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TRANSIT BUS STOPS: OWNERSHIP, LIABILITY, AND ACCESS

This report was prepared under TCRP Project J-5, "Legal Aspects of Transit and Intermodal Transportation Programs," for which the Transportation Research Board is the agency coordinating the research. The report was prepared by Jocelyn K. Waite, Waite & Associates, Reno, Nevada. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

The Problem and Its Solution

The nation's transit agencies need to have access to a program that can provide authoritatively researched, specific, limited-scope studies of legal issues and problems having national significance and application to their businesses. The TCRP Project J-5 is designed to provide this insight.

The intermodal approach to surface transportation requires a partnership between transit and other transportation modes.

Transit attorneys have noted that they particularly need information in several areas of transportation law, including environmental requirements; construction and procurement contract procedures and administration; civil rights and labor standards; and tort liability, risk management, and system safety.

In other areas of the law, transit programs may involve legal problems and issues that are not shared with other modes; as, for example, compliance with transit equipment and operations guidelines, Federal Transit Administration (FTA) financing initiatives, and labor or environmental standards.

Applications

Bus stops can create a variety of legal issues associated with ownership, maintenance, accessibility, accommodations, and environment. Bus stops are generally owned by a state or local government entity. Their location may be primarily determined and maintenance provided

pursuant to a cooperative agreement between the government entity and a transit authority or private transit company. However, the responsibility and the duties associated with ownership and possession of a bus stop area may belong to the government entity that owns the land or easement on which it is located. Generally, government entities cannot delegate total responsibility associated with those responsibilities and duties.

Transit agencies are increasingly looking at bus stop location, construction, and use patterns, not only with a goal toward improving services and safety, but also to respond to accessibility concerns. Environmentalists and Americans with Disabilities Act (ADA) advocates have raised challenges regarding access to bus stops as well.

This legal digest should inform transit providers and government officials of the different levels of ownership, liability, and maintenance associated with bus stops and bus shelters; identify the categories of legal issues that are associated with ownership and liability; and provide information on the problems and practices of others who have dealt with such problems, including protective provisions in franchise agreements and service provider contracts. It should be useful to attorneys, transit planners and operations officials, state and local governmental officials, environmental and ADA advocates, and other transit operators.

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TRANSIT BUS STOPS: OWNERSHIP, LIABILITY, AND ACCESS

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I. INTRODUCTION

A. Statement of the Problem

Bus stops and bus shelters can create a myriad of legal issues¹ associated with their ownership, maintenance, and accessibility. Accessibility issues arise both for persons with disabilities under the Americans with Disabilities Act of 1990 (ADA)² and elderly persons whether or not they come under the ADA. Bus stop location and modifications may also have environmental law implications, particularly in the context of bus rapid transit. In addition, First Amendment issues may arise concerning advertising.

1. Purpose

Dealing with the various legal issues requires an understanding of the tort law of the transit agency's jurisdiction, both in terms of general tort liability and liability specific to bus stops and bus shelters; relevant state and local legislation/regulations; federal requirements; and potential federal and state constitutional issues. Numerous operational decisions may flow out of these legal issues, and these issues should be considered in drafting contracts with franchisees and contract operators. This report is meant to provide transit agencies with a foundation for conducting more specific legal research to analyze legal liability in their own circumstances.

2. Focus

The report discusses the primary legal issues that are associated with ownership and/or responsibility for bus stops and bus shelters, including liability for personal injury and property damage; identifies common problems regarding bus stops and bus shelters; and provides

information on possible ways of addressing such problems, including major issues to cover in franchise agreements and service provider contracts. The report also discusses the type of government requirements generally associated with bus stops/bus shelters, including the importance of community input. Examples are provided throughout the report, not as best practices per se, but as potential models that can be modified as necessary for local conditions and to meet varying requirements in state and local law.

3. Scope

Given that the focus of the report is on legal issues that relate to stand-alone bus stops and bus shelters, there are a number of topics related to bus stops that are beyond the scope of the report. These include bus terminals, the duty owed to persons parking near bus stops, and most actions of bus drivers, including the ADA issue of calling out bus stops.³ It is also beyond the scope of the report to consider measures, such as implementing intelligent transportation systems (ITS), which may have multiple benefits that include mitigating disadvantages of certain bus stops.⁴ The report does discuss, however, the liability that may attach where a bus driver stops at other than the designated bus stop. In the case of bus terminals, the terminal operator has both governmental and proprietary functions, and liability may differ depending on which function the claimed injury concerns.⁵ Although bus stops/bus shelters may be an important element in increasing bus ridership,⁶ a discussion of this operational aspect is also

¹ The Transit Cooperative Research Program (TCRP) has already reported on operational considerations for locating and designing bus stops. TEXAS TRANSPORTATION INSTITUTE, TEXAS A&M RESEARCH FOUNDATION, TEXAS A&M UNIVERSITY, GUIDELINES FOR THE LOCATION AND DESIGN OF BUS STOPS (TCRP Report 19, Transit Cooperative Research Program, 1996) (hereinafter referred to as "Texas Transportation Institute"). The issue of placing and spacing bus stops is also addressed in HOWARD P. BENN, BUS ROUTE EVALUATION STANDARDS (TCRP Synthesis 10, Transit Cooperative Research Program, 1995). Bus bulbs have also already been the subject of a TCRP Report: KAY FITZPATRICK, KEVIN M. HALL, STEPHEN FARNSWORTH, MELISA D. FINLEY, EVALUATION OF BUS BULBS (TCRP Report 65, Transit Cooperative Research Program, 2001).

² 42 U.S.C. §12101, *et seq.*

³ See 49 C.F.R. 37.167, Other service requirements; Martin et al. v. Metro. Atlanta Rapid Transit Agency, 225 F. Supp. 2d 1362 (N.D. Ga. 2002) for discussion of requirement of announcing stops. See NATIONAL COUNCIL ON DISABILITY, THE CURRENT STATE OF TRANSPORTATION FOR PEOPLE WITH DISABILITIES IN THE UNITED STATES, at 26–30, 161, 177 (June 13, 2005) for discussion of this issue, www.ncd.gov/newsroom/publications/2005/pdf/current_state.pdf.

⁴ For example, providing accurate bus arrival information may allow passengers to avoid lingering at bus stops that they perceive as unsafe. See *ITS & Public Safety: How Technology and Collaboration Can Save Lives*, 80 n.9 PUBLIC MANAGEMENT A1(15) (1998).

⁵ See LARRY W. THOMAS, STATE LIMITATIONS ON TORT LIABILITY OF PUBLIC TRANSIT OPERATIONS 9-10 (Legal Research Digest No. 3, Transit Cooperative Research Program, 1994); § I.C., *General Tort Liability Issues*, *infra* this report.

⁶ *E.g.*, South Lake Union Transportation Study, <http://www.ci.seattle.wa.us/transportation/slureport/AppA3SL>

beyond the scope of this report. School bus transportation is generally beyond the scope of the report,⁷ although the report does touch on transportation of school children by transit agencies. For the most part, issues presented by paratransit door-to-door service are beyond the scope of the report.⁸ Finally, the report does not cover transit agency liability for incidents that are not particular to bus stops, such as a bus striking another vehicle or a pedestrian.

B. Description of Bus Stops and Bus Shelters

In this report the term “bus stop” refers to a place along a curb or side of the road where a bus comes to a halt briefly to allow passengers to board or alight. The term does not include areas where buses may stop for transit layover/staging, characterized by lengthy stops made for purposes other than allowing passengers to board or alight. For purposes of discussion in this report, unless otherwise specified the term “bus stop” will be used to include bus stops that have bus shelters.

Bus stops may be marked or unmarked. Signs marking bus stops signal to the driver where to stop the bus and the passengers where to wait.⁹ A driver-created bus stop is one other than a predesignated location indicating where a bus will stop. Bus stops may or may not have seating.¹⁰ Once the decision is made to install benches, design and location issues must be decided.¹¹ Bus stops with benches have maintenance issues not present for bus stops without this type of street furniture.

In this report the term “bus shelter” refers to a structure that affords persons waiting at a bus stop protection from the weather. A bus shelter may include seating, lighting, or other amenities.

[UWorkSession1Summary.pdf](#); Rockland County Land Use Planning, <http://www.co.rockland.ny.us/planning/goals.htm>.

⁷ See Tracy A. Bateman, Annotation, *Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Associated with Transportation of Students*, 23 A.L.R. 5th 1 (2007). See also *Hunt v. Clarendon Nat'l Ins. Serv.*, 691 N.W.2d 904 (Wis. App. 2004) (additional safety procedures to assist alighting students may have been required to meet duty of exercising very high degree of care for the safety of passengers); *Bassett v. Lakeside Inn*, 44 Cal. Rptr. 3d 827, 140 Cal. App. 4th 863 (Cal. App. Dist. 3 2006) (California Education Code § 44808 limits school district's liability for injuries suffered off school property, and such immunity extends beyond liability imposed under the Education Code).

⁸ Transit agencies must provide paratransit from the origin to the destination, but have discretion in deciding whether to provide door-to-door or curb-to-curb service. Federal Transit Administration, *Origin-to-Destination Service*, DEPARTMENT OF TRANSPORTATION DISABILITY LAW GUIDANCE, www.fta.dot.gov/civilrights/ada/civil_rights_3891.html.

⁹ BC Transit, Transit Stop Installation Checklist 6, (hereinafter referred to as “BC Transit”), www.bctransit.com/corporate/resources/pdf/res-urban-22.pdf.

¹⁰ See TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, at 74.

¹¹ See BC Transit, *supra* note 9, for sample standards for installation and location.

A major distinction between a “bus stop” and a “bus shelter” as used in this report is that legal and operational issues may arise due to the structural characteristics of bus shelters. The term “bus shelter” is generally used in the report where the particular characteristics of a bus shelter raise issues not present for bus stops without shelters.

Bus shelters do offer advantages. Providing accessible covered shelters improves accessibility to transit.¹² “People are more likely to ride a bus if they don't have to wait in the rain.”¹³ Beyond providing such basic protection, bus shelters may be considered assets in attracting ridership.¹⁴ Bus shelter franchisees claim increases in ridership after shelters are installed.¹⁵

C. General Tort Liability Issues

“To prove negligence, a plaintiff must establish the existence of a duty, a breach of that duty, resulting injury, and proximate causation between the breach of the duty and the resulting injury.”¹⁶ This subsection discusses general principles of tort liability relevant to bus stops. The intent of this discussion is to provide transit agencies with a basis for conducting their own legal research, not to provide an exhaustive analysis of the general principles. To that end, examples are provided of the law in selected jurisdictions. Specific applications of these principles will vary by jurisdiction. In addition, the focus is on the liability of public entities. The liability of service providers such as maintenance companies—generally governed by standard negligence principles—is not discussed.

1. Sovereign Immunity

A threshold question is whether the transit agency is subject to tort liability at all, as some jurisdictions re-

¹² Bicycle and Pedestrian Facility Design Best Practices, at 9 (Oct. 2005),

www.sactaqc.org/Resources/Agreements/UniversalDesign.pdf.

¹³ OREGON DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION, OREGON BICYCLE AND PEDESTRIAN PLAN 100 (1995), § II, *Facility Design Standards*,

www.oregon.gov/ODOT/HWY/BIKEPED/docs/bp_plan_2_ii.pdf

¹⁴ TriMet, 3 Revitalizing Portland's Downtown Mall (Jan. 2003),

www.trimet.org/pdfs/portlandmall/Revitalizing_Portlands%20Downtown_Mall%20Jan03.pdf. See also Seattle Office of Economic Development, Metro Bus Shelters, www.seattle.gov/economicdevelopment/biz_district_guidIde/biz_dist_pages/METRO_bus_shelters.htm.

¹⁵ Cemusa North America claimed customer surveys showed a 10 percent increase in ridership after Cemusa installed bus shelters for VIA Metropolitan Transit in San Antonio, Texas. *Local Bus Ridership Up Since VIA Built Shelters*, SAN ANTONIO BUSINESS JOURNAL, Nov. 20, 2006, <http://www.sanantonio.bizjournals.com/sanantonio/stories/2006/11/20/daily9.html>.

¹⁶ *Kuehn v. Snohomish County Pub. Transp. Benefit Area Corp.*, 109 Wash. App. 1046, 2001 Wash. App. LEXIS 2730, n.4 (Wash. App. Div. 1 2001), citing *Schooley v. Pinch's Deli Market*, 134 Wash. 2d 468, 474, 951 P.2d 749 (1998).

tain sovereign immunity in general¹⁷ or have provided it to their transit agencies, at least under some circumstances. For example, Dallas Area Rapid Transit is immune from suit unless immunity is waived, and such immunity is a bar to the court's jurisdiction.¹⁸ Illinois has conferred immunity on the Chicago Metropolitan Transit Agency from liability "for failure to provide a security or police force or, if a security or police force is provided, for failure to provide adequate police protection or security, failure to prevent the commission of crimes by fellow passengers or other third persons or for the failure to apprehend criminals."¹⁹ The Washington Metropolitan Area Transit Authority (WMATA) has immunity under the WMATA Compact and District of Columbia court decisions.²⁰

While some states have retained sovereign immunity, it is more common for states to waive immunity via statute, although there are usually statutory exceptions to the waiver and limitations on the amounts that can be recovered. Whether common law immunity has been retained, waived via statute, or restated via statute, of course varies by jurisdiction. Each transit agency must ascertain its own legal status.²¹

In addition to being available to public transit agencies, the sovereign immunity defense may be available to a private corporation running a transit system on behalf of the state. Connecticut has articulated the following criteria for allowing a private corporation to assert such a defense:

...whether: (1) the state created the entity and expressed an intention in the enabling legislation that the entity be treated as a state agency; (2) the entity was created for a public purpose or to carry out a function integral to state government; (3) the entity is financially dependent on the state; (4) the entity's officers, directors or trustees are state functionaries; (5) the entity is operated by state employees; (6) the state has the right to control the entity; (7) the entity's budget, expenditures and appropriations are closely monitored by the state; and (8) a judgment

¹⁷ For example, in California, all government tort liability must be based on statute. *Rodriguez v. Inglewood Unified Sch. Dist.*, 186 Cal. App. 3d 707, 716, 230 Cal. Rptr. 823 (1986). And the intent of the California Tort Claims Act is "to confine potential governmental liability to rigidly delineated circumstances." *Brown v. Poway Unified Sch. Dist.* 4 Cal. 4th 820, 829, 843 P.2d 624 (1993).

¹⁸ *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003).

¹⁹ Section 27 of the Metropolitan Transit Agency Act, 70 ILCS 3605/27, <http://law.justia.com/illinois/codes/chapter15/982.html>. See *Hopkinson v. Chicago Transit Agency*, 211 Ill. App. 3d 825, 570 N.E.2d 716 (Ill. 1st Dist. 1991).

²⁰ See discussion at § I.C.2., *Exceptions infra* this report.

²¹ See THOMAS, *supra* note 5; STUART M. SPEISER, CHARLES F. KRAUSE, & ALFRED W. GANS, 5 THE AMERICAN LAW OF TORTS, at ch. 17, *Tort Claims Acts; Liability of Public Sovereignities or Bodies* (1988). See §§ 17:23 and 17:24 for discussion of state tort claims acts in some 30 states.

against the entity would have the same effect as a judgment against the state. (Footnotes omitted)²²

In *Gordon, supra*, the private company that managed the transit system in question attempted to assert sovereign immunity against a claim that it should have obtained uninsured motorist coverage. The court held that the private company met five of the eight criteria, including operating a governmental function, and was entitled to assert sovereign immunity.

Some state statutes provide that the purchase of liability insurance is deemed a waiver of sovereign immunity.²³ Since the effect of purchasing insurance will vary depending on the statute being interpreted, transit agencies should consult controlling state and local law on this issue.

2. Exceptions

Where the transit agency may be subject to tort liability, exceptions generally apply. Perhaps the most important exception is that for discretionary decisions. This exception is modeled on the Federal Tort Claims Act.²⁴ A key analytical factor is the level of decision-making at which discretion is exercised.²⁵ In general, driving a bus is considered ministerial, rather than discretionary, and therefore not immune to suit.²⁶ The District of Columbia Circuit Court of Appeals has held that employees of WMATA "enjoy absolute immunity from state-law tort actions when the conduct at issue falls 'within the scope of their official duties and the conduct is discretionary in nature.'²⁷

A less common distinction is that between governmental functions (immune) and proprietary functions (not immune).²⁸ California, for example, long ago abrogated the doctrine of governmental immunity,²⁹ although the *Muskopf* rule was suspended legislatively and then partially reinstated, resulting in some limitations on governmental liability and some limitations on remedies.³⁰ Where the exception is recognized, the control and function of bus companies is generally considered a governmental function.³¹ New York courts have held that absent a special relationship with an injured party, the New York City Transit agency cannot be held liable for an act or omission related to its governmental

²² *Gordon v. H.N.S. Management Co.*, 861 A.2d 1160 (Conn. 2004).

²³ 18 McQuillin Mun. Corp. § 53.02.10, 53.02.30 (3d ed.).

²⁴ 28 U.S.C. §§ 2671 *et seq.*

²⁵ THOMAS, *supra* note 5, at 5–6.

²⁶ *Id.* at 6, *citing* *Garza v. Salvatierra*, 846 S.W.2d 17, 22 (Tex. App. San Antonio 1992).

²⁷ *Beebe v. WMATA*, 129 F.3d 1283, 1289 (D.C. Cir. 1997).

²⁸ NORMAN J. LANDAU & EDWARD C. MARTIN, 3 PREMISES LIABILITY LAW AND PRACTICE § 12.04[2][a] (2006).

²⁹ *Muskopf v. Corning Hospital Dist.*, 55 Cal. 2d 211, 216–17, 359 P.2d 457, 460 (1961). See note 17, *supra*.

³⁰ *Heieck and Moran v. City of Modesto*, 64 Cal. 2d 229, 231–32, 411 P.2d 105, 106–107 (1966).

³¹ 8 McQuillin Mun. Corp. § 53.30, *supra* note 23.

authority.³² Some jurisdictions provide immunity under both discretionary and governmental theories: In addition to case law providing WMATA with immunity for discretionary actions,³³ the WMATA Compact provides immunity to WMATA for torts committed in the exercise of governmental functions.³⁴

Application of the distinction between governmental and proprietary functions is not always clear. For example, failure to lock a subway gate has been held to be a governmental function,³⁵ while allegations that transit employees had seen an assault on a passenger but not called police have been held to relate to proprietary functions.³⁶ Notably, numerous New York courts have declined to hold that lapses in proper maintenance, including adequate lighting, involve proprietary functions. Several of these courts have held that lack of illumination at a subway exit involved security, a governmental function, and the transit agency was therefore not subject to liability absent a showing of a special relationship between the transit agency and the injured party.³⁷

In addition, it is important to determine whether the jurisdiction in question has provided a statutory waiver of the immunity for exercises of governmental functions. For example, as noted *supra*, under Texas law transit service is a governmental function with immunity from suit, absent an express statutory waiver.³⁸ However, there is such a waiver for personal injury and death caused by a condition or use of tangible personal or real property if the governmental unit would, were it

a private person, be liable to the claimant according to Texas law.³⁹

Where the public entity may be liable for injury related to its proprietary function, premises liability principles will be applied.⁴⁰ In such cases, where there is an allegation of a premises defect, the duty owed may vary depending on whether it is owed to a licensee (lower standard of care) or invitee (higher standard of care).⁴¹

Where there is a government mandate, the transit agency cannot claim governmental immunity when it fails to follow the mandate.⁴²

3. Public Duty Rule

The public duty rule may also come into play in assessing municipal liability. Under that rule, subscribed to by the majority of jurisdictions,⁴³ where the municipality has a duty to the general public, as opposed to a particular individual, breach of the duty does not result in individual tort liability.⁴⁴ The duty to provide police protection is generally held to be a public duty.⁴⁵ Ohio has applied the public duty rule to regional transit agencies, holding transit agencies not liable for assaults committed at transit agency stations.⁴⁶ In *Drexler v. Greater Cleveland Regional Transit Agency*, the court

³⁹ *Id.*, citing TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(2) (Vernon 2005).

⁴⁰ See generally LANDAU ET AL, *supra* note 28.

⁴¹ See, e.g., Thomas, 168 S.W.3d at 325–26:

The duty owed by a governmental entity to a licensee is not to injure the licensee by willful, wanton, or grossly negligent conduct, and to use ordinary care either to warn the licensee of, or make reasonably safe, a dangerous condition of which the owner is aware and the licensee is not. State Dept. of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 237 (Tex. 1992). If the claimant pays for the use of the premises, the limitation of duty under section 101.022 does not apply and the governmental entity owes the claimant the duty owed to an invitee. See Tex. Civ. Prac. & Rem. Code Ann. § 101.022(a) (Vernon 2005). A governmental entity has the duty to warn an invitee of dangerous conditions of which the government has knowledge or which the government would have discovered in the exercise of ordinary care. City of San Antonio v. Hartman, 155 S.W.3d 460, 465 (Tex. App.-San Antonio 2004, pet. filed) (citing Payne, 838 S.W.2d at 237). That duty also requires the owner to use ordinary care to reduce or eliminate an unreasonable risk of harm created by the condition. Hartman, 155 S.W.3d at 465.

⁴² See THOMAS, *supra* note 5, at 12.

⁴³ 18 McQuillin, *supra* note 23, § 53.24.

⁴⁴ *Id.* § 53.04.25.

⁴⁵ *Id.* § 53.04.50.

⁴⁶ Shelton v. Greater Cleveland Reg'l Transit Agency, 65 Ohio App. 3d 665, 584 N.E.2d 1323, 1331 (Ohio 8th Dist. 1989); Drexler v. Greater Cleveland Reg'l Transit Agency, 80 Ohio App. 3d 367, 609 N.E.2d 231, 233–234 (Ohio App. 8th Dist. 1992). The court also found that even though R.C. 2744.01(G)(2)(c) includes the establishment, maintenance, and operation of a transit company within the definition of a proprietary function, given that provision or nonprovision of police services is a governmental function immune from liability under R.C. 2744(C)(2)(a), the transit agency was also entitled to summary judgment under R.C. Chapter 2744. 609 N.E.2d 234–35.

