January 3, 1990

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
TEMPORARY EXEMPTION OF POLITICAL ADVERTISING AND SIGNS FROM CITY'S SIGN CODE ORDINANCE

I have been asked to respond to a question regarding the legality of exempting political advertising and signs from the provisions of the City's Sign Code Ordinance (codified in the Municipal Code as section 95.0101 et seq.) for a period of three (3) weeks prior to a municipal election. This report is being sent to you to advise you of possible adverse consequences associated with such an action.

Section 95.0101 forbids the placement of advertising structures or signs over or upon public property unless otherwise authorized in the Municipal Code. Exceptions to this general rule enacted over the last couple of years include the allowance of advertising in transit shelters and establishment of the Downtown Banner Program which permits copy to be placed on banners hung along a section of the downtown Broadway corridor.

As you know, the City was 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). Exempting political advertising and signs from the sign code, even on a temporary basis, could seriously undercut the ability of the sign code administrator and my office to continue to uphold the general ban of signs or advertising in the public right-of- way.

There are two primary concerns. The first is that even though political advertising or signs would be exempted for a minimal amount of time, the exemption would commence on a regular basis; i.e. during every election. The cumulative effect of such an exemption would result in a major deviation from the general intent of the City's current sign program.

The second concern revolves around exempting a particular type of speech, in this case political, from the sign code ordinance. 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. 789, 804 (1984).

In City Council v. Taxpayers for Vincent, plaintiffs, Taxpayers for Vincent, sought an injunction to stop enforcement of a local ordinance that prohibited the placement of posters on public utility poles and similar objects. Plaintiffs who wished to place campaign signs on the utility poles, claimed the ordinance created an unconstitutional prohibition of their free speech rights under the First Amendment.

The Supreme Court held against the plaintiffs stating there were sufficient governmental interests, such as traffic control and safety "to justify this content-neutral, impartially administered prohibition against the posting of appellee's temporary signs on public property . . . ." City Council v. Taxpayers for Vincent, 466 U.S. at 817. Speaking directly to the question of exempting political speech, the Supreme Court stated on page 816:

> To create an exception for appellees' political speech and not these other types of speech might create a risk of engaging in constitutionally forbidden content discrimination.

Exempting political signs from the City's sign code would appear to be in direct contraposition to the holding in the Vincent case.

Finally, please be aware that if the City's sign code regulations are challenged, every exception to the overall regulatory scheme will be closely scrutinized to determine if the general ban on signage in the public right-of-way can continue to be justified.

Respectfully submitted,
JOHN W. WITT
City Attorney

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