

DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2762 Telephone: (970) 498-6100	▲ COURT USE ONLY ▲
Plaintiff: THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, v. Defendants: BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO; STREETMEDIAGROUP, LLC	
Attorneys for Defendant, StreetMediaGroup, LLC: Todd G. Messenger, Reg. No. 38783 Andrew J. Helm, Reg. No. 47548 FAIRFIELD AND WOODS, P.C. 1801 California Street, Suite 2600 Denver, CO 80202 Telephone: (303) 830-2400 Facsimile: (303) 830-1033 E-Mail: tmessenger@fwlaw.com; ahelm@fwlaw.com	Case Number: 2020CV030580 Division: 4B
DEFENDANT STREETMEDIAGROUP, LLC'S ANSWER AND CROSS CLAIM	

Defendant StreetMediaGroup, LLC (“StreetMedia”), through its undersigned counsel, Fairfield and Woods, P.C., hereby answers Plaintiff’s Complaint and states as follows:

1. StreetMedia admits the allegations set forth in paragraph 1 of the Complaint.
2. StreetMedia admits the allegations set forth in paragraph 2 of the Complaint.
3. StreetMedia denies the allegations set forth in paragraph 3 of the Complaint.
4. The allegations set forth in paragraph 4 of the Complaint are a statement of Plaintiff’s case, to which no response is required or appropriate. To the extent a response is required, StreetMedia denies the allegations.
5. StreetMedia denies the allegations set forth in paragraph 5 of the Complaint.

PARTIES

6. StreetMedia is without knowledge sufficient to know the truth of the allegation, which is not supported in the certified record. As such, StreetMedia denies the allegations set forth in paragraph 6 of the Complaint.

7. StreetMedia, on information and belief, admits the allegations set forth in paragraph 7 of the Complaint.

8. StreetMedia does not dispute the status of the Board as the proper party to sue.

9. StreetMedia, on information and belief, admits the allegations set forth in paragraph 9 of the Complaint.

10. StreetMedia admits the allegations set forth in paragraph 10 of the Complaint.

11. StreetMedia admits the allegations set forth in paragraph 11 of the Complaint.

JURISDICTION AND VENUE

12. StreetMedia denies the allegations set forth in paragraph 12 of the Complaint.

13. StreetMedia admits that this Court has jurisdiction to review quasi-judicial decisions under C.R.C.P. 106, but denies that the Court has subject matter jurisdiction in this case, as alleged in paragraph 13 of the Complaint.

14. StreetMedia admits that the City filed its Complaint within twenty-eight days of the Board's July 28, 2020 Findings and Resolution, but denies that the City's Complaint was timely under C.R.C.P. 106(b), as alleged in paragraph 14 of the Complaint.

15. StreetMedia does not dispute that venue is proper, but only if the Court has jurisdiction over a timely filed Complaint under C.R.C.P. 106.

GENERAL ALLEGATIONS

16. StreetMedia admits that Fort Collins has attached a copy of the IGA document referenced in paragraph 16 to its Complaint as Exhibit A. StreetMedia is without knowledge sufficient to admit the basis for or authenticity of the document. StreetMedia denies that the IGA document is part of the Certified Record under review. StreetMedia denies that the IGA document is relevant to or controlling in this action.

17. The allegations set forth in paragraph 17 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations. StreetMedia denies that the IGA document is part of the Certified Record under review. StreetMedia denies that the IGA document is relevant to or controlling in this action.

18. The allegations set forth in paragraph 18 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations. StreetMedia denies that the IGA document is part of the Certified Record under review. StreetMedia denies that the IGA document is relevant to or controlling in this action.

19. StreetMedia admits that Fort Collins has attached a copy of the amendment to the IGA document referenced in paragraph 19 to its Complaint as Exhibit B. StreetMedia is without knowledge sufficient to admit the basis for or authenticity of the document. StreetMedia denies that the amendment to the IGA document is part of the Certified Record under review. StreetMedia denies that the amendment to the IGA document is relevant to or controlling in this action.

