

Supreme Court of California, In Bank.  
METROMEDIA, INC., Plaintiff and Respondent,  
v.  
CITY OF SAN DIEGO, Defendant and Appellant.  
PACIFIC OUTDOOR ADVERTISING COMPANY, INC., Plaintiff and  
Respondent,  
v.  
CITY OF SAN DIEGO et al., Defendants and Appellants.  
L.A. 30782.  
April 14, 1980.  
As Modified on Denial of Rehearing May 14, 1980.

Billboard owners brought action to enjoin enforcement by city of ordinance banning all off-site advertising billboards and requiring removal of existing billboards following expiration of amortization period. The Superior Court, San Diego County, Jack R. Levitt, J., entered summary judgment enjoining [abating] enforcement of the ordinance, and the city appealed. The Supreme Court, Tobriner, J., held that: (1) achievement of purposes recited in the ordinance represented proper objective for exercise of police power by city and the ordinance bore reasonable relationship to such objectives; (2) the ordinance did not violate First Amendment; (3) the ordinance was partially preempted by state law; (4) the ordinance did not deny equal protection of law; (5) amortization provisions of the ordinance were not facially unreasonable; and (6) amortization period was not shown to be unreasonable as applied to any of owners' billboards. Reversed...

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TOBRINER, Justice.

#### CASE SUMMARY

The City of San Diego enacted an ordinance which bans all off-site advertising billboards and requires the removal of existing billboards following expiration of an amortization period. Plaintiffs, owners of billboards affected by the ordinance, sued to enjoin its enforcement. Upon motion for summary judgment, the superior court adjudged the ordinance unconstitutional, and issued the injunction as prayed.

We reject the superior court's conclusion that the ordinance exceeded the city's authority under the police power. We hold that the achievement of the purposes recited in the ordinance eliminating traffic hazards and improving the appearance of the city represent proper objectives for the exercise of the city's police power, and that the present ordinance bears a reasonable relationship to those objectives. We reject also the lower court's alternative holding that the ordinance violates the First Amendment; judicial decisions demonstrate that a ban on

commercial off-site billboards, enacted under the city's authority to regulate the commercial use of real property, does not abridge freedom of speech or press.

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## FACTUAL BACKGROUND

The present case concerns the constitutionality of San Diego Ordinance No. 10795, enacted March 14, 1972. With limited exceptions specified in the footnote, the ordinance as subsequently amended prohibits all off-site "outdoor advertising display signs." Off-site signs are defined as those which do not identify a use, facility or service located on the premises or a product which is produced, sold or manufactured on the premises. All existing signs which do not conform to the requirements of the ordinance must be removed following expiration of an amortization period, ranging from 90 days to 4 years depending upon the location and depreciated value of the sign.

As originally enacted, the ordinance contained no exception for political signs. On October 19, 1977, the city counsel amended the ordinance to permit "Temporary political campaign signs, including their supporting structures, which are erected or maintained for no longer than 90 days and which are removed within 10 days after the election to which they pertain." (Ord. No. 12189 (New Series).) This amendment may have been prompted by the decision of the Ninth Circuit in [Baldwin v. RedwoodCity \(1976\) 540 F.2d 1360](#), in which that court held an ordinance regulating temporary signs to be an unconstitutional restriction upon political speech.

If enforced as written Ordinance No. 10795 will eliminate the outdoor advertising business in the City of San Diego. Each of the plaintiffs are the owners of a substantial number of outdoor advertising displays (approximately 500 to 800) in the City of San Diego. The displays have varying values depending upon their size, nature and location. Each of the displays has a fair market value as a part of an income-producing system of between \$2,500 and \$25,000. Each display has a remaining useful income-producing life in excess of 25 years. All of the signs owned by plaintiffs in the City of San Diego are located in areas zoned for commercial and industrial purposes. Outdoor advertising increases the sales of products and produces numerous direct and indirect benefits to the public. Valuable commercial, political and social information is communicated to the public through the use of outdoor advertising. Many businesses and politicians and other persons rely upon outdoor advertising because other forms of advertising are insufficient, inappropriate and prohibitively expensive. Many of plaintiffs' signs are within 660 feet and others are within 500 feet of interstate or federal primary highways. The amortization provisions of Ordinance No. 10795 have no reasonable relationship to the fair market value, useful life or income generated by the signs and were not designed to have such a relationship."

