all other agreements, oral or written, between the parties. This **AGREEMENT** may not be modified except by written instrument signed by **CITY** and by an authorized representative of **OPERATOR**. Each party to this **AGREEMENT** acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

**20. Assignment.**

**OPERATOR** may not assign or transfer any interest herein without the prior written consent of **CITY**, and any such assignment or transfer without **CITY's** prior written consent shall be considered null and void.

**21. Discrimination.**

**OPERATOR** shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. **OPERATOR** affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local labor laws and regulations.

**22. Jurisdiction-Venue.**

This **AGREEMENT** has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this

**AGREEMENT** shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of this **AGREEMENT**.

**23. Severability.**

If any part of this **AGREEMENT** is found to conflict with applicable local, state, or federal laws or regulations, such part shall be inoperative, null and void insofar as it conflicts with said laws or regulations, or may be modified or suspended as may be necessary to comply with any local, state, or federal law or regulation, but the remainder of the **AGREEMENT** shall continue in full force and effect.

**24. Counterparts.**

This **AGREEMENT** may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this **AGREEMENT** may be by actual, facsimile or electronic signature.

**25. Authority to Bind.**

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this **AGREEMENT**, and shall indemnify **CITY** fully, including reasonable costs and attorney's fees, for any injuries or damages to **CITY** in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

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*{Signature page follows}*



**IN WITNESS WHEREOF**, the parties hereto have executed this **AGREEMENT** the date and year first above written.

**ATTEST:**

**CITY OF SANTA ANA**

\_\_\_\_\_  
DAISY GOMEZ  
Clerk of the Council

\_\_\_\_\_  
KRISTINE RIDGE  
City Manager

**APPROVED AS TO FORM:**  
SONIA R. CARVALHO  
City Attorney

**OPERATOR  
LEGAL  
NAME:** \_\_\_\_\_

By: \_\_\_\_\_  
John M. Funk  
Chief Assistant City Attorney

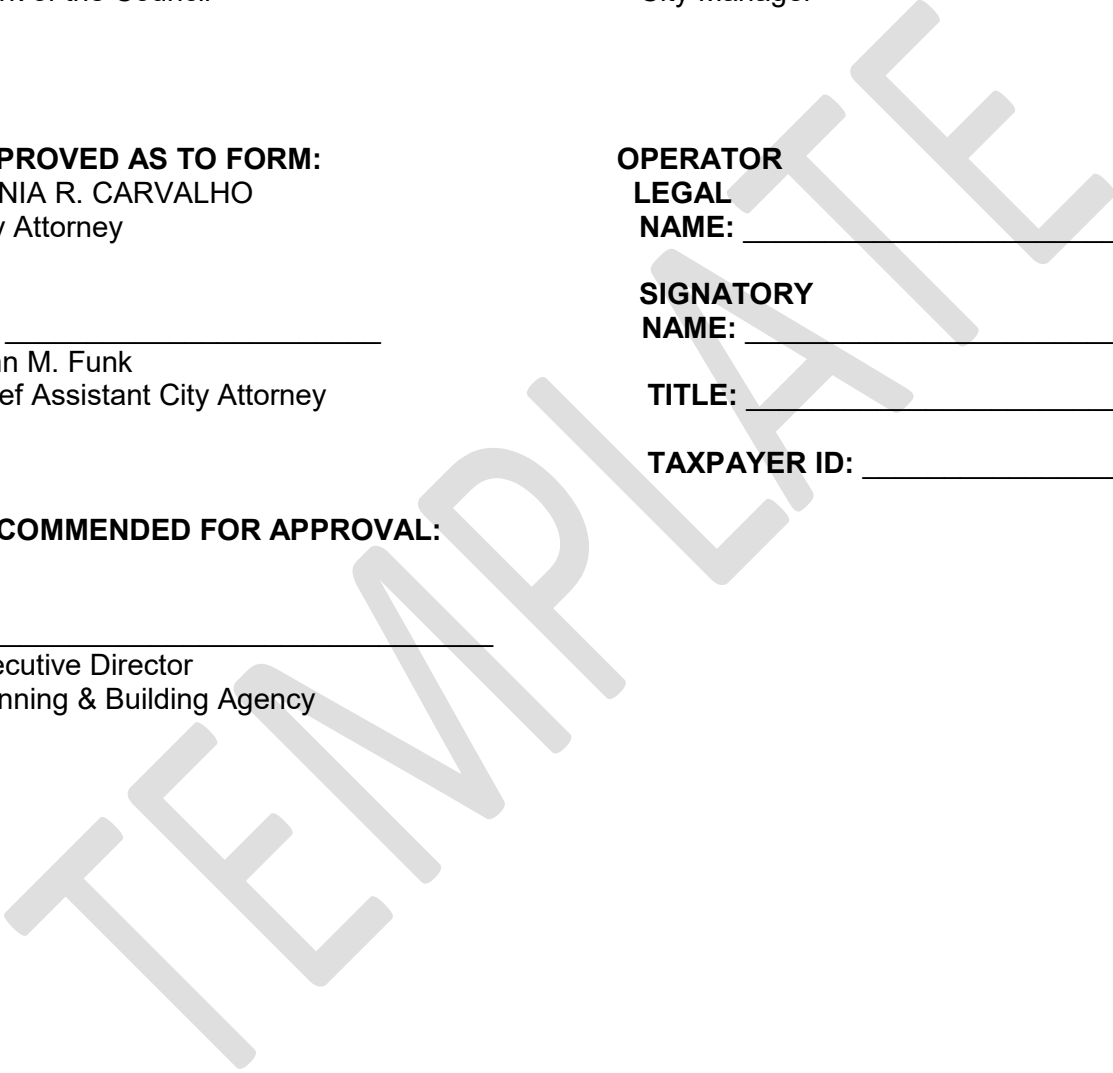
**SIGNATORY  
NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TAXPAYER ID:** \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Executive Director  
Planning & Building Agency



ORDINANCE NO. NS-3023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA REPEALING AND REENACTING IN ITS ENTIRETY ARTICLE XII OF CHAPTER 41 OF THE SANTA ANA MUNICIPAL CODE PERTAINING TO OFF-PREMISE COMMERCIAL ADVERTISING SIGNS AND DEVELOPMENT PROJECT PLAN APPROVALS TO ALLOW AND REGULATE NEW DIGITAL BILLBOARDS SUBJECT TO CERTAIN LOCATION, DESIGN, AND OPERATIONAL REQUIREMENTS

