



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Aldinger and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Lindy Coe-Juell, Assistant to The City Manager

DATE: September 4, 2007

SUBJECT: Discussion of Aerial Advertising

RECOMMENDATION:

Staff recommends that the City Council discuss aerial advertising issues and provide appropriate direction.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

It is a common practice, especially during the summer, for aircraft dragging banners containing advertising messages over the water parallel to the beach. This practice is particularly prevalent during large events. In recent weeks, and most notably during the weekend of the Manhattan Beach Open, aircraft dragging banners flew directly over the City of Manhattan Beach making turns over residential areas and repeating this circular pattern many times. This pattern of flight was different than the usual aerial advertising over the water and was particularly noisy and distracting. Several residents have suggested that the City should take action to regulate or prohibit aerial advertising.

DISCUSSION:

The regulation of airspace and flight patterns is traditionally within the jurisdiction of the Federal Government, specifically the Federal Aviation Administration ("FAA"). In 2002 the Ninth Circuit Court of Appeal did uphold a City of Honolulu ordinance which banned aerial advertising. A 2006 Ninth Circuit opinion upheld that same ordinance with regard to a First Amendment freedom of speech challenge.

However, the City Attorney has advised that the courts' opinions regarding the Honolulu ordinance were based on the acquiescence of the FAA. It is far from clear that such support exists in Los Angeles County. The City of Huntington Beach did, in fact, in 2002 adopt an ordinance similar to Honolulu's. When they were sued, however, the Federal District Court issued a temporary restraining order and preliminary injunction which resulted in Huntington Beach rescinding the ordinance. A representative of the FAA's General Counsel's office, when contacted by Manhattan

Beach, indicated that it is the FAA's current position that a local Southern California jurisdiction lacks the legal authority to enact an ordinance which bans aerial advertising. The City Attorney also advises that recent changes in the FAA's handbook and waiver procedure raise significant questions as to the applicability of the Ninth Circuit cases validating the Honolulu ordinance.

The FAA has indicated that there are existing rules which govern overflights of densely populated areas. These include altitude requirements of 1,000 feet for inland flights and 500 feet for over water flights as well as noise limits. The FAA is willing to enforce these rules but needs to be notified of potential violations and as many facts and details as possible in order to identify the violators and confirm the violation.

The City Attorney recently sent a letter to the FAA's Acting Regional Counsel requesting a formal opinion regarding the FAA's position with regard to the City's authority to adopt an ordinance like Honolulu's, requesting that regulations already in place which might mitigate the impacts of aerial advertising be identified, and asking for the current enforcement process and any way for the FAA and Manhattan Beach to work together on enforcement to be identified.

The City Attorney will continue to communicate with the FAA and work with that agency to confirm their position related to the regulation of aerial advertising. The Community Development Department is prepared to take the lead City staff role as appropriate and directed by Council.

Attachments: Letter of City Attorney to FAA Regional Counsel.

cc: Richard Thompson, Director of Community Development
Robert V. Wadden Jr., City Attorney



Robert V. Wadden Jr.
City Attorney 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5061 FAX (310) 802-5251 TDD (310) 546-3501

August 23, 2007

Naomi Tsuda, Acting Regional Counsel
Federal Aviation Administration
P.O.B. 92007
Los Angeles, CA 90009-2007

Re: Local Regulation of Aerial Advertising

Dear Ms. Tsuda,

The issue of aerial advertising over the City of Manhattan Beach has become a cause celebre among City residents. Attached is a copy of the "Letters" section of a local newspaper, the *Beach Reporter*, which contains correspondence complaining about the problems resulting from this activity. Although this is a continuing issue, as the letters note, the problem was particularly acute during the AVP Manhattan Beach Open volleyball tournament during the weekend of August 10-12. At this event we had not only the parade of aircraft pulling banners which goes up and down our beach every week-end but also planes flying (and making turns) directly over Manhattan Beach airspace (which is overwhelmingly and densely residential in character) at low altitudes.

As you may note from these letters residents are aware of the 2002 Ninth Circuit decision in *Skysign International, Inc. v. City and County of Honolulu* 276 F.3d 1109. As I you are probably aware this decision upheld a local ordinance which completely banned aerial advertising over that jurisdiction. Many residents and some members of the Manhattan Beach City Council are quite interested in enacting such an ordinance. However, the court in the *Skysign* case relied heavily upon the acquiescence of the FAA towards the Honolulu ordinance. Without that acquiescence the result of the case may not have been the same. We are therefore most interested in the position of the FAA with regard to such a local ban on aerial advertising. To that end we pose the following questions:

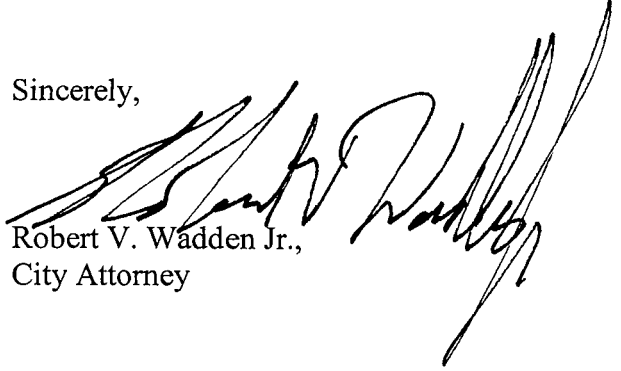
1. Is it the FAA's position that a local Southern California City such as Manhattan Beach has the authority to enact an ordinance banning aerial advertising over City airspace?
2. If the answer to the above question is "no" how does the FAA distinguish or explain the inapplicability of the ruling in the *Skysign* case upholding the Honolulu ordinance which does exactly what Manhattan Beach is interested in doing?