20. There is no paragraph 20.

21. StreetMedia admits, on information and belief, the allegations set forth in paragraph 21 of the Complaint, but denies the import of the Property's location to this matter.

22. StreetMedia is without knowledge sufficient to know the truth of the allegation, which is not supported by competent evidence in the Certified Record. As such, StreetMedia denies the allegations set forth in paragraph 22 of the Complaint.

23. StreetMedia admits the allegations set forth in paragraph 23 of the Complaint.

24. StreetMedia admits the allegations set forth in paragraph 24 of the Complaint.

25. The allegations set forth in paragraph 25 of the Complaint refer to the Larimer County Code ("LUC"), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

26. The allegations set forth in paragraph 26 of the Complaint refer to the Larimer County Code ("LUC"), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

27. StreetMedia admits it filed an Appeal Request Form, as alleged in paragraph 27 of the Complaint. The Appeal Request Form speaks for itself. StreetMedia denies the allegation in paragraph 27 that the subject of the Appeal Request Form "is not consistent with LUC § 10 in several respects."

28. The allegations set forth in paragraph 28 of the Complaint refer to the Larimer County Code ("LUC"), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

29. The allegations set forth in paragraph 29 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations.

30. The allegations set forth in paragraph 30 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations.

31. StreetMedia admits the allegations set forth in paragraph 31 of the Complaint.

32. The allegations set forth in paragraph 32 of the Complaint refer to the Larimer County Code (“LUC”), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

33. The allegations set forth in paragraph 33 of the Complaint refer to the Larimer County Code (“LUC”), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

34. The allegations set forth in paragraph 34 of the Complaint refer to the Larimer County Code (“LUC”), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

35. The allegations set forth in paragraph 35 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations.

36. The allegations set forth in paragraph 36 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations.

37. The allegations set forth in paragraph 37 of the Complaint refer to a document that speaks for itself. To the extent a response is required and the allegations conflict with the document referenced, StreetMedia denies the allegations.

38. StreetMedia admits the letter referenced in paragraph 38 of the Complaint is a part of the Certified Record in this case. The letter speaks for itself, and to the extent a response is required and the allegations conflict with the letter referenced, StreetMedia denies the allegations.

39. The allegations set forth in paragraph 39 of the Complaint refer to the Larimer County Code (“LUC”), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

40. The allegations set forth in paragraph 40 of the Complaint refer to the Larimer County Code (“LUC”), which speaks for itself. To the extent a response is required and the allegations conflict with the LUC provision referenced, StreetMedia denies the allegations.

41. StreetMedia admits the allegation in paragraph 41 that County Staff reviewed StreetMedia’s application. StreetMedia denies that County Staff has the authority to “determine”

the merits of an application. To the extent any other matter is expressed or implied by this allegation, StreetMedia denies same.

42. The allegations set forth in paragraph 42 of the Complaint refer to a County Staff report which speaks for itself. To the extent the allegations in paragraph 42 suggest County Staff have the authority to act conclusively on an application, and to the extent the allegations conflict with the staff report quoted, StreetMedia denies the allegations.

43. The allegations set forth in paragraph 43 of the Complaint refer to a County Staff report which speaks for itself. To the extent the allegations in paragraph 43 suggest County Staff have the authority to act conclusively on an application, and to the extent the allegations conflict with the staff report quoted, StreetMedia denies the allegations.

44. The allegations set forth in paragraph 44 of the Complaint refer to a County Staff report which speaks for itself. To the extent the allegations in paragraph 44 suggest County Staff have the authority to act conclusively on an application, and to the extent the allegations conflict with the staff report quoted, StreetMedia denies the allegations.