³² Weiner v Metro. Transp. Auth., 55 N.Y.2d 175, 433 N.E.2d 124 (N.Y. 1982); Clinger v. N.Y. City Tr. Auth., 85 N.Y.2d 957, 650 N.E.2d 855 (N.Y. 1995).

³³ Beebe v. WMATA, 129 F.3d 1283, 1289 (D.C. Cir. 1997).

³⁴ WMATA Compact § 80, Liability for Contracts and Torts:

The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agents committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

www.wmata.com/about/board_gm/compact.cfm#Contracts.

³⁵ Calero v. N.Y. Transit Agency, 563 N.Y.S.2d 109, 110, 168 A.2d 659 (N.Y. App. 1990).

³⁶ Crosland v. N.Y. City Transit Agency, 110 A.D. 2d 148, 149, 493 N.Y.S.2d 474, 476, 480 (N.Y. App. 1985).

³⁷ Rivera v. N.Y. City Transit Agency, 585 N.Y.S.2d 367, 184 A.D. 2d 417 (N.Y. App. 1st Dep't 1992).

³⁸ Dallas Area Rapid Transit v. Whitley, 104 S.W.3d 540, 542 (Tex. App. 2002); Dallas Area Rapid Transit v. Thomas, 168 S.W.3d 322, 325 (Tex. App. 5th Dist. 2005), citing TEX. TRANSP. CODE ANN. § 452.052(c) (Vernon 1999).

found that the complaint could only be characterized as failure to provide police protection, not a premises liability case against a common carrier.⁴⁷

4. Procedural Limitations

Even those states that allow tort actions against transit agencies may impose procedural limitations or cap the damages that are recoverable.⁴⁸ Such damage caps have been generally,⁴⁹ but not always,⁵⁰ upheld. In any event, even where damages against transit agencies are allowed, punitive damages are often—but not always⁵¹—disallowed, either by statute⁵² or case law.⁵³

In addition, some states may specify statutory remedies that must be pursued for recovery. For example, where a debarking passenger was injured by an obstruction in the right-of-way, the Connecticut Supreme Court held that the condition that caused his injuries was, as a matter of law, a highway defect and that therefore the plaintiff's exclusive remedy was under the state's defective highway statute.⁵⁴

D. Applied in Bus Stop Context

Assuming that an agency can have tort liability as a general matter, it is important to consider whether any

exceptions apply, and if not, whether the transit agency has breached a duty of care resulting in injury proximately caused by the breach. Even if these elements are met, a claim may be derailed on procedural grounds.⁵⁵

1. Exceptions

Two common situations where exceptions to sovereign immunity are likely to come into play are driver-created bus stops and design immunity.

In the case of driver-created bus stops, the analysis is likely to draw the distinction between the type of decision-making that is involved in changing bus routes or formally designating bus stops, and that involved in deciding where to stop at a particular intersection. When faced with this question, a Tennessee court held that the decision to change a school bus route was a planning decision within the discretionary function exception, involving balancing factors, assessing priorities, and allocating resources, and was therefore the type of decision meant to be immune from liability. However, since there is reasonably specific guidance on stopping the bus, the bus driver's decision about where to stop at a specific intersection was held to be an operational act not within the discretionary function exception to governmental immunity.⁵⁶ California has also held a bus driver's decision as to exactly where to stop a bus to be an operational act not entitled to immunity.⁵⁷ However, a Texas court held the act of discharging students from a school bus to be discretionary, finding the state guide on guiding students across the street to constitute a recommendation, not a mandate.⁵⁸

Design immunity is intended to prevent a jury from second-guessing a public entity's decision regarding the plan or design of a public construction project or other public improvement.⁵⁹ The statutory basis for such immunity may vary, as may the defenses against it. In California, for example, in order to raise a design immunity defense, the public entity must show "(1) a causal relationship between the plan or design and the accident, (2) discretionary approval of the plan or design prior to construction and (3) the existence of substantial evidence supporting the reasonableness of the adoption of the plan or design."⁶⁰ The immunity may be lost where a public entity had actual or constructive

⁴⁷ *Id.*

⁴⁸ THOMAS, *supra* note 5, at 9–11.

⁴⁹ *Lienhard v. State*, 417 N.W.2d 119 (Minn. App. 1987); *Lyles v. Commonwealth*, Dep't of Transp., 512 Pa. 322, 516 A.2d 701 (Pa. 1986) (holding that provision of Pennsylvania Sovereign Immunity Act limiting tort liability of Commonwealth party to \$250,000 did not violate the equal protection provisions of the federal or Pennsylvania constitutions); *Schuman v. Chicago Transit Agency*, 407 Ill. 313, 95 N.E.2d 447 (Ill. 1950) (rejecting a constitutional challenge to the notice of claim requirement and the reduced statute of limitations for personal injury suits against CTA).

⁵⁰ *Gladon v. Greater Cleveland Reg'l Transit Agency*, 75 Ohio St. 3d 312, 662 N.E.2d 287 (Ohio 1996).

⁵¹ *Magaw v. Mass. Bay Transp. Auth.*, 21 Mass. App. Ct. 129, 485 N.E.2d 695 (Mass. App. 1985) (stating that any limitation on the transportation authority's tort liability is for the legislature).

⁵² *E.g.*, CAL. GOVT' CODE § 818 (West 1980) (no exemplary damages); FLA. STAT. ANN. § 768.28 (5) (West 1986) (no punitive damages); TEX. GOVT' CODE ANN. § 101.024 (West 1986) (same); 42 PA. CONS. STAT. § 8521(c) (West 1982) (omitting punitive damages from categories of recoverable damages).

⁵³ *Thomas*, *supra* note 5, at 11–12, citing *Teart v. Washington Metro. Area Transit Agency*, 686 F. Supp. 12, 14 (D.D.C. 1988) (refusing to grant punitive damages in the absence of an express statutory grant); *Metro. Atlanta Rapid Transit Agency v. Boswell*, 261 Ga. 427, 405 S.E.2d 869 (Ga. 1991); *George v. Chicago Transit Agency*, 374 N.E.2d 679 (Ill. App. Ct. 1978). *See also* *Boyles v. Greater Peoria Mass Transit Dist.*, 58 Ill. App. 3d 692, 113 Ill. 2d 545, 101 Ill. Dec. 847, 499 N.E.2d 435 (1986) (former employee of mass transit district was precluded from recovering punitive damages under Local Governmental and Governmental Employees Tort Immunity Act).

⁵⁴ *Ferreira v. Pringle*, 255 Conn. 360, 766 A.2d 400 (Conn. 2001).

⁵⁵ *See* discussion under § I.D.2., *Procedural Issues*, *infra* this report.

⁵⁶ *Bowers v. City of Chattanooga*, 826 S.W.2d 427, 429 (Tenn. 1992).

⁵⁷ *Bonanno v. Central Contra Costa Transit Agency*, 30 Cal. 4th 139, 65 P.3d 807 (Cal. 2003). *See* discussion of *Bonanno* in §§ II.A.2, *Duty to Whom*, II.B.1, *Description/Extent of Duty*, II.B.2, *Duty Owed By*, and II.C.1, *Description/Extent of Duty*, *infra* this report.

⁵⁸ *Cortez v. Weatherford Indep. Sch. Dist.*, 925 S.W.2d 144 (Tex. App. 2d Dist. 1996).

⁵⁹ *Baldwin v. State of Cal.*, 6 Cal. 3d 424, 432, 491 P.2d 1121, 1126, 1127–1128 n.7, 434 (1972).

⁶⁰ *Higgins v. State of Cal.*, 54 Cal. App. 4th 177, 185, 62 Cal. Rptr. 2d 459, 464 (1997).

notice of changed conditions that rendered the design dangerous, but failed to remedy the danger.⁶¹ Likewise in New York, where the city fails to exercise due care in approving a defective design for a bus shelter, and then fails to take reasonable steps to alleviate the danger once it becomes aware of the dangerous condition, qualified immunity will be overcome.⁶² The District of Columbia, however, has held that the original decision to locate a bus stop is subject to perpetual design immunity.⁶³

2. Procedural Issues

Even where the transit agency is subject to liability, claims may be defeated on procedural grounds, such as failing to file a claim within the statutory timeframe. For example, claims against the New York City Transit agency for personal injury, wrongful death, or damage to real or personal property “are subject to the requirements of General Municipal Law § 50-i, which requires that any action be commenced within 1 year and 90 days of the event upon which the claim is based.”⁶⁴ Such limitations are operative regardless of whether the public entity was acting in a governmental or proprietary capacity.⁶⁵

E. Summary of Important Principles

Liability may be:

- Precluded under state sovereign immunity law (case law or statute).
- Entire or partial.
- Shielded for particular action complained of under discretionary or governmental exceptions.
- Precluded by public duty rule, particularly in relation to security issues.
- Found only where transit agency’s action or inaction proximately causes injury.

Procedural requirements may limit, or even preclude altogether, recovery for damages.

II. LEGAL LIABILITY FOR PERSONAL INJURY/PROPERTY DAMAGE RELATED TO BUS STOPS/BUS SHELTERS

A. In General

Liability for bus stop-related incidents can be significant. Even a small share of liability can translate into considerable financial burden: In *Bonanno*, *supra*, liability for 1 percent of the damages amounted to \$1.6

million.⁶⁶ In the wake of *Bonanno*, some local governments may be reluctant to install shelters because of the potential liability.⁶⁷

Establishing liability for injury or property damage requires a determination of which entity has a duty of care to the injured party, the breach of which duty was the proximate cause of the injury. That determination will turn in part on which entity has ownership or control over the bus stop.

The local jurisdiction often owns the areas where the bus stops are located. Thus ownership/responsibility for the bus stops themselves generally lies with the local jurisdiction, but in some instances—particularly in the case of bus shelters, which may be controlled by another entity—the responsibility may lie with the transit agency or a private entity.

The varying ownership/control will affect the duty of care owed and thus liability. For example, where a transit agency does not have ownership or maintenance responsibility for a bus stop, and did not, through its actions or those of its bus driver, create a dangerous condition causing injury, the injured party does not have a cause of action, as a matter of law, against the transit agency.⁶⁸ Where the transit agency does have control over the area where the injury took place, but has not created the dangerous condition, in order to show breach of duty the plaintiff must establish actual or constructive notice and a reasonable opportunity to remedy the condition.⁶⁹ Note that enabling legislation, discussed *infra*, may set liability, either directly or by determining ownership and/or responsibility for maintenance and operation of bus stops/bus shelters.

This subsection discusses the general parameters of the duties of care that may be owed related to bus stops; which entities may owe a duty of care; how the passenger status may affect the duty owed; persons to whom a duty of care may be owed; the contexts in which a duty of care may arise; and the principal type of injury that may occur. Placement, design, and maintenance of bus stops may all pose different issues about duty of care, in terms of which entity owes the duty, the extent of the duty, and to whom it is owed. The subsequent subsections of Section II discuss in more detail these issues concerning duty of care. While the local jurisdiction is often responsible for the condition of the bus stop, the

⁶⁶ Paul Jewel, *Bus Stops: It’s All About the “Curb Appeal,”* www.nelsonnygaard.com/articles/article_busstops.htm.

⁶⁷ Minutes of a Regular Meeting of the City Council of the City of Coronado, 1825 Strand Way, Coronado, CA 92118, Tuesday, April 15, 2003 (city attorney recommends against city-sponsored shelter because of potential liability), http://service.govdelivery.com/service/docs/CACORON/CACORON_1/CACORON_1_20030415_en.htm.

⁶⁸ See *Norris v. Westside Transit Line and/or American Transit Corp.*, 841 So. 2d 920 (La. App. Cir. 5 2003).

⁶⁹ *Lewis v. Metro. Transp. Auth.*, 99 A.D. 2d 246, 472 N.Y.S.2d 368 (N.Y. App. 1st Dep’t 1984) (plaintiff injured after allegedly slipping on oily substance on train platform; no cause of action because no showing of actual or constructive notice on part of defendant of allegedly dangerous condition).

⁶¹ Baldwin, 6 Cal. 3d at 434.

⁶² Flynn v. Farias, 528 N.Y.S.2d 486 (1988).

⁶³ *McKethean v. Wash. Metro. Area Transit Agency*, 588 A.2d 708, 711 (D.C. App. 1991).

⁶⁴ *Petrucci v. City of N.Y.*, 167 A.D. 2d 29, 569 N.Y.S.2d 624 (N.Y. App. 1st Dep’t 1991).

⁶⁵ *McGuire v. City of N.Y.*, 153 N.Y.S.2d 368 (1956).

primary focus of the analysis of this section is on potential liability to the transit agency.

In all instances, liability may vary based on state statutes and case law. Thus it is expected that transit agencies will use the cases cited as a basis for their own research in their specific jurisdictions.

1. Duties Owed

Duties that may be owed related to bus stops include the common carrier's duty of care to passengers, a municipality's duty to maintain its streets and sidewalks, and for bus shelter franchisees, a property owner's duty of reasonable care to business invitees. Contractors' duties will generally be governed by standard negligence principles, not discussed here. Ownership of bus stops varies by jurisdiction.⁷⁰ Usually the local, county, or state government is responsible for the design, construction, and maintenance of streets and sidewalks.⁷¹ However, in some circumstances, based on agreement, statute, or specific actions of the transit agency, the transit agency may be responsible for the conditions of the sidewalk or other area next to the bus stop. And in some jurisdictions, adjacent private property owners are responsible for sidewalk repairs.⁷² Assuming that the entity has the requisite ownership or control over the bus stop to owe a duty of care, the standards of care are as follows:

Transit agency.— Generally, the transit agency has the utmost standard of care to meet when it is acting in

⁷⁰ Examples of municipalities that own or are otherwise responsible for bus stops/shelters:

- Alameda, California, www.alamedatransit.org/projects/shelters/index.html.
- Lincoln, Nebraska, www.lincoln.ne.gov/city/finance/purch/pdf/con05219.pdf.
- Mesa, Arizona, www.cityofmesa.org/transportation/street_maintenance.aspx.
- Temple City, California, www.ci.temple-city.ca.us/parksrec.asp.
- West Covina, California, www.westcov.org/council/budget2006/page2a.html.

Examples of transit agencies that own or are otherwise responsible for bus stops/shelters:

- AC Transit, www.actransit.org/aboutac/bod/memos/e279fc.pdf.
- Regional Transportation Commission of Southern Nevada, www.rtsouthernnevada.com/otm/06April/busshelter.htm.
- St. Cloud Metropolitan Transit Commission (Metro Bus), www.stcloudmtc.com/minutes/.pdf.
- VIA Metropolitan Transit (Bexar County/San Antonio), www.neighborhoodlink.com/demo/via/index.htm.
- WMATA, www.ci.alexandria.va.us/city/mgmt_budget/fy05budgetmemos/memo75.pdf.

⁷¹ LANDAU ET AL., *supra* note 28, § 8.03[1].

⁷² For example, in St. Louis, Missouri, property owners are responsible for sidewalk repairs. Jeremy Kohler, *Path of Resistance*, Dec. 2005, www.disabilityrights.org/1205.htm.

the capacity of common carrier.⁷³ The theory justifying this duty is that passengers rely on the carrier's professional skill and judgment.⁷⁴ California, for example, imposes a duty by statute of utmost care and diligence on common carriers.⁷⁵ Wisconsin imposes a duty of the highest degree of care for passengers' safety:

[A] common carrier must exercise the highest degree of care for their safety. The care required is the highest that can be reasonably exercised by persons of vigilance and foresight when acting under the same or similar circumstances, taking into consideration the type of transportation used and the practical operation of its business as a common carrier.⁷⁶

Although the Wisconsin court later described the degree of care as ordinary, it noted that the ordinary care required of common carriers "requires a more heightened degree of care than the ordinary care that is required of others."⁷⁷

Connecticut has expressed the common carrier duty as requiring the common carrier "to use the utmost care consistent with the nature of its business to guard its passengers against all dangers which might reasonably and naturally be expected to occur, in view of all the circumstances."⁷⁸ Where, however, the danger is one that the carrier is neither aware of nor had reason to be aware of, there is no breach of the duty.⁷⁹

Maryland has held that a common carrier has a duty to exercise the "highest degree of care that is consistent with its mode of transport to ensure the safety of its passengers."⁸⁰

Rhode Island has held that "a common carrier owes to a passenger a duty to exercise the highest degree of care that is consistent with the orderly conduct of its business."⁸¹

Some states impose a lesser standard: reasonable care under the circumstances.⁸²

Regardless of the standard of care, it is generally held that common carriers are not insurers of their passen-

⁷³ 18 McQuillin, *supra* note 23, § 53.108, n.2; 2A SPEISER ET AL., *supra* note 21, § 9:19, Duty to prevent criminal acts of third persons; liability to victim harmed by criminal acts of third persons, at 471.

⁷⁴ *White v. Metro. Gov't of Nashville and Davidson County*, 860 S.W.2d 49, 52 (Tenn. App. 1993).

⁷⁵ *Shannon v. Central-Gaither Union Sch. Dist.*, 133 Cal. App. 124, 23 P.2d 769 (Cal. App. 1933), citing CAL. CIVIL CODE § 2100.

⁷⁶ *Hunt v. Clarendon Nat'l Serv.*, 278 Wis. 2d 439, 691 N.W.2d 904 (2004).

⁷⁷ *Id.*

⁷⁸ *Josephson v. Meyers*, 180 Conn. 302, 429 A.2d 877, 879 (Conn. 1980).

⁷⁹ *See Parlato v. Conn. Transit*, 181 Conn. 66, 434 A.2d 322 (Conn. 1980).

⁸⁰ *Wash. Metro. Area Transit Agency v. Reading*, 109 Md. App. 89, 674 A.2d 44 (1996).

⁸¹ *Kelly v. R.I. Pub. Transit Agency*, 740 A.2d 1243 (R.I. 1999).

⁸² 2A SPEISER ET AL., *supra* note 21, § 9:30, n.91.

gers' safety.⁸³ Assuming the transit agency has not created a dangerous condition, in order to show breach of duty the plaintiff must establish that the transit agency had actual or constructive notice of the condition and a reasonable opportunity to remedy the condition.⁸⁴

Municipality.—The city's decision of where to locate a bus stop may be immune from challenge as a governmental function.⁸⁵ Nonetheless, a public entity may be liable for dangers created by public property; such dangers may be due to adjoining property when the users of the public property are necessarily exposed to the risks posed by the adjoining property.⁸⁶

If the municipality is not immune, the duty of care may include a duty to warn of dangerous conditions, such as oncoming traffic.⁸⁷ The duty to warn of unsafe conditions may vary depending on the status of the party being warned. For example, Texas distinguishes between the duty of ordinary care owed a licensee to either make conditions reasonably safe or warn of a dangerous condition of which the governmental entity is aware and the licensee is not, and the duty owed an invitee to warn of a dangerous condition of which the governmental entity knows or would have known in the exercise of ordinary care, and to reduce or eliminate any unreasonable risk of harm posed by the dangerous condition.⁸⁸

Franchisees.—Companies that design, install, operate, and maintain bus shelters may owe a duty to conduct such operations with reasonable care.⁸⁹

2. Duty to Whom

For the transit agency, determining the duty owed generally depends on the injured party's standing: whether the injured party is a passenger and whether he or she is boarding, alighting, waiting, or passing by. Jurisdictions may differ on the criteria for determining when a person qualifies as a passenger owed the highest duty of care. In addition, the determination is fact dependent. For example, for the most part the transit agency will not owe a duty to a person who is merely passing by the bus stop or loitering at a bus shelter. However, where the transit agency has control over the bus stop or shelter, or sufficient responsibility for the area, the agency could owe a duty to such parties.

Clearly it is important to understand the duty of care owed passengers. However, for the purposes of this report, the focus is on incidents related to bus stops that involve persons who are boarding, alighting, or waiting to do one or the other, as opposed to passengers already on board a bus.

In the case of a municipality owing a duty to those using its streets and sidewalks, the distinctions between passengers, pedestrians, and prospective passengers matter less, if at all.

A) Passengers.—Generally a common carrier owes the highest duty to passengers: Given the rationale for the high duty of care to passengers, a lesser duty may be owed where the passenger-carrier relationship has not yet formed, has been interrupted, or has terminated, such as at transit stations or on platforms,⁹⁰ or in cases of pedestrians or prospective passengers.⁹¹

Jurisdictions may differ as to where to draw the line on formation of the passenger-carrier relationship for purposes of liability. The District of Columbia has held that a common carrier owes a duty of reasonable care to its passengers, but that until a person "has placed himself in some substantial sense in the custody or under the control of the carrier, he is not a passenger and no special duty of care is owed him. An intent to become a passenger is not enough to confer that status or to charge the carrier with the duty to exercise that degree of care owed by a carrier in the transportation of a passenger."⁹² Rather the District requires the common carrier's duty to begin "when the intending passenger makes his first contact with the bus in the act of entering it."⁹³

A person boarding or alighting from the bus will generally be considered a passenger for the purpose of determining the duty of care owed.⁹⁴ Generally the person will no longer be considered a passenger once the person safely reaches the sidewalk.⁹⁵ Jurisdictions differ over the effect of a person's intent to transfer. A person who alights from a bus with the intent to transfer to another conveyance may no longer be considered a passenger once the person safely reaches the sidewalk and so may no longer be owed the high standard of care owed a passenger.⁹⁶ It is also possible that a person who

⁹⁰ Lewis, 99 A.D. 2d 246.

⁹¹ 18 McQuillin, *supra* note 23, § 53.108, n.n. 11–12.

⁹² McKethan v. Wash. Metro. Transit Auth. (WMATA), 588 A.2d 708 (D.C. App. 1988).

⁹³ *Id.*, citing Standardized Civil Jury Instructions for the District of Columbia, no. 8.2.

⁹⁴ See R. W. Gascoyne, Annotation, *Duty and Liability of Carrier by Motorbus to Persons Boarding Bus*, 93 A.L.R. 2d 237 (2007).

