

October 23, 1987

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
TRANSIT SHELTER PROGRAM

This report is being sent to advise you of potential legal problems which may arise if the Transit Shelter Program is implemented.

San Diego Municipal Code (the "Code") Section 95.0101 forbids the placement of signs or advertising structures over or upon public property unless otherwise authorized by the Code. The City Manager has utilized Code Section 62.0501 to authorize the placement of sign copy on bus benches after a permit has been obtained from the City Manager's Office.

Approval of the Transit Shelter Program is clearly a policy matter. However, 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. Notwithstanding the fact that advertising has been allowed on bus benches, the implementation of the Transit Shelter Program could undercut the ability of the Sign Administrator and this office to uphold the general ban of signs or advertising structures in the public right-of-way. For example, persons proposing to install billboards on public property could allege that the sign codes were being illegally applied as to them.

Another factor to consider is that the 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 only commercial advertising would be placed in the transit shelters, the argument could be made that the program favors commercial speech over other types of speech, such as that found in political advertising.

It can certainly be argued that the implementation of the Transit Shelter Program is for the public good and helps to further the important government interest of providing for the

safety of its citizens. See *City Council v. Taxpayers for Vincent*, *supra* at 805. However, as a final cautionary note, you should be aware that every exception made to the City's general regulatory scheme on signage may make enforcement more difficult in the future.

Respectfully submitted,

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