45. The allegations set forth in paragraph 45 of the Complaint refer to a County Staff report which speaks for itself. To the extent the allegations in paragraph 45 suggest that County Staff findings are binding on the Board of County Commissioners, and to the extent the allegations conflict with the staff report quoted, StreetMedia denies the allegations.

46. StreetMedia is without knowledge sufficient to know the truth of the allegation in the first clause of paragraph 46 (“Based on its analysis of the LUC and findings”) and therefore denies the same; StreetMedia admits that “County Staff recommended the Board deny StreetMediaGroup’s sign appeal.”

47. StreetMedia admits the allegations set forth in paragraph 47 of the Complaint.

48. StreetMedia admits the allegations set forth in paragraph 48 of the Complaint.

49. StreetMedia admits that the Board voted to approve StreetMedia’s proposal at the June 1, 2020, and did not issue a written decision at that time, as set forth in paragraph 49 of the Complaint. StreetMedia denies any implication that the Board was required to set forth its decision in writing before that decision was considered a final quasi-judicial determination.

50. StreetMedia admits that Fort Collins has attached a copy of the letter referenced in paragraph 50 to its Complaint as Exhibit F. StreetMedia is without knowledge sufficient to admit the authenticity of the document. StreetMedia denies that the document is part of the Certified Record under review. StreetMedia denies that the document is relevant to or controlling in this action.

51. StreetMedia admits the allegations set forth in paragraph 51 of the Complaint.

52. The allegations set forth in paragraph 52 of the Complaint are a statement of Plaintiff's case, to which no response is required or appropriate. To the extent a response is required, StreetMedia denies the allegations.

FIRST CLAIM FOR RELIEF
(Review Pursuant to C.R.C.P. 106(a)(4))

53. StreetMedia incorporates its responses to the allegations set forth in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. StreetMedia denies the allegations set forth in paragraph 54 of the Complaint.

55. StreetMedia denies the allegations set forth in paragraph 55 of the Complaint.

56. StreetMedia denies the allegations set forth in paragraph 56 of the Complaint.

57. StreetMedia denies the allegations set forth in paragraph 57 of the Complaint.

58. StreetMedia denies the allegations set forth in paragraph 58 of the Complaint.

59. StreetMedia denies the allegations set forth in paragraph 59 of the Complaint.

60. StreetMedia denies the allegations set forth in paragraph 60 of the Complaint.

61. StreetMedia denies the allegations set forth in paragraph 61 of the Complaint.

62. StreetMedia denies the allegations set forth in paragraph 62 of the Complaint.

63. StreetMedia denies the allegations set forth in paragraph 63 of the Complaint.

64. StreetMedia denies the allegations set forth in paragraph 64 of the Complaint.

65. StreetMedia denies the allegations set forth in paragraph 65 of the Complaint.

66. StreetMedia denies the allegations set forth in paragraph 66 of the Complaint.

67. StreetMedia denies the allegations set forth in paragraph 67 of the Complaint.

68. StreetMedia denies the allegations set forth in paragraph 68 of the Complaint.

69. The allegations set forth in paragraph 69 of the Complaint are legal conclusions, to which no response is required or appropriate. To the extent a response is required, StreetMedia denies the allegations.

70. StreetMedia denies the allegations set forth in paragraph 70 of the Complaint.

71. StreetMedia denies the allegations set forth in paragraph 71 of the Complaint.

72. StreetMedia denies the allegations set forth in paragraph 72 of the Complaint.

73. StreetMedia denies the allegations set forth in paragraph 73 of the Complaint.

74. StreetMedia denies the allegations set forth in paragraph 74 of the Complaint.

75. StreetMedia denies the allegations set forth in paragraph 75 of the Complaint.

76. StreetMedia denies the allegations set forth in paragraph 76 of the Complaint.

77. The allegations in paragraph 77 of the Complaint are non-sequitur, as Plaintiff has alleged that LUC § 10 prohibits “off-premises billboards.” StreetMedia denies the allegations set forth in paragraph 77 of the Complaint.