Fire Department Address: 400 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5201
Police Department Address: 420 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5107
Public Works Department Address: 3621 Bell Avenue, Manhattan Beach, CA 90266 FAX (310) 546-1752
<http://www.ci.manhattan-beach.ca.us>

3. Short of adopting a local ordinance banning aerial advertising are there existing FAA regulations which might prevent aerial advertising flights over the City from having negative impact?
4. Are there existing FAA regulations which might prevent aerial advertising flights over the ocean off the coast of Manhattan Beach from having negative impacts?
5. Assuming the answers to questions 3 and 4 are affirmative what is the enforcement process for violation of such regulations?
6. Is there a way for the City to work with the FAA to mitigate the impacts from these flights?

We are not interested in an adversarial relationship with your agency and would simply like to find the best way of serving our residents and solving what appears to be a nuisance and annoyance to folks living in the City and enjoying the beach. We look forward to any assistance you can give us in doing so.

Sincerely,



Robert V. Wadden Jr.,
City Attorney

cc: Mayor and City Council
Geoff Dolan, City Manager
Richard Thompson, Director of Community Development

We Get Letters

Planes annoy the residents

Why do we allow airplanes towing advertising banners to fly back and forth along our beaches to create incredible noise and add to pollution? Waikiki Beach has banned them and so should we. It is an ineffectual way to advertise and an annoyance to residents.

This entire weekend and last weekend has seen plane after plane flying low from 9:30 a.m. to 5 p.m. I would never buy anything from these banners.

Is anybody else bothered by the ceaseless noise and impact on the environment?

Victoria Peters
Manhattan Beach

Boycott products

Last weekend, the AVP volleyball tournament not only took over our beach and our downtown, but also our airspace. For about four hours, planes towing banners droned overhead while circling the Manhattan Beach sand section, annoying a lot more people than just those attending the tournament. I quit counting at eight different messages with sometimes four planes circling at the same time. If our noise ordinances don't regulate such invasive conduct, then surely the FAA should. Until the authorities take control, one thing the citizens can do is boycott the products that utilize this advertising format.

Terry Taugner
Manhattan Beach

City should ban aerial advertising

I would like to add my support to T.J. Judson's suggestion for a Manhattan Beach city ordinance banning aerial advertising.

The city of Honolulu passed a law banning aerial advertising to protect its "scenic beauty and its attractiveness as a tourist destination." Shouldn't Manhattan Beach do the same? Not to mention the noise - during the AVP, planes roared overhead every 10 minutes or less. Is that what a day at the beach is supposed to be?

The Honolulu ordinance was upheld by the 9th Circuit Court of Appeals and the U.S. Supreme Court. I urge the Manhattan Beach City Council to pass a similar ordinance and restore tranquility to the beach.

Gary McAulay
Manhattan Beach

Noise pollution

On Aug. 12 between 10 a.m. and 3 p.m. while doing yard work, several single-wing airplanes began their weekend advertising assault pulling advertising banners in low, repeated, circular patterns over Hermosa and Manhattan Beach residential and downtown neighborhoods at low altitudes every 15 to 20 minutes. We don't appreciate the noise created for the purpose of commercial enterprises at our expense. The advertisers don't consider the noise pollution that is created.

Speaking with others in my yard was

the low-flying advertising planes flew north and south beyond the breakers with relatively innocent Coppertone ads. Now they are hawking Cormier, Cuervo and beer.

I called Torrance Airport Noise Abatement. They returned my call two days later with the FAA number for complaints, several loops away in the buck-passing dance.

We tolerate several layers of air traffic here, from big commercial jets settling in to long-distance routes; helicopters on police or civic business day and night; and the occasional low-flying, window-rattling airplane that sounds like it may hit my house.

On the same day, the *Los Angeles Times* featured a picture of a single-wing plane upside down on a Lomita house. Fortunately, the woman inside suffered only minor cuts. The plane's passengers, two dogs, survived. The pilot who took off from Torrance airport wasn't that lucky.

Is a flight compromise possible? Perhaps the only answer is an ordinance banning low-flying planes over the city.

Cadence and Ernest Schreiber
Manhattan Beach

City needs to act on airplane noise

Are we tired of constant noise at the beach? Then boycott these products sponsoring constant noise-polluting banner advertising aircraft - Vive Cuervo, Knotts, Coors Lite, Cormier Chevrolet, Nutri-system and EZ Lube among others.

Do they really think this annoying advertising will sell their products? The never-ending drone destroys beach-goers' enjoyment of the sounds of the surf, gulls, brown pelicans and, yes, even normal conversation. It's like living 500 feet from the runway.

What's within 500 feet from 29 Right at Torrance Airport? Cornfields. Medical facilities beyond that wouldn't stand for the noise. Additionally, weekend procedure at Torrance Airport is very restricted, cutting noise to a minimum.

Bravo to the person who recently wrote to *The Beach Reporter* saying such flybys are forbidden in Hawaii. Also I think some of our neighboring cities as well forbid such annoyances. Time for our city reps to take some corrective action.

In desperation, has London any World War II barrage balloons still serviceable? Maybe we could use? Lend lease in reverse.

Don Zoellner
Manhattan Beach

Don't blame the lawsuit

I must take exception to *The Beach Reporter* article Aug. 9, echoing council's errant mantra that a lawsuit filed against the city over undergrounding was the cause for District 6's undergrounding delay (and subtle implication that it will, therefore, not see the same cost cuts as District 2).

Between the five-year time the city ordered undergrounding designs leading up to the November 2005 vote for Districts 2, 4 (now D15, having gerrymandered briefly at D4A) and 6, it also arranged for District 6 infrastructure work - sewer lines, gas, water, etc.

The city organized and disorganized D6 delays and distress (having fully col-