

February 28, 1995
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ADVERTISING ON LIFEGUARD TOWERS

You will shortly be considering a proposal that would allow advertising on certain permanent lifeguard towers within the City of San Diego. This advertising would be in conjunction with the installation of electronic signs which would display the time, temperature and ultraviolet index.

We have reported to you on numerous occasions our concerns with regard to allowing advertising on public property. In a similar context, in 1988 we reported our concerns regarding advertising on transit shelters. A copy of our report to you at that time is enclosed as Attachment 1. Our concerns about the current proposal are very similar.

In particular, although the implementation of the lifeguard tower sign and advertising proposal is clearly a policy matter, that implementation could undercut the ability of the sign administrator and this office to uphold the general ban on signs or advertising structures in the public right-of-way. For example, persons proposing to install billboards on public property may argue that the sign codes are being selectively applied to them, and thus avoid application of the overall sign ordinance.

As indicated in the 1988 report, another factor to consider is that the current sign regulations are "content neutral." Such regulatory schemes are proper since they do not favor one view point or type of speech over another. *City Council v. Taxpayers for Vincent*, 466 U.S. 784, 804 (1984). Because only commercial advertising would be allowed on the lifeguard towers, an argument could be made that the current proposal favors commercial speech over other types of speech, and thus is illegally discriminatory.

It can be argued that the implementation of the current proposal helps to further important government interests by providing for the health and safety of its citizens, in particular through the conveyance of the time, temperature and ultraviolet index. As we have repeatedly warned, however, you should be aware that every exception to the City's general regulatory scheme on signs may make enforcement more difficult in the future because courts would look at all of the City's sign control measures and actions to determine whether a particular ban is

reasonable in light of ordinances permitting some displays.

Respectfully submitted,

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Attachment 1

RC-95-8