

San Diegans Against Billboard Blight

Summary of Existing Law and New Proposal to Amend the City of San Diego's Sign Ordinance¹

1. San Diego's sign ordinance has endured for 40 years through multiple court challenges and a battle all the way to the U.S. Supreme Court. The City Council first enacted a billboard ban targeting signs near freeways in 1962.² Litigation delayed enforcement. After years of study and debate, in 1972 the Council enacted a city-wide ban on off-site advertising signs to phase out billboards.³ More litigation followed, ultimately reaching the U.S. Supreme Court, which in 1981 struck the ordinance but gave guidance on how it could be amended to be constitutional.⁴ The City passed a new ordinance which was stayed until the U.S. Supreme Court ruled in 1984 that cities could ban commercial advertising signs to advance aesthetic values.⁵ The opinion, which upheld a City of Los Angeles law, said "It is well settled that the state may legitimately exercise its police powers to advance aesthetic values. . ." The "visual assault on the citizens of Los Angeles . . . constitutes a significant, substantive evil within the City's power to prohibit."⁶
2. With clear high court precedent, the San Diego enacted a law freezing the total number of outdoor off-site advertising signs at the number in existence as of July 19, 1983.⁷ All off-site advertising signs, such as billboards, must have been in existence prior to that date. All are regulated in the Municipal Code as "Previously Conforming Advertising Display Signs."⁸
3. The City's current sign law prohibits changing previously conforming signs to add flashing lights or rotating or revolving parts. "The *sign face* of a rebuilt *advertising display sign* shall be no larger than the *sign face* of the original *advertising display sign*. Flashing lights and rotating or revolving *signs* are not permitted."⁹ These rules also further the City's public policy against light pollution and glare, and in favor of dark skies.¹⁰
4. FinWater Advisors/Marston+Marston, Inc., whose principals are Denver businessman David Ehrlich and San Diego public affairs consultant and lobbyist Jeff Marston, have put forward a draft Downtown San Diego District Sign Plan that would significantly amend the City's sign ordinance. Under a draft dated August 25, 2012, 58 blocks of downtown are designated as potentially exempt from the City's off-site advertising sign restrictions, from Front to 10th streets and Beech to E streets, plus a few blocks on the margins.¹¹
5. The draft plan appears to initially allow at least 79 separate sign locations within 44 street, covering building faces up to 14 stories tall and the entire length of street blocks. The total square footage proposed has not been determined.¹² However, because many of the building faces identified in the draft plan are several stories high and up to a block wide, the proposed new signage area is massive.
6. In addition to an enormous increase in the number and size of signs, many types of signage not now allowed on previously conforming off-site, or even for on-site signs¹³ would be allowed under the draft proposal. The plan includes electronic message centers, kinetic signs, fiber optic displays, translucent mesh, projected light, tri-vision signs, signs with 3D extensions, monument/kiosk signs and street level interactive kiosks.¹⁴
7. Large TV-style screens could be erected and LED illuminated panels might play advertisements changing as often as every 15 seconds, 18 hours per day.¹⁵
8. The proposed compensation for these drastic changes to the City's 40-year legacy of sign restrictions and relatively ad-sign-free urban environment are paltry and speculative. The draft plan proposes creation of a nonprofit Arts and Entertainment District that would receive 15 percent¹⁶ of gross ad revenues minus an unspecified fee proponents want to manage it.¹⁷ Funds would be paid "to provide public performances and public art as well as capital improvements for the district and marketing of the district"¹⁸ The draft also allocates 20 percent¹⁹ of signage time to arts oriented public service announcements. The draft does not estimate the actual monetary value that would be devoted to these purportedly public purposes. The Denver Theater District, on which the San Diego proposal is modeled, does not appear to contribute significant funds to the arts, based on its 2011 tax return, which is a public record.²⁰
9. There is serious doubt whether the proposal can comply with Constitutional law. Courts have interpreted the First Amendment to require that *exceptions* to a City's sign ordinance further an interest *stronger and more important* than the interest underlying its current law, which in San Diego is traffic safety and aesthetics.²¹ Diverting a small fraction of ad revenues to promote art and business cannot meet the legal test to qualify as promoting a value stronger than the City's overall interest in traffic safety and aesthetics, which has allowed its law to withstand legal challenge for decades. If permitted downtown, the same legal rationale would likely apply to other neighborhoods. Soon the City's off-site advertising limits could be erased and San Diego would return to the unbridled sign

proliferation that inspired City leaders to pass the 1972 law.