⁹⁵ See Sigmond v. Liberty Lines Transit, 689 N.Y.S.2d 239 (N.Y. App. Div. 2d Dep't 1999).

⁹⁶ See Martin v. Metro. Atlanta Rapid Transit Agency, 225 F. Supp. 1362 (N.D. Ga. 2002), p. 9 of Dec. 24, 2002, order granting preliminary injunction (unpublished order, Civil Action File No. 1:01-CV-3255-TWT), mandating as part of settlement agreement that passengers requiring use of wheelchair lift or ramp wait at designated bus stop, and further requiring

⁸³ 18 McQuillin, *supra* note 23, § 53.108, n.7.

⁸⁴ Lewis v. Metro. Transit Auth., 99 A.D. 2d 246, 472 N.Y.S.2d 368 (1984).

⁸⁵ See LANDAU ET AL., *supra* note 28, vol. 2, § 12.04[2], n.39.

⁸⁶ Bassett v. Lakeside Inn, 140 Cal. App. 4th 836, 44 Cal. Rptr. 3d 827 (2006).

⁸⁷ Josephson v. Meyers, 180 Conn. 302, 429 A.2d 879–80 (1980).

⁸⁸ Dallas Area Rapid Transit v. Thomas, 168 S.W.3d 322 (Tex. App. 2005).

⁸⁹ See, e.g., Cabrera v. Eller Media Co., June 24, 2005: Natalie White, *\$65 Million for Sixth-Grader Electrocuted At Bus Stop, Jury Rejects Lightning Theory*, www.lawyersweeklyusa.com/usa/8topten2005.cfm.

alights from a bus with the intent to transfer to another conveyance may still be considered a passenger, but owed a lesser duty of care.⁹⁷

The duty of care may increase or decrease due to the special status or condition of the passenger. For example, a higher duty of care is owed to children than to adults.⁹⁸ Where a transit agency provides transportation to schoolchildren in more than an incidental manner, transit agency buses may become subject to a higher duty of care required for school bus transportation.⁹⁹

Some states have held that a greater duty is owed to an intoxicated passenger, where the carrier knows or should have known of the passenger's condition.¹⁰⁰ A number of jurisdictions have required a greater duty toward disabled individuals if the disability is made known to the carrier or is readily apparent.¹⁰¹ On an accessible bus route, the duty to provide a clear path to disembark includes the duty to provide an unobstructed path to and from the bus stop that is wheelchair accessible.¹⁰²

*B) Passengers Boarding/Alighting from Bus.*¹⁰³—A number of jurisdictions extend the “heightened duty”

that if the passenger cannot board at that stop, the driver board the passenger at the nearest feasible point. 2A SPEISER ET AL., *supra* note 21, § 9:30, n.8.

⁹⁷ McKethean, 588 A.2d 708 (1988).

⁹⁸ 18 McQuillin, *supra* note 23, § 53.108, n.6.

⁹⁹ *E.g.* Metro. Atlanta Rapid Transit Agency v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878, 881 (Ga. App. 1982). *See also* Bateman, *supra* note 7.

¹⁰⁰ Wash. Metro. Transit Auth. v. Reading, 109 Md. App. 89, 111, 674 A.2d 44, n.5 (Md. App. 1996), citing Veenstra v. United Rys. and Elec. Co., 129 A. 678 (1925); O’Leary v. Am. Airlines, 100 A.D. 2d 959, 475 N.Y.S.2d 285 (N.Y. App. 2d Dep’t 1984); Leval v. Dugoni, 444 So. 2d 778, 780 (La. App. 1984).

¹⁰¹ Wash. Metro. Transit Auth. (WMATA) v. Reading, 109 Md. App. 89, 111, 674 A.2d 44, 54 (Md. App. 1996), *citing* Montgomery v. Midkiff and Transit Agency of River City, 770 S.W.2d 689, 690 (Ky. Ct. App. 1989); Paolone v. Am. Airlines, 706 F. Supp. 11, 12 (S.D.N.Y. 1989); Heger v. Trustees of Ind. Univ., 526 N.E.2d 1041, 1043 n.4 (Ind. Ct. App. 1988); Crear v. Nat’l Fire & Marine Ins. Co., 469 So. 2d 329, 334–35 (La. App. 1985); Cary v. New Orleans Pub. Serv., 250 So. 2d 92 (La. App.), *cert. denied*, 259 La. 808, 253 So. 2d 67 (La. 1971). *See also* Hinckley v. Palm Beach County Bd. of County Comm’rs, 801 So. 2d 193 (Fla. Dist. Ct. App. 4th Dist. 2001) (when transportation authority undertook to transport developmentally disabled person, a special relationship and nondelegable duty to protect her from foreseeable harm were created).

¹⁰² *See, e.g.*, Bus Service Guidelines for Westchester County Municipalities (hereinafter “Westchester”), at 2, 17, www.westchestergov.com/transportation/images/Bus&20Service%20Guidelines.pdf.

¹⁰³ Most injuries related to bus stops are likely to occur while passengers are boarding or alighting, as opposed to waiting for the bus. Of the 17,992 person casualties (suffered by bus passengers or passengers in another vehicle involved in a bus accident) suffered in 1993, 38.3 percent were suffered while boarding/alighting, as opposed to 4.3 percent suffered at

owed passengers to providing “a safe means of boarding and exiting” the vehicle.¹⁰⁴ New York, for example, imposes on carriers a duty of care to provide a safe place for passengers to board and exit their vehicles.¹⁰⁵ A New York court has explained:

The duty owed by the transit defendants to plaintiff, a boarding passenger, has been described as a reasonably safe, direct entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance. Stated differently, imposing liability requires a finding that the placement of the bus dictates that the passenger, in order to board the bus, must negotiate a dangerous or defective path.¹⁰⁶

This duty appears to exist whether or not a specific bus stop is designated. In *Foley, supra*, a New York court upheld the dismissal of plaintiff’s complaint because she had not shown that the location of the bus jeopardized the required safe path. However, the fact that there was no formal bus stop did not diminish the bus company’s duty to provide a safe path to board the bus.¹⁰⁷ A Connecticut court has held that the general duty of care owed passengers may require providing assistance to alighting passengers.¹⁰⁸

New York holds that the duty to provide a safe path for alighting passengers terminates when the passenger safely reaches the sidewalk.¹⁰⁹ Moreover, where a safe path exists, the bus company will not be liable for injuries suffered by a passenger opting to take a dangerous path.¹¹⁰ However, a passenger taking his first step off a bus is still owed the duty of a safe place to alight, as

the bus stop. ROLLAND D. KING, BUS OCCUPANT SAFETY 5 (TCRP Synthesis 18, 1996). The duty of highest care is owed to passengers when they are boarding and alighting from the bus. 18 McQuillin, *supra* note 23, § 53.108, n.n. 3–5. *See also* 2A SPEISER ET AL., *supra* note 21, § 9:30; Duty and liability of carrier by motorbus to persons boarding bus, 93 A.L.R. 2d 237.

¹⁰⁴ *E.g.*, Reading, 674 A.2d 44.

¹⁰⁵ Blye v. Manhattan and Bronx Surface Transit Operating Auth., 124 A.D. 2d 106, 511 N.Y.S.2d 612 (N.Y. App. 1st Dep’t 1987); Miller v. Fernan, 537 N.Y.S.2d 123, 124, 534 N.E.2d 40 (1988) (common carrier owes duty to alighting passengers to “stop at a place where the passenger may safely disembark and leave the area”); *Foley v. Golub Corp.*, 252 A.D. 2d 905, 676 N.Y.S.2d 308 (N.Y. App. 3d Dep’t 1998). *See also* Jam v. Indep. Sch. Dist., 413 N.W.2d 165 (Minn. App. 1987).

¹⁰⁶ Gross v. N.Y. City Transit Agency, 256 A.D. 2d 128, 681 N.Y.S.2d 513 (N.Y. App. 1st Dep’t 1998). *See also* 429 A.2d 879; Mahase v. Manhattan and Bronx Surface Transit Operating Auth., 3 A.D. 3d 410, 771 N.Y.S.2d 99 (N.Y. App. 1st Dep’t 2004).

¹⁰⁷ *Foley*, 252 A.D. 2d 905.

¹⁰⁸ Meyers, 429 A.2d at 880.

¹⁰⁹ Sigmond v. Liberty Lines Transit, 261 A.D. 2d 385, 689 N.Y.S.2d 239 (N.Y. App. 2d Dep’t 1999).

¹¹⁰ Francias v. City of N.Y., 222 A.D. 2d 215, 634 N.Y.S.2d 483 (N.Y. App. 1st Dep’t 1995). *See also* Diedrick v. City of New York, 162 A.D. 2d 496, 556 N.Y.S.2d 698 (N.Y. App. 2d Dep’t 1990) (where passenger is injured after safely alighting, and where alternate safe paths were available, no breach of transit agency’s duty of care).

opposed to a passenger who has taken several steps away from the bus.¹¹¹ In *Malawer, supra*, the bus stopped so that the plaintiff allegedly had to exit onto a slippery subway grating. The court found that it was possible that the plaintiff had not yet safely exited when he fell and thus a question of fact had been raised as to whether the transit agency had breached its duty to afford a safe place to alight, particularly in light of allegations that there were other spots where the driver could have safely stopped the bus.

Maryland holds that generally once the plaintiff is discharged safely, the duty to provide a safe path to disembark is met, even if the discharge point is not a regular stop.¹¹²

A higher duty of care may be required for children, particularly schoolchildren, than for adults.¹¹³ However, Connecticut has held that the mere fact that the passenger, even a schoolchild, has to cross the street upon alighting from the bus does not render the path unsafe.¹¹⁴

The duty of care may be established by statute. In Connecticut, for example, after the state supreme court held that a school bus was not a common carrier for the purpose of establishing the standard of care, the legislature applied the common carrier standard of care to school buses by statute.¹¹⁵

Where disabled passengers using a wheelchair ramp or lift are unable to access the bus at the designated bus stop, there may be a duty to allow such passengers to board the bus at the nearest point to the designated stop that will allow safe access.¹¹⁶

¹¹¹ *Malawer v. N.Y. City Transit Agency*, 18 A.D. 3d 293, 795 N.Y.S.2d 201 (N.Y. App. 1st Dep't 2005).

¹¹² *WMATA v. Reading*, 109 Md. App. 89, 103, 674 A.2d 44, 51 (1996), citing *Thomas v. Hampton Express*, 208 A.D. 2d 824, 617 N.Y.S.2d 831 (1994), *cert. denied*, 85 N.Y.2d 803, 624 N.Y.S.2d 373, 648 N.E.2d 793 (1995); *Kramer v. Lagnese*, 144 A.D. 2d 648, 535 N.Y.S.2d 13 (1988); *Mitchell v. Chicago*, 221 Ill. App. 3d 1017, 583 N.E.2d 60 (Ill. App. 1991); *Heger v. Trustees of Ind. Univ.*, 526 N.E.2d 1041 (Ind. App. 1988); *Smith v. Va. Transit Co.*, 206 Va. 951, 147 S.E.2d 110 (1966); *Harris v. De Felice*, 379 Pa. 469, 109 A.2d 174 (1954).

¹¹³ *Jam v. Indep. Sch. Dist.* 413 N.W.2d 165 (1987). *See also Pratt v. Robinson*, 45 A.D. 2d 641, 644, 360 N.Y.S.2d 349, 353 (N.Y. App. 4th Dep't 1974) (Moule, J., dissenting), citing *Shannon v. Central-Gaither Union Sch. Dist.*, 133 Cal. App. 124 (1933); *Roden v. Conn. Co.*, 113 Conn. 408 (1931); *Gazaway v. Nicholson*, 61 Ga. App. 3 (1940), *aff'd*. 190 Ga. 345; *Greeson v. Davis*, 62 Ga. App. 667; *Jordan v. Wiggins*, 66 Ga. App. 534 (1942); *Taylor v. Patterson's Adm'r*, 272 Ky. 415 (1938).

¹¹⁴ *Meyera*, 429 A.2d at 880.

¹¹⁵ *Id.*

¹¹⁶ *See Martin et al. v. Metro. Atlanta Rapid Transit Agency*, 225 F. Supp. 1362 (N.D. Ga. 2002), p. 9 of Dec. 24, 2002, order granting preliminary injunction (unpublished order, Civil Action File No. 1:01-CV-3255-TWT), mandating as part of settlement agreement that passengers requiring use of wheelchair lift or ramp wait at designated bus stop, and further requiring that if the passenger cannot board at that stop, the driver board the passenger at the nearest feasible point.

C) Persons Waiting at Bus Stop/Shelter.—The District of Columbia has held that in addition to owing a duty of care to passengers, the common carrier owes a duty to an individual standing upon property owned or controlled by the carrier. However, merely waiting for a bus on property neither owned or controlled by the carrier, absent some action by the carrier that causes injury, does not give rise to a duty of care.¹¹⁷

D) Persons Walking Away from Bus Stop/Shelter.—Generally the carrier no longer has a duty to a person who has had the opportunity to safely alight from the bus via a usual and proper path.¹¹⁸ For example, Maryland has held that ordinarily a person's status as a passenger ceases when the person exits the bus, even though the person crosses the street with the intent to board another bus.¹¹⁹ Illinois has made the distinction that a person who transfers from one conveyance to another retains the status of passenger, but that during the time that the passenger is between conveyances, the carrier owes only a duty to exercise ordinary care, rather than a higher degree of care.¹²⁰ Both Delaware and West Virginia have held that the common carrier has not breached its duty to passengers who had safely disembarked and were injured while crossing the street to transfer to connecting bus lines.¹²¹

E) Persons Approaching Bus Stop/Shelter.—The primary question for the purpose of transit agency liability for persons approaching a bus stop or shelter is at what point the approaching person attains the protected status of passenger. Thus, findings of liability will depend somewhat on how close the injured party is to the bus stop and on whose property the injury took place.

A Texas court has held that where a woman fell next to a bus stop she planned to use, with no bus approaching or waiting, there was not sufficient control by the carrier to establish the express or implied contract for carriage.¹²² More recently, California has held that a person crossing the street to access a bus stop is as much a user of the bus stop as someone waiting at the bus stop and accordingly that the transit agency owed a duty of care to her.¹²³ Rhode Island has held that a would-be passenger who enters upon the premises of the transit agency and then enters an area subject to the control of the transit agency becomes a passenger

¹¹⁷ *McKethean v. WMATA*, 588 A.2d 708 (1988).

¹¹⁸ *2A SPEISER ET AL.*, *supra* note 21, § 9:30, n.8.

¹¹⁹ *Reading*, 674 A.2d 44.

¹²⁰ *Mitchell v. Chicago*, 221 Ill. App. 3d 1017, 1019–1021, 583 N.E.2d 60, 62–63 (Ill. App. 1st Dist. 1991).

¹²¹ *Cooke v. Elk Coach Line, Inc.*, 37 Del. 120, 180 A. 782 (Del. 1935); *Pritchard v. City Lines of West Virginia*, 136 W. Va. 278, 66 S.E.2d 276 (W.Va. 1951).

¹²² *2A SPEISER ET AL.*, *supra* note 21, § 9:29, n.85, citing *City of Houston v. Matthews*, 605 S.W.2d 628 (Tex. Civ. App. Houston 1st Dist. 1980), writ refused n.r.e. (Oct. 22, 1980).

¹²³ *Bonnano v. Central Costa Transit Auth.*, 30 Cal. 4th 139, 151, 65 P.3d 807, 814 (2003).

owed the highest degree of care.¹²⁴ Other jurisdictions consider as well the passenger's immediate intention to become a passenger.¹²⁵

Washington views the duty owed by a transit agency to a would-be passenger crossing the highway from a park-and-ride lot to a bus stop in terms of the duty owed to a customer-invitee to keep premises in a reasonably safe condition and to warn customers-invitees of dangerous conditions. The warning requirement is for those dangerous conditions that are known or should have been known to the entity *and* not known or reasonably discoverable by the customer-invitee.¹²⁶ Washington, however, has held that a transit agency has no duty to warn a passenger of an obviously dangerous intersection over which the transit agency had no control.¹²⁷

3. Harms to Protect Against

There are basically two categories of harm that may befall passengers or pedestrians due to a breach of duty related to bus stops: accidental injury and criminal assault (including theft):

Accidental Injury.—This may be the most common harm regarding which the common carrier and/or public entity has a duty of care, as discussed *supra*. Generally the transit agency owes the highest duty of care regarding this harm to passengers and, depending on context, to boarding or alighting passengers. Causes of injury include slip and fall, being struck by the bus or another vehicle, and electrical shock due to faulty electrical connections.

Assault/Theft.—Transit agencies have generally been held to owe some duty to passengers to protect them from assault by other passengers.¹²⁸ Statutory and common law special relationships between the common carrier and its passengers may establish that duty of care.¹²⁹ For example, New Jersey imposes liability on common carriers for failure to provide adequate security to the extent that proprietary functions are involved,¹³⁰ while New York holds that a transit agency has no duty to protect persons on its premises from as-

sault by third parties,¹³¹ except in a narrow set of circumstances¹³² of uncertain applicability to bus stops. The rule that the common carrier is not the insurer of the passenger's safety also comes into play in this context.¹³³

Generally a public entity will not be liable for failing to provide police protection, a governmental function, unless the injured party can show:

- (1) that the agency assumed an affirmative duty to protect him or her through promises or actions; (2) knowledge by the agency that inaction could lead to harm to plaintiff; (3) direct contact between the agency's representative and the plaintiff; and (4) reliance by plaintiff on the agency's affirmative undertaking to provide protection to him or her.¹³⁴

Where, however, the harm comes about because of a failure to exercise the requisite care in carrying out a proprietary function, the public entity may be liable for injury caused by foreseeable harm. The harm must, however, be foreseeable. Thus, the District Court for the District of Columbia agreed that a plaintiff could challenge the adequacy of lighting, exit gate placement, and existence of hiding places at a WMATA parking place, but held that WMATA had no duty to protect its visitors against the actions of third persons unless the agency knew or had reason to know that the attacks were occurring or about to occur.¹³⁵

The New Jersey Supreme Court has found provision of lighting to be a proprietary function,¹³⁶ while at least some New York courts have declined to make that finding.¹³⁷ Where a proprietary standard is imposed, a landowner must exercise "reasonable care under the circumstances to maintain the premises in a reasonably safe condition,"¹³⁸ including taking "minimal security precautions against reasonably foreseeable criminal acts by third parties."¹³⁹ Past criminal activity will at a

¹³¹ *Weiner v. Metro. Transp. Auth.*, 55 N.Y.2d 175, 433 N.E.2d 124 (1982).

¹³² *Lieberman*, 622 A.2d at 1301–02 (N.J. 1993) (viewing crime from vantage point offering both safety and means to summon help without danger and not doing so is within narrow range of circumstances that could be found to be actionable), citing *Crosland v. N.Y. City Transit Auth.*, 68 N.Y.2d 165, 498 N.E.2d 143, 145 (1986).

¹³³ *See Se. Stages, Inc. v. Stringer*, 263 Ga. 641, 437 S.E.2d 315, 317–18 (Ga. 1993).

¹³⁴ *In re World Trade Ctr. Bombing Litig.* 3 Misc. 3d 440, 466, 776 N.Y.S.2d 713, 733 (2004), citing *Cuffy v. City of N.Y.*, 69 N.Y.2d 255 (1987).

¹³⁵ *Gillot v. Wash. Metro. Area Transit Auth.*, 507 F. Supp. 454 (D.C. 1981).

¹³⁶ *Lieberman*, 622 A.2d at 1304–05.

¹³⁷ *See discussion of Rivera v. N.Y. Transit Agency*, 184 A.D. 2d 417, 585 N.Y.S.2d 367, *supra*. § 1.C.2.

¹³⁸ *World Trade Ctr. Bombing Litig.*, 776 N.Y.S.2d at 734 citing *Kush v. City of Buffalo*, 59 N.Y.2d 26 (1983); *Basso v. Miller*, 40 N.Y.2d 233 (1976).

¹³⁹ *Id.*, citing *Nallan v. Helmsley-Spear, Inc.*, 50 N.Y.2d at 519–520. *See also Jacqueline S. v. City of N.Y.*, 81 N.Y.2d 288, 295, 614 N.E.2d 723, 726 (1993); Restatement [Second] of Torts

¹²⁴ *Kelly v. R.I. Pub. Transit Auth.*, 740 A.2d 1243 (R.I. 1999).

¹²⁵ *Id.* at 1250, citing *Galehouse v. Minneapolis, St. P. & S.S. M. Ry. Co.*, 135 N.W. 189 (N.D. 1912); *Johns v. Charlotte, C. & A. R. Co.*, 17 S.E. 698 (S.C. 1893).

¹²⁶ *Kuehn v. Snohomish County Public Trans. Benefit Area Corp.*, 109 Wash. App. 1046 (2001).

¹²⁷ *Id.*

¹²⁸ *Thomas*, *supra* note 5, at 9, citing *Lopez v. S. Cal. Rapid Transit Dist.*, 40 Cal. 3d 780, 786, 710 P.2d 907, 910 (Cal. 1985); *McCoy v. Chicago Transit Agency*, 69 Ill. 2d 280, 283–284, 371 N.E.2d 625, 627–28 (Ill. 1977); *Rodriguez v. New Orleans Pub. Serv.*, 400 So. 2d 884 (La. 1981); *Mangini v. Se. Pa. Transp. Auth.*, 235 Pa. Super. 478, 344 A.2d 621 (1975).

¹²⁹ *Lopez*, 710 P.2d 907.

