

RESOLUTION NO. 38-14

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND TO REFER TO THE PLANNING COMMISSION CONSIDERATION OF REVOCATION FOR AN ELECTRONIC SIGN AT PACIFIC EAST MALL

WHEREAS, on January 13, 2009, the City of Richmond Planning Department improperly approved an electronic (“flashing illumination”¹) sign at Pacific East Mall, and;

WHEREAS, the sign was further defined under the “Use and Display of Signs” Ordinance as an “advertising sign,”² and;

WHEREAS, at the time the sign was approved, the “Use and Display of Signs” Ordinance, (specifically RMC 15.06.070(D)(1)(k)), required review in a public hearing by the DRO (Design Review Organization)³, notice to property owners within 300 feet, as well as to the appropriate Neighborhood Council and business association, none of which happened, and;

WHEREAS, the “Use and Display of Signs” Ordinance required the DRO to make certain findings, specifically, that livability and/or development of the surrounding area would not be adversely affected by such sign, the sign would be placed on a lot or area within contiguous parcels of 10 acres or more under the same ownership or management, and that there would be no less than 1,000 feet between another similar sign, none of which was done, and;

WHEREAS, if the application had been properly heard by the DRO, it would have been appealable to the Design Review Board, successor to the PDRB (Public Design Review Board), according to 15.04.930.C.5, and;

WHEREAS, under 15.06.070.D(1)(b), of the “Use and Display of Signs” Ordinance at the time the sign was approved, limited approval of advertising signs in commercial districts a maximum total area of fifty square feet and for a temporary period not to exceed three years (15.06.070.D.1(a)(ii) and 15.06.070.D.1(a)(ii)(b)), and;

WHEREAS, under “Use and Display of Signs” Ordinance at the time the sign was approved, advertising signs were not allowed within 660 feet of a freeway (15.06.080.C), and the Pacific East Mall sign is more than 50 square feet and is both an advertising sign and is within 660 feet of I-80, and;

WHEREAS, the application for the Pacific East Mall sign misrepresented it as a business identification sign when, in fact, it is an advertising sign (Exhibit A), and,

WHEREAS, neither the process used to approve the sign, the conditions of approval nor the sign itself conforms to the provisions of the previous “Use and Display of Signs” Ordinance, and;

WHEREAS, a building permit issued in violation of law confers no right, and may be revoked upon discovery of the error, even after building operations commence. For example, in *Pettitt v. City of Fresno*, 34 Cal. App. 3d 813 (1973), the court held that a city may act to deny the validity of building permit issued in violation of the city’s zoning ordinance, and,

¹ The previous “Use and Display of Signs” Ordinance defined a flashing illumination sign as “Any sign illuminated by means of electric lights, luminous tubes, gas flames or similar sources wherein such illumination is not maintained in constant intensity, color or pattern during all times the sign is illuminated” (15.06.050.A.3)

² The previous “Use and Display of Signs” Ordinance defined an advertising sign as “a sign which directs attention to a business, profession, commodity, service or entertainment, which is conducted, sold or offered elsewhere than on the same lot or parcel upon which the sign is located” (1506.050.A.1(b))

³ The previous Design Review Organization (DRO) was established by the previous Zoning Ordinance, specifically 15.04.930. C 1, comprised of six staff members from several departments and had powers and duties to provide administrative review similar to that of the current Zoning Administrator.

WHEREAS, The California Building Code, 1.5.4, states:

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy of such a structure where in violation of this code or any other ordinances of this jurisdiction, and;

WHEREAS, the former “Use and Display of Signs” Ordinance did have a process in place for revoking a sign permit (RMC 15.06.090) for cause. Under the former process, any sign permit was revocable by the DRO upon a finding of a violation of any of the conditions or terms of the sign permit or of any law, ordinance or provision of the Municipal Code. Upon its own motion, or at the request of the City Council, the DRO would hold a hearing, then render its findings and decision, which would have been appealable to the Public Development Review Board and;

WHEREAS, current local law (RMC sections 15.04.990.010 – 15.04.990.090) also establishes a process for the revocation or modification of a permit. An action to revoke a permit for cause may be initiated by order of the Planning Commission or City Council on its own motion, and a hearing would be held before the Planning Commission with the right of appeal to the City Council (RMC 15.04.990.030). While the section provides a number of possible findings that may be made to revoke or modify a permit (only one such finding is required), in this matter the Planning Commission would have to find one of the following Grounds for Revocation or Modification (15.04.990.020):