The San Diego ordinance, as we shall explain, represents a proper application of municipal authority over zoning and land use for the purpose of promoting the public safety and

welfare. The ordinance recites the purposes for which it was enacted, including the elimination of traffic hazards brought about by distracting advertising displays and the improvement of the appearance of the city. Since these goals are proper objectives for the exercise of the city's police power, the city council, asserting its legislative judgment, could reasonably believe the instant ordinance would further those objectives.

An ordinance restricting land use is valid under the police power if it has a real or substantial relation to the public health, safety, morals or general welfare. ([Associated Home Builders etc., Inc. v. City of Livermore \(1976\) 18 Cal.3d 582, 604, 135 Cal.Rptr. 41, 557 P.2d 473](#); [Miller v. Board of Public Works \(1925\) 195 Cal. 477, 490, 234 P. 381.](#))

Part A of the ordinance declares:

"It is the purpose of these regulations to eliminate excessive and confusing sign displays which do not relate to the premises on which they are located; to eliminate hazards to pedestrians and motorists brought about by distracting sign displays; to ensure that signing is used as identification and not as advertisement; and to preserve and improve the appearance of the City as a place in which to live and work."

It is the intent of these regulations to protect an important aspect of the economic base of the City by preventing the destruction of the natural beauty and environment of the City, which is instrumental in attracting nonresidents who come to visit, trade, vacation or attend conventions; to safeguard and enhance property values; to protect public and private investment in buildings and open spaces; and to protect the public health, safety and general welfare."

Plaintiffs cannot question that a city may enact ordinances under the police power to eliminate traffic hazards. They maintain, however, that the city failed to prove in opposition to plaintiffs' motion for summary judgment that the ordinance reasonably relates to that objective. We hold as a matter of law that an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety. Billboards are intended to, and undoubtedly do, divert a driver's attention from the roadway. Whether this distracting effect contributes to traffic accidents invokes an issue of continuing controversy. But as the New York Court of Appeals pointed out, "mere disagreement" as to "whether billboards or other advertising devices . . . constitute a traffic hazard . . . may not cast doubt on the statute's validity. Matters such as these are reserved for legislative judgment, and the legislative determination, here expressly announced, will not be disturbed unless manifestly unreasonable." ([New York State Thruway Auth. v. Ashley Motor Ct. \(1961\) 10 N.Y.2d 151, 218 N.Y.S.2d 640, 176 N.E.2d 566.](#)) Many other decisions have upheld billboard ordinances on the ground that such ordinances reasonably relate to traffic safety; we cannot find it manifestly unreasonable for the San Diego City Council to reach the same conclusion. As the Kentucky Supreme Court said in [Moore v. Ward \(1964\) 377 S.W.2d 881, 884](#): "Even

assuming (plaintiffs) could produce substantial evidence that billboard signs do not adversely affect traffic safety, . . . the question involves so many intangible factors as to make debatable the issue of what the facts establish. Where this is so, it is not within the province of courts to hold a statute invalid by reaching a conclusion contrary to that of the legislature."

The case for the hazards of private signs rests largely upon common sense and the informed judgments of traffic engineers and other experts. The arguments are complex and sometimes highly technical, but on the whole, the courts are increasingly likely to conclude that regulation of private signs may be reasonably expected to enhance highway safety." (Dowds, Private Signs and Public Interests, in 1974 Institute on Planning, Zoning and Eminent Domain, p. 231.)

We further hold that even if, as plaintiffs maintain, the principal purpose of the ordinance is not to promote traffic safety but to improve the appearance of the community, such a purpose falls within the city's authority under the police power. In contending that aesthetic considerations cannot justify the exercise of the police power to prohibit billboards, plaintiffs rely on [Varney & Green v. Williams \(1909\) 155 Cal. 318, 100 P. 867](#), which held unconstitutional an ordinance of the City of East San Jose prohibiting all advertising billboards. Asserting that the ordinance rested solely on the "promotion of aesthetic or artistic considerations," we stated that "it has never been held that these considerations alone will justify, as an exercise of the police power, a radical restriction of the right of an owner of property . . . ." ([Id. at p. 320, 100 P. at p. 868](#), quoting [City of Passaic v. Patterson Bill Posting Co. \(1905\) 72 N.J.L. 285, 287, 62 A. 267.](#))

Constrained by this precedent, subsequent California Court of Appeal decisions have stated that aesthetic considerations cannot justify an ordinance prohibiting billboards. (See [Desert Outdoor Advertising, Inc. v. County of San Bernardino \(1967\) 255 Cal.App.2d 765, 769, 63 Cal.Rptr. 543](#); [County of Santa Barbara v. Purcell, Inc. \(1967\) 251 Cal.App.2d 169, 173, 59 Cal.Rptr. 345](#); [National Advertising Co. v. County of Monterey \(1962\) 211 Cal.App.2d 375, 379, 27 Cal.Rptr. 136.](#)) Only one decision, however, has actually invalidated a city ordinance on this ground. ([City of Santa Barbara v. Modern Neon Sign Co. \(1961\) 189 Cal.App.2d 188, 191-194, 11 Cal.Rptr. 57.](#)) In all other cases the courts have found some additional ground for the ordinance, such as elimination of driving hazards or promotion of tourist traffic. Relying on such additional grounds, the cases conclude that the ordinance did not become unconstitutional merely because aesthetic considerations may have played some part in motivating its enactment.

