

February 16, 1988

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 65.0501 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 code including the placement of billboards and other signs on public property; e.g., *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). 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 my office to uphold the general ban of signs or advertising structures in the public right of way. The fact that the program would increase the number of signs in the public right of way in order to be cost effective is of particular concern.

Another factor to consider is that our 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. 784, 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 be argued that the implementation of the Transit Shelter Program 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, you should be aware that every exception to the City's general regulatory scheme on signage may make enforcement more difficult in the future when the courts look at all the City's sign control measures to determine whether a particular ban is reasonable in

light of ordinances permitting some displays.

Respectfully submitted,

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ALT:pi:474.6.12(x043.1)

RC-88-9