

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
DEMONSTRATION BANNER PROGRAM

Legal problems may arise if the Demonstration Banner Program is implemented. A proposal to amend the San Diego Municipal Code to authorize the program appears on your January 5 docket as Item 338.

San Diego Municipal Code Section 95.0101 currently forbids the use of copy on street banners which are hung on public property. Banners without copy may be placed on public property if a permit has been obtained from the Planning Director.

The City has been involved in costly and protracted litigation over various provisions of the sign codes including the placement of billboards and other signs on public property; e.g., *Metromedia, Inc. v. City of San Diego*, 453 U.S. 800 (1981). The implementation of the Demonstration Banner Program could undercut the ability of the Sign Administrator and my office to resist attacks on the general ban of signs or advertising in the public right-of-way. For example, with the program in place, persons proposing to install billboards on public property may persuasively argue that the sign codes were being illegally applied to them.

Our current sign regulations are "content-neutral." Such regulatory schemes have been held proper since they do not favor one viewpoint or type of speech over another. *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). As the only copy allowed on these banners would be for cultural and civic-oriented "events" and "messages" such as the Super Bowl, the argument could be made that the program discriminates against other types of speech, such as that found in political advertising.

The Demonstration Banner Program may appear an aesthetically pleasing way to communicate information. However, you should be aware that every exception to the City's general regulatory

scheme on signage may make enforcement more difficult in the future when the courts look at all the City's sign control measures to determine whether a particular ban is reasonable in light of ordinances permitting some displays.

Respectfully submitted,  
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