A. Revocation/Modification for Cause. A permit or variance may be revoked or modified for cause, including the imposition of new conditions upon a finding of any of the following grounds:

1. The permit or variance was issued on the basis of erroneous or misleading information, misrepresentation, or fraud.
2. A term of one or more of the conditions of approval of the permit or variance has been violated or relevant other laws or regulations have been violated.
3. The use or facility for which the permit was granted is so conducted or maintained so as to be detrimental to the public health, welfare, or safety so as to be deemed a nuisance.
4. There has been a discontinuance of the exercise of the entitlement granted by the permit for six consecutive months, and;

WHEREAS, the permit or variance may have been issued on the basis of erroneous or misleading information, misrepresentation, or fraud, and there is substantial public opinion that the sign is conducted or maintained so as to be detrimental to the public health, welfare, or safety so as to be deemed a nuisance.

THEREFORE BE IT RESOLVED that the City Council directs the Planning Commission to conduct a revocation hearing (with restricted ramifications) for the previous approval of the electronic billboard LED sign at Pacific East Mall (the “LED Sign”).

THEREFORE BE IT FURTHER RESOLVED that should the Planning Commission determine that the LED Sign was approved and erected in violation of the “Use and Display of Signs” Ordinance at the time the LED Sign was approved, then the most drastic consequence shall be that the LED Sign be limited to advertising for Richmond businesses and charitable events in Richmond only.

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I hereby certify that the foregoing resolution of the Council of the City of Richmond was duly passed and adopted at a special meeting thereof held May 13, 2014, by the following vote:

AYES: Councilmembers Butt, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.

NOES: Councilmember Bates, Boozé, and Myrick.

ABSENT: None.

ABSTENTION: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 38-14**, finally passed and adopted by the City Council of the City of Richmond at a special meeting held on May 13, 2014.

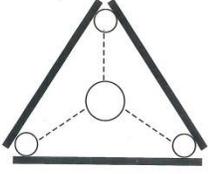
EXHIBIT A

DOUBLE SIDED RETRO-FIT OF EXISTING PYLON STRUCTURE WITH NEW 25MM FULL COLOR LED DISPLAY



Existing 99 Ranch Market cabinet to be removed and discarded.

A EXISTING THREE SIDED SIGN STATIC DISPLAY Not to Scale



EXISTING PLAN VIEW

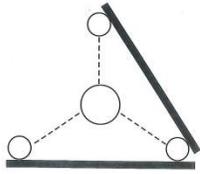


New LED Display Cabinets to mount to Existing Vertical Supports

New 99 Ranch Market letters to install on support as shown. (Both Sides)

A PROPOSED RETROFIT FULL COLOR LED DISPLAY Not to Scale

Manufacture and install two (2) LED full color displays as a triangle sign to mount on top of existing supports.



PLAN VIEW

ADART SIGN COMPANY
 5 THOMAS MELLON CIRCLE, SUITE 260
 SAN FRANCISCO, CA 94134
 T 415.869.6460
 F 415.869.6460

CA STATE CONTRACTORS LICENSE #42171

PACIFIC EAST MALL
 3288 PIERCE STREET
 RICHMOND, CA

SHEET 2
 SALES: JEREMY ANDERSON
 JOB #: 4502
 DATE: 7-14-05
 DESIGNER: JASON CRESBECKY
 FIRMNAME: ZOO/PACIFIC EAST MALL

Revision	Date	Description
#1	8-23-04	Revise page layout
#2	8-23-04	Revise logo layout
#3	3-15-05	Add 99 Ranch Market
#4	6-4-05	Add images to LED

SALES APPROVAL: _____
 CUSTOMER APPROVAL: _____
 LANDSCORD APPROVAL: _____

CONCEPTUAL DRAWING ONLY:
 Dimensions are approximate & may change due to construction factors or exact field conditions. Colors shown are as close as printing will allow; always follow written specifications.

ALL RIGHTS RESERVED:
 This design has been created for you in connection with a project being planned for you by AD ART. It may not be shown to anyone outside your organization, and may not be reproduced in any manner without prior consent.

Application shows sign as a business identification sign