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and, declares as follows:

- A. On April 16, 1984, the City Council adopted Ordinance No. NS-1722, adding Article XII to Chapter 41 of the Santa Ana Municipal Code (SAMC) allowing and regulating off-premise commercial advertising signs, commonly known as billboards.
- B. On June 15, 1987, the City Council adopted Ordinance No. NS-1915, adopting a revised "Critical Development Areas" and "Improvement Areas" map to further allow and regulate off-premise commercial advertising signs in certain segments of the City.
- C. On September 8, 1987, the City Council adopted Ordinance No. NS-1927, further amending certain sections of Article XII of the Santa Ana Municipal Code.
- D. Since the adoption of Ordinance Nos. NS-1722, NS-1915, and NS-1927, amendments to the California Outdoor Advertising Act and other regulations and policies of the California Department of Transportation (Caltrans), as well as changes in technology allowing digital displays on billboards, have rendered many segments of Article XII of Chapter 41 of the SAMC outdated and obsolete. This status effectively prohibits construction or reconstruction of new or existing billboards, as well as installation of electronic message displays. Since their adoption, these ordinances have also effectively rendered existing billboards in Santa Ana as legal nonconforming.
- E. The California Outdoor Advertising Act, set forth in California Business and Professions Code Section 5200 et seq., generally provides that compensation must be paid to billboard owners for the removal, abatement, or limitation of

the customary maintenance, use, or repair of certain lawfully erected nonconforming billboards, except through a relocation agreement.

- F. Business and Professions Code Section 5412 specifically empowers a city to enter into relocation agreements on whatever terms are agreeable to an outdoor advertising display owner and such city as a means of eliminating the need to pay compensation for their removal.
- G. Construction of new billboards is prohibited along highways designated as landscaped freeways with certain exceptions, including the construction of relocated billboards pursuant to Business and Professions Code Sections 5440 through 5443.5 or the construction of new billboards along portions of landscaped freeways that have been declassified.
- H. Business and Professions Code Section 5412 further empowers a city to adopt ordinances or resolutions providing for the relocation of billboards.
- I. Technology has also allowed for the modernization of advertising medium by way of the creation of digital or electronic messaging, which have been utilized by advertising companies throughout the nation.
- J. The City recognizes that billboards are a valuable advertising tool, but without proper design, placement, and maintenance, they may unduly distract, create traffic hazards and negative visual, lighting, and glare impacts.
- K. Permitting the construction of new billboards along portions of the City that are not adjacent to landscaped freeways and the relocation or reconstruction of existing billboards to more appropriate locations within the City with upgraded technology provides a greater opportunity for businesses to advertise to larger audiences, promote economic growth in the City and the region, and provide for additional public service announcements.
- L. Allowing the removal of existing billboards also allows the City to direct the placement of new billboards with digital technologies into areas that are more aesthetically appropriate, thereby creating fewer visual and glare impacts for the City's residents.
- M. Adoption of this Ordinance is compatible with the SAMC and promotes the public health, safety, and welfare of the citizens of the City.
- N. The Planning Commission held a duly-noticed public hearing on April 25, 2022 to consider this Ordinance, where all interested persons were given an opportunity to be heard. The Planning Commission recommended approval of the ordinance to the City Council, subject to modifications to Section 41-1113 of this Ordinance and the draft Operating Agreement template to provide for minimum local hiring requirements when considering billboard reduction alternatives as per Section 1 of the draft Operating Agreement.

O. The City Council held a duly-noticed public hearing on June 21, 2022 where all interested persons were given an opportunity to be heard.

Section 2. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 3. Article XII (Off-Premise Commercial Advertising Signs) of Chapter 41 of the Santa Ana Municipal Code (Zoning) is hereby repealed in its entirety.

Section 4. Article XII (Off-Premise Commercial Advertising Signs) of Chapter 41 of the Santa Ana Municipal Code (Zoning) is hereby reenacted in its entirety to read as follows:

## ARTICLE XII. – OFF-PREMISE COMMERCIAL ADVERTISING SIGNS (BILLBOARDS)

### DIVISION 1. - GENERAL PROVISIONS

#### Sec. 41-1100. - Purpose.

The purpose and intent of this Article is to allow:

- (1) The installation of digital billboards adjacent to freeways in suitable locations;
- (2) The reconstruction or conversion of existing static freeway-oriented billboards to digital billboards; and
- (3) The reconstruction or conversion of existing on-premise freeway-oriented advertising signs to digital billboards.

#### Sec. 41-1100.5. - Goals.

These provisions seek to achieve the following goals:

- (1) The removal of existing billboards along arterial streets;
- (2) The construction of new freeway-oriented digital billboards in exchange for specific economic and community benefits as described in this Article;
- (3) The reconstruction/conversion of freeway-oriented existing static billboards in exchange for specific economic and community benefits as described in this Article;
- (4) The reconstruction or conversion of existing on-premise freeway-oriented digital signs to off-premise commercial advertising signs;
- (5) The display of public service announcements; and
- (6) The generation of revenue for City to fund ongoing services and community needs.

#### Sec. 41-1101. - Definitions.

As used in this Article, the following words, terms or phrases have the following meanings:

- (1) *Adjacent (when used to refer to a billboard adjacent to a freeway)* shall mean located within 300 feet of the edge of pavement of a freeway on a parcel having frontage on said freeway and as depicted on maps by the Planning Division.
- (2) *Arterial Billboard* means an off-premise commercial advertising sign located adjacent to a public street that is not freeway oriented.
- (3) *Billboard and Off-Premise Commercial Advertising Sign* means a sign affixed to the ground as a permanent structure used for the display of off-premise advertising to the public.
- (4) *Billboard Operating Agreement* means an agreement entered into by and between the City and the billboard operator which will specify terms for fees to compensate for impacts on City aesthetics and services, including an Economic and Community Benefits Plan, if proposed.
- (5) *Classified Landscaped Freeway*, when referenced in this Article, refers to a designation applied by the California Department of Transportation (Caltrans) to certain freeway segments which meet the criteria established by the California Code of Regulations Outdoor Advertising Regulations, Title 4, Division 6, and as amended.
- (6) *Commercial Advertisement* means any advertisement which has, as its primary purpose, the promotion of the sale of goods or services by a commercial business or enterprise to the public generally or any significant part thereof.
- (7) *Digital Billboard* means a billboard or off-premise commercial advertising sign using technologies, such as LCD (Liquid Crystal Display) and LED (Light-Emitting Diode), to display images and text.
- (8) *Freeway Corridor* means land located within three hundred (300) feet of the edge of freeway pavement and having frontage on the following freeways: the Santa Ana (I-5) Freeway; the Garden Grove (SR-22) Freeway; and the Costa Mesa (SR-55) Freeway.
- (9) *Freeway-Oriented* means any billboard that is adjacent to a freeway, designed to be viewed primarily by persons traveling on the main-traveled way of the freeway.
- (10) *Freeway-Oriented On-Premise Digital Sign (Existing)* means an electronic, digital message display that has been approved by the City of Santa Ana as part of a regional planned sign program pursuant to Section 41-885 of the Santa Ana Municipal Code.
- (11) *Non-Commercial Advertisement Sign* means any advertisement other than a commercial advertisement, including public service announcements.
- (12) *Off-Premise Advertisement Sign* means any commercial advertisement other than an on-premise advertisement sign that advertises products or services that is not located, produced, or offered for sale on the subject premise.
- (13) *On-Premise Advertisement Sign* means any commercial advertisement which pertains solely to goods or services which are produced or offered for sale on the premises where the advertisement is displayed.

- (14) *Static Billboard* means a billboard or off-premise commercial advertising sign that is not equipped as a digital display.

Sec. 41-1102. - Consistency with the Outdoor Advertising Act.

To the extent that there is any conflict between the provisions of this Article and the provisions of the California Outdoor Advertising Act, codified at California Business and Professions Code Sections 5200 et seq., and as amended, the Outdoor Advertising Act shall prevail.

Sec. 41-1103. - Application to Existing Signs.

Any off-premise commercial advertising sign which was constructed in conformance with the requirements of this Article as they existed at the time of such construction, but which is not in conformance with the requirements of this Article, shall be deemed a legal nonconforming use for purposes of this Article, and may be maintained subject to the restrictions and limitations imposed on nonconforming uses by this Chapter. Such signs may be compelled to be removed through amortization subject to the requirements and limitations imposed by Sections 5412 through 5412.4 of the Business and Professions Code of the State of California, the provisions of which, as they may from time to time be amended, are incorporated herein by this reference.

Sec. 41-1104. - Fees.

The City Council may, by resolution, establish fees for any or all the administrative processes established by this Article. Every application for a billboard permit or Conditional Use Permit (CUP) or appeal to the Planning Commission or City Council shall be accompanied by a filing fee. No application shall be accepted for filing without the required fee. The City Council shall from time to time by resolution adopt a schedule of fees to be charged.

Sec. 41-1105. - Commercial and Non-commercial Messages.

Nothing in this Article shall be deemed to prohibit or restrict the use of any sign authorized by this Article for any noncommercial message. No permit required for any sign under this Article shall be granted, conditioned, or denied based on the content of the message displayed by such sign, whether such message is commercial or noncommercial in nature.

DIVISION 2. - ADMINISTRATION AND PERMIT PROCEDURES

Sec. 41-1110. – Permit Type and Review Authority.

Table 41-1110 below identifies the primary types of development applications, approval process and approval authority for the applications required to permit digital

billboards. Applications may be subject to one or more development application processing procedures contained in this Chapter. The exact processing and timing of applications shall be determined by the Planning Division based on the applicable project characteristics.

**Table 41-1110 Permit Type and Review Authority**

Billboard Type	Permit Type Required	Approving Body	Public Hearing Required
New Digital Billboard	Development Project Plan	Director of PBA	Yes
	Conditional Use Permit	Planning Commission	
	Operating Agreement	City Manager	
Conversion/Reconstruction of Existing Freeway-Oriented Static Billboard	Development Project Plans	Director of PBA	No
	Operating Agreement	City Manager	
Conversion/Reconstruction of Existing Freeway-Oriented On-Premise Digital Sign	Development Project Plan	Director of PBA	Yes
	Conditional Use Permit	Planning Commission	
	Operating Agreement	City Manager	
Relocation of Existing and Approved Static or Digital Billboards <sup>(1)</sup>	Development Project Plan	Director of PBA	Yes
	Conditional Use Permit	Planning Commission	
	Operating Agreement	City Manager	
Notes:			
1. As approved by this Ordinance and if required and permitted by the California Outdoor Advertising Act, as amended from time to time.			

Appeals from decisions of the Director of the Planning and Building Agency and/or Planning Commission, extensions, time limits, and modifications to such digital billboard approval must be conducted in a manner in accordance with Article V, Division 1 of this Chapter.

Sec. 41-1111. - Application Requirements.

Every application for the construction a new digital billboard, conversion/reconstruction of an existing freeway-oriented static billboard, or conversion/reconstruction of an existing freeway oriented on-premise advertising sign to a digital billboard shall be filed by, or with the written consent of, the property owner on forms required by the Planning Division and shall be at a minimum accompanied by the following information:

- (a) A pictorial representation of, and other information about, the proposed digital billboard, disclosing overall dimensions, dimensions of letters and figures, colors, materials, copy, and illumination characteristics.
- (b) A plan of the site on which the proposed digital billboard is to be located, indicating the precise location of the billboard, existing and proposed landscaping, other site improvements, and proximity to the edge of pavement of an adjacent freeway.
- (c) A vicinity map depicting the location of all existing and proposed billboards, any landmarks as designated on the General Plan that are within one thousand (1,000) feet of the proposed digital billboard, and the zoning designation of all sites within five hundred (500) feet of the boundaries of the subject property.
- (d) Photo simulations of all proposed digital billboards showing daytime and nighttime conditions.
- (e) A three-dimensional (3D) massing study depicting the proposed digital billboard. The 3D study should include massing of proposed development, if any, on applicant's parcel as well as existing buildings and advertising signs within one thousand (1,000) feet of the proposed digital billboard.
- (f) If the application involves the exchange of existing billboards, a map depicting the location(s) of billboards to be removed; at least two photos of each billboard to be removed; and a summary of the size of each billboard face to be removed.
- (g) Such other information as the Executive Director of the Planning and Building Agency deems appropriate to determine compliance with the provisions of this Article.