10. Conclusion

San Diego's sign ordinance was pioneering when first enacted and has stood the test of time. Your support is sought to oppose this latest effort to weaken it. The City has many priceless attributes that should not be sold for any price. Our strict sign law is one of them. Elected officials need to hear from constituents who support San Diego's enduring legacy as a city where beautification is valued and defended. If changes are warranted to the City's sign law, they should be done after extensive study and legal analysis, not in a piecemeal fashion driven by financial interests. This will insure the law continues to be legally defensible and takes into account what is best for the City as a whole.

The FinWater Advisors/Marston+Marston, Inc. proposal is due to be discussed at a hearing of the San Diego City Council's Land Use & Housing Committee's in Spring 2013. The exact date has not been scheduled. The next committee meeting is March 6, 2013; the agenda is not yet published. The committee meets at 2 p.m. in the City Council Committee Room, 12th Floor, City Administration Building at 202 C Street, San Diego, CA 92101. Proponents made an informational presentation to the committee in August 2012, a videotape of which is available on the City's website. Committee members are District 6 Councilmember Lorie Zapf, Chair; District 1 Councilmember Sherri S. Lightner, Vice Chair; District 3 Councilmember Todd Gloria; District 8 Councilmember David Alvarez. Written comments may be submitted to the committee and council members now, or no later than at least one week in prior to a hearing on this proposal. Public testimony may be presented at the hearing.²²

¹ This summary and opinions expressed herein pertain to a matter of public interest pending before a City legislative body. Prepared by San Diegans Against Billboard Blight.

² San Diego Union, page B-1, Feb. 26, 1972; also discussed in San Diego Union articles, Feb. 18 and 23, 1972.

³ San Diego Union, page B-1, Feb. 26, 1972.

⁴ San Diego Union, page A-1, July 3, 1981.

⁵ San Diego Union, page A-1, July 3, 1981.

⁶ San Diego Union, page A-1, May 16, 1984.

⁷ San Diego Municipal Code ("SDMC") § 127.0301.

⁸ San Diego Municipal Code ("SDMC") §§ 127.0301 - 127.0305.

⁹ SDMC §127.0305(a)

¹⁰ SDMC § 142.0740.

¹¹ Proponents' 217-page PDF labeled "SanDiegoSignPlan8 25 12(2).pdf"

¹² Based on information reviewed.

¹³ SDMC §142.1210(a)(5) – (a)(7)

¹⁴ Proposed allowed sign mediums initially listed on page 11 of SanDiegoSignPlan8 25 12(2).pdf. Street level kiosks described in October 2012 email from David Ehrlich to City Land Use Committee.

¹⁵ Common image change intervals and hours of operation of digital signs.

¹⁶ SanDiegoSignPlan8 25 12(2).pdf., page 4.

¹⁷ FinWater Advisors/Marston+Marston, Inc. Memo to City Land Use and Planning Committee, dated August 25, 2012, page 1.

¹⁸ SanDiegoSignPlan8 25 12(2).pdf., page 4.

¹⁹ SanDiegoSignPlan8 25 12(2).pdf., page 3.

²⁰ Denver Theater District 2011 990, available at www.guidestar.org.

²¹ Office of the City Attorney, City of San Diego, Memorandum MS 59, dated July 20, 2011, "Subject: Off-Premises Advertising in Proposed Downtown Entertainment District," page 2.

²² Comments for the Land Use & Housing Committee may be submitted to Leslie Perkins, Council Committee Consultant, 202 C Street, 3rd Floor, San Diego, CA 92101, Email: LRPerkins@sandiego.gov, (619) 533-3982.

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