Thus we could distinguish the present case from [Varney & Green v. Williams, supra, 155 Cal. 318, 100 P. 867](#), on the ground that the present ordinance was not enacted exclusively for aesthetic purposes. We believe, however, that the holding of *Varney & Green v. Williams*, that aesthetic purposes alone cannot justify assertion of the police power to ban billboards, is unworkable, discordant with modern thought as to the scope of the police power, and therefore compels forthright repudiation.

Because this state relies on its scenery to attract tourists and commerce, aesthetic considerations assume economic value. Consequently any distinction between aesthetic and economic grounds as a justification for billboard regulation must fail. "Today, economic and aesthetic considerations together constitute the nearly inseparable warp and woof of the fabric upon which the modern city must design its future." ([Metromedia, Inc. v. City of Pasadena, supra, 216 Cal.App.2d 270, 273, 30 Cal.Rptr. 731, 733](#); [Burk v. Municipal Court, supra, 229 Cal.App.2d 696, 702, 40 Cal.Rptr. 425.](#)) \he holding of *Varney & Green v. Williams* also conflicts with present concepts of the police power. Most jurisdictions now concur with the broad declaration of Justice Douglas in [Berman v. Parker \(1954\) 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27:](#)

"The concept of the public welfare is broad and inclusive. (Citation.) The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." ([Id., at p. 33, 75 S.Ct. at pp. 102-103.](#)) Although Justice Douglas tendered this description in a case upholding the exercise of the power of eminent domain for community redevelopment, it has since been recognized as a correct description of the authority of a state or city to enact legislation under the police power. ([Village of Belle Terre v. Boraas \(1974\) 416 U.S. 1, 5-6, 94 S.Ct. 1536, 1539, 39 L.Ed.2d 797](#); [City of Phoenix v. Fehlner \(1961\) 90 Ariz. 13, 17, 363 P.2d 607](#); [People v. Stover \(1963\) 12 N.Y.2d 462, 467- 468, 240 N.Y.S.2d 734, 737-38, 191 N.E.2d 272, 274-75](#); [Oregon City v. Hartke \(1965\) 240 Or. 35, 48, 400 P.2d 255](#); [Markham Advertising Co. v. State, supra, 73 Wash.2d 405, 424, 439 P.2d 248.](#)) As the Hawaii Supreme Court succinctly stated: "We accept beauty as a proper community objective, attainable through use of the police power." ([State v. Diamond Motors, Inc. \(1967\) 50 Haw. 33, 36, 429 P.2d 825, 827.](#)) [FN10]

Present day city planning would be virtually impossible under a doctrine which denied a city authority to legislate for aesthetic purposes under the police power. Virtually every city in this state has enacted zoning ordinances for the purpose of improving the appearance of the urban environment and the quality of metropolitan life. Many municipalities engage in projects of one type or another designed to beautify their communities. Indeed, *Varney & Green v. Williams* itself asserted "That the promotion of aesthetic or artistic considerations is a proper object of governmental care will properly not be disputed." ([155 Cal. 318, 320, 100 P. 867, 868.](#)) But as the New York Court of Appeals pointed out, "Once it be conceded that aesthetics is a valid subject of legislative concern the conclusion seems inescapable that reasonable legislation designed to promote that end is a valid and permissible exercise of the police power. . . . (W)hether such a statute or ordinance should be voided should depend upon whether the restriction was 'an arbitrary and irrational method of achieving an attractive . . . community and not upon whether the objectives were primarily aesthetic.' " ([People v. Stover, supra, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272.](#))