Sec. 41-1112. - Digital Billboard Conditional Use Permit Findings of Approval.

For approval of a Conditional Use Permit for a Digital Billboard, the Planning Commission shall make the following findings of fact set forth in this Section and not upon the standards set forth in Section 41-638 of this Chapter, and may impose conditions, restrictions or limitations as the commission deems necessary to meet the general purpose and intent of this Article and to ensure that the public health, safety and welfare are being maintained. Findings of Approval shall be made, and conditions may be imposed to confirm that:

- (a) The proposed digital billboard shall not constitute a hazard to the safe and efficient operation of vehicles upon a freeway.



- (b) Adequate space exists between the proposed digital billboard and any existing billboards in the vicinity, thus avoiding or minimizing any negative aesthetic impacts to surrounding land uses.
- (c) The size and design of the digital billboard will not be out of context with its visual environment.
- (d) The digital billboard will not cause light and glare to intrude upon residential uses, including those in mixed-use districts or developments.
- (e) The digital billboard will not significantly block or impair views of landmarks identified in the City's General Plan.
- (f) The installation of the new digital billboard will result in significant economic and community benefits.

**Sec. 41-1113. - Operating Agreement Required; Execution Fee Required.**

Prior to issuance of any building permits to reconstruct an existing static billboard, or prior to the public hearing notice to consider construction of a new digital billboard or conversion/reconstruction of an existing freeway oriented on-premise sign to a digital billboard, the applicant shall submit to the City Manager an executed Billboard Operating Agreement that has been reviewed and approved by the City Attorney and the Executive Director of the Planning and Building Agency. The applicant shall be responsible for paying any fees that have been established by the City Council to process and execute the Billboard Operating Agreement. In approving such agreement, the City Manager must find that the agreement will confer a substantial public benefit to the City and to the general public. Such public benefits may include, without limitation: the removal of legal nonconforming billboards; minimum display percentages or times for the advertising of City events and public service announcements; public art programming; physical site improvements; automatic brightness reductions or automatic display shutoffs due to proximity to sensitive land uses; minimum advertising of goods, products, or services provided onsite; monetary contribution intended for streetscape amenities or publicly accessible open space that enhances the quality and comfort of the pedestrian experience; minimum 20-percent local hiring from Santa Ana residents to be considered for billboard removal alternatives through the Economic and Community Benefits Plan; and/or financial contributions to the City with the intent to achieve the same results.

**DIVISION 3. – DEVELOPMENT, LIGHTING AND OPERATIONAL STANDARDS**

**Sec. 41-1130. - Permitted Locations.**

New and reconstructed billboards, and the conversion of existing freeway oriented on-premise advertisement signs to a digital billboard:

- (a) Shall only be constructed on properties zoned and used for non-residential uses in any zoning district, including overlay zones, specific plans, and

specific development zones. Such requirement may be modified by the Planning Commission through the approval of a Conditional Use Permit.

- (b) Shall be located within the Freeway Corridor as defined in Section 41-1101.
- (c) Shall not be located within five hundred (500) feet from any residentially zoned parcel, as measured from the border of the digital billboard face, or the base of the digital billboard structure, to the nearest property line of the residentially zoned property. Such requirement may be modified to be no less than one-hundred fifty (150) feet for mixed-use districts by the Planning Commission through the approval of a Conditional Use Permit
- (d) Shall be located outside any right-of-way owned by the California Department of Transportation (Caltrans).
- (e) Shall not significantly block or significantly impair views of any landmark identified in the General Plan.
- (f) To preserve views of the Santa Ana Water Tower, no billboard shall be constructed on any property adjacent to the northbound and southbound travel lanes of the Santa Ana (I-5) Freeway between Main Street and Grand Avenue.

**Sec. 41-1131. - Development Standards.**

- (a) All digital billboards shall comply with standards established by the California Department of Transportation (Caltrans) in effect at the time the permit is issued. These standards may prohibit the construction of digital billboards in landscaped areas and/or in zones where residential uses are permitted; may limit the size and height of digital billboards; and may require separation between billboards, among other provisions.
- (b) All new or reconstructed billboards shall be digital billboards. The construction or reconstruction of static billboards is prohibited.
- (c) The development standards in Table 41-1131 shall be applicable to all new and reconstructed billboards.

**Table 41-1131 Digital Billboard Development Standards**

Standard	
Maximum Sign Area/Face	As allowed by Caltrans
Maximum Number of Faces	Two (2)
Maximum Height	60 feet <sup>(1)</sup>
Spacing Between Billboards	1,000 feet <sup>(2)</sup>
Number of Vertical Supports	One Vertical Support <sup>(3)</sup>
Notes:	
1. Measured from nearest adjacent curb level on the site on which the sign is constructed.	

May be modified through Planning Commission approval of a Conditional Use Permit.

2. The minimum separation between billboards shall be one-thousand (1,000) feet (including static billboards) or standards established by Caltrans in effect at the time the permit is issued, whichever is greater, as measured from the base of each billboard's vertical support.
3. All conduits, cables and appurtenances shall be concealed within the vertical support.

#### Sec. 41-1132. - Design Standards.

- (a) The words "Santa Ana" shall permanently appear on the billboard structure in a size large enough to be visible to drivers using the freeway. The precise location, size and font of the words shall be determined by the approval authority.
- (b) All ground-mounted equipment shall be screened from view at street level. The entire site occupied by the billboard shall be appropriately landscaped with groundcover and shrubs to the satisfaction of the approval authority.
- (c) Each freeway billboard must be oriented primarily for viewing from the freeway and shall be oriented, and adequately shielded if necessary, to prevent the trespass of light and glare upon any residential land use, including those in mixed-use districts, as exists on the date of building permit issuance.
- (d) The billboard shall utilize an innovative billboard format, shall creatively use the latest in technology to ensure digital image quality, and shall use innovative architectural features and materials.
- (e) All billboards shall plainly display, and be visible from no less than fifty (50) feet, the name of the person or company owning or maintaining such billboard, contact information for said person or company, and the billboard's identification number.
- (f) Billboards projecting over a driveway or drive aisle shall have a minimum clearance of 20 feet between the lowest point of the sign and the driveway grade.
- (g) No part of any billboard shall cross onto an adjacent property.
- (h) Billboards projecting over a pedestrian walkway shall have a minimum clearance of twelve (12) feet between the lowest point of the sign and the walkway grade.
- (i) All billboards not projecting over drive areas or pedestrian walkways shall have a minimum clearance of twelve (12) feet between the lowest point of the billboard and ground level.