¹³⁰ *Lieberman v. Port Auth.*, 132 N.J. 76, 83–85, 622 A.2d 1295, 1299–1300 (1993).

minimum raise a question of fact as to whether future criminal activity is foreseeable, and the past activity need not be the precise type of activity complained of at present.¹⁴⁰ Georgia has held that once something occurs to put a common carrier on notice that intentional misconduct by third persons is likely to occur, the carrier is required to take measures to protect its passengers from such conduct.¹⁴¹ An Illinois court held the Chicago Transit Authority liable for an assault that occurred on a rapid transit train where physical conditions conducive to passenger isolation and past patterns of criminal activity on the trains made it reasonably foreseeable that such attacks would occur.¹⁴² A Third Circuit court found the Southeastern Pennsylvania Transportation Authority liable for an assault that occurred on a subway platform, holding that insufficient lighting and inattention by the transit agency employee on the scene supported the finding of negligence.¹⁴³ Conversely, there is no liability where the criminal activity was “sudden, unexpected, unanticipated, and there was no showing that the carrier either knew, or should have known, about it.”¹⁴⁴ Furthermore, there may be substantial differences between the duty owed by a transit agency on a conveyance or in a facility owned by the transit agency and the duty owed at a bus stop/shelter, unless the bus stop/shelter is owned, controlled, or maintained by the transit agency.

4. Summary of Important Principles

Responsibility for conditions at a bus stop:

- Usually falls to municipality.
- May be with transit agency where these types of actions cause injury:
- Stopping bus in place that has no clear path to alight, where such clear path alternative exists (e.g., stopping before an icy patch of sidewalk when clear sidewalk is safely available nearby).

§ 344 concerning a landlord’s duty to reasonably discover the harmful actions of third parties and either warn against or take steps to prevent such action.

¹⁴⁰ World Trade Ctr. Bombing Litig., 776 N.Y.S.2d at 734.

¹⁴¹ Se. Stages v. Stringer, 263 Ga. 641, 437 S.E.2d 315 (1993).

¹⁴² 2A SPEISER ET AL., *supra* note 21, § 9:19, at 471, citing Gordon v. Chicago Transit Agency, 128 Ill. App. 3d 493, 470 N.E.2d 1163 (Ill. App. 1st Dist. 1984).

¹⁴³ 2A SPEISER ET AL., *supra* note 21, § 9:20, n.54, citing Kenny v. Se. Pa. Transp. Auth., 581 F.2d 351 (3d Cir. 1978).

¹⁴⁴ 2A SPEISER ET AL., *supra* note 21, § 9:20, n.56, citing, *inter alia*, Letsos v. Chicago Transit Agency, 47 Ill. 2d 437, 265 N.E.2d 650 (1970); Miller v. Chicago Transit Agency, 78 Ill. App. 2d 375, 223 N.E.2d 323 (1st Dist. 1966); Leake v. Queen City Coach Co., 270 N.C. 669, 155 S.E.2d 161 (1967); Gillot v. Wash. Metro. Area Transit Agency, 507 F. Supp. 454 (D.C. 1981). *See also* Carter v. Atlantic Coast Line R. Co., 109 S.C. 119, 95 S.E. 357 (1918) (lack of lighting held not to be proximate cause of attack on employee beaten and robbed on railroad’s premises).

- Stopping bus in manner contrary to transit authority guidance.
- Operating buses in a way that creates a dangerous condition (usually a slip and fall hazard) at the bus stop.

Transit agency’s duty to afford safe place to board/alight:

- Generally met when passenger safely reaches sidewalk or equivalent area, whether or not safe spot is designated bus stop.
- Usually does not apply to passenger who has safely alighted and crossed the street to transfer buses.
- May be required by some jurisdictions to apply to transferring passengers throughout the transfer process.

Duty to prevent criminal assault:

- Depends in part on ownership and control of premises.
- May be affected by actions of transit agency personnel.

Procedural protection:

- Transit agencies may be attractive defendants.
- Appropriate indemnification and insurance clauses¹⁴⁵ advised for franchise and maintenance agreements.

B. Placement of Bus Stop/Shelter

Placement is often a significant question in bus stop tort cases. Grounds for alleging placement is unsafe include traffic conditions at the designated stop, weather-related problems at the alighting point, and risk of assault due to a crime-prone location.

1. Description/Extent of Duty

Jurisdictions differ as to whether the placement of a bus stop/shelter is a governmental/discretionary decision, possibly immune from tort liability. The District of Columbia, for example, has held that a decision whether to relocate a particular bus stop involves planning, a governmental function, and is therefore immune from liability under the WMATA Compact.¹⁴⁶ A Pennsylvania court has held that since the city of Philadel-

¹⁴⁵ *See, e.g.*, § 16, The Wave Transit RFP, Appendix A *infra* this report; St. Paul, Minnesota Franchise Agreement, Appendix B *infra* this report.

¹⁴⁶ McKethean v. WMATA, 588 A.2d 708 (D.C. App. 1988). The court also held that the District of Columbia was also immune from liability as its decision whether to relocate the bus stop was a discretionary one. *See also* Pratt v. Robinson, 45 A.D. 2d 641, 360 N.Y.S.2d 349 (1974) (existence of other safe locations does not in and of itself support finding of breach of duty: general rule is that determination of school bus stop is governmental decision that courts will not second guess; even hazardous location may not be basis for liability where alternative locations are unsatisfactory).

phia had no duty to erect traffic controls, it had no duty to place a bus stop at a location that contained traffic controls. In addition, the court held a claim of negligent design of the bus stop to be barred by governmental immunity under the Pennsylvania statute.¹⁴⁷

California, while continuing to recognize the viability of the discretionary decision exception to statutory immunity, has held that a bus stop location may constitute a dangerous condition of public property. The danger may arise from the relationship of the bus stop to its surroundings, *e.g.*, an unsafe intersection.¹⁴⁸ In *Bonanno, supra*, the court found that the bus stop placement created a dangerous condition under state law because:

...the stop could, at that location, only be reached from the south side of [the street] by one of two approaches (the crosswalk and the narrow north shoulder of [the street]), both of which were unnecessarily unsafe....[P]ublic entities are subject to potential liability...when their facilities are located in physical situations that unnecessarily increase the danger to those who, exercising due care themselves, use the facilities in a reasonably foreseeable manner.¹⁴⁹

The court rejected the arguments of public entities that finding liability under the facts of *Bonanno* would open public agencies to liability for all manner of design decisions. The court emphasized that in order to establish liability, the dangerousness must not only arise from the property's location or physical location, but must be substantial. In addition, the property must be owned or controlled by the public entity, the dangerous condition must proximately cause the injury, the condition must create a reasonably foreseeable risk of the injury that occurred, and the public entity must either negligently create the condition or must have had sufficient notice to correct the condition.¹⁵⁰ However, such liability may still be defeated by the discretionary decision exception to statutory liability,¹⁵¹ and where locating a bus stop in a high-crime neighborhood or at a dangerous intersection is the only way to provide service in a particular neighborhood, the transit agency would not be liable for maintaining a dangerous condition.¹⁵² Although the *Bonanno* decision created a stir in California, as of February 2007 it had not been followed elsewhere.

A New Mexico court has held that the decision to locate a bus stop at a particular place is a matter of maintenance not subject to statutory immunity unless there

are specific facts establishing that the location was part of the road design.¹⁵³

Where a private property owner such as a shopping center forces the removal of a bus stop from its property, the private owner may be liable for injuries suffered by pedestrians traveling from the relocated bus stop and the shopping center.¹⁵⁴ Where a transit system has a significant number of minority patrons, a decision to refuse to allow a bus stop at a mall may be subject to allegations of violations of civil rights law.¹⁵⁵ These points may be of interest in negotiating transit access to enclosed private property.

An otherwise safe bus stop may be rendered unsafe by the bus driver's actions, although, as is the case with many of these actions, court decisions are very fact-dependent.¹⁵⁶ In *Gross, supra*, the bus driver, contrary to the rule requiring a bus to stop within 12 in. of the curb, stopped the bus one (empty) car lane away from the curb, leaving the debarking passenger to navigate the traffic lane near Times Square. The court held it was a jury question whether this stop created a foreseeable risk of injury, but noted that the driver's failure to follow departmental traffic rules could be taken as evidence of negligence. The court specifically rejected the transit agency's contention that, as a matter of law, plaintiff's failure to check for oncoming traffic was an intervening factor that precluded a finding of negligence on the part of the transit agency.¹⁵⁷

In *Malawer, supra*, the court held that it was a jury question whether the bus driver's decision to stop in front of an icy subway grating instead of at a clear portion of sidewalk was a breach of the duty to afford a clear path for alighting from the bus.¹⁵⁸

2. Duty Owed By

In determining which entities may owe a duty of care, it is important to consider ownership and control of the bus stop. In addition, responsibilities may be set by statute or regulation. For example, the Nevada legislature recently transferred the responsibility for placing bus benches and bus shelters from local governments in Clark County to the Regional Transportation Commis-

¹⁵³ Gallegos v. State, 123 N.M. 362, 940 P.2d 468 (N.M. App. 1997).

¹⁵⁴ DENNIS HINEBAUGH, LAUREL LAND, & LISA STAES, CENTER FOR URBAN TRANSPORTATION RESEARCH, 9-10 PUBLIC TRANSIT ACCESS TO PRIVATE PROPERTY (2000). (Shopping center liable for injuries to disabled passenger injured traveling between relocated bus stop and shopping center; family of single mother recovered from transit agency, mall, and dump truck company: decedent killed by dump truck while crossing seven-lane highway trying to get to job at mall; bus had been forbidden to stop at mall).

¹⁵⁵ *Id.* at 10.

¹⁵⁶ See 2A SPEISER ET AL., *supra* note 21, § 9:30, n.5.

¹⁵⁷ Gross v. N.Y. City Transit Auth., 256 A.D. 2d 128, 681 N.Y.S.2d 513 (N.Y. App. 1998).

¹⁵⁸ Malawer v. N.Y. City Transit Auth., 18 A.D. 3d 293, 795 N.Y.S.2d 201 (N. Y. App. 1st Dep't 2005).

¹⁴⁷ Garrett v. Moyston, 127 Pa. Comm. 488, 562 A.2d 386 (1989).

¹⁴⁸ Bonanno v. Central Costa Trans. Auth., 30 Cal. 4th 139, 150, 65 P.3d 807, 813 (2003).

¹⁴⁹ *Id.* at 813, n.4.

¹⁵⁰ *Id.* at 816.

¹⁵¹ *Id.*

¹⁵² *Id.* at 817.

sion of Southern Nevada.¹⁵⁹ In New Mexico, the Transportation Division of the State Department of Education has a statutory responsibility to establish bus routes, which has been held to include the responsibility for establishing bus stops.¹⁶⁰

While in many jurisdictions the municipality owns and/or is responsible for establishing bus stops, in some cases such ownership and/or responsibility lies with the transit agency.¹⁶¹ Where a city approves the placement of a bus stop, it may be liable for injury caused by an accident related to that placement.¹⁶² Where a transit agency owns and controls the bus stop, even though the county could veto the location of the bus stop, the transit agency may be liable for injuries suffered due to unsafe conditions on property adjacent to the bus stop.¹⁶³

Jurisdictions split over whether a public entity has a duty to protect passengers from dangers on adjacent land. California, for example, has held that such a duty exists,¹⁶⁴ while Washington says it does not.¹⁶⁵ Where a bus stop is located at an unsafe location, in addition to the transit agency being liable for placement of the bus stop, the responsible municipality may also be liable for maintaining an unsafe crosswalk.¹⁶⁶ The fact that the

¹⁵⁹ Committees—Bus Shelter and Bench Advisory Committee, www.rtcsonthernnevada.com/rtc/bsbac.htm.

¹⁶⁰ *Gallegos v. State Bd. of Educ.*, 123 N.M. 362, 940 P.2d 468 (N.M. App. 1997).

¹⁶¹ *E.g.*, in Alexandria, Virginia, the City of Alexandria installed the bus benches and shelters for its DASH service; WMATA installed the bus benches and shelters for Metrobus. The city has now assumed responsibility for the bus benches and shelters for Metrobus. See City of Alexandria Public Transportation and Control Project, available at http://alexandriava.gov/budget/2008/proposed/pdf/cip08prop_transportation.pdf; in Austin, Texas, Capital Metro appears to own bus stops and bus shelters, www.window.state.tx.us/tpr/capmet/chpt7.htm; in Coronado, California, the transit agency is responsible for bus shelters. Minutes of a Regular Meeting of the City Council of the City of Coronado, 1825 Strand Way Coronado, CA, 92118, Tuesday, Apr. 15, 2003, 3:00 p.m., http://service.govdelivery.com/service/docs/CACORON/CACORON_1/CACORON_1_20030415_en.htm; the San Mateo County Transit District appears to have responsibility for bus shelters in its service area, www.samtrans.org/pdf/BOD_Agenda_Reports/03_15_06/FIN_1_Minutes.pdf; the St. Cloud Metropolitan Transit Commission appears to have responsibility for bus shelters in its service area; in Bexar County, Texas (San Antonio), VIA Metropolitan Transit appears to own the bus shelters in its service area.

¹⁶² *See, e.g.*, *Am. Employers Ins. Co. v. Metro Regional Transit Agency*, 12 F.3d 591 (6th Cir. 1993).

¹⁶³ *Bonanno v. Central Contra Costa Transit Auth.*, 30 Cal. 4th 139, 147, 65 P.3d 807, 811 (2003).

¹⁶⁴ *Id.* at 807.

¹⁶⁵ *Kuehn v. Snohomish County Pub. Transp. Benefit Area Corp.*, 109 Wash. App. 1046 (2001).

¹⁶⁶ *Bonanno*, 65 P.3d at 810. *Cf. Garrett v. Moyston*, 127 Pa. Comm. 488, 562 A.2d 386 (1988) (city not liable for placing unsafe bus stop because of lack of traffic signals where city had no obligation to install traffic signals).

actual injury is caused by a third party does not necessarily relieve the public entity of responsibility.¹⁶⁷

3. Summary of Important Principles

Assessing potential liability:

- Does the transit agency have responsibility for designating bus stop placement?
- Does the jurisdiction deem bus stop placement to be a policy level decision immune from liability?
- Does the jurisdiction recognize a duty to address dangerous conditions on adjacent property?
 - If so, is risk of injury substantial?
- Placing the bus stop where sufficient sidewalks are lacking may constitute placing the bus stop adjacent to dangerous conditions, particularly for disabled passengers.
- Regardless of responsibility for designating bus stop placements, injuries caused by driver-created bus stops may give rise to liability.

C. Design/Maintenance of Bus Stop/Shelter (Including Signs)

Design (principally of bus shelters) and maintenance (of both bus stops and bus shelters) are two significant areas where transit agencies may incur liability. These are also areas where carefully drafted agreements with service providers are important to avoid liability.

1. Description/Extent of Duty

The duty as to design includes exercising reasonable care to avoid reasonably foreseeable dangers, and taking reasonable steps to alleviate dangers that become apparent. For example, whether or not it is foreseeable at the outset that bus shelters may be demolished by vehicles leaving the street and ending up on the sidewalk, once a number of such incidents occur it is foreseeable that additional such accidents will occur.¹⁶⁸ That the injury is actually caused by the negligent action of the driver who strikes the bus shelter does not relieve the designer of the bus shelter of all responsibility: “the foreseeable result of the risk created by [the designers] was injury to a pedestrian from a vehicle striking the improperly designed shelter.”¹⁶⁹

Where the entity responsible for designing/installing a bus shelter does so in a negligent fashion, giving rise to a dangerous condition, that entity need not have notice of the condition to be liable for a breach of the duty of reasonable care. Thus, where the franchisee responsible for installing and then maintaining a bus shelter may have done so with a drain pipe opening onto a sidewalk instead of into the street, the franchisee did not need actual or constructive notice of the resulting icy condition that caused an alighting passenger to slip

¹⁶⁷ *Bonanno*, 65 P.3d at 814.

¹⁶⁸ *See Flynn v. Farias*, 139 Misc. 2d 699, 528 N.Y.S.2d 486 (1988).

¹⁶⁹ *Id.*

and fall in order for its liability to be a triable issue of fact.¹⁷⁰ A design defect will not necessarily relieve the party responsible for maintenance of liability, but may do so if the maintenance agreement does not impose exclusive or comprehensive duties on the maintenance provider.¹⁷¹

Ordinarily, a governmental entity has a duty to keep its streets and sidewalks in a reasonably safe condition.¹⁷² In addition, there is a general duty of reasonable care to maintain the sidewalk in front of a bus stop,¹⁷³ as part of the property owner's "general duty to exercise reasonable care in maintaining [a] public space in a safe condition."¹⁷⁴ A similar duty may attach where the bus stop is on the side of a road.¹⁷⁵ The duty to maintain may include the duty to protect against harmful criminal conduct on the public property.¹⁷⁶ The duty is predicated on control over the sidewalk. Where, for example, the city has entered into an agreement with the transit agency to maintain and control the property, the city owes no duty to an injured plaintiff.¹⁷⁷

The condition of a bus stop may be adversely affected by bus operations or other actions of the transit agency, giving rise to liability even where another party is responsible for maintaining the bus stop area.¹⁷⁸ For example, in *Matias v. City of New York*,¹⁷⁹ the plaintiff offered evidence that the action of the transit agency's buses repeatedly running over a curb may have given rise to the condition that caused the plaintiff to trip. The court ruled that there was a factual issue as to the transit agency's liability. New York holds that while a transit agency does not have a duty to repair the sidewalks, it does have a duty not to impair the safety of

the sidewalks.¹⁸⁰ Even where the transit agency is not responsible for maintenance, the transit agency may be liable on other grounds.¹⁸¹

2. Duty Owed By

The property owner owes a general duty to exercise reasonable care concerning the public space in front of a bus stop.¹⁸² Ordinarily the common carrier is not responsible for maintaining or repairing the public space at a bus stop.¹⁸³ In New York, the responsibility to maintain bus stops, including the sidewalks and curbs, belongs to the City of New York or the owner/lessee of the abutting property.¹⁸⁴ The New York City Transit Agency only has a duty of care if it derives a special benefit from the alleged condition or if it causes the condition.¹⁸⁵ Thus in New York, where the transit agency's use of the sidewalk constitutes a special use ("a construction in the sidewalk, not necessary for its proper construction or maintenance as a public sidewalk, and which is designed to create a special benefit to the user of the construction"), the transit agency will be responsible for maintenance of the special use area and prior notice of an unsafe condition will not be required. Moreover, the existence of a special use makes the governmental/proprietary distinction irrelevant for purposes of notice.¹⁸⁶

Even where a transit agency has a contractual obligation to maintain a transit facility in a safe condition, the property owner may not be able to delegate its duty of reasonable care concerning the sidewalk to the transit agency, at least where the transit agency's use of the property is limited to picking up and dropping off passengers.¹⁸⁷

If the activity that gives rise to a duty is "inherently dangerous," some jurisdictions hold that the duty of care is nondelegable, even if an independent contractor carries out the activity. The term "inherently dangerous" extends beyond work that is "intrinsically hazardous" depending on the circumstances under which the

¹⁷⁰ *Patterson v. N.Y. City Transit Agency*, 5 A.D. 3d 454, 773 N.Y.S.2d 417 (N.Y. App. 2d Dep't 2004).

¹⁷¹ *Baher v. Shelter Express, Inc.*, 298 A.D. 2d 320, 748 N.Y.S.2d 859 (N.Y. App. 2002) (uncorrected opinion) (defective design of bus shelter created icy condition by shelter; party responsible for maintaining shelter not liable for injury to passengers or passersby, unless maintenance agreement imposes exclusive or comprehensive duties upon maintenance provider).

¹⁷² LANDAU ET AL., *supra* note 28, § 8.02[1]. State statutes may affect the scope of that duty. *Id.* § 8.02[2]. Furthermore, the governmental entity that has the duty cannot delegate it to another entity. *Id.* § 8.02[4].

¹⁷³ *Simpkins v. United States*, 253 F. Supp. 2d 4 (D.C. 2003).

¹⁷⁴ *Id.* at 7.

¹⁷⁵ *Ferreira v. Pringle*, 255 Conn. 330, 766 A.2d 400 (2000) (plaintiff exited bus on to shoulder of road, was injured when he tripped on portion of steel signpost protruding from ground).

¹⁷⁶ *Bonanno v. Central Contra Costa Transit Auth.*, 30 Cal. 4th 139, 146, 65 P.3d 807, 815 (2003).

¹⁷⁷ LANDAU ET AL., *supra* note 28, § 8.02[1], n.4.1, *citing* *Leonardi v. Chicago Transit Agency*, 341 Ill. App. 3d 1038, 1043–1044, 793 N.E.2d 880, 885–886 (Ill. Ct. App. 2003).

¹⁷⁸ *Dursi v. N.Y. City Transit Agency*, 198 A.D. 2d 470, 471, 604 N.Y.S.2d 543 (N.Y. App. 2d Dep't. 1993).

¹⁷⁹ 292 A.D. 2d 311, 741 N.Y.S.2d 497 (N.Y. App. 1st Dep't 2002).

¹⁸⁰ *Petrucci v. New York*, 167 A.D. 2d 29, 569 N.Y.S.2d 624 (1991).

¹⁸¹ *Hickey v. Manhattan and Bronx Surface Transit Operating Auth.*, 163 A.D. 2d 262, 558 N.Y.S.2d 543 (N.Y. App. 1st Dep't. 1990) (city breached its duty to maintain the sidewalk; transit agency breached its duty to provide safe path for alighting).

¹⁸² *Simpkins v. United States*, 253 F. Supp. 2d 7 (D.C. 2003).

¹⁸³ *McKethean v. WMATA*, 588 A.2d 708 (D.C. App. 1991).

¹⁸⁴ *Duris v. N.Y. City Transit Auth.*, 198 A.D. 2d 470, 604 N.Y.S.2d 960 (N.Y. App. 1993).

¹⁸⁵ *Gall v. City of N.Y.*, 223 A.D. 2d 622, 636 N.Y.S.2d 837 (N.Y. App. 2d Dep't 1996).

¹⁸⁶ *Giaccotto v. N.Y. City Transit Agency*, 150 Misc. 2d 164, 566 N.Y.S.2d 450 (N.Y. Sup. Ct. 1990). Note that bus lanes are not a special use by a transit agency. *Towbin v. City of N.Y.*, 309 A.D. 2d 505, 765 N.Y.S.2d 242 (N.Y. App. 1st Dep't 2003).