In a subsequent decision, the New York Court of Appeals confirmed that aesthetic considerations may justify the exercise of the police power to ban all off-site billboards in a community. ([Suffolk Outdoor Adv. Co., Inc. v. Hulse \(1977\) 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263, app. disp., 439 U.S. 808, 99 S.Ct. 66, 58 L.Ed.2d 101.](#)) "It cannot be seriously

argued," the New York court said, "that a prohibition of this nature is not reasonably related to improving the aesthetics of the community." ([Id.](#), at p. 490, 402 N.Y.S.2d at p. 371, 373 N.E.2d at p. 266.) [FN11] The fact that the ordinance bans billboards in commercial and industrial areas, and that it permits on-site signs, does not demonstrate that the ordinance as a whole lacks a reasonable relationship to improving community appearance. ([E. B. Elliott Adv. Co. v. Metropolitan Dade County](#), *supra*, 425 F.2d 1141, 1152.) "(T)he notion that an extensively commercial or industrial area will be made more attractive by the absence of billboards is open to debate. Since the issue is debatable, however, the modern judicial presumption in favor of legislation (requires the court) to uphold the ordinance as a rational means of enforcing the legislative purpose of preserving aesthetics.

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If the San Diego ordinance reasonably relates to the public safety and welfare, it should logically follow that the ordinance represents a valid exercise of the police power. Plaintiffs contend, however, that the police power is subject to an additional limiting doctrine: That regardless of the reasonableness of the act in relation to the public health, safety, morals and welfare the police power can never be employed to prohibit completely a business not found to be a public nuisance. For the reasons we shall offer, however, we believe that this doctrine, too, conflicts with reality and with current views of the police power. Rather than strive to develop a logical distinction between "regulation" and "prohibition," and to find themselves embroiled in language rather than fact, courts of other jurisdictions in recent decisions have held that a community can entirely prohibit off-site advertising. ([John Donnelly & Sons v. Mallar](#), *supra*, 453 F.Supp. 1272; [Murphy, Inc. v. Westport](#) (1944) 131 Conn. 292, 40 A.2d 177; [John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.](#), *supra*, 369 Mass. 206, 339 N.E.2d 709; [Suffolk Outdoor Adv. Co., Inc. v. Hulse](#), *supra*, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263; [Matter of Cromwell v. Ferrier](#), *supra*, 19 N.Y.2d 263, 279 N.Y.S.2d 22, 225 N.E.2d 749.) These decisions fall within the general principle that a community may exclude any or all commercial uses if such exclusion reasonably relates to the public health, safety, morals or general welfare. ([Town of Los Altos Hills v. Adobe Creek Properties, Inc.](#) (1973) 32 Cal.App.3d 488, 502-504, 108 Cal.Rptr. 271, and cases there cited; see [Associated Home Builders etc., Inc. v. City of Livermore](#), *supra*, 18 Cal.3d 582, 606, fn. 23, 135 Cal.Rptr. 41, 557 P.2d 473.) As the Oregon Supreme Court explained in [Oregon City v. Hartke](#), *supra*, 240 Or. 35, 400 P.2d 255, "(I)t is within the police power of the city wholly to exclude a particular use if there is a rational basis for the exclusion. . . . It is not irrational for those who must live in a community from day to day to plan their physical surroundings in such a way that unsightliness is minimized. The prevention of unsightliness by wholly precluding a particular use within the city may inhibit the economic growth of the city or frustrate the desire of someone who wishes to make the proscribed use, but the inhabitants of the city have the right to forego the economic gain and the person whose business plans are frustrated is not entitled to have his interest weighed more heavily than the predominant interest of others in the community." (Ps. 49-50, 400 P.2d p. 263.) Plaintiffs stress that most of the cases upholding a community ban on billboards or other commercial uses have involved small, predominantly residential, towns or rural localities. Recently, however, the Massachusetts Supreme Judicial Court upheld an ordinance similar to the one at issue here involving a total prohibition of billboards in a densely populated town with a

sizable business and industrial district. ( [John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.](#), supra, 369 Mass. 206, 339 N.E.2d \*865 709.) The court there stated that "We believe that it is within the scope of the police power for the town to decide that its total living area should be improved so as to be more attractive to both its residents and visitors. Whether an area is urban, suburban or rural should not be determinative of whether the residents are entitled to preserve and enhance their environment. Urban residents are not immune to ugliness." (P. 720.)

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Thus the validity of Ordinance No. 10795 under the police power does not turn on its regulatory or prohibitory character, nor upon the size of the city which enacted it, but solely on whether it reasonably relates to the public safety and welfare. As we have explained, the ordinance recites that it was enacted to eliminate traffic hazards, improve the appearance of the community, and thereby protect property values. The asserted goals are proper objectives under the police power, and plaintiffs have failed to prove that the ordinance lacks a reasonable relationship to the achievement of those goals. We conclude that the summary judgment cannot be sustained on the ground that the ordinance exceeds the city's authority under the police power.