#### Sec. 41-1133. - Lighting and Display Requirements.

- (a) Signs shall produce a maximum 0.3 foot-candles over ambient light levels.
- (b) The display brightness shall be controlled by a photocell or light sensor that adjusts the brightness to the required level based on ambient light conditions without the need for human input. Use of other brightness adjustment methods, such as timer- or calendar-based systems, shall only be used as a backup system.

- (c) The display shall be factory-certified as capable of complying with the above brightness standards. Such certification shall be provided to the satisfaction of the Executive Director of the Planning and Building Agency, or his/her designee.
- (d) The sign owner shall provide to the City, upon request, certification by or compensation for an independent contractor to verify that the brightness levels of the digital billboard are in compliance with the requirements of this Section.
- (e) All signs shall be equipped with a control system that, in the event of a display or control malfunction, "freezes" the display on either a single, unchanging message, or a blank screen. An emergency shutoff switch shall be provided.
- (f) Any sign area not comprising the digital display panel is prohibited. This area includes, but is not limited to, static sign area, appendages, cutout letters, and figures. A frame surrounding the display panel up to twelve (12) inches in width shall be permitted; it shall not contain any sign copy or graphics, and shall not count toward the sign area.
- (g) Where screen transitions are used, such transitions shall not give the appearance of moving text or images. The sign copy shall not use flashing, intermittent or moving lights or produce the optical illusion of movement or use animation.
- (h) Each sign copy shall be displayed for a minimum of four (4) seconds. The still images may not move or present the appearance of motion and may not use flashing, scintillating, blinking, or traveling lights or any other means not providing constant illumination. Transition or blank screen time between one still image and the next may not exceed one (1) second.
- (i) All digital billboards must comply with all applicable laws and regulations concerning brightness, including, without limitation, California Vehicle Code Section 21466.5, and as amended.
- (j) All digital billboards must provide sufficient time for public service announcements as set forth in the approved Operating Agreement. Such public service announcements may not be concentrated during non-peak hours and must be evenly dispersed throughout peak hours so as to maximize their benefit for the community and passer-by traffic.

Sec. 41-1134. - Prohibited Features.

Freeway oriented billboards shall not contain any of the following features:

- (a) Moving parts.
- (b) Appendages, cutout letters, or figures that protrude beyond the flat surface of the sign face.
- (c) Lights that flash, shimmer, glitter or give the appearance of flashing, shimmering or glittering. Exceptions to this restriction include time, temperature and smog index units.
- (d) Walls or screens at the base of the sign which create a hazard to public safety or provide an attractive nuisance.

- (e) Copy which simulates any traffic sign in a manner which confuses the public.
- (f) Copy which duplicates any other content displayed on the sign.
- (g) Devices which emit audible sound, or odor or particulate matter.

Sec. 41-1135. - Maintenance and Monitoring.

- (a) No person shall allow any digital billboard located on property owned, occupied or controlled by such person to remain in a condition of disrepair for a period of more than fifteen (15) days. For purposes of this article, a billboard shall be deemed to be in a condition of disrepair if it is in need of replacement of defective or missing parts, has a broken or damaged sign face, or is in need of repainting or cleaning in order to be brought into a reasonably slightly and legible condition.
- (b) All billboard operators shall submit a Lighting Monitoring Report to the Planning Division upon installation, and at three-year intervals thereafter to confirm conformance with the lighting requirements set forth in this Article.
- (c) Complaints about lighting will be investigated by the City, and if determined necessary by the Executive Director of the Planning and Building Agency, the billboard operator shall provide an updated Lighting Monitoring Report within 72 hours of the notice from the City. The City shall reserve the right to conduct digital billboard lighting measurements. If the measured luminance and/or illuminance exceed the data presented in operator's Lighting Monitoring Report, the findings of the City report shall prevail. All cost shall be borne by the applicant/operator.

DIVISION 4. - BILLBOARD EXCHANGE PROGRAM.

Sec. 41-1140. - Applicability.

No building permit shall be issued for any new digital billboard, conversion/reconstruction of an existing freeway oriented static billboard, or conversion/reconstruction of an existing on-premise advertising sign to a digital billboard, until the removal ratios as required by the Operating Agreement pursuant to Section 41-1113 of this Article have been met by applicant. In addition, the following standards shall apply:

- (a) Nonconforming billboards with more than one face shall be removed in their entirety and shall not be altered or partially dismantled in such a way as to leave behind one or more faces or portion(s) thereof.
- (b) No billboard shall be reduced in size or otherwise altered to provide for the required removal, and only whole, entire billboard(s) shall be removed. In no case shall less than the required amount of display surface area be removed.
- (c) Any billboard removed or demolished from within the City, or reduced in size, not in conjunction with a project requiring removal under this Article, shall not be credited toward the removal requirements of Section.
- (d) Billboards shall be removed with the following priority, in order of highest priority to lowest:

- (1) Nonconforming billboards located on properties used for residential purposes or zoned for residential use.
  - (2) Nonconforming billboards not located adjacent to a street classified as a Freeway, Principal, Major Arterial, Primary Arterial and Secondary Arterial as defined by the Santa Ana Circulation Element, with the exception of those billboards located in Downtown Santa Ana.
  - (3) All other nonconforming billboards.
- (e) The City may allow the applicant to post a bond guaranteeing removal of the existing billboards prior to issuing permits for the applicable digital billboard in the freeway corridor.

Sec. 41-1141. - Overriding Economic and Community Benefit Considerations for Billboard Removal Exchange Ratio Reduction.

The billboard removal ratio as required pursuant to Section 41-1113 of this Article may be reduced subject to demonstration of overriding economic and community benefits as proposed in an Economic and Community Benefits Plan attached to and incorporated in a Billboard Operating Agreement as specified in Section 41-1113 of this chapter, subject to the satisfaction of the City Manager.

Section 5. Section 41-668 of Division 3 of Article V of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read as follows:

Sec. 41-668. - Definitions.