¹⁸⁷ *Simpkins*, 253 F. Supp. 2d 4.

work is performed.¹⁸⁸ As a point of comparison, in *Schlosser, supra*, the court held that stocking and cleaning a construction site was not inherently dangerous work.

Whether or not the duty of care is delegable, the property owner may be indemnified by the transit agency for the liability by contract.¹⁸⁹ In addition, the responsibility to maintain the area near a bus shelter may be delegated by contract. For example, in *Lerer v. City of New York*,¹⁹⁰ New York City, the nominally responsible party, had a franchise agreement with Outdoor Systems to operate its bus shelters. Outdoor Systems had a contract with Shelter Express Corp. to maintain the bus shelters. It was deemed a triable issue of fact as to whether Express had a contractual duty to maintain and repair the sidewalk by the bus shelter and whether Express had a duty to defend the action brought against Outdoor Systems. Notably, this issue arose because the court found that the contract clause setting forth the scope of Express's duty to maintain the sidewalk was ambiguous.

A Connecticut court held in *Rodriguez v. City of Hartford* that even where the common carrier is a management company that is specifically not contractually responsible for maintenance, the common carrier duty to provide a safe place to alight creates a question of fact about that carrier's liability.¹⁹¹ In *Rodriguez*, the plaintiff was injured when he tripped over a water valve at a bus stop, and was seeking to recover from, among others, H.N.S. Management Company, Inc. H.N.S. moved to dismiss, arguing that it had no control over the valve, was contractually not responsible for maintenance at the bus stop, and therefore as a matter of law had no duty to the plaintiff. The court rejected H.N.S.'s argument that as a matter of law it had no duty of care to Rodriguez, since as the provider of professional services it was not foreseeable to it that the plaintiff would trip on the valve over which H.N.S. had no control. Rather, because of the common carrier duty, there was a jury question as to the foreseeability of the occurrence and hence potential liability.

State statutes may specify responsibility for design and maintenance. For example, in Connecticut, a high-way defect provision makes the state liable for defects within the right-of-way.¹⁹²

3. Duty Owed to Whom

The general duty of reasonable care concerning the sidewalk in front of a bus stop is owed to any pedes-

¹⁸⁸ See *W. M. Schlosser Co. v. Md. Drywall Co.*, 673 A.2d 647 (D.C. 1996).

¹⁸⁹ *Simpkins*, 253 F. Supp. 2d at 8. See § II.I., *Indemnification and Insurance infra*.

¹⁹⁰ 301 A.D. 2d 577, 756 N.Y.S.2d 217 (N.Y. App. 2d Dep't 2003).

¹⁹¹ 2004 Conn. Super. LEXIS 3808 (unpublished opinion), citing *Parlato v. Conn. Transit*, 181 Conn. 6667, 434 A.2d 322, 323 (1980).

¹⁹² *Ferreira v. Pringle*, 255 Conn. 330, 766 A.2d 400 (2000).

trian, including but not limited to passengers approaching or departing from the bus stop.¹⁹³ In addition, there may be a duty owed to passersby. The company responsible for defective electrical wiring of a bus shelter in Miami was held liable for the electrocution of a young boy who sought shelter from a rainstorm. The fact that he was not a passenger does not appear to have been an issue in the case.¹⁹⁴

4. Summary of Important Principles

Responsibility for bus shelter design:

- Responsible entity must exercise reasonable care to avoid reasonably foreseeable dangers.
 - Dangers not apparent at the outset may become so.
 - Reasonable steps should be taken to alleviate such dangers.
- Negligent design:
 - Actual notice of defect not required for liability to accrue.
 - Transit agency may be liable for approving negligent design.

Bus stop and bus shelter maintenance

- Generally municipal responsibility, unless contracted out.
 - Contractor must meet general negligence standards.
 - Adjacent property owners may be responsible for maintaining some of the area around the bus stop.
 - Transit agency may have maintenance responsibility.
 - State or local law.
 - Agreement with otherwise legally responsible entity.
 - Limitations on public entity's ability to delegate responsibility may exist.
 - Ability of public entity to receive or provide indemnification varies by jurisdiction.
 - Even absent direct maintenance responsibility, liability may accrue based on actions of transit agency that adversely affect conditions at the bus stop.

Liability attached to structures may give rise to liability for injury to passersby resulting from defective conditions at the bus shelter.

D. Indemnification and Insurance¹⁹⁵

The issue of indemnification arises in the context of public employee liability and the context of various agreements between transit agencies and municipali-

¹⁹³ *Simpkins*, 253 F. Supp. 2d at 7–8.

¹⁹⁴ *Cabrera v. Eller Media Co.*, June 24, 2005: Natalie White, *\$65 Million for Sixth-Grader Electrocuted at Bus Stop, Jury Rejects Lightning Theory*, www.lawyersweekklyusa.com/usa/Stopten2005.cfm.

¹⁹⁵ A detailed discussion of the issues potentially involved in drafting indemnification provisions (*e.g.*, collateral source rule, *see Mead v. Amtrak*, 676 F. Supp. 92 (D. Md. 1987)) is beyond the scope of this report.

ties, franchisees, and maintenance contractors. In the case of agreements, issues arise concerning indemnification by public entities and of public entities.

1. Indemnification of Employees

A state statute may require that the municipality indemnify an employee who negligently injures someone while operating a municipally-owned vehicle in discharge of a statutory duty and within the scope of employment. However, some states require that in order for such indemnification to apply to the operation of a transit bus, the legislation authorizing the municipality to operate the bus must be mandatory and the exercise of authority must be in the municipality's sovereign rather than proprietary capacity.¹⁹⁶

2. Indemnification by Public Entities

State sovereign immunity law may prohibit or restrict a public entity from providing indemnification or purchasing liability insurance.¹⁹⁷ Such limitations may cover only state entities, thus allowing municipalities to indemnify.¹⁹⁸

3. Indemnification of Public Entities

A New York court found that the actions of the transit agency that created an unsafe condition on the sidewalk did not give rise to common-law indemnification of the city, which bore the clear responsibility for maintaining the sidewalks. Moreover, the court noted that even statutory language requiring a contractor to indemnify the city for any damage caused by negligent work performed by the contractor would not relieve the city of its own independent duty to maintain the sidewalks.¹⁹⁹

For contract language to provide indemnification, the language must be quite specific. The following was found to be sufficient to require a bus shelter vendor to indemnify the City of New York: “[Vendor] shall hold the City harmless from all damages to persons...by reason of the construction, operation or maintenance of the bus stop shelters hereby authorized, whether or not such damages are due to the negligence or otherwise of the City, its agents, servants or employees.”²⁰⁰

Very clear language is required to provide indemnification that permits an indemnitee to recover for its own negligence. The District of Columbia has held the fol-

¹⁹⁶ *Fiebinger v. New York*, 182 Misc. 1007, 51 N.Y.S.2d 383 (N.Y. Sup. Ct. 1944).

¹⁹⁷ See, e.g., Prohibited Contract Clauses, www.legal.uncc.edu/knockout.html; Explanation of Indemnification Limitations and Insurance Clauses, www.utsystem.edu/OGC/intellectualproperty/indins.htm; Defense and Indemnity, www.wisc.edu/legal/defense.pdf.

¹⁹⁸ E.g., *Am. Home Assurance Co. v. Nat'l R.R. Passenger Corp.* 908 So. 2d 459 (Fla. 2005).

¹⁹⁹ *Petrucci v. City of N.Y.*, 167 A.D. 2d 29, 569 N.Y.S.2d 624 (1991).

²⁰⁰ *Flynn v. Farias*, 139 Misc. 2d 699, 528 N.Y.S.2d 486 (1988).

lowing language to be sufficient: “The Subcontractor...shall indemnify and save harmless the Contractor...and Owner from any and all claims and liabilities for property damage and personal injury, including death, arising out of or resulting from or in connection with the execution of the work.”²⁰¹

Public policy considerations may limit the application of indemnity clauses,²⁰² and in the case of construction contracts²⁰³ or gross negligence²⁰⁴ such considerations may prohibit them altogether.

Even where there is no basis for indemnification, there might be a basis for requiring contribution.²⁰⁵

III. OTHER LEGAL ISSUES

A. Access to Enclosed Private Property to Provide Bus/Shuttle Service

Substantial numbers of transit-dependent passengers can only gain access to privately owned facilities such as shopping centers, office parks, and medical centers via transit. In addition, in order to have meaningful access to such destinations, these transit-dependent passengers may also require transit access to privately owned facilities such as gated communities, retirement communities, and assisted-living communities. While many transit agencies have sufficient access to private property to provide this needed service to these transit-dependent passengers, other agencies have experienced difficulties in acquiring and/or maintaining access to such private property.²⁰⁶

In addition to reviewing the need for transit access to private property, this subsection includes examples of agencies that do have such access. The subsection also reviews examples of requirements for providing access and discusses possible liability to private property owners for denying access.

1. Need for Service

Elderly passengers may be physically restricted in their ability to reach a regular bus stop, wait for a bus,

²⁰¹ *N.P.P. Contractors v. Canning & Co.*, 715 A.2d 139 (D.C. App. 1998). See also *Schlosser v. Md. Drywall*, 673 A.2d 647 (D.C. App. 1996).

²⁰² George Coppola. *Indemnification Agreements—Validity in Other States*. 2000-R-0514, Apr. 26, 2000, www.cga.ct.gov/2000/rpt/olr/htm/2000-R-0514.htm.

²⁰³ E.g., RCW 4.24.115. Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate, <http://apps.leg.wa.gov/RCW/default.aspx?cite=4.24.115>.

²⁰⁴ *Nat'l R.R. Passenger Corp. v. Consol. Rail Corp.*, 698 F. Supp. 951 (D.D.C. 1988).

²⁰⁵ *Petrucci*, 167 A.D. 2d 29.

²⁰⁶ See HINEBAUGH ET AL., *supra* note 154. In addition, some transit agencies cannot serve enclosed private properties because they do not provide service on private streets. *Id.*

or enter or exit a bus.²⁰⁷ However, not all of these passengers are eligible for paratransit service.²⁰⁸ Such passengers may be dependent on regularly scheduled transit service and may need service that can access private property (e.g., shopping centers, retirement communities, assisted living facilities, and medical facilities).

The types of private property for which access may be required include gated communities, senior citizen communities, senior citizen facilities, and shopping centers. For example, Sacramento Regional Transit runs a Neighborhood Ride shuttle route through the Phoenix Park gated community, which provides housing to low-income families and seniors,²⁰⁹ to the Florin Mall Transit Center.²¹⁰ In the case of paratransit, a passenger requesting a pick-up from a gated community may need to arrange before the scheduled pick-up for entry through security to secure the needed transportation.²¹¹

People with disabilities may be particularly dependent on transit, and so be at a particular disadvantage when retail, employment, and medical centers do not allow transit access.²¹²

2. Examples of Agencies That Have Access

Transit agencies seeking access to malls and other private property may find it useful to be aware of agencies that have such access. Selected examples of transit agencies with bus stops on private property follow.

Metro Transit in Minneapolis has access to the Mall of America, which provides light rail access and bus connections.²¹³ The mall describes bus service as one of its guest services: Passengers may access buses serving Minneapolis, St. Paul, and surrounding suburbs at the mall's transit station at the east side of the mall.²¹⁴ The Mall of America Transit Center is the largest transit center in the Minneapolis-St. Paul metropolitan area.²¹⁵

²⁰⁷ David V. Lampman, *Fun, Fun, Fun, 'Til Sonny (or the Government) Takes the T-Bird Away: Elder Americans and the Privilege to be Independent*, 12 ALB. L. J. SCI. & TECH. 863, 877 (2002).

²⁰⁸ National Council on Disability, *supra* note 3, at 91–92.

²⁰⁹ Phoenix Park Revitalization Project, described at www.shra.org/Content/CommunityDevelopment/PhoenixPark/PhoenixParkTOC.htm.

²¹⁰ SACOG Community Bus Service Planning Study Final Report, July 2004, Appendix B-2. Posted at www.sacog.org/publications/SACOG-04-021.pdf.

²¹¹ *E.g.*, Access-a-Ride Users' Guide, Regional Transportation District, Denver. Posted at www.rtd-denver.com/SpecialRides/access-a-ride/userguide.pdf.

²¹² See NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 19-21.

²¹³ Thomas R. Devaney, *Public Transit and Shopping Centers: Access or Denial?*, SHOPPING CENTER LEGAL UPDATE, vol. 24, issue 3, Fall/Winter 2004, at 2.

²¹⁴ www.mallofamerica.com/about_moa_guest_services.aspx.

²¹⁵ A Better Light-Rail Connection to Mall of America; Good Transit Access is Good Business, www.metrocouncil.org/Directions/transit/transit2001-03/moa.htm.

The WMATA has access to several malls within its service area, including the Tysons Corners Shopping Center in Fairfax County.²¹⁶

The Westshore Mall in Tampa, Florida, has provided patrons of Hillsborough Area Regional Transit the same level of access to the mall through its parking garage as it provides for people who park in the garage.²¹⁷

The Central Florida Regional Transportation Authority (LYNX) will have access to the proposed Plaza Colina Shopping Center (a retail, office, and residential condominium development), with bus shelters provided and maintained by LYNX, and to Winter Garden Village (another mixed-use development), with bus shelters provided by the developer.²¹⁸

Palm Tran in Palm Beach County, Florida, gained access to the Mall at Wellington Green as part of Palm Tran's Access to Jobs program.²¹⁹

3. Requirements and Strategies for Granting Access

In St. Louis, Missouri, a local ordinance requires that bus access for the Bi-State Development Agency be identified before permits can be issued for new developments, redevelopments, and expansions.²²⁰

The expenditure of public funds for maintenance may be grounds for requiring access. In Florida, for example, the Attorney General has determined that public access cannot be denied where local government participates in maintenance of private property.²²¹

Moreover, zoning ordinances, land development regulations, and other local land use laws and regulations may require transit access.²²² Florida law, for example, requires that any development with significant effect on more than one county be considered a Development of Regional Impact (DRI) that must be reviewed by regional planning councils. Transit agencies are involved early on in the review process, and the process often results in transit access requirements in exchange for development approval.²²³ Pasadena, California, requires that major nonresidential developments provide facilities for alternative modes of transportation.²²⁴ The 1998 Comprehensive Plan for the City of Port Orange, Florida required that: "Major trip generators and attractors,

²¹⁶ www.shoptyson.com/directions.asp.

²¹⁷ Sara J. Hendricks, Cecilia Dyhouse, *Land Developer Participation in Providing for Bus Transit Facilities and Operations*, CENTER FOR URBAN TRANSPORTATION RESEARCH, March 2002, at 12, www.dot.state.fl.us/research_center/Completed_Proj/Summary_PTO/FDOT_BC137_19_rpt.pdf.

²¹⁸ MARY KAY CHRISTOPHER, BUS TRANSIT SERVICE IN LAND DEVELOPMENT PLANNING 18 (TCRP Synthesis 67, 2006).

²¹⁹ Palm Beach County Transportation Agency Transit Development Plan Annual Update FY 2001–2002, at 25, www.co.palmbeachfl.us/palmtran/marketing/pdf/library/tdpfinal2002.pdf.

²²⁰ HINEBAUGH ET AL., *supra* note 154, at 14.

²²¹ DEVANEY, *supra* note 213, at 3, citing (AGO 92-42).

²²² HINEBAUGH ET AL., *supra* note 154.

²²³ CHRISTOPHER, *supra* note 218, at 16–6.

²²⁴ Hendricks et al, *supra* note 217, at 60.

including new commercial developments exceeding 50,000 square feet in gross leasable space and new residential developments of more than 200 dwelling units, shall provide on-site space for bus stops if located on a public transportation corridor.²²⁵

While not quite requiring transit access to private property, some jurisdictions require that elderly housing be in proximity to transit, including bus stops.²²⁶ Jurisdictions interested in exploring such requirements may also want to review model regulations. The American Planning Association's model regulations to mandate transit-supportive policies include regulations related to bus stops, shelters, and benches, as does TriMet's 1993 report, *Planning and Design for Transit Handbook*.²²⁷

4. Liability for Denying Access

Failure to allow transit access may violate federal or state statutory requirements. For example, the ADA requires a clear path of travel for disabled passengers from a bus stop to a destination, e.g., a mall.²²⁸ Under some circumstances, refusal to allow transit access to private property such as malls may violate the ADA clear path requirement.²²⁹

The Job Access and Reverse Commute (JARC) program²³⁰ provides funding to develop new or expanded transportation services connecting low-income persons to employment sources and services.²³¹ Although JARC does not create liability for refusing access to private employment centers, transit/JARC coordination encourages extending transit service to work centers.²³² In addition, employer participants in state welfare-to-work programs have an interest in providing transit access for their employees who participate in such programs.²³³

Denial of transit access may violate Title VI of the Civil Rights Act of 1964²³⁴ if the denial is found to be based on race or income distribution.²³⁵ The Greater Bridgeport Transit Agency raised this issue when the Trumbull Mall excluded transit buses, but the chal-

lenge was dismissed for lack of standing.²³⁶ A Center for Urban Transportation Research study of transit access to private property found that while private property managers and owners may couch objections to bus stops in terms of "undesirables" and "rowdy teenagers,"²³⁷ transit agencies suspected that racial bias was behind a significant number of incidents of shopping centers refusing to allow bus stops on their properties.²³⁸

B. Accessibility of Bus Stop/Bus Shelter to Disabled Passengers²³⁹

A transit agency may meet its responsibilities under the ADA²⁴⁰ by providing fixed route service that is accessible to disabled passengers. Alternatively, a transit agency may provide transportation to disabled individuals via paratransit that provides comparable service to the authority's fixed-route service.²⁴¹ When a transit agency provides such paratransit service, it must do so from the origin to the destination, but has discretion in deciding whether to provide door-to-door or curb-to-curb service.²⁴² Paratransit does not raise the accessibility issues of bus stops serving fixed-route service.

The ADA, as enforced by the U.S. Department of Transportation (DOT)²⁴³ and the U.S. Department of Justice (DOJ),²⁴⁴ imposes requirements related to the accessibility of both the bus stop itself and the path to a destination, either of which may be entirely outside the control of the transit agency.²⁴⁵ Both the DOT and the

²³⁶ *Id.*, at 3, citing *In the Matter of Westland Properties, Inc. and Greater Bridgeport Transit District*, American Arbitration Association, No. 12 15 00266 94, decided Aug. 23, 1995.

²³⁷ HINEBAUGH ET AL., *supra* note 154, at 77.

²³⁸ *Id.* at 11–12.

²³⁹ See generally HENRY H. PERRITT, JR., AMERICANS WITH DISABILITIES ACT HANDBOOK (2003), ch. 6, *Requirements Under Title III for Public Accommodations and Services Operated by Private Entities*; ch. 7, *Transportation and Communications Systems Requirements Under Title IV*. Accessibility issues such as making route information available to visually disabled passengers are beyond the scope of this report and are not discussed in depth. See, e.g., *Martin v. Metro Atlanta, RTA*, 225 F. Supp. 2d 1362 (N.D. Ga. 2002).

²⁴⁰ 42 U.S.C. § 12101 *et seq.*

²⁴¹ See, e.g., *Anderson v. Rochester-Genesee Regional Transp. Auth.*, 337 F.3d 201 (2d Cir. 2003).

²⁴² FTA Disability Law guidance, *supra* note 8.

²⁴³ Transportation services for individuals with disabilities (ADA), 49 C.F.R. pt. 37,

www.access.gpo.gov/nara/cfr/waisidx_06/49cfr37_06.html.

²⁴⁴ Nondiscrimination on the basis of disability in state and local government services, 28 C.F.R. pt. 35,

www.access.gpo.gov/nara/cfr/waisidx_06/28cfr35_06.html;

Nondiscrimination on the basis of disability by public accommodations and in commercial facilities, 28 C.F.R. pt. 36, www.access.gpo.gov/nara/cfr/waisidx_06/28cfr36_06.html.

²⁴⁵ E.g., TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, at 60; NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 121, citing U.S. ACCESS BOARD, PUBLIC RIGHTS-OF-WAY ACCESS ADVISORY COMMITTEE, BUILDING A TRUE COMMUNITY: FINAL

²²⁵ *Id.* at A-1.

²²⁶ City of Gresham Development Code [8.01]-8 (5/3/01), www.ci.gresham.or.us/departments/ccdd/dp/code/article8/section801.pdf.

²²⁷ CHRISTOPHER, *supra* note 218, at 5–6.

²²⁸ Devaney, *supra* note 213, at 2.

²²⁹ *Id.*

²³⁰ 49 U.S.C. § 5316, added to tit. 49 by § 3018 of Pub. L. No. 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

²³¹ www.fta.dot.gov/printer_friendly/grants_financing_3629.html.

²³² See, e.g., Transit Development Plan 2006, Central Connecticut Regional Planning Agency, at 9, www.ccrpa.org/Transit_Development%20Plan.pdf.

²³³ HINEBAUGH ET AL., *supra* note 154, at 41.

²³⁴ Title VI, 42 U.S.C. § 2000d *et seq.*

²³⁵ Devaney, *supra* note 213, at 2.

DOJ have incorporated the Americans with Disabilities Act Accessibility Guidelines (ADAAG), issued by the U.S. Access Board, into their regulations.²⁴⁶ These requirements apply to new construction and alterations of existing facilities.²⁴⁷

ADAAG requires that site arrival points, including bus stops, be connected by an accessible route to the accessible building entrance(s) served.²⁴⁸ In addition, bus stops designated for lift deployment must comply with Section 810.2, Bus Boarding and Alighting Areas,²⁴⁹ with on-street bus stops required to do so to the maximum extent practicable.²⁵⁰ Essentially the purpose of Section 810.2 is to ensure that there is sufficient space for a wheelchair lift or ramp to deploy.²⁵¹

REPORT, 2001. (Retrieved June 15, 2004, from <http://www.access-board.gov/prowac/commrept/index.htm>).