78. StreetMedia denies the allegations set forth in paragraph 78 of the Complaint.

79. StreetMedia denies the allegations set forth in paragraph 79 of the Complaint.

80. StreetMedia denies the allegations set forth in paragraph 80 of the Complaint.

GENERAL DENIAL

81. StreetMedia denies each and every allegation set forth in the Complaint not specifically admitted to herein.

AFFIRMATIVE DEFENSES

1. Plaintiff’s Complaint fails to state a claim upon which relief can be granted.
2. This Court lacks subject matter jurisdiction over Plaintiff’s Complaint, because the Complaint is untimely under C.R.C.P. 106.
3. Plaintiff lacks standing to bring its Complaint.
4. Plaintiff’s claims are moot.
5. Plaintiff’s claim are barred by the doctrines of waiver, estoppel and/or laches.

WHEREFORE, StreetMediaGroup LLC respectfully requests that this Court affirm the decision of the Board of County Commissioners of Larimer County, award StreetMediaGroup LLC its attorneys’ fees and costs as may be permitted by law, and award StreetMediaGroup any other relief this Court deems just and proper.

CROSS CLAIMS

Defendant StreetMediaGroup, LLC, by and through its attorneys, Fairfield and Woods, P.C., asserts cross claims against Defendant Board of County Commissioners of Larimer County, Colorado (“Board”) as follows:

1. StreetMedia incorporates each factual allegation in the Complaint specifically admitted to in its Answer, as if fully set forth herein.

JURISDICTION AND VENUE

2. This Court has jurisdiction over StreetMedia’s Cross Claims pursuant to C.R.C.P. 13, as the allegations set forth herein arise out of the transaction or occurrence that is the subject matter of the original action, and relates to property that is the subject matter of the original action.

3. Venue is proper pursuant to C.R.C.P. 98.

GENERAL ALLEGATIONS

4. On March 24, 2020, StreetMedia filed an Appeal Request Form in order to commence a process (“Appeal”) through which, after a public hearing of the Board of County Commissioners, StreetMedia could obtain approval to apply for a building permit for an outdoor advertising device (“Sign”) that did not strictly comply with several of the standards set out in LUC § 10.

5. As part of its Appeal, in order to reduce overall sign clutter in the County and advance the County’s stated objectives in the LUC, StreetMedia proposed to deconstruct and remove five advertising devices within the County.

6. The Board considered the Appeal at a properly-noticed public hearing on June 1, 2020.

7. At that hearing, the Board granted StreetMedia’s Appeal.

8. On July 28, 2020, fifty-seven days after the Board granted StreetMedia’s appeal, the Board memorialized that approval in a written document entitled, “Findings and Resolution.”

9. The City of Fort Collins filed its action seeking review of the Board’s decision on August 25, 2020, eighty-five days after the Board granted StreetMedia’s Appeal.

10. The City did not seek injunctive relief as part of its Complaint for review.

11. After the Board’s June 1, 2020 approval, StreetMedia and the Board took action related to the fulfillment of StreetMedia’s Appeal and the Board’s approval.

12. These actions include, but are not limited to, the deconstruction of the five advertising devices within the County, the issuance of all necessary permits for the Sign (including building and electrical permits), the construction of the Sign, all required inspections for the Sign, closure of the building and electrical permits, and finally, the display of content on the Sign.

13. StreetMedia's rights in its Sign are constitutionally-protected under the First Amendment, the Fifth Amendment, and the Fourteenth Amendments to the U.S. Constitution, and Colorado Constitution, Article II, §§ 3, 10, and 25.

14. Larimer County Code ("LUC") § 10.0 sets out the general requirements for signs within the County.

15. LUC § 10.0 includes requirements for limiting the area of sign faces, sign height, and sign setbacks.

16. LUC § 10.5 prohibits certain types of signs in any zoning district within the County, including electronic or changeable message signs that change more frequently than once every minute, as well as billboards and "off-premise signs."