(a) *Development project.* As used in this division, the term "development project" includes any of the following projects:

(1) The new construction of any building or buildings, and additions to any existing building or buildings, if new floor space of two thousand five hundred (2,500) square feet or more is constructed or added; but excluding the following:

- a. Single family homes;
- b. Room additions to duplexes;
- c. Tenant improvements not involving a change of use;
- d. Facade improvements;
- e. Equipment covers or structures to cover equipment.

(2) Tenant improvements involving an intensification or change in occupancy classification.

(3) Any project that requires a discretionary approval, excluding conditional use permits for operation of eating establishments between the hours of 12:00 a.m. and 5:00 a.m. and conditional use permits for the sale of alcoholic beverages.

(4) Construction of new digital billboards, conversion of an existing static billboard within to a digital billboard, conversion/reconstruction of existing on-premise digital signs, and relocation of billboards.

(b) *Discretionary approval.* As used in this division, the term "discretionary approval" means a conditional use permit, variance, minor exception, tentative map approval, change in use district designation, or similar entitlement for development, the granting of which involves the exercise of discretion, other than the plan approval process set forth in this division.

Section 6. Pursuant to the California Environmental Quality Act, the City Council has concurrently and separately reviewed, certified, and adopted the Final Initial Study/Mitigated Negative Declaration and the related Mitigation Monitoring and Reporting Program for this project/ordinance. On the basis of this review, the City Council found that there is no substantial evidence from which it can be fairly argued that the project will have a significant adverse effect on the environment.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 8. This Ordinance shall become effective thirty (30) days after its adoption.

Section 9. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this 19<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Vicente Sarmiento  
Mayor

APPROVED AS TO FORM  
Sonia R. Carvalho, City Attorney

By: John M. Funk  
John M. Funk  
Chief Assistant City Attorney

AYES: Councilmembers Hernandez, Lopez, Mendoza, Penaloza,  
Phan, Bacerra, Sarmiento (7)

NOES: Councilmembers None (0)

ABSTAIN: Councilmembers None (0)

NOT PRESENT: Councilmembers None (0)

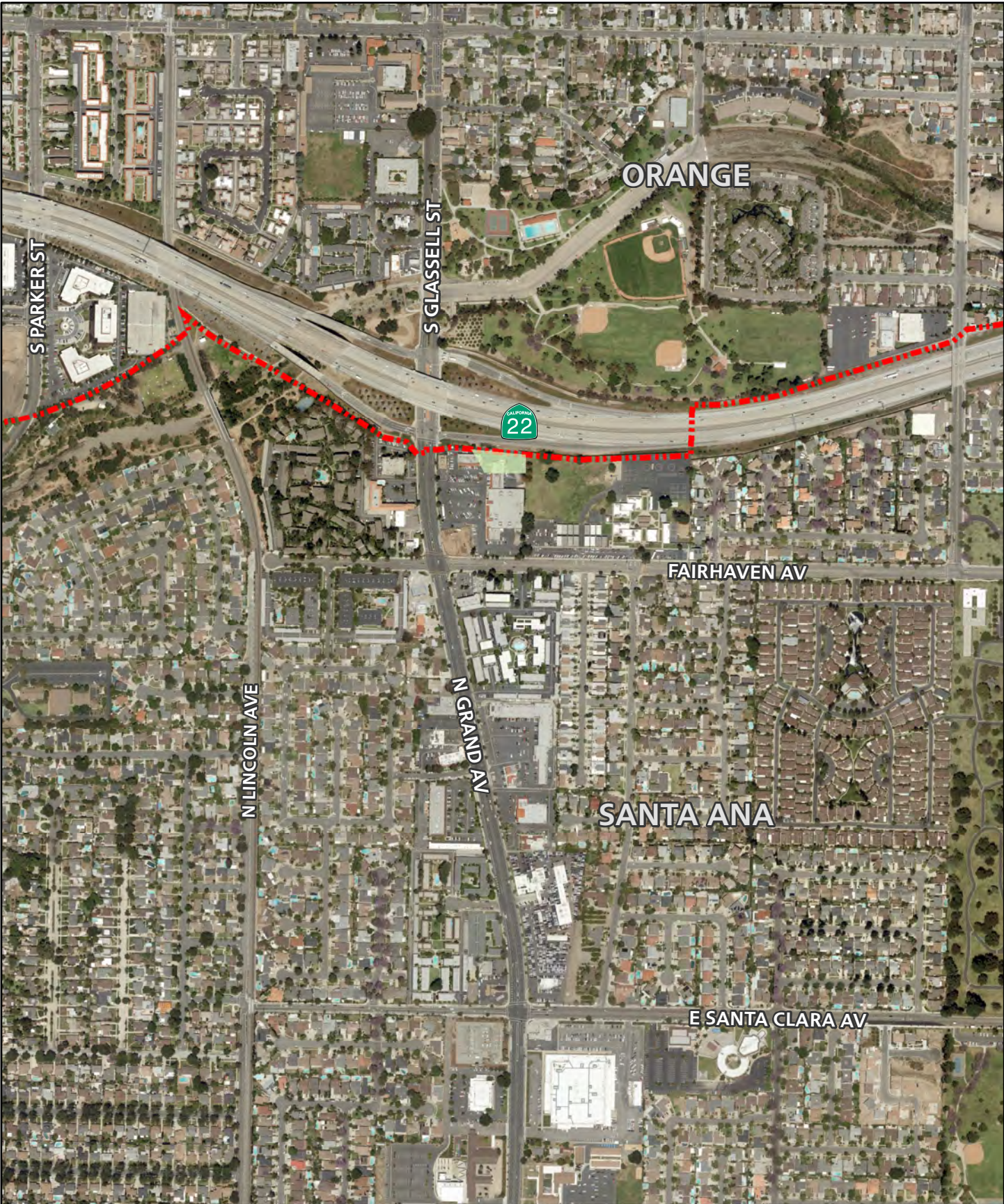
CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-3023 to be the original ordinance adopted by the City Council of the City of Santa Ana on July 19, 2022 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 7/26/22

