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BY EMAIL (pgmc@toronto.ca)

Secretariat - Planning and Growth Committee
City of Toronto
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Mesdames:

Re: PG1.2 Enforcement Strategy for Chapter 694 of the Municipal Code

We are the lawyers for Clear Channel Outdoor Company Canada. Our client is concerned with the staff recommendations contained within the above-captioned item to be considered on January 8, 2015. Our client is specifically concerned with the recommendation to request that the Ontario Legislature repeal Section 110(1) of the *City of Toronto Act, 2006* (the “Act”)¹.

Such a request is patently unfair to the rights of those who lawfully erected signs in accordance with City by-laws in force when those signs were erected. To paraphrase the Ontario Court of Appeal in the case *Pattison Outdoor Advertising LP v Toronto (City)*², the staff report submitted in this matter is devoid of any consideration of the “unfairness of subjecting existing signs to newly enacted regulator standards”³ in the context of the request to the Legislature to repeal Section 110(1) of the Act.³ Moreover, no input has been sought by those who control lawfully erected first party signs on this point.

¹ 110. (1) A City by-law respecting advertising devices, including signs, does not apply to an advertising device that was lawfully erected or displayed on the day the by-law comes into force if the advertising device is not substantially altered, and the maintenance and repair of the advertising device or a change in the message or contents displayed is deemed not in itself to constitute a substantial alteration. 2006, c. 32, Sched. B, s. 23.

² *Pattison Outdoor Advertising LP v. Toronto (City)*, 2012 ONCA 212

³ *Pattison* at para. 37: More generally, the language of s. 110 clearly indicates that it was enacted to deal with the unfairness of subjecting existing signs to newly enacted regulatory standards. It is a classic example of a legal non-conforming use provision that is designed to protect a property owner who has erected a structure in reliance on existing municipal standards from being subjected to standards that did not exist at the time the structure was erected. See, for example, Ian

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Provisions such as Section 110(1) of the Act emanate from a long line of cases where the courts have sought “to protect a property owner who has erected a structure in reliance on existing municipal standards from being subjected to standards that did not exist at the time the structure was erected”⁴ The Act simply codified what courts have generally found to be just and fair. To ask the Legislature to undue this protection is, on its face, unfair to the rights of those who complied with then in-force by-laws and thus, unjust.

As it relates to signs, the Court of Appeal found in *Pattison* that the purpose of Section 110(1) specifically was “to deal with the problem of changing standards in relation to existing uses, an issue commonly encountered with non-conforming uses”¹ Once again, there does not appear to have been any consideration of the potential impact of this request. The request to repeal Section 110(1) would in fact exacerbate the “problem of changing standards”¹ by, for example, making it impossible to commence a development when the City could change the rules at any time in the future.

Our client opposes the recommendation to repeal Section 110(1) of the Act. It is not fair and runs contrary to the state of the law in this Province.

We trust this is satisfactory.

Sincerely,
Affleck Greene McMurtry LLP



Michael Binetti

MacF. Rogers and Alison Scott Butler. Canadian Law of Planning and Zoning, loose-leaf, 2nd ed. (Toronto: Carswell, 2009), at para. 6.2.1:

⁴ *Pattison* at para. 38: Section 110 operates to exempt signs that were “lawfully erected or displayed on the day the by-law comes into force”. The word “lawfully” indicates that its purpose is to deal with the regulation of signs and the application of the standards that the City has prescribed for lawful signs. Similarly, the reference to “substantial alteration” indicates that the purpose of s. 110 is to deal with the problem of changing standards in relation to existing uses, an issue commonly encountered with non-conforming uses. Subsection 110(2), allows the City to recover the cost of removing non-complaint signs, which confers a power that coincides with the regulation of signs and the prescription of regulatory standards. In my view, the references to signs that were “lawfully erected or displayed”, to “substantial alteration” and to recovering the cost of removal of non-compliant signs all point to regulation of signs, not taxation.