²⁴⁶ Final Rule Adopting New Accessibility Standards—Effective Nov. 29, 2006. 71 Fed. Reg. 63263, 63264 (Oct. 30, 2006), www.fta.dot.gov/documents/ADAAG_Final_Rule.pdf. The most recent regulation specifies that new construction or alterations begun or having received final design approval before the effective date of the revised regulations and meeting regulations in effect before that effective date need not meet the new regulatory requirements. 71 Fed. Reg. 63265: 49 C.F.R. § 37.9(c)(1), as amended. Furthermore, existing building and facilities not altered after November 29, 2006, and in compliance with regulatory requirements in effect before that date, need not be retrofitted to comply with the amended regulations. 71 Fed. Reg. 63265: 49 C.F.R. § 37.9(c)(2), as amended. The revised regulation also retains the structural impracticability exception that is deleted from the new ADAAG for technical drafting purposes. See 71 Fed. Reg. 63264.

²⁴⁷ ADAAG, July 23, 2004; ADA, ch. 2: *Scoping Requirements*, 201, Application, www.access-board.gov/ada-aba/final.pdf.

²⁴⁸ *Id.*, 206, Accessible Routes, 206.2.1, Site Arrival Points, www.access-board.gov/ada-aba/final.pdf. See THE STARKLOFF DISABILITY INSTITUTE, 11–12 ACCESS TO INDEPENDENCE, A REPORT TO THE EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS (2005) (problem with lack of clear path).

²⁴⁹ *Id.*, 209.2.2, Bus Loading Zones.

²⁵⁰ *Id.*, 209.2.3, On-Street Bus Stops. This replaces 10.2.1(1), which provided:

Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

New ADA ACCESSIBILITY GUIDELINES SIDE-BY-SIDE COMPARISON, ch. 2: *Scoping Requirements*, www.access-board.gov/ada-aba/comparison/chapter2.htm.

²⁵¹ See *Neff v. VIA Metro. Transit Agency*, 179 F.R.D. 185 (W.D. Tex. 1998) (settlement included requirement that VIA construct concrete pad next to sidewalk to provide adequate room for wheelchair lift to deploy). Design considerations may support exceeding the minimum ADA requirements. See 1995

The revised Appendix A to 49 Code of Federal Regulations (C.F.R.) Part 37 amends Section 810.2.2 to include the provision from the former 49 C.F.R. § 37.9(c), which required that public entities, to the extent construction specifications are within their control, ensure bus boarding and alighting areas comply with the required dimensions.²⁵² Appendix A also notes that it may be necessary to make operational adjustments where there is not sufficient clearance to deploy wheelchair lifts or ramps,²⁵³ and that to avoid the need to make such adjustments, shelters and signs should not be placed within the required clearance.²⁵⁴ Where an existing bus stop does not allow deployment of a lift or ramp, the bus driver is encouraged to stop at the nearest stable surface.²⁵⁵

ADAAG does not require the installation of bus shelters, but does provide that where there is a bus shelter, the shelter must comply with Section 810.3.²⁵⁶ The required bus pad may be either within or outside the shelter.²⁵⁷

The DOT also requires that where one bus stop is accessed by multiple routes, there should be identification so that visually impaired passengers may identify the appropriate vehicle to board.²⁵⁸

OREGON BICYCLE AND PEDESTRIAN PLAN, II. *Facility Design Standards*, at 95,

www.oregon.gov/ODOT/HWY/BIKEPED/docs/bp_plan_2_ii.pdf

²⁵² 71 Fed. Reg. 63265. The provision specifically states:

810.2.2 Dimensions—Modification to 810.2.2 of Appendix D to 36 CFR

Part 1191

Bus boarding and alighting areas shall provide a clear length of 96 inches (2440 mm), measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm), measured parallel to the vehicle roadway. Public entities shall ensure that the construction of bus boarding and alighting areas comply with 810.2.2, to the extent the construction specifications are within their control.

71 Fed. Reg. 63266.

²⁵³ *Martin v. Metro Atlanta, RTA*, See 225 F. Supp. 2d 1362 (N.D. Ga. 2002), p. 9 of Dec. 24, 2002, order granting preliminary injunction (unpublished order, Civil Action File No. 1:01-CV-3255-TWT), mandating as part of settlement agreement that passengers requiring use of wheelchair lift or ramp wait at designated bus stop, and further requiring that if the passenger cannot board at that stop, the driver board the passenger at the nearest feasible point.

²⁵⁴ 71 Fed. Reg. 63267.

²⁵⁵ Toolkit for the assessment of Bus Stop Accessibility and Safety, p. 6, n.2, citing 49 C.F.R. § 37.167(g), http://projectaction.easterseals.com/site/DocServer/06BSTK_Complete_Toolkit.pdf?docID=21443.

²⁵⁶ *Id.*, 218.4 Bus Shelters.

²⁵⁷ *Id.* Advisory 810.2, Bus Boarding and Alighting Areas, at 251.

²⁵⁸ Michael Lewyn, “*Thou Shalt Not Put a Stumbling Block Before the Blind.*” *The Americans With Disabilities Act and Public Transit for the Disabled*, 52 HASTINGS L.J. 1037, 1071, n.262 (2001), citing DOT regulations: 49 C.F.R. § 37.167(c).

In addition to requirements for bus stops and bus shelters, accessibility issues arise concerning sidewalks. The Ninth Circuit has held that sidewalks are subject to the requirements of Title II of the ADA and Section 504 of the Rehabilitation Act, and the implementing regulations.²⁵⁹ The court found that “maintaining public sidewalks is a normal function of a city” and therefore under Ninth Circuit precedent, maintaining accessibility of sidewalks falls within the scope of Title II of the ADA.²⁶⁰ This ruling has been interpreted to mean that: “...governments will be obligated to remove barriers from their sidewalks, such as benches, wires, cracks, breaks, and sign posts, if their presence poses a barrier to the accessibility of the sidewalk to, for example, persons using wheelchairs or those with sight impairments.”²⁶¹

Under a settlement agreement, the City of Sacramento will devote “twenty percent of its transportation funds for the next 30 years to improve sidewalks, crosswalks and curb ramps.”²⁶²

Uncertainty regarding requirements for right-of-way accessibility could be further resolved by adoption of accessibility guidelines for public rights-of-way currently under development²⁶³ by the U.S. Access Board. Relevant sections include R301 Pedestrian Access Route,²⁶⁴ R303 Curb Ramps and Blended Transitions,²⁶⁵ R307 Street Furniture,²⁶⁶ R309 Call Boxes,²⁶⁷ R402 Clear Space,²⁶⁸ R406 Ramps,²⁶⁹ R409 Signs,²⁷⁰ and R410 Bus Stops (R410.1 Bus Boarding and Alighting Areas, R410.2 Bus Shelters).²⁷¹ A number of these sections are substantially similar to the existing requirements discussed above, while others place more general guidance from the existing guidelines in the specific context of the public right-of-way. For example, street furniture

would be required to have clear space around it and be connected to a pedestrian access route.²⁷²

The draft guidelines provide:

Where bus stops are marked along existing streets by the placement of signage, benches, or shelters, other features necessary to accessibility, such as surface improvements and curb ramps, will be subject to the program access requirements of the U.S. Department of Justice title II regulation at 28 C.F.R. 35.151 or the U.S. Department of Transportation 504 regulation at 49 C.F.R. Part 27. Transportation, public works, and transit agencies should consider including needed improvements in their transition plans and other program accessibility planning. Furthermore, the placement of such items is subject to usability and protruding objects provisions that apply to street furniture. Bus stop benches and shelters shall not intrude into an existing pedestrian access route....Signage required at bus stops is scoped at R210.2 Bus Route Identification.²⁷³

The guidelines draw distinctions between bus stops that are merely designated by signage and those that involve construction. For example, merely placing a bus stop sign to mark a bus stop at a site without a sidewalk would not require the installation of an improved surface.²⁷⁴

The proposed guidelines do not address the issue of which entity is responsible for implementation. Making that determination should depend on which entity has control over or ownership of the facility at issue. For example, the duty to provide adequate curb cuts, which are needed to provide access to a bus stop, generally falls on the municipal government.²⁷⁵ The duty to maintain sidewalks generally resides with municipal governments as well.²⁷⁶

Assuming the transit agency is responsible for constructing the bus stop pad, whether the transit agency’s duty ends with proper construction of the pad and immediate shelter area or extends beyond depends on state and local law governing torts and the responsibility for maintaining the public right-of-way, as well as any agreements governing that responsibility. Depending on the jurisdiction, the transit agency may incur some liability based on decisions to locate a bus stop where the existing sidewalks are inadequate or on failure to request repairs of sidewalks that become inadequate.

²⁷² *Id.* R307.2, *Clear Floor or Ground Space*.

²⁷³ *Id.* at 28–29.

²⁷⁴ *Id.* Technical Assistance Q&A for Alterations Projects, p. 15.

²⁷⁵ *See, e.g.*, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, The ADA and City Governments: Common Problems: Curb Ramps (discussing city government obligation to install curb ramps, and including bus stops on list of priority sites), www.ada.gov/comprob.htm; Andrea Kelly, *Federal Disability Rules Require Many Redos*, ARIZONA DAILY STAR, March 5, 2007, posted by Disability Technology & News, <http://disabilitytechnews.wordpress.com/2007/03/13/federal-disability-rules/>. *See also* II.A.1, *Duties Owed*, *supra* this report.

²⁷⁶ *See id.*

“DOT has declined to prescribe specific means for such identification. *See* 49 C.F.R. § 37.167, app. D.”

²⁵⁹ *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002).

²⁶⁰ *Id.*

²⁶¹ Municipal Research & Services Center (MRSC), Americans with Disabilities Act, Dec. 2006, www.mrsc.org/Subjects/Legal/ada/adainfo.aspx.

²⁶² *Id.*

²⁶³ Public Rights-of-Way, www.access-board.gov/prowac/index.htm.

²⁶⁴ Public Rights-of-Way, ch. R3, *Technical Provisions*, p. 30. Advisory R301.3.1 requires that street furniture, including newspaper racks and bus shelters, not reduce the required width of the pedestrian access route, p. 31, www.access-board.gov/prowac/draft.pdf.

²⁶⁵ *Id.* at 34.

²⁶⁶ *Id.* at 43.

²⁶⁷ *Id.* at 46.

²⁶⁸ *Id.* Public Rights-of-Way, ch. R4, *Supplementary Technical Provisions*, R402, *Clear Space*, p. 48.

²⁶⁹ *Id.* at 50.

²⁷⁰ *Id.* at 54.

²⁷¹ *Id.* at 58.

quate after the bus stop is designated. Such liability could accrue even if the transit agency was not responsible for constructing the bus stop pad. Additionally, efforts to locate bus stops to provide access and to maintain accessibility will be considered when the Federal Transit Administration assesses the agency's efforts to comply with ADA requirements.²⁷⁷

C. Civil Rights

Bus stop location may raise civil rights issues. The Federal Transit Administration counts the distribution of bus stop shelters and any amenities such as benches, lights, and telephones as an indicator of a transit agency's compliance with Title VI²⁷⁸ of the Civil Rights Act.²⁷⁹ As noted above, denying transit access to private property may violate Title VI if the refusal is based on the race of passengers.²⁸⁰

D. Advertising

Hiring an outside vendor to construct, maintain, and/or operate shelters, in exchange for allowing the vendor to sell advertising on the shelters, is a popular way to pay for bus shelters.²⁸¹ Such agreements often bring in revenue for the municipality by requiring that the vendor share a portion of the advertising receipts with the municipality.²⁸² Advertising may also be viewed as a means of providing private sector support for public transportation.²⁸³

1. Whether Allowed by Local Jurisdiction

Advertisements on bus shelters may be subject to regulation at the state and/or local level, depending on the location of the bus shelters and state and local law. For example, a survey of state DOTs by the American Association of State Highway and Transportation Officials on regulations concerning advertising on street furniture, specifically bus shelters, indicated a range of approaches, including prohibiting advertising in the state right-of-way, regulating bus shelter advertising under billboard/outdoor advertising regulations, and

not regulating bus shelter advertising at all.²⁸⁴ In addition, some jurisdictions do not allow advertising on bus shelters owned by the transit agency, but do allow advertising on privately owned bus shelters.²⁸⁵

While a number of jurisdictions have amended their prohibitions on outdoor advertising to enable bus shelter franchise agreements,²⁸⁶ some jurisdictions still prohibit bus shelter advertising, usually under their sign codes.²⁸⁷

2. Restrictions on Type of Advertising

Restrictions on the type of advertising allowed must comport with the First Amendment and state constitutional protection of speech. An in-depth analysis of these issues is beyond the scope of this report.²⁸⁸ It is

²⁸⁴ Outdoor Advertising on Street Furniture Ads/Parks, survey of state requirements,

www.fhwa.dot.gov/realestate/aashto2006/strfurnads.htm. Minnesota, for example, prohibits advertising in the public right-of-way, except in designated areas, www.ci.madison.wi.us/neighborhoods/buildb/bus_stops.htm.

²⁸⁵ Minneapolis: www.kingsfield.org/NRP/NRP%20mnts%2005-1.htm. For example, under the South Carolina Code of Laws, bus shelters are regulated under Title 57, Highways, Bridges and Ferries, ch. 25, *Outdoor Advertising*, art. 1, *General Provisions*. Section 57-25-30, Erection of bus shelters; location; permit requirement; fee provides:

(A) Bus shelters, including those on which commercial advertisements are placed, may be erected and maintained within the rights-of-way of public roads by the State. A bus shelter located within the right-of-way of a state road shall comply with all applicable requirements of the Department of Transportation, Title 23 of the United States Code, and Title 23 of the Code of Federal Regulations. A bus shelter located within the right-of-way of a road other than a state road shall comply with all applicable requirements of the municipality or county within whose jurisdiction it is located.

(B) A person erecting a bus shelter shall obtain a permit for each shelter location from the Department of Transportation. The permit shall cost twenty-five dollars. Permit fees must be placed in the department's trust fund and used for public transportation purposes.

www.scstatehouse.net/code/t57c025.htm. See also Procedures for Permitting Bus Shelters on Rights-of-Way of Public Roads, www.dot.state.ga.us/topps/op/tsd/6755-10.htm.

²⁸⁶ Greg J. Borowski, *Proposal for Ads on Bus Shelters in City Gets Rolling Again*, THE MILWAUKEE JOURNAL SENTINEL, Oct. 2, 1998. Milwaukee now has a bus shelter franchise agreement with Clear Channel Outdoor. See § V.A, *Franchise Agreements infra* this report.

²⁸⁷ E.g., div. 26, *Sign Ordinance*, § 26.4, Prohibited Signs, <http://stpetebeach.org/commdev/lcd/prohibit.asp>. See also Request for Proposals, RFP # 10-01-06, Bus Shelter Program Issued by Transit Management of Mobile dba The Wave Transit for the City of Mobile, Alabama, 22.0 Compliance with Scope of Work (prohibiting advertisements on city bus shelters), www.thewavetransit.com/BusinessInitiatives/files/BusShelterRFP.pdf.

²⁸⁸ See NORMAN Y. HERRING & LAURA D'AURI, TRANSPORTATION RESEARCH BOARD, NATIONAL RESEARCH COUNCIL, RESTRICTIONS ON SPEECH AND EXPRESSIVE ACTIVITIES IN TRANSIT TERMINALS AND FACILITIES (1998).

²⁷⁷ See, e.g., Suburban Mobility Authority for Regional Transportation (SMART), Detroit, Michigan, Review of Reliability, Maintenance, and Operation of Accessible Fixed Route Bus Service, May 9–12, 2005, p. 10, http://www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

²⁷⁸ FTA Circular 4702.1A, ch. V, § 2.

²⁷⁹ 42 U.S.C. § 2000d.

²⁸⁰ See Hendricks et al., *supra* note 217.

²⁸¹ See generally BEVERLY R. SILVERBERG, SYNTHESIS OF TRANSIT PRACTICE 32, TRANSIT ADVERTISING REVENUE: TRADITIONAL AND NEW SOURCES AND STRUCTURES (Transit Cooperative Research Program, 1998).

²⁸² For example, in 1975 the City of New York had an agreement with its vendor that required the vendor to pay the city 5 percent of the vendor's advertising receipts. *Flynn v. Faria*, 139 Misc. 2d 699, 528 N.Y.S.2d 486 (1988). See § V.A, *Franchise Agreements infra* this report.

²⁸³ See Palm Beach County, *supra* note 219, at 8.

important to keep in mind that reasonable time, place, and manner restrictions are generally permissible; content-based restrictions may be more problematic.²⁸⁹ While the Supreme Court has held that a public entity may prohibit all political advertising on bus benches/shelters,²⁹⁰ such restrictions on advertising “must not be arbitrary, capricious, or invidious.”²⁹¹ Following this reasoning, the Ninth Circuit Court of Appeals has held that regardless of whether a bus shelter can be categorized as a traditional public forum,²⁹² prohibiting specific political advertising in a bus shelter based on the contents of the advertising is unconstitutional.²⁹³ In particular, prohibiting advertisements based on the viewpoint expressed in the advertisements is unconstitutional.²⁹⁴

Restrictions on the percentage of advertisements that can be devoted to typically regulated products such as tobacco and alcohol or outright prohibitions on such advertisements seem common. For example, Colorado regulates advertising on bus benches and bus shelters in the state right-of-way.²⁹⁵ The Colorado Department of Transportation’s (CDOT) Right of Way Manual prohibits bus bench and bus shelter advertising that relates to tobacco or alcoholic products and “objectionable advertising which is obscene, prejudicial, offensive, degrading or discriminatory as determined by CDOT.”²⁹⁶

²⁸⁹ See, e.g., Mark Cordes, *Sign Regulation After Ladue: Examining the Evolving Limits of First Amendment Protection*, 74 NEB. L. REV. 36 (1995).

²⁹⁰ *Lehman v. Shaker Heights*, 418 U.S. 298, 91 S. Ct. 2714, 41 L. Ed. 770 (1974). It remains to be seen how the holding in *Lehman*, a plurality opinion, would be applied in other contexts, i.e., dealing with political advertisements relating to issues rather than candidates running for election. See Vikram David Amar, *Must Public Subway Trains That Feature Advertising Carry Anti-Abortion Ads? What the First Amendment Has to Say*, FindLaw, Jan. 20, 2006, <http://writ.news.findlaw.com/amar/20060120.html>.

²⁹¹ *Lehman*, 418 U.S. at 303.

²⁹² *Cf. Id.*, where the bus advertising space was deemed not to be a public forum.

²⁹³ *Metro Display Advertising v. City of Victorville*, 143 F.3d 1191 (9th Cir. 1998).

²⁹⁴ *Id.* The court not only found the restrictions based on the content of speech to be unconstitutional, but rejected the city officials’ assertion of qualified immunity as it is clearly unlawful for government officials to engage in viewpoint discrimination in regulating advertising.

²⁹⁵ Outdoor Advertising Act, C.R.S § 43-1-401 *et seq.*; Rules and Regulations Pertaining to Outdoor Advertising, 2 C.C.R. 601-3.

²⁹⁶ COLORADO DEPARTMENT OF TRANSPORTATION, RIGHT OF WAY MANUAL, ch. 6: *Roadside Beautification Policies, Procedures and Information*, Dec. 2005, at 21, www.dot.state.co.us/ROW_Manual/Chapter6/Chapter6.pdf.

The RIGHT OF WAY MANUAL also covers such issues as placement of bus benches and shelters, maximum number of benches and shelters per stop, construction requirements, and contract and indemnification requirements.

The District of Columbia restricts the number of advertisements related to tobacco or alcoholic products to 50 percent of advertisements, and requires the franchisee to remove any advertisement the Mayor determines to be “deceptive, misleading, untruthful, obscene, or in violation of [consumer protection provisions].”²⁹⁷ Westchester County, New York, prohibits advertising related to politics, religion, alcohol products, and tobacco products.²⁹⁸

E. Environmental Issues

At least one smart-growth commentator has argued that urban planning should encourage walking and biking, and planners should design transit systems to further that policy goal. One of the amenities cited to advance combining walking with transit is providing bus shelters.²⁹⁹

The Federal Transit Administration/Federal Highway Administration environmental regulation includes a number of bus-related projects as predetermined to be categorical exclusions: “alterations to buses or facilities to make them accessible for the elderly and persons with disabilities; installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals where no substantial land acquisition or traffic disruption will occur; and construction of pedestrian and bicycle lanes, paths, and facilities.”³⁰⁰ Where bus stop projects may have significant impacts, for example, involving a new highway right-of-way or otherwise being part of a larger project with significant environmental effects, more extensive environmental documentation will be required.³⁰¹ Bus rapid transit projects are considered to be new start projects³⁰² and thus under the environmental impact statement requirements of the National Environmental Policy Act of 1969 (NEPA)

²⁹⁷ D.C. CODE ANN., tit. 9, Transportation Systems, subtit. IV., Miscellaneous, ch. 11A, Bus Shelters, § 9-1154, Advertising.

²⁹⁸ Westchester County, *supra* note 102. Appendix B: Intermunicipal Agreements for Bus Shelters, <http://www.westchestergov.com/transportation/images/Bus%20Service%20Guidelines.pdf>.

²⁹⁹ Wendy Collins Perdue, *The Public's Health and the Law in the 21st Century, The Proceeding of the Third Annual Partnership Conference on Public Health Law, Concurrent Session, Using Law for Community Health, Smart Growth for Community Development*, 32 J.L. MED. & ETHICS 27, 28 (2004).

³⁰⁰ Circular No. C 9300.1A, Oct. 1, 1998, 6. Environmental Considerations, www.fta.dot.gov/laws/curculars/leg_reg_4128.html.

³⁰¹ *Id.* See, e.g., Downtown East Valley Transit Improvement Plan Santa Clara/Alum Rock Corridor. Public Workshop: Review of Draft Plans, Aug. 14, 2003 (Enhanced bus alternative requires EIS/EIR, www.vta.org/projects/dtev/docus/library/powerpoint/8_14_03_final_scar_public_mtg_presentation.pdf; www.sanjoseca.gov/clerk/CommitteeAgenda/BBT/05_02_05docs/05_02_05_BBT_ItemA2.pdf).