17. LUC § 10.15 defines "Off-Premise Sign" as "[a] sign which is used or intended for use to advertise, identify, direct or attract the attention to a business, institution, product, organization, event or location offered or existing elsewhere than upon the same property where such sign is displayed."

18. LUC § 12.0 provides the common procedures for development review in the County.

19. LUC § 12.4.3.G provides that, as a general matter, when determining the outcome of a development application at public hearing, the Board's decision to approve, approve with conditions, or deny the application must be in writing.

20. LUC § 12.4.3.H requires written notice of that decision to the applicant "within a reasonable time after the decision."

21. LUC § 12.0 does not provide a specified period of time after hearing by which the Board's decision is required to be reduced to writing. As such, if a written decision is required, LUC § 12.0 operates as an unconstitutional prior restraint on free speech due to its failure to include a brief, specified time period between application and final decision.

22. StreetMedia's Appeal was not a development application governed by the provisions of LUC § 12.0.

23. Rather, StreetMedia's Appeal was an appeal regarding the enforcement of the LUC, pursuant to LUC § 22.0, and particularly pursuant to LUC § 22.2.5—an appeal from the applicable requirements of LUC § 10.0 (the Larimer County sign code).

24. LUC § 22.2.2.5.c provides that, “[a]t the conclusion of the hearing [on an appeal,] the county commissioners will affirm, affirm with modifications or reverse the decision of the administrative officer or the interpretation of the planning director.”

25. There is no requirement under LUC § 22.0 for the decision of the Board to be issued in writing.

26. Pursuant to LUC § 22.0, on June 1, 2020 the Board granted StreetMedia’s Appeal. The grant of StreetMedia’s appeal relieved StreetMedia from the application of unconstitutional restrictions on StreetMedia’s free speech.

27. Under LUC § 10.0, the content of signs is censored through a prohibition on “off-premises” messages in LUC § 10.5.E. The prohibition treats “on-premise” commercial speech more favorably than “off-premise” noncommercial speech.

28. For example, whether a liquor store qualifies for a permit to display a sign on its property turns solely on the message to be displayed on that sign:

- a. If the sign displays the name of the liquor store, and perhaps advertises a specific product for sale there, the sign may qualify for a permit under LUC § 10.0;
- b. If, however, the sign displays an “off-premise” message (say, the name of a business across the street, an announcement of a charity golf tournament at a course somewhere else in the County, or an announcement of the location of religious services somewhere else in the County), then it is categorically prohibited under LUC § 10.5.

29. LUC § 10.5.E is “Content-Based” on its face because it applies to speech based on the topic discussed or the idea or message expressed.

30. LUC § 10 also includes exceptions that favor some speakers over others. For example, LUC § 10.6.F. provides that if a sign identifies “seed brands and varieties in use” or “test plots,” it does not require a permit; and similarly LUC § 10.6.R., which provides that if a sign provides certain “warning messages” it does not require a permit.

31. LUC § 10 allows certain subject matter to be displayed on signs without permits, but if the signs exceed a certain size, then the Board of County Commissioners must first grant an appeal before the owner of the sign is allowed to obtain a building permit and thereafter display the message. For example:

- a. LUC § 10.6.V. provides that “ideological signs” (defined as a “sign conveying a philosophical, religious, political, charitable or other similar noncommercial message”) cannot exceed 10 square feet in area per face within a maximum aggregate of 20 square feet in face area per lot, and that such signs may not be

lighted. As such, LUC § 10.6.V. prohibits the display of philosophical, religious, political, charitable or other similar noncommercial messages on electronic signs.

- b. LUC § 10.6.E. prohibits the display of commemorative messages on signs that are larger than two square feet in area.
- c. LUC § 10.6.U. prohibits the display of messages related to a candidate, issue, proposition, or other matter to be voted upon by the electors of the county on signs that are larger than 32 square feet.

