

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: December 7, 2011
TO: Mike McSweeney, Marketing Manager, Qualcomm Stadium
FROM: City Attorney
SUBJECT: Proposal to Temporarily Change Qualcomm Stadium Identifying Signs

You have asked this Office to review a proposal from Qualcomm Incorporated (Qualcomm) to temporarily change identifying signs at Qualcomm Stadium to reference a new product to be sold by Qualcomm, essentially converting identifying signage to advertising. You have asked us to determine whether this proposal is legally permissible. Based upon the contract provisions governing Qualcomm's naming rights at the Stadium, and the City's Sign Ordinance, we conclude that it is not.

In 1997, the City of San Diego (City) conveyed the right to name the facility previously known as San Diego Jack Murphy Stadium (Stadium) to Qualcomm for \$18 million for a term of twenty years. The parties entered into the Agreement Conveying Naming Rights to Stadium between the City and Qualcomm (Agreement) and the Supplement No. 1 to Agreement Conveying Naming Rights (Signage Plan), both of which were authorized by the City Council by ordinance adopted on April 7, 1997. Under the Agreement, the City granted Qualcomm the exclusive right to name the Stadium, agreed to change all identifying and directional signage at the Stadium and within the City limits to "Qualcomm Stadium," along with maps, brochures, advertising, and other promotional or informational documents, and to rename "Stadium Way" to "Qualcomm Way." In the Signage Plan, the parties agreed on the signs for the Stadium and surrounding area to ensure maximum television, aerial and spectator coverage for the name "Qualcomm Stadium."

City staff provides the following information on the proposal: Qualcomm is rolling out a new consumer-based product called Snapdragon. Qualcomm desires to cover a number of large signs

at the Stadium that read "Qualcomm Stadium" with temporary vinyl, fabric, or mesh banners or covers, for a period of two weeks, to promote Snapdragon at the San Diego Chargers (Chargers) football game scheduled on December 18, 2011 and the college holiday bowl games scheduled on December 21 and 28, 2011, at the Stadium. This Office understands that Qualcomm would like the temporary signs to read: "Snapdragon by Qualcomm" with the word "STADIUM" underneath. Installation of the temporary signs is scheduled to begin on December 12, 2011, and to be completed by December 16, 2011. The removal of the temporary signs will be completed between December 29 and 30, 2011. According to staff, the advertisement will serve to encourage Stadium patrons to purchase Snapdragon.

Qualcomm's proposal raises two issues: first, whether the proposed temporary signs are consistent with the terms of the Agreement and Signage Plan; and second, whether the proposed temporary signs would comply with the City's Sign Ordinance.

The Naming Rights Agreement. In the Agreement, the City specifically and unequivocally grants Qualcomm "the exclusive right to name the Stadium 'QUALCOMM STADIUM,'" and Qualcomm agrees "to immediately name the Stadium 'QUALCOMM STADIUM.'" (Agreement, Art. II, A). The Agreement and the Signage Plan refer to the size, design, and location of the signs that will display the words "Qualcomm Stadium."

The Agreement distinguishes between signs to be installed as part of the Agreement for the purpose of identifying the Stadium under its new name, and any advertising space that Qualcomm might seek to purchase. For example, in Article II.B.6 of the Agreement, the City agreed to install the following new signs "*identifying* the Stadium as 'QUALCOMM STADIUM:'" (i) the marquis sign at the entrance to the Stadium; (ii) a sign over the main entrance to the Stadium; (iii) a sign on top of the existing scoreboard at the east end of the Stadium; (iv) a sign on the new scoreboard at the west end of the Stadium; (v) two signs on the inside of the Stadium below the Loge Level; and (vi) two signs on the exterior of the Stadium. (See also the Signage Plan, stating that the signs shall use the words "Qualcomm Stadium" with the Qualcomm logo). Separate and apart from these name signs, Qualcomm can purchase advertising at the Stadium:

At all times QUALCOMM shall have the right, at its sole cost and expense, to purchase advertising at the Stadium subject to existing agreements for the sale of advertising at the Stadium between the City, Padres and Chargers. (Agreement, Art. II.B.6.a).

Qualcomm's proposal seeks to use the identifying signage to promote its new product without paying any additional consideration to which the City would otherwise be entitled. Qualcomm does not have that right under the Agreement. Per the Agreement, the content of the identifying signs is clearly limited to the name of the Stadium as "Qualcomm Stadium," and not subject to use for advertising.

Instead of advertising, it has been suggested that Qualcomm's proposal could be viewed as a name change from "Qualcomm Stadium" to "Snapdragon by Qualcomm Stadium." Qualcomm or its assignee may, under the terms of the Agreement, seek to rename the Stadium. (Art. II.A). Putting aside the issue of whether such a change is really a change of name as opposed to advertising, any name change requires the prior written consent of the City authorized by a resolution of the City Council. (Agreement, Art. II.A). This requirement is consistent with the fact that the Agreement was originally authorized by the City Council and concerns the naming of a major City facility. The City Council acted on behalf of the City in approving the name for the Stadium; there is no provision in the Agreement for change of the name without further Council action, and there is no provision for a temporary name change. Accordingly, if Qualcomm desires to rename the Stadium to "Snapdragon by Qualcomm," even on a temporary basis, Qualcomm must first obtain the City's written consent authorized by Council resolution.

