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November 28, 2012

Leslie Perkins
Council Committee Consultant
Land Use & Housing Committee
San Diego City Council
202 C Street, 3rd Floor
San Diego, CA 92101

Re: FinWater Advisors/Marston+Marston, Inc. Proposal to Amend City Sign Ordinance Per "San Diego Sign Plan."

Dear Ms. Perkins,

This letter provides written comments to the Land Use & Housing Committee regarding the proposal submitted by FinWater Advisors/Marston+Marston, Inc. to amend the City's Sign Ordinance, as described in a 217-page "San Diego Sign Plan" and other documents submitted to your committee.

The Sierra Club San Diego Chapter strongly opposes this proposal. 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. In 1972, after years of study and debate, the City Council enacted a city-wide ban on off-site advertising signs to phase out billboards.¹ Litigation followed, ultimately reaching the U.S. Supreme Court, which in 1981 struck the ordinance but gave guidance how it could be amended to be constitutional.² The City passed a new ordinance which became enforceable after a 1984 Supreme Court ruling that cities can ban commercial advertising signs for reasons including advancement of aesthetic values.³

San Diego's law froze the total number of outdoor off-site advertising signs at those in existence as of July 19, 1983.⁴ All such signs and billboards are regulated in the Municipal Code as "Previously Conforming Advertising Display Signs."⁵ No new billboards are permitted; previously conforming signs may not be changed to add flashing lights, rotating or revolving parts; and repairs are regulated.⁶

FinWater Advisors/Marston+Marston, Inc. has put forward a draft Downtown San Diego District Sign Plan that would require significant amendments to City's sign ordinance. In addition to an enormous increase in the number and size of signs, many types of signage not now permitted would be allowed, including electronic message centers, kinetic signs, fiber optic displays, translucent mesh, projected light, tri-vision and signs with 3D extensions, monument/kiosk signs and street level interactive kiosks.⁷ It appears illuminated LED panels might play advertisements changing as often as every 15 seconds, 18 hours per day.

Contrary to proponents' arguments, there is serious doubt 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.⁸ Diverting a small fraction of ad revenues to promote art and business cannot qualify as promoting a value stronger than the City's overall interest in traffic safety and aesthetics, which has allowed its law to stand for decades. Art and business can be promoted by other means without disturbing the sign law. If



permitted downtown, the same legal rationale would apply to other neighborhoods. Soon the City's off-site advertising limits could be erased and we would return to the unbridled sign proliferation that inspired City action in 1972.

The proposed compensation for drastic changes to the City's 40-year legacy of sign restrictions and a relatively sign-free urban environment are paltry and speculative. The plan proposes creation of a nonprofit Arts and Entertainment District that would receive 15 percent⁹ of gross ad revenues minus an unspecified fee proponents want to manage it.¹⁰ Funds would be paid "to provide public performances and public art as well as capital improvements for the district and marketing of the district,"¹¹ and 20 percent¹² of signage time would be allocated to arts oriented public service announcements. No estimate of dollar values to be devoted to these purposes is stated in the plan.

San Diego's sign ordinance was pioneering when enacted and has stood the test of time. We ask you to oppose this latest effort to weaken it. The City has many priceless attributes that should not be sold for any price, including our strict sign law. Past elected officials understood San Diego's enduring legacy as a city where beautification is valued and defended and commercial advertising blight abated. To the extent changes are warranted in the City's sign law, they should be done after extensive study and legal analysis, not in a piecemeal fashion driven by private 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.

Sincerely,



Mollie Bigger
Chair, Conservation Committee

cc: Council Member Lorie Zapf
Council Member Sherri S. Lightner
Council Member Todd Gloria
Council Member David Alvarez.

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

² San Diego Union, page A-1, July 3, 1981.

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

⁴ San Diego Municipal Code ("SDMC") § 127.0301.

⁵ San Diego Municipal Code ("SDMC") §§ 127.0301 - 127.0305.

⁶ SDMC §§ 127.0301 - 127.0305.

⁷ 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.

⁸ 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.

⁹ SanDiegoSignPlan8 25 12(2).pdf., page 4.

¹⁰ FinWater Advisors/Marston+Marston, Inc. Memo to Land Use & Planning Committee, dated August 25, 2012, page 1.

¹¹ SanDiegoSignPlan8 25 12(2).pdf., page 4.

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