32. Due to the array of content-based “permit exceptions” in LUC § 10.6 and the prohibition of “off-premises” messages of all types in LUC 10.5.E, the entire regulatory program set out in LUC § 10 is facially “Content-Based.”

33. Content-based regulations on speech are, in general, subject to strict scrutiny review as set out in *Reed v. Gilbert*, 576 U.S. 155 (2015). The Board cannot demonstrate that LUC § 10 is the least restrictive means to advance compelling governmental interests.

34. Even if LUC § 10 were construed to only burden commercial speech, LUC § 10 also fails the “commercial speech test” set out in *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm’n*, 447 U.S. 557 (1980), and recently articulated by the Tenth Circuit in *Aptive Envtl., LLC v. Town of Castle Rock*, 959 F.3d 961 (10th Cir. 2020), because the Board cannot demonstrate that harms associated with signs are real and, further, that LUC § 10 will in fact alleviate those harms to a material degree.

35. LUC § 10 is also entirely arbitrary and divorced from context, and therefore does not bear a substantial relation to the public health, safety, morals, or general welfare.

36. StreetMedia is a seller of advertising space on signs, as defined in LUC § 10.15.

37. As part of its business, StreetMedia purchases, leases, licenses, or seeks easements on property, in order to install structures and signs upon which to display messages. StreetMedia has several leases for the construction and display of signs in Larimer County. Not all of the leased properties currently display signs.

38. StreetMedia’s sign inventory (“StreetMedia Signs”) includes both “static” signs, which display messages that are printed on media that is affixed to the sign, and Changeable Electronic Variable Message Signs (“CEVMS”), which allow for the rotation of messages on an electronic display.

39. The Sign at issue in this case is CEVMS.

40. StreetMedia uses the Sign to display messages for for-profit businesses, non-profit public service entities, political causes, civic causes, and StreetMedia itself.

41. StreetMedia is generally compensated for the display of messages on StreetMedia Signs.

42. StreetMedia also contributes to non-profit public service entities, political causes, civic causes, and governmental entities by allowing them to display messages on StreetMedia Signs without compensation to StreetMedia.

43. StreetMedia also works with other corporate and civic sponsors to display civic messages (e.g., “Thank you Firefighters”).

44. The Certified Record includes testimony and evidence that StreetMedia’s lease with the State Land Board will generate approximately \$1,000,000 for public schools in Colorado over the term of the lease; and that raising money for public schools using State-owned land is the essential mission of the State Land Board.

45. LUC § 10 violates StreetMedia’s constitutionally protected right to free speech.

46. If applied to sign appeals under LUC § 22.2.2., LUC § 12.2.7.C.’s requirement for a written decision on some unspecified date after the public hearing on the sign appeal is an unconstitutional prior restraint on free speech.

FIRST CLAIM FOR RELIEF
**(Declaratory Relief pursuant to 42 U.S.C. § 1983,
C.R.S. § 13-51-101, et seq., and C.R.C.P. 57)**

47. StreetMedia incorporates its allegations set forth in paragraphs 1 through 45 above, as if fully set forth herein.

48. StreetMedia, as a business entity engaged in the construction of signs as well as the sale and use of message space on signs, both to its customers and for its own uses, within the County, is an interested party with standing to seek a declaration of its rights under the LUC.

49. Whether the LUC is unconstitutional, in whole or in part, on its face and/or as-applied to StreetMedia is a matter of controversy appropriate for this Court to decide.

50. A declaration by this Court will terminate the controversy surrounding application of the LUC, in whole or in part, to StreetMedia.

