

September 24, 2002

**Honorable Mayor and Members of the  
Hermosa Beach City Council**

SUBJECT: ORDINANCE PROHIBITING AERIAL ADVERTISING

INITIATED BY THE CITY COUNCIL

Background

The Ninth Circuit Court of Appeals recently decided a case involving a Honolulu ordinance that prohibited aerial advertising. In *Skysign Intern., Inc. v. City and County of Honolulu* (9<sup>th</sup> Cir. 2002) 276 F.3d 1109, the Ninth Circuit Court of Appeals ruled that Honolulu's ordinance was not preempted by federal law. The court found that Congress had made no decision to "occupy" this particular subfield of aviation, but that it had left the door open for the FAA to develop regulations in this area.<sup>1</sup> Honolulu did not dispute ("nor could it" according to the court) that a federal regulation would control over an actually contradictory municipal ordinance.

The court also specifically found that the federal government had contemplated the coexistence between federal and local regulatory schemes regarding banner tow operations. The court relied on the FAA's General Aviation Operations Inspector's Handbook as well as the Certificate of Waiver issued to Skysign International. The court noted that the Handbook specifically suggested that Certificates of Waiver issued to pilots towing banners include an explicit statement that the certificate and its special provisions "do not supersede any local, state, or city ordinance(s) prohibiting aerial advertising." Furthermore, the actual waivers that Skysign obtained contained a provision explicitly noting that "[t]he [aircraft] operator, by exercising the privilege of this waiver, understands all local laws and ordinances relating to aerial signs, and accepts responsibility for all actions and consequences associated with such operations." Based on these provisions, the court concluded that the application of Honolulu's ordinances did not impede the federal policy or purpose in issuing Skysign's Certificates of Waiver.

The current Handbook, the current FAA Form 7711-1 Certificate of Waiver or Authorization, and the FAA's position as set forth in the amicus brief submitted in the *Skysign* case all support the conclusion that cities may regulate banner tow operations along their beaches.

The City of Huntington Beach has adopted an ordinance similar to that of Honolulu. According to the Los Angeles Times, aerial advertisers have threatened to flout the law and to mount a legal challenge.

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<sup>1</sup>The FAA submitted an amicus brief in the *Skysign* case that apparently expressed its approval of local regulation in the area of banner tow operations.

### Proposed Ordinance

The attached ordinance is based on the ordinances adopted in Honolulu and Huntington Beach. In order to be constitutionally acceptable, it applies to all types of advertising, regardless of content. Violation of the ordinance would be a misdemeanor.

### Recommendations

1. Consider whether to introduce the attached ordinance on first reading.
2. If the Council proceeds forward, direct staff to contact the cities of El Segundo, Manhattan Beach, Redondo Beach and Torrance relative to adopting a uniform approach along the entire South Bay coast.

Respectfully submitted,

UNAVAILABLE FOR SIGNATURE

Michael Jenkins  
City Attorney

Concur,

Stephen R. Burrell  
City Manager