Likewise, paragraph 11 of the Signage Plan provides Qualcomm "the right to redesign and [i]ninstall substitute signage" at its own expense, upon the City's prior approval (and the approval of the Chargers and the NFL), but not the right to change the words on the sign from "Qualcomm Stadium" to something else, or the right to change the purpose of the signs. Instead, the Signage Plan repeatedly states that the signs shall use the words "Qualcomm Stadium." Based on the clear language of both the Agreement and the Signage Plan, Qualcomm does not have the right under either of these documents to implement its proposal.

The City's Sign Ordinance. In addition to the contractual limits on the use of the identifying signs at the Stadium, signs located at the Stadium and visible from the public right-of-way must comply with the City's sign regulations (Sign Ordinance).¹ This Office has issued several opinions in the past regarding the City's Sign Ordinance, the purpose of those regulations, and the inherent risks in creating new exceptions to an ordinance that maintains a delicate balance between furthering important governmental interests (safety and community aesthetics) and restricting speech (commercial advertising in public rights-of-way and on public property).² The stated purpose of the Sign Ordinance is to provide "a comprehensive system of regulations for signs³ that are visible from the *public right-of-way*,"⁴ and "to provide a set of standards that are designed to optimize communication and quality of signs while protecting the public and the aesthetic character of the City."⁵

¹ San Diego Municipal Code §§ 142.1201-142.1292.

² See, e.g., 1999 City Att'y MOL 122 (99-12; Nov. 23, 1999); City Att'y MOL No. 2001-7 (May 3, 2001); 2002 City Att'y Report 265 (2002-19; Oct. 16, 2002); City Att'y MOL No. 2011-4 (May 19, 2011).

³ *Sign* means any identification, description, illustration, or device, illuminated or nonilluminated, that is visible from the public right-of-way or is located on private property and exposed to the public and which directs attention to a product, place, activity, person, institution, business, or solicitation, including any permanently installed or situated merchandise with the exception of window displays, and any emblem, painting, banner, pennant, placard, or temporary sign designed to advertise, identify, or convey information. SDMC § 113.0103.

⁴ *Public right-of-way* means a public easement for *streets, alleys*, or other uses. SDMC § 113.0103.

⁵ SDMC § 142.1201.

The Sign Ordinance distinguishes between signs with “offsite” advertising and signs with “onsite” advertising.⁶ Offsite advertising, typically found on billboards and other signs advertising products or services not available at that site, is not permitted. Onsite advertising, for example, identifying a place of business and the goods or services it offers, is permitted.⁷ The Sign Ordinance values onsite advertising over offsite advertising, and generally prohibits offsite advertising.⁸

By adding “Snapdragon” to the exterior name signs at the Stadium, Qualcomm’s proposal would convert signs that currently identify the Stadium and are consistent with the City’s Sign Ordinance into signs that advertise a Qualcomm product and appear to be at odds with the City’s Sign Ordinance. There is no dispute that the purpose of adding “Snapdragon” to the name signs is to advertise a new Qualcomm product. Aside from the fact that this conversion of use is not provided for in the Agreement, the addition of a product promotion appears to violate the restriction against offsite advertising.

It has been suggested that because Snapdragon can be purchased using a mobile internet device while at the Stadium, that Snapdragon is available “on-premises.” This rationale is based on a false premise: if Snapdragon is available for sale over the internet, then the internet is the location at which it is available, not the Stadium. To conclude otherwise would mean that advertising signs could be placed anywhere there is adequate internet reception for any product or service offered on the internet. One cannot reach that conclusion without ignoring the purpose and intent of the Sign Ordinance, *i.e.*, to reduce the overall number of signs (reduce visual clutter) by allowing signs that help people identify buildings and the business or activity that is carried on in them, and not allowing less important signs unrelated to a particular place that add visual clutter to the City’s landscape.⁹

Based on the terms of the Agreement and the Signage Plan between the City and Qualcomm, Qualcomm has the right and the City has the obligation to identify the Stadium as “Qualcomm Stadium” on signs at and leading to the Stadium. Qualcomm or its assignee may seek to change the name of the Stadium, but cannot effectuate such a change without the prior approval of the City Council. Qualcomm may, under the terms of the Agreement, purchase advertising at the Stadium, but it has no right to use the signage identifying the name of the Stadium for advertising. The purpose of the Agreement is to name the Stadium, not to sell advertising space.

⁶ City Att’y MOL No. 2011-4.

⁷ SDMC § 113.0103 (definition of “advertising display sign”) and § 142.1210. Onsite messages “are those identifying or advertising an establishment, person, activity, goods, products, or services located on the *premises* where the *sign* is installed. § 142.1210(a)(1)(A).

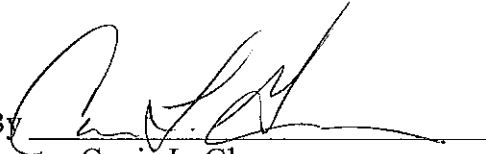
⁸ *Metromedia Inc. v. City of San Diego*, 453 U.S. 490, 511-12 (1981). The Sign Ordinance also permits defined public interest messages; that provision is not relevant here.

⁹ City Att’y MOL No. 2011-4, 5. Such an interpretation would gut the Sign Ordinance and “call into question the constitutionality of the entire regulatory scheme.”

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Even if under the terms of the Agreement and Signage Plan the parties could change the text of the name signs, the new text must comply with the City's Sign Ordinance, and may not include offsite advertising.

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