N. A. Ozy  
for Daisy Gomez  
Clerk of the Council  
City of Santa Ana





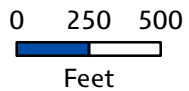


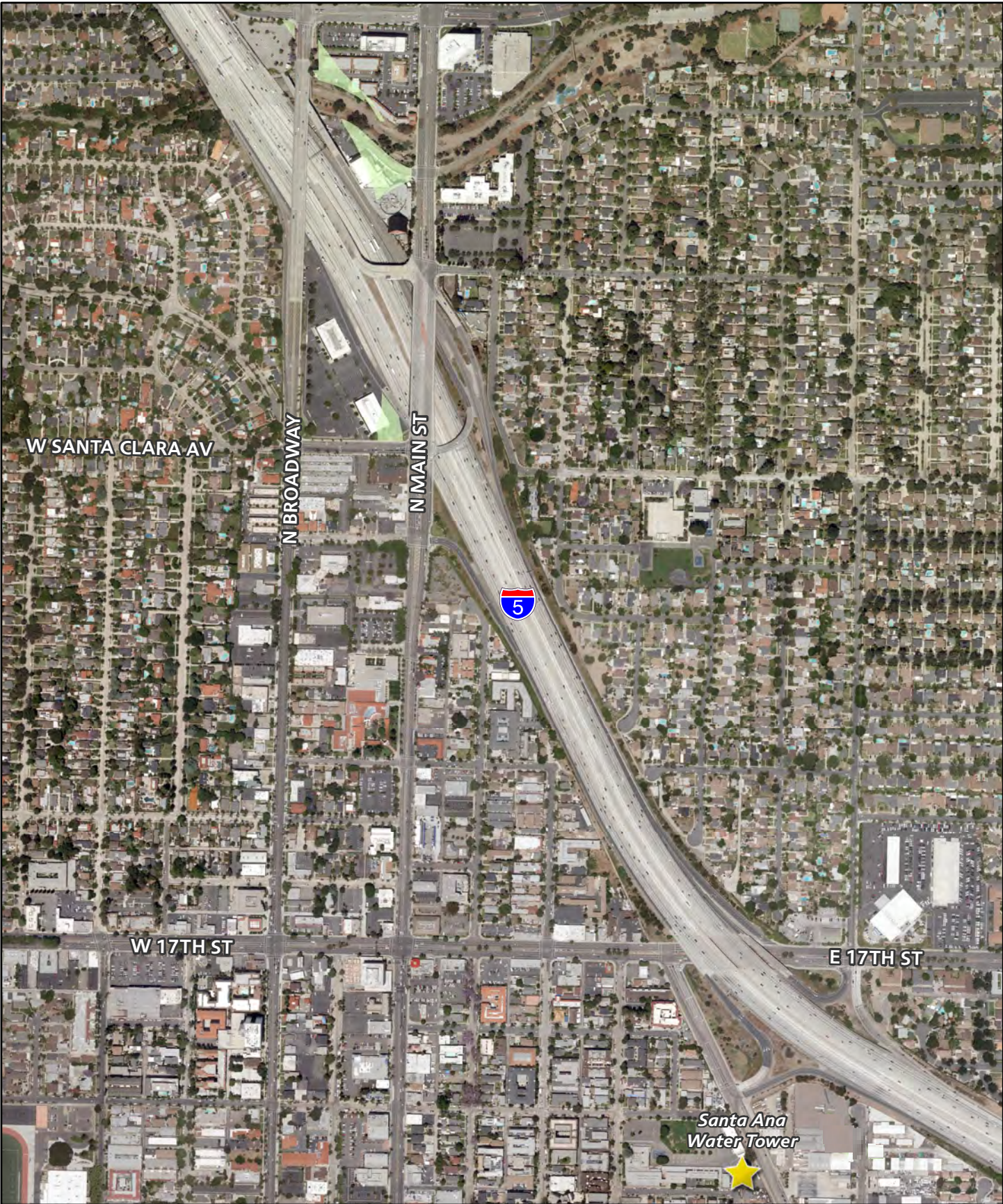
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SANTA ANA



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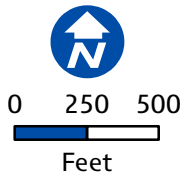
-  Potential Billboard Area - 500 ft Residential Buffer
-  City Boundary





## Potential Billboard Area 2

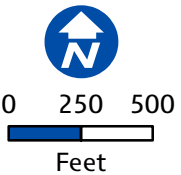
-  Potential Billboard Area - 500 ft Residential Buffer
-  City Boundary