51. Accordingly, StreetMedia is entitled to, and seeks, a declaratory judgment stating:

- a. The application of LUC § 12.2.7.C. to appeals from the restrictions set forth in LUC § 10.0 relating to signs (pursuant to under LUC § 22.2.2) is a prior restraint of speech that is prohibited under the First Amendment of the U.S. Constitution and the Colorado Constitution, Article II, § 10, because it restrains speech prior to judicial review, without providing a

brief specified period of time during which the status quo must be maintained, and as such: (i) the vote of the County Commissioners on June 1, 2020 was a final decision approving StreetMedia's Appeal, and a written decision on the StreetMedia Appeal is without further legal effect; and (ii) Plaintiff Fort Collins' Complaint is untimely as a matter of law and must be dismissed.

- b. In addition or in the alternative, LUC § 10.0 in its entirety is unconstitutional on its face and as applied to StreetMedia.
- c. In addition or in the alternative, LUC § 10.5.E. is unconstitutional on its face and as applied to StreetMedia.

SECOND CLAIM FOR RELIEF
(Injunctive Relief pursuant to 42 U.S.C. § 1983; C.R.C.P. 65)

52. StreetMedia incorporates its allegations set forth in paragraphs 1 through 51 above, as if fully set forth herein.

53. The application of LUC § 12.2.7.C.'s requirement for a written decision on some unspecified date after the public hearing on a sign appeal under LUC § 22.2.2. is an unconstitutional prior restraint on free speech.

54. The requirements of LUC § 10.0, including but not limited to LUC § 10.5.E., are unconstitutional and pose and present a significant threat to StreetMedia's constitutionally-protected free speech and property rights in its existing signs, and in its free speech rights in signs it may seek to construct or purchase in the future.

55. StreetMedia's damages as a result of the enforcement of the unconstitutional provisions of the LUC are immediate, irreparable, and incapable of redress through monetary damages or other plain, speedy, and adequate remedy at law.

56. An injunction against enforcement of the unconstitutional provisions of the LUC will not disserve the public interest, as it is in the public's interest to have only constitutional laws and codes enforced.

57. Accordingly, StreetMedia is entitled to preliminary and permanent injunctive relief, enjoining the County from enforcing unconstitutional provisions of the LUC.

WHEREFORE, Defendant/Cross Claimant StreetMediaGroup, LLC respectfully requests that this Court enter judgment on its Cross Claim in its favor and against the Board, and grant the following relief against Defendant Board of County Commissioners of Larimer County, Colorado:

A. Find and declare that LUC § 12.2.7.C.'s requirement for a written decision on some unspecified date after the public hearing on a sign appeal under LUC § 22.2.2. is an unconstitutional prior restraint on free speech, and permanently enjoin the County from enforcing LUC § 12.2.7.C. in the context of a sign appeal under LUC § 22.2.2, thereby allowing for a final decision of the Board of County Commissioners by vote at the end of the public hearing contemplated by LUC § 22.2.2.;

B. Find and declare that LUC § 10.0 is unconstitutional on its face and permanently enjoin the County from enforcing LUC § 10.0;

C. Find and declare that LUC § 10.0 is unconstitutional as-applied to StreetMedia and permanently enjoin the County from enforcing LUC § 10.0 against StreetMedia;

D. In addition to or in the alternative, find and declare that LUC § 10.5.E. is unconstitutional on its face and permanently enjoin the County from enforcing LUC § 10.5.E.;

E. In addition to or in the alternative, find and declare that LUC § 10.5.E. is unconstitutional as-applied to StreetMedia, and permanently enjoin the County from enforcing LUC § 10.5.E. against StreetMedia;

F. Award StreetMedia attorneys' fees and costs as may be available by law, and in particular pursuant to 42 U.S.C. § 1988; and

G. Such other and further relief as the Court deems just and proper.

DATED this 12th day of December, 2020.

FAIRFIELD AND WOODS, P.C.

/s/ Andrew J. Helm

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Attorneys for Defendant StreetMediaGroup, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2020, I filed the foregoing with the Clerk of the Court using Colorado Courts E-Filing. I further certify that a copy of the foregoing was sent via Colorado Courts E-Filing to the following:

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/s/ Andrew J. Helm

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