³⁰² New Starts Project Planning & Development, www.fta.dot.gov/planning/planning_environment_5221.html.

must be justified under a detailed written analysis of the projects' environmental impact and the proposed alternatives.³⁰³ Bus stops and bus shelters that are part of a bus rapid transit project should not be segmented from the project and processed under the less rigorous categorical exclusion process.³⁰⁴

Washington State specifically provides by statute that the construction or designation of bus stops and bus shelters are exempt from the Environmental Impact Statement requirement of the State Environmental Policy Act of 1971 (SEPA). The Washington Supreme Court held that where the type of project that would normally be subject to a categorical exclusion may have significant impacts on the environment, an environmental impact statement will nonetheless be required.³⁰⁵ In the wake of that decision, the Washington legislature revised SEPA, and the Washington court then rejected the *Downtown* premise that "courts may look beyond the nature of the activity to determine whether an otherwise categorically exempt activity is a major action requiring environmental review."³⁰⁶ Hawaii has held that where the environment is particularly sensitive, even a routine bus stop placement may require environmental documentation.³⁰⁷

F. Enabling Legislation

Jurisdictions may set responsibilities for locating/maintaining bus stops/bus shelters, including franchising of bus shelters, via local ordinance. A change in responsibility may encounter local resistance, both from the local governments that stand to lose franchise reve-

nue and from the transit agency not prepared to administer a bus shelter program.³⁰⁸

Some examples of enabling legislation follow.

District of Columbia.—Chapter 11A of the D.C. Code governs bus shelters, covering numerous issues including selection of bus shelter locations, franchising, compensation for advertising, and restrictions on advertising. The government must enter into a franchise agreement to provide shelters in the District, and such agreement must be the exclusive agreement for private installation and maintenance of shelters with advertising. The statute:

- Places a limit of 90 percent on the number of bus shelters in the District that may have advertising.
- Sets forth the time frame for the franchise.
- Prescribes the franchisee responsibilities that must be included in the franchise agreement.
- Prescribes parameters of the agreement concerning number and location of initial order of bus shelters, design, and minimum standards for maintenance and replacement.
- Allows the Mayor to include additional terms.³⁰⁹

The Mayor must, based on consultation with the City Council, select locations for bus shelters.³¹⁰ Major provisions of the D.C. Bus Shelter Franchise Agreement are summarized *infra* this report.

Minneapolis, Minnesota.—The bus shelter franchise is enacted as an appendix to the city code.³¹¹ Major provisions are summarized *infra* this report.

Oakland, California.—The transit agency is responsible for locating bus shelters, but must obtain a permit to do so from the Director of Public Works. The permit must provide that:

- The permittee shall maintain the public bus shelters in good repair and safe and slightly condition at permittee's expense and to the satisfaction of the Director of Public Works. All necessary electrical and telephone connections, cables, wires, and associated appurtenances shall be installed underground in appropriate conduits and in accordance with applicable codes.
- The permittee shall save the city harmless from any and all losses, claims, or judgments for damage to any person or property arising from the installation or maintenance of the public telephones or public bus shelters.

³⁰³ Environmental Analysis & Review,

www.fta.dot.gov/planning/planning_environment_5222.html.

³⁰⁴ See, e.g., Preparation of an Environmental Impact Statement for the East Bay Bus Rapid Transit Project in Berkeley, Oakland, and San Leandro, California, 69 Fed. Reg. 3423-3425 (Jan. 23, 2004).

³⁰⁵ *Downtown Traffic Planning Committee v. Royer*, 26 Wash. App. 156, 160-61, 612 P.2d 430, 433-434 (Wash. App. 1980), citing WASH. ADMIN. CODE 197-10-170(1).

³⁰⁶ *Kucera v. DOT*, 140 Wash. 2d 200, 215, 995 P.2d 63, 71 (Wa. 2000), citing *Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Board*, 131 Wash. 2d 345, 932 P.2d 158, 165 (Wa. 1997).

³⁰⁷ www.hawaii.gov/health/oeqc/notice/notice/23mar1998.pdf (draft environmental assessment required for improvements including "realigning an existing bus stop and building a new bus stop to accommodate city and visitor buses; planting beach naupaka and coconut trees; building a new viewing platform with handicap access ramp; installing new public parking on the mauka side of Kamehameha Highway; maintaining the beach...and realigning the bicycle pathway), www.hawaii.gov/health/oeqc/notice/notice/23mar1998.pdf.

See also *Skywest, Inc. v. City of Duvall*, SHB 98-37 & 46 (Shorelines Hearings Board, State of Washington, June 10, 1999) (special requirements for shoreline development, available at <http://www.eho.wa.gov/FinalOrders.asp?Year+1999> (Last visited July 19, 2007)).

³⁰⁸ Adrienne Packer, *Public Transportation: Bill Transfers Bus Shelter Oversight. Responsibility for Building Stops Would Shift from Local Governments to RTC*, LAS VEGAS REVIEW-JOURNAL, May 10, 2005, www.reviewjournal.com/lvrj_home/2005/May-10-Tue-2005/news/26482451.html.

³⁰⁹ D.C. CODE § 9-1152. The franchise agreement.

³¹⁰ D.C. CODE § 9-1153. Location of bus shelters.

³¹¹ City Code of Ordinances, app. G, § 16, www.municode.com/resources/gateway.asp?pid=11490&rsid=23.

- The permit shall be revocable on 30 days prior written notice to the permittee from the Director of Public Works, in which event the permittee shall at his or her own expense remove the bus shelter or bus shelters installed pursuant to the permit and shall restore the sidewalk as nearly as practicable to its condition prior to such installation.³¹²

IV. STATUTORY PROVISIONS/GOVERNMENTAL PROCESS TO BE FOLLOWED FOR BUS STOPS/BUS SHELTERS

A. Responsibility for Installation and Maintenance of Bus Stop/Bus Shelter

The responsibility for installing and maintaining bus stops/shelters may be set by state or local law. In some cases installing or maintaining bus stops/shelters may be required to obtain development or other governmental approvals.³¹³

Local developers may be required to provide bus stops as a condition of approval of zoning amendments. For example, in Tampa, Florida, the development order for the International Plaza shopping mall, which opened in September 2001, required that “the developer build two bus shelters and pullout bays along two highways located one-half mile from mall property.”³¹⁴ Palm Beach County, Florida, also may require bus stop placement as a condition of approval of zoning amendments.³¹⁵

Property owners are often responsible for maintaining the area in front of their properties to the curb,³¹⁶ and so may be responsible for maintaining the area around a bus stop.³¹⁷ Local jurisdictions may specify maintenance responsibilities for bus benches and bus

³¹² Oakland Code, 12.08.010, Public telephones and bus shelters, www.bpcnet.com/cgi-bin/hilite.pl/codes/oakland/ DATA/TITLE12/Chapter 12 08 E NCROACHMENTS.html#1.

³¹³ See HINEBAUGH, LAND, & STAES, *supra* note 154.

³¹⁴ SARA J. HENDRICKS, Principal Investigator & CECILIA DYHOUSE, Graduate Student Assistant, CENTER FOR URBAN TRANSPORTATION RESEARCH, 13 LAND DEVELOPER PARTICIPATION AND DEVELOPER PARTICIPATION IN PROVIDING FOR BUS TRANSIT FACILITIES AND OPERATIONS (2002), http://www.dot.state.fl.us/research-center/Completed_Proj/Summary See also Resolution Approving Zoning Petition PDD99-077 Official Zoning Map Amendment to a Planned Development District (PDD), Exhibit C1 Affordable Housing Conditions, www.pbcgov.com/pzb/zoning/resolutions/2000/R-2000-1234.pdf.

³¹⁵ Resolution Approving Zoning Petition PDD99-077, Official Zoning Map Amendment to a Planned Development District (PDD), www.pbcgov.com/pzb/zoning/resolutions/2000/R-2000-1234.pdf.

³¹⁶ See, e.g., *Dursi v. City Transit Auth.*, 198 A.D. 2d 470, 604 N.Y.S.2d 960 (1993).

³¹⁷ See, e.g., Metro Bus Shelters, Seattle Office of Economic Development <http://www.seattle.gov/economicdevelopment/biz>.

shelters, including timeframes for making needed repairs.³¹⁸

B. Design Guidelines

Design guidelines may be mandatory or hortatory.³¹⁹ Regardless of state or municipal design guidelines, new bus stops and shelters must meet U.S. DOT requirements for ADA compliance.³²⁰ Lift accessibility should be considered when installing bus bulbs.³²¹

C. Placement

In addition to transit agency guidelines for bus stop placement, local and state governments often specify the locations allowed for bus stops and bus shelters. Possible sources for requirements include community development codes³²² and sign codes.³²³ Limitations on placement are also found in bus shelter franchise authorizing statutes.³²⁴ In addition, ADA requirements, referenced *supra*, will influence placement. Placement

³¹⁸ West Jordan, Utah, www.wjordan.com/files/BENCHSIGNAPP_10-05.pdf.

³¹⁹ See, e.g., West Jordan, Utah (mandatory), www.ci.west-jordan.ut.us/files/BENCHSIGNAPP_10-05.pdf; Westchester County, *supra* note 102. Recommended: Bus stop dimensions, pp. 6, 11; pavement construction for bus pads, p. 7; bus turn-outs, p. 10; waiting pads, p. 12; bus shelter placement, p. 13; summary of desirable bus stop features, p. 15.

³²⁰ Pt. IV, DOT, 49 C.F.R., pts. 27, 37, & 38, Transportation for Individuals With Disabilities; Final Rule. Sample graphic of minimum design dimensions: Westchester County, *supra* note 102, p. 17. See § III.B, *Accessibility of Bus Stop/Bus Shelter infra* this report.

³²¹ See FITZPATRICK ET AL., *supra* note 1, at 6, 9 (possible difficulty maintaining appropriate slope for wheelchair at bus bulb). A bus bulb (or curb extension, nub, or bus bulge) is “a section of sidewalk that extends from the curb of a parking lane to the edge of a through lane.” *Id.* at 1. The authors identified the following cities as having bus bulbs: Charlotte, North Carolina; Grand Rapids and Lansing, Michigan; Orlando and West Palm Beach, Florida; Portland, Oregon; San Francisco, California; and Seattle, Washington. *Id.* at 3.

³²² E.g., A-Engrossed Ordinance No. 588, Exhibit 32, Oct. 9, 2002: Cedar Hills-Cedar Mill Community Plan, www.co.washington.or.us/deptmts/lut/planning/ord2002/ord588a/ord588aex32.pdf.

³²³ E.g., West Jordan, Utah (bus bench/bus shelter locations specified in sign ordinance), www.wjordan.com/files/BENCHSIGNAPP_10-05.pdf.

³²⁴ E.g. St. Paul, Minnesota, City Code, app. I., Bus Stop Shelter Franchise. Section 8, Other Franchises, provides:

No bus stop shelters with advertising displayed thereon shall be allowed to occupy or use a right-of-way of any street or highway within the City of Saint Paul without a franchise. This shall not, however, include non-advertising shelters constructed by Metro Transit. The rights hereby granted are not exclusive and the city may grant like rights and responsibilities to other persons during the term of this franchise. (Ord. No. 17237, § 8, 5-9-85; C.F. No. 95-516, § 8, 6-7-95; C.F. No. 05-457, § 8, 6-8-05).

www.stpaul.gov/code/appi.html.

requirements may also be included in franchise agreements.³²⁵

D. Permit Requirements

Bus stops/shelters are generally subject to numerous requirements, such as those for building permits, sign code permits,³²⁶ and electrical permits.³²⁷ Required documentation may include Engineer of Record signed and sealed plans and profile sections and details; Maintenance of Traffic Plan; a letter notifying neighboring property owners of construction; photographs of existing conditions; a lane closure request form; and a right-of-way permit. In addition, bus shelter installation is likely to require numerous construction inspections.³²⁸

E. Liability Issues

As described *supra* in this report, state statutes often set the parameters for the liability of public entities. State statutes may require or authorize localities to have public liability insurance in connection with bus shelters.³²⁹

F. Environmental Requirements

Many bus stop projects, including at least small bus shelters, will qualify as categorical exclusions under federal environmental requirements. More complex projects may require more documentation. Also state environmental statutes may have more stringent requirements.³³⁰

G. Advertising

Use of advertising is often subject to statutory or regulatory requirements. Many jurisdictions regulate

bus shelter advertising through their sign codes.³³¹ WMATA makes advertising subject to its use regulations. Part 100 of the use regulations provides: “Bus shelter advertising will be conditional on obtaining the necessary authorizations from the surrounding jurisdictions.”³³² The specific requirements for advertising on the Metrobus system are:

- (1) All advertising on the Authority’s property shall comply with the applicable advertising guidelines that govern the advertising inventory.
- (2) All advertising shall be truthful and in compliance with the laws of the signatories; the laws, ordinances, and regulations of the political subdivisions in the transit zone; and the rules and regulations of the Authority.
- (3) Advertising which is false or misleading is prohibited.
- (4) The use of the Authority’s graphics or representations in advertising is subject to the Authority’s approval.
- (5) The Authority reserves the right to reject or remove any advertising that is in violation of the laws of the signatories; the laws, ordinances and regulations of the political subdivisions in the transit zone; or the terms and conditions of the contractual agreement.³³³

H. Agencies/Community Groups That Must Be Consulted

Community development planning, transit planning, and construction permitting processes all affect bus stop/shelter placement. Thus there are public agencies and community groups involved in those processes that often must be consulted about bus stop/shelter placement.

Generally a number of state and/or local agencies must approve the location/relocation of bus stops/shelters. Departments of Public Works and Right-of-Way are likely to be involved. For example, in Los Angeles, the Department of Public Works, Bureau of Street Services (PW-BSS), must review requests for bus stop relocations. The City Council also has input into determining bus shelter locations.³³⁴ In some states, bus shelters in the state right-of-way require the approval of the state DOT. In Utah, for example, an entity that wants to install a bus shelter must consult the transit agency, the municipality in which the shelter is to be located, and the Utah DOT.³³⁵

Some jurisdictions also involve agencies that work with groups likely to use transit. For example, in Berkeley, California, the Commission on Aging and the

³²⁵ Exhibit A—Recommended Appendix G Ordinance Changes (dated Aug. 14, 2006), at 7.

www.ci.minneapolis.mn.us/council/2006-meetings/20060901/docs/02_Appendix_G_revision_081406_v2_revision_081406_v2.pdf.

³²⁶ *E.g.*, West Jordan, Utah: www.ci.west-jordan.ut.us/files/BENCHSIGNAPP_10-05.pdf; Miami Beach: Bus Shelter Installation Permit Application Checklist, www.miamibeachfl.gov/NEWCITY/depts/public_works/Bus%20Shelter%20Checklist%20Feb%202004.pdf.

³²⁷ *See, e.g.*, Request for Proposals, RFP # 10-01-06. Bus Shelter Program Issued by Transit Management of Mobile, www.thewavetransit.com/BusinessInitiatives/files/BusShelterRFP.pdf.

³²⁸ *See, e.g.*, Miami Beach: Bus Shelter Installation Permit Application Checklist, www.miamibeachfl.gov/NEWCITY/depts/public_works/Bus%20Shelter%20Checklist%20Feb%202004.pdf.

³²⁹ *E.g.*, Transportation Code, ch. 316, Use of Municipal Streets and Sidewalks for Public Conveniences and Amenities or for Private Uses, subch. A., Use of Municipal Streets and Sidewalks for Public Conveniences and Amenities. Sec. 316.002, Permitted Improvements or Facilities on Municipal Street. Sec. 316.004, Permit Program, <http://tlo2.tlc.state.tx.us/statutes/tn.toc.htm>.

³³⁰ *See* III.E, *Environmental Issues*, *supra* this report.

³³¹ *See* III.D, *Advertising*, *supra* this report.

³³² WMATA Use Regulations. Sept. 2004, www.wmata.com/about/parp_docs/UseRegulations.pdf.

³³³ *Id.*, § 100.9, Advertising on Metrobus and Metrorail Systems, (b) Type of Advertising.

³³⁴ Memo on bus shelters for Metro from San Fernando Valley Sector Staff, item no. 8, Metro San Fernando Valley Service Sector Governance Council, Aug. 16, 2006, meeting, www.socata.net/newspro2/viewnews.cgi.

³³⁵ R933-4-4, Permitting and Conditions for Valid Permits, www.rules.utah.gov/publicat/code/r933/r933-004.htm#E4.

Commission on Disability both had input into the city's agreement with its bus shelter franchisee and worked with the franchisee on shelter locations.³³⁶

Neighborhood associations or other community groups often comment on bus stop/shelter locations and designs. Whether or not they have formal legal say, they are usually considered important stakeholders in the public review process of zoning and other procedures under which bus stop/shelter location and design are reviewed.³³⁷

I. Process for Selecting/Adding Bus Stops/Shelters

Transit agencies must consider a number of factors in deciding where to locate bus stops: general parameters such as boardings and alightings, headways, and land use; neighborhood requests; maintenance of equity in service provisions among neighborhoods; special needs of transit-dependent areas; and accessibility to the bus stop and its amenities.³³⁸ In addition to transit agency policy, the local jurisdiction usually has processes that must be followed in order to locate bus stops/shelters.

The responsible jurisdiction is likely to have responsibility for designating bus stops.³³⁹ Where the transit agency is part of local government, the agency is more likely to have some direct responsibility beyond recommending bus stop/shelter locations. Where a bus shelter franchise is in place, the franchisee can be expected to have some input, or even total discretion, in placing the bus shelters.³⁴⁰

The responsible jurisdiction may allow community groups and businesses to request additions of bus stops and shelters. If so, the transit agency is the likely entity for collecting and transmitting recommendations to the responsible municipal officer.

Common evaluation factors include average daily boardings at requested locations, safety of the requested

locations, and the cost of adding the requested bus stop or shelter. The size of the transit system will influence boarding criteria: large systems are apt to have a higher average daily boarding threshold for bus shelter installations than are smaller systems.

Jurisdictions may allow privately funded bus shelters where requests for shelter exceed the agency's available budget or do not meet the agency's boarding criteria. This approach may be followed for requests for non-standard bus shelter designs.

Several examples of local processes illustrate these various approaches:

1. Madison, Wisconsin

In Madison, the city traffic engineer is responsible for setting bus stop locations within the jurisdiction of the City of Madison.³⁴¹ However, Madison Metro takes requests from neighborhoods for adding bus stops and bus shelters and makes recommendations to the city. Neighborhood associations can help fund new bus shelters, pursuant to appropriate agreements governing ownership, liability, and maintenance responsibilities. Requests for bus stops must comply with municipal placement criteria, such as distance between stops, relationship to intersections, and street dimensions. Neighborhood associations may submit design suggestions for bus shelters but shelters must meet municipal design standards.³⁴²

2. Los Angeles

In the Los Angeles metropolitan area, local jurisdictions are responsible for placing bus shelters and bus benches at transit stops. The Los Angeles PW-BSS administers a contract with a private company to install, operate, and maintain bus shelters. LA Metro forwards requests for bus shelters to the city. The actual decision-making authority of where to locate bus shelters is allocated as follows: 25 percent to the local City Council office, 40 percent to the BSS, and 35 percent to the private contractor. The following city agencies must approve each shelter location: the DOT, Police Department, PW (Bureau of Engineering (BOE), BSS, Construction Administration, and Bureau of Street Lighting (BSL)), and City Planning. In addition, the abutting property owner must consent to the bus shelter location.³⁴³

3. King County, Washington

Metro Transit, part of the King County government, is responsible for planning and installing bus stops and

³³⁶ John Geluardi, *City Still Waits for Bus Shelter Installation*, BERKELEY DAILY PLANET, Nov. 24, 2001, www.berkeleydailyplanet.com/article.cfm?archiveDate=11-24-01&storyID=8494. Accessed Feb. 2, 2007. See also *Draft Unmet Paratransit/Transit Needs*, July 2005 (includes comments of Elderly & Disabled Transportation Advisory Committee and Metro Accessible Services Transit Forum), www.sccrtc.org/committee/2005/0507UnmetNeeds.pdf.

³³⁷ E.g., Cambridge Woods Neighborhood Association (East Milwaukee, WI) review of bus shelters associated with proposed business expansion, new condominiums, www.cambridgewoods.org/PositionPapers/CommentsOPandLocustSt.pdf; Meadowview and Oak Park resident provided public comment on neighborhood bus stops during Community Bus Service Planning Study, City of Sacramento, Meadowview and Oak Park Communities. SACOG Planning Study, *supra* note 210.

³³⁸ See TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, at 8.

³³⁹ See, e.g., Westchester County, *supra* note 102, at 2.

³⁴⁰ E.g., VTA Transit System Ridership Report, www.vta.org/inside/boards/committee_advisory/cta/agendas_minites/2006/09_sep/cta_091306_m.pdf.

³⁴¹ Per Jan. 24, 2007, and Jan. 25, 2007, emails to author from Tim Sobota, Transit Planner, Metro Transit, Madison, WI.

³⁴² Madison Metro Bus Stops & Shelters, www.ci.madison.wi.us/neighborhoods/buildb/bus_stops.htm.

³⁴³ LA Metro Board Responses to Requests for Bus Shelter Placement Information, www.mta.net/board/Items/2006/08_August/20060816OtherSectorSFV_Item8.pdf.

related passenger facilities. However, the responsible jurisdiction must review and approve all bus stop locations. Improvements within the right-of-way, such as bus shelters or benches, must go through the permit process. Most projects that involve excavation, concrete work, or installation of structures require payment of a permit fee. If the structure is to be on private property, Metro Transit must obtain a right-of-way use agreement from the property owner in addition to building permits. In the case of new construction, part of the work may be done under the construction permit, but actual installation will require its own building permit. Often a traffic control plan for the equipment necessary for installation will be required as part of the permit. Lighted shelters may require separate permits for wiring and power supply.³⁴⁴

Metro's minimum threshold for installing a bus shelter is 50 passenger boardings per day. When community or business owners want a shelter for a location that does not meet Metro's threshold, Metro offers three alternatives: First, in the case of new construction, the property owner can install the proper footings for a shelter, which Metro will install and maintain once the ridership threshold is met. Second, Metro staff will discuss "transit-friendly alternatives such as awnings, benches and passenger leaning rails." Third, Metro staff will consult with business districts, communities, or property owners who are willing to design, build, and maintain a shelter about design, materials, and maintenance issues.³⁴⁵ Where property owners are interested in nonstandard designs, it may be necessary for the property owner to contribute to or cover completely the cost of maintaining the bus shelter.