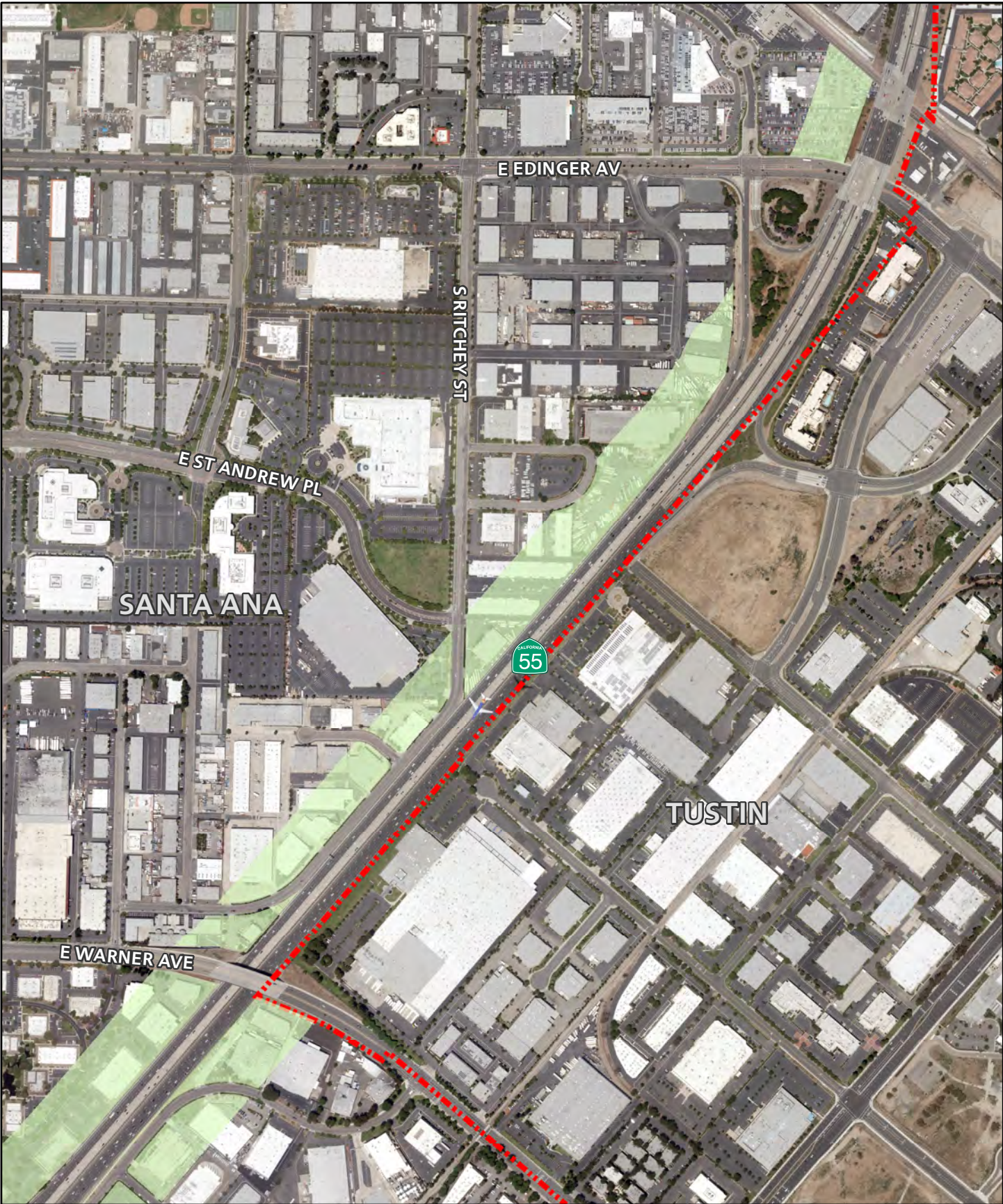






### Potential Billboard Area 3

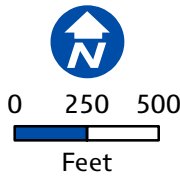
- Potential Billboard Area - 500 ft Residential Buffer
- City Boundary







### Potential Billboard Area 4

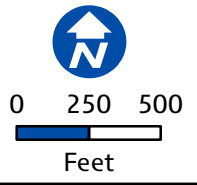
-  Potential Billboard Area - 500 ft Residential Buffer
-  City Boundary

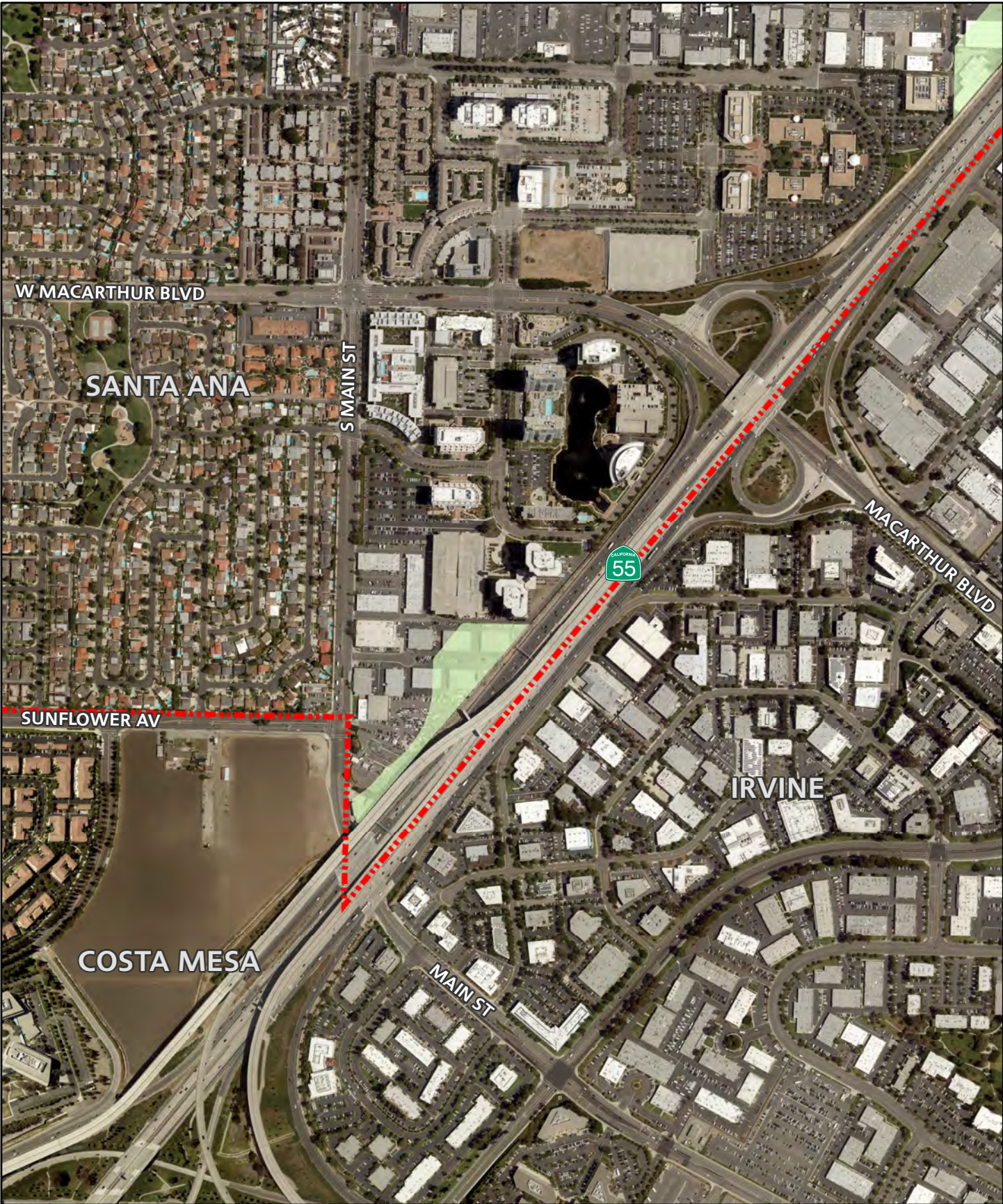






### Potential Billboard Area 5

-  Potential Billboard Area - 500 ft Residential Buffer
-  City Boundary





### Potential Billboard Area 6

-  Potential Billboard Area - 500 ft Residential Buffer
-  City Boundary