4. Minneapolis-St. Paul, Minnesota

Metro Transit, which has about 18,000 bus stops and 897 bus shelters in the metropolitan area,³⁴⁶ has minimum boarding criteria for adding a bus shelter of 40 passengers per day in the metropolitan area and 25 per day in the suburbs. A higher threshold of 100 passengers per day is required for custom shelters.³⁴⁷ Metro Transit allows art on bus shelters at the request of

³⁴⁴ Per Jan. 29, 2007, email to author from Ross Hudson, Senior Planner, King County Metro Transit Route Facilities. See SMC 11.16.280, Traffic Engineer—Authority—Special Zones: The Traffic Engineer establishes bus zones ("portion of the roadway along the curb which is reserved for loading and unloading of either transit coaches of the Metro Transit System, or school buses." SMC 11.14.070, Bus zone.)

³⁴⁵ Seattle Metro Bus Shelters, www.seattle.gov/economicdevelopment/biz_district_guide/biz_dist_pages/METRO_bus_shelters.htm.

³⁴⁶ Minn. Metropolitan Council, *Program Evaluation and Audit: Passenger Shelter Costs*, Dec. 22, 2006, at 2, <http://councilmeetings.metc.state.mn.us/audit/2007/Q1-2007/2007-A03.pdf>.

³⁴⁷ *Id.* at 17 (Guideline for Metro Transit Standard/Custom Shelters Installation), <http://councilmeetings.metc.state.mn.us/audit/2007/Q1-2007/2007-A03.pdf>.

community groups, but Metro Transit will not maintain any art added to the shelters.³⁴⁸ Metro Transit does not own or control the location of bus benches. Benches are placed by a private company at its discretion, under a contract with the City of Minneapolis.³⁴⁹

5. Klamath Falls, Oregon

Basin Transit Service (BTS), which operates five large buses, two mini-vans, and one small bus serving a population area of 45,000, has a lower threshold for adding bus stops/shelters. Bus stops are spaced to provide three to four stops per mile. There must be at least an average of 5 boardings per day to merit a bench, and 10 boardings per day to merit a shelter. In all cases BTS considers safety as well as the number of boardings in adding benches and shelters.³⁵⁰

V. AGREEMENTS

A. Franchise Arrangements

Numerous municipalities have entered into franchise agreements with private companies to design, install, operate, and/or maintain bus shelters, often in exchange for the company's right to advertise on the bus shelters. Frequently different portions of the right-of-way are controlled by more than one government entity, often none of them being the actual transit service provider. This diffusion of responsibility may require multi-party coordination on, if not signatories to, franchise agreements, particularly for transit agencies that provide service to more than one jurisdiction.³⁵¹

It is not uncommon for bus stop/shelter agreements to involve multiple jurisdictions. In Westchester County, New York, for example, the county has a license agreement with a private franchisee to construct and maintain bus shelters. Municipalities within the county that have signed a cooperative agreement with the county can use the franchise services under the county's franchise agreement.³⁵² AC Transit has an umbrella agreement with a bus shelter franchisee, which municipalities in its service area can utilize.³⁵³

A comparison of the major issues covered by several franchise agreements illustrates the generally common aspects of elements such as franchise obligation and time frame, as well as the range of revenue available to the franchising entity, from \$9 million for San Mateo

³⁴⁸ www.kingfield.org/NRP/NRP%20mnts%2005-1.htm.

³⁴⁹ *Id.*

³⁵⁰ Bus Stop and Bus Shelter Location Policy, Basin Transit Service, Klamath Falls, OR, www.basintransit.com/newriderpolicy.shtml.

³⁵¹ Geluardi, *supra* note 336 (AC Transit had agreement with franchisee to install shelters in seven cities; each city had to approve agreement as to shelters in its jurisdiction).

³⁵² Westchester County, *supra* note 102, at 18, www.westchestergov.com/transportation/images/Bus%20Service%20Guidelines.pdf.

³⁵³ Geluardi, *supra* note 336.

County over 15 years to over \$1 billion for New York City over 20 years.

The District of Columbia³⁵⁴

- *Franchisee*: Clear Channel Adshel
- *Obligation*: Installation of shelters, provisions of bus maps, real-time bus arrival information in cooperation with WMATA and a computerized bicycle rental program
- *Number of shelters*: 700.
- *Shelter amenities*: Made of vandal and graffiti-resistant materials.
- *Payment to municipality*: More than \$150 million
- *Time frame of agreement*: 20 years.
- *Advertising by franchisee*: Yes.
- *Planned use of revenue from franchise*: \$100 million earmarked to finance the District's Great Streets program to improve and beautify some of the major transportation corridors in the District.

MBTA³⁵⁵

- *Franchisee*: Cemusa North America.
- *Number of shelters*: At least 200.
- *Payment to agency*: Unspecified percentage of advertising fees (also payments to jurisdictions where shelters are located).
- *Time frame of agreement*: 10 years.
- *Advertising by franchisee*: Yes.

Milwaukee³⁵⁶

- *Franchisee*: Clear Channel Outdoor.
- *Obligation*: Design, install, and maintain bus shelters; market and sell space on 250 displays and 425 buses.
- *Number of shelters*: 125.
- *Time frame of agreement*: 7 years.
- *Advertising by franchisee*: Yes.
- *Planned use of revenue from franchise*: Reinvest the proceeds in Milwaukee County Transit System bus service.

Minneapolis³⁵⁷

³⁵⁴ District of Columbia DOT, Bus Shelter Franchise Agreement,

www.ddot.dc.gov/ddot/cwp/view.a.1255.q.633272.asp.

³⁵⁵ Naomi Aoki, *T Awards 10-Year Pact to Build Bus Shelters. Contract Calls for Ad Revenue to Pay for Installations*, BOSTON GLOBE, Dec. 1, 2004, www.boston.com/business/articles/2004/12/01/t_awards_10_year_pact_to_build_bus_shelters/.

³⁵⁶ Katy Bachman, *CC Outdoor Wins Milwaukee Transit Contracts*, Sept. 6, 2006, www.mediaweek.com/mw/news/recent_display.jsp?vnu_content_id=1003117460.

³⁵⁷ Exhibit A—Recommended Appendix G Ordinance Changes (dated Aug. 14, 2006), www.ci.minneapolis.mn.us/council/2006-meetings/200060901/docs/02_Appendix_G_revision_081406_v2.pdf; Public Hearing for Transfer of the Transtop Bus Shelter Franchise to CBS Outdoor and Extension of Shelter Franchise to Year 2015,

- *Franchisee*: CBS Outdoor, Inc. (nonexclusive).
- *Obligation*: Furnish litter container to bus shelters citywide (with or without a bench) located in a commercial corridor; service containers 2.5 times per week (3 times per week in the summer, 2 times per week in the winter), for average fee of \$30 per month per container.
- *Number of shelters*: 210.
- *Payment to municipality*: \$100,000 minimum guarantee (with 6-year extension, increasing to \$115,000 in 2006, escalating annually up to \$260,000 in 2015) plus 13 percent of advertising revenues—maintenance ceiling credits.
- *Time frame of agreement*: 10 years; 6-year extension in exchange for adding 20 shelters.
- *Advertising by franchisee*: Yes.

New York³⁵⁸

- *Franchisee*: Cemusa.
- *Obligation*: Build and install 650 bus shelters, 110 news stands, and 10 public toilets; repair existing bus shelters.
- *Number of shelters*: 3,300.
- *Payment to municipality*: Over \$1 billion.
- *Time frame of agreement*: 20 years.
- *Advertising by franchisee*: Yes.

San Mateo County³⁵⁹

- *Obligation*: Bus shelter construction, installation, advertising, and maintenance services.
- *Number of shelters*: 202 (replacing old shelters) (50 shelter minimum in 12 months).
- *Payment to municipality*: Up to \$9,054,703.
- *Time frame of agreement*: 15 years.
- *Advertising by franchisee*: Yes.
- *Other*: SamTrans will maintain direct control over shelters if community in service area refuses to allow advertising or if shelter is needed based on ridership but location does not meet franchisee requirements. Franchisee does not allow advertising related to alcohol or tobacco.

B. Other Agreements

Short of comprehensive franchise agreements, the public entity responsible for bus stops and bus shelters may enter into maintenance and other service agreements with private providers. These service provider agreements may be less complex than franchise agreements, depending on the service area.³⁶⁰ Bus shelter

www.ci.minneapolis.mn.us/council/2006-meetings/20060922/Docs/04_Bus_Shelter_Franchise.pdf.

³⁵⁸ Charles V. Bagli, *Lawsuits Seek to Void \$1 Billion New York City Deal for Bus Shelters, Newsstands and Toilets*, NEW YORK TIMES, Aug. 24, 2006.

³⁵⁹ San Mateo County Transit District, Minutes of Finance Committee Meeting, Feb. 22, 2006, www.samtrans.org/pdf/BOD_Agenda_Reports/03_15_06/FIN_1_Minutes.pdf.

³⁶⁰ Lincoln, NE (contracting out maintenance), www.lincoln.ne.gov/city/finance/purch/pdf/con05219.pdf.

franchisees themselves may enter into service agreements for maintenance.³⁶¹ Even though they are not party to such agreements, the franchisors have an interest in such agreements having appropriate indemnity and defense clauses.³⁶²

Agreements with private property owners to allow access for bus stops are also important. Such agreements may include development agreements between the municipality and the developer for bus stop installation, traffic mitigation agreements requiring bus stops, and agreements between the transit agency and the private property owner. Maintenance of the bus stop may be covered in an access agreement or be the subject of a separate agreement.

VI. COMMON ISSUES AND POSSIBLE SOLUTIONS

A. Introduction

A transit agency has at least two considerations concerning potential problems: 1) avoiding legal liability, and 2) because of the potential effects bus stop conditions may have on ridership, having safe, accessible, well-maintained bus stops regardless of who is responsible for them. Thus, even when the transit agency does not have the primary responsibility for bus stops, the agency has an interest in whether arrangements with the responsible entity address these common issues.

Whether or not they are responsible for placing and/or maintaining bus stops, transit agencies should be involved in those processes. Involvement at the planning stages for rights-of-way and facilities that attract traffic, such as malls, is key.³⁶³ In some cases, local law may require coordination with the transit agency during the development process,³⁶⁴ affording an opportunity to provide input into bus stop placement and design even where the transit agency is not legally responsible for those decisions.

B. Design

The two major issues with legal implications that can be addressed via design elements are safety (both from an accidental injury and a criminal assault perspective) and accessibility. To the extent that design elements help prevent accidental injury and discourage criminal activity, those elements minimize potential liability.

³⁶¹ *E.g.*, Shelter Express provided maintenance services (cleaning, repairing, warehousing, and posting advertising on shelters) to Viacom, when Viacom was the franchisee in New York City, www.shelterexpress.com/maintenance.html.

³⁶² See VII.C, *Agreements infra* this report.

³⁶³ See, *e.g.*, NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 121-23, www.ncd.gov/newsroom/publications/2005/pdf/current_state.pdf; Hendricks et al., *supra* note 217, at A-1.

³⁶⁴ City of Orange, Florida, requires the city to inform the local transit agency about proposed locations of “new transit generators and attractors as they are being reviewed.” Hendricks et al., *supra* note 217, at A-1.

The same holds true for design elements that enhance accessibility. It is also important to take into consideration the fact that bus shelter franchisees are often responsible for bus shelter design. Certain design elements, such as those that discourage graffiti, will also reduce maintenance costs.

1. Safety³⁶⁵

Lighting.—Adequate lighting, or the lack thereof, will affect safety,³⁶⁶ in terms of both preventing accidental injury and discouraging assault and other crimes.³⁶⁷ Factors that discourage the use of lighting include difficulties in obtaining access to electrical power; connection, usage, and maintenance costs;³⁶⁸ and concerns about liability due to injury from electricity. Solar-powered lighting systems may allow transit agencies to provide the safety of well-lit bus shelters with less cost and potential liability than with conventional lighting.³⁶⁹ Solar lighting may also be less costly and disruptive to install than traditional lighting, at least when solar lighting is integrated into the bus shelter’s design. Such systems do cost more than traditional shelters. Even frequently overcast locations, such as Seattle and Portland, Oregon, can employ solar lighting.³⁷⁰

Given the critical nature of lighting, if a bus stop itself cannot be lit, it is helpful to obtain the cooperation of nearby businesses to leave lights on to illuminate the stop.³⁷¹ Adequate lighting, together with providing clear lines of sight to pedestrians and neighborhood businesses, allows for natural surveillance of the bus stop.³⁷² The San Diego Police Department, for example, has recommended this approach in its neighborhood policing guidance.³⁷³

Features.—Bus stop signposts can be a source of injury or property damage. A breakaway design for posts

³⁶⁵ JEROME A. NEEDLE & RENEE M. COBB, IMPROVING TRANSIT SECURITY (TCRP Synthesis 21, 1997).

³⁶⁶ See, *e.g.*, Washington County Transportation Development Plan, Final Report, July 16, 2003, at D-3, http://www.washcomd.net/public_works/commuter/WashingtonCoTDPFinal.pdf.

³⁶⁷ See also MARTHA J. SMITH & RONALD V. CLARKE, *Crime and Public Transport*, 2 CRIME AND JUSTICE, v. 27. 169, 210 (Michael Tonry, ed., 2000).

³⁶⁸ *Bus Shelter Enlightenment*, 31.3 ALTERNATIVES JOURNAL (Aug. 2005).

³⁶⁹ *Id.*

³⁷⁰ Denis Du Bois, *Solar Transit Lighting Shines in the Cloudy Pacific Northwest—Case Study*, Aug. 10, 2005, http://energypriorities.com/entries/2005/08/carmanah_metro.php.

³⁷¹ NEEDLE ET AL., *supra* note 365, at 10, 20 (Ann Arbor Transit Authority got shopping centers to leave lights on to illuminate unlit bus stops).

³⁷² See Neal Kumar Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039, 1052 (March 2002).

³⁷³ Crime Prevention Through Environmental Design (CPTED) for Urban Village Centers, San Diego Police Department Neighborhood Policing Resource Team, May 2005, www.sandiego.gov/police/pdf/CPTEDvillagesmay2005.pdf.

that are not protected by a guardrail or other feature should minimize liability.³⁷⁴ Providing an all-weather surface where passengers board/alight enhances the safety of the path and should reduce slip and fall injuries, thus mitigating potential liability.³⁷⁵

Environment.—Studies have shown that the appearance that a potential crime setting is watched may deter potential criminals,³⁷⁶ whereas evidence of “incivilities” such as litter and graffiti may lead to greater criminal activity.³⁷⁷ Thus, using graffiti-resistant material for bus shelters may help discourage criminal activity.³⁷⁸ For example, Metro (King County, Washington) uses etched art glass to deter “scratch” graffiti on shelter glass,³⁷⁹ as well as deploying a Bus Shelter Mural program that is intended in part to deter graffiti.³⁸⁰

In addition, bus stop/shelter design should avoid or modify features that provide hiding places for criminals or allow them to trap potential victims. The bus stop/shelter design should also make the stops/shelters visible to traffic and neighboring businesses, so as to provide evident surveillance.³⁸¹ At least one study found that installing even dummy cameras on buses, coupled with publicity about the cameras, reduced vandalism on the buses.³⁸² Cameras could also be used at bus stops to deter vandalism and other crimes.³⁸³

Certain crimes, such as picking pockets, are facilitated by overcrowding. Designing adequate waiting space for passengers³⁸⁴ and providing shelters to separate passengers from potential thieves³⁸⁵ can deter such crimes. Bus bulbs can be used to achieve the effect of reducing overcrowding. Bus bulbs offer the additional advantages of reducing the crossing distance for pedestrians, allowing buses to stop in the traffic lane, and making more room for benches and shelters. In 2001 the estimated construction cost was between \$15,000

and \$55,000 per bulb. Factors that contribute to cost include construction materials, drainage needs, relocation of utilities, and amenities such as benches and shelters.³⁸⁶

Grouping bus stops into transit centers may make transfer between routes safer and may also reduce passengers’ exposure to street crime.³⁸⁷ However, to the extent that such centers incorporate other functions, the legal standards for assessing liability may differ from those in effect when assessing the liability of a transit agency at a stand-alone bus stop.

Other measures that enhance safety include designing seating to discourage reclining on the seats,³⁸⁸ thereby discouraging sleeping in the shelters; ensuring that there are emergency call boxes or public telephones to report crimes; installing resistant windows; and using vandal-resistant materials.³⁸⁹

2. Accessibility

ADA requirements must be taken into consideration.³⁹⁰ Thus design should:³⁹¹

- Avoid obstacles that would restrict wheelchair movement or be undetectable to the visually impaired.
- Incorporate stable, slip-resistant surfaces.
- Include signs usable by visually disabled passengers.
- Place any telephones so as not to obstruct wheelchairs.
- Specify telephones that are accessible to hearing disabled passengers.
- Afford a 5-8 ft wheelchair landing area free of all obstacles, including bus shelters and benches, for any bus waiting pads.

In addition to ADA considerations, designing bus stops to eliminate obstacles may reduce potential liability for personal injury to all passengers.³⁹²

³⁷⁴ See TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, at 48.

³⁷⁵ See *id.* at 19.

³⁷⁶ Anastasia Loukaitou-Sideris, *Hot Spots of Bus Stop Crime: The Importance of Environmental Attributes*, JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 65.4, 395 (1999), <http://www.uctc.net/scripts/countdown.pl?384.pdf>.

³⁷⁷ *Id.* See also SMITH ET AL., *supra* note 367, at 221.

³⁷⁸ See *id.* at 220.

³⁷⁹ Metro Bus Shelters, www.seattle.gov/economicdevelopment/biz_district_guide/biz_dist_pages/METRO_bus_shelters.htm.

³⁸⁰ http://transit.metrokc.gov/prog/sheltermural/shelter_mural.html.

³⁸¹ Loukaitou-Sideris, *supra* note 376. See also Anne Lusk, *Bus and Bus Stop Designs Related to Perceptions of Crime*, FTA MI-26-7004-2001.8.

³⁸² Smith et al., *supra* note 367, at 186.

³⁸³ *E.g.*, Digital Video Cameras in Bus Shelters, http://archive.cardiff.gov.uk/government/english/Cabinet_Papers/04_09_16_Cab/Reports/ExecBusiness16Sept04_Digital_video_cameras_in%20bus_shelters_tot.pdf.

³⁸⁴ Loukaitou-Sideris, *supra* note 376.

³⁸⁵ Smith et al., *supra* note 367, at 191.

³⁸⁶ FITZPATRICK ET AL., *supra* note 1, at 1.

³⁸⁷ CHRISTOPHER, *supra* note 218, at 23.

³⁸⁸ See Bus Shelter Franchise Agreement, District of Columbia DOT, art. VIII, § 5, www.ddot.dc.gov/ddot/cwp/view.a.1255.q.633272.asp.

³⁸⁹ M. Annabelle Boyd, M. Patricia Maier, Patricia J. Kenney, *Perspectives on Transit Security*, FTA-MA-90-7006-96-1, 1996, at 4-58-4-60, http://transit-safety.volpe.dot.gov/publications/security/FTA-MA-90-7006-96-1/PDF/FTA-MA-90-7006-96-1_Perspectives_on_Transit_Security.pdf. See Smith et al., *supra* note 367, at 222 (call boxes may deter crime).

³⁹⁰ See III.B. *Accessibility of Bus Stop/Bus Shelter to Disabled Passengers*, *supra* this report.

³⁹¹ TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, at 61, 64, 67, 75. Although the Access Board has updated its requirements since the publication date of this report, see III.B. *Accessibility of Bus Stop/Bus Shelter to Disabled Passengers*, *supra* this report, the suggested design guidelines are still applicable. See also Washington County Transportation Development Plan, Final Report, July 16, 2003, at D-2, http://www.washco-md.net/public_works/commuter/WashingtonCoTDPFinal.pdf.

³⁹² See II, *Legal Liability for Personal Injury/Property Damage Related to Bus Stops/Bus Shelters*, *supra* this report.

It is common for the right-of-way, including the bus stop, to be under the authority of the municipality, county, or state where the right-of-way is located, limiting the transit agency's ability to ensure accessibility.³⁹³

In addition to meeting legal requirements, improving the accessibility of bus stops may be considered a cost-saving measure, in that it may reduce the need for costlier paratransit service for some patrons.³⁹⁴

3. Responsibility

Franchisees are often responsible for the design of bus shelters. For example, in New York City, the DOT has a franchise agreement under which the franchisee will “design, manufacture, install and maintain all of the structures as well as pay the City an annual premium in exchange for the right to sell advertising on the structures. The advertising is limited to print backlit panels of a restricted size.”³⁹⁵ It is important that developers understand the specific ADA requirements for bus stops/shelters.³⁹⁶

Marking bus stops will also improve ridership. The problem is that the responsibility for doing so often lies with the municipality, while the negative ramifications of failing to do so affect the transit agency. One transportation analyst recommended moving responsibility to the transit authority to ensure sign maintenance. However, doing so may also affect municipal labor agreements.³⁹⁷

C. Placement

In many jurisdictions the transit agency will not have the ultimate responsibility for placing bus stops/shelters, but will have significant input—whether formal or informal—into the decision. Even where the transit agency does not have the requisite control over the bus stop/shelter location to ultimately be held liable for injuries caused by the location, the transit agency is still a probable party in actions for recovery. Thus, concerns about maintaining ridership aside, the transit agency has an interest in encouraging safe locations that provide adequate access to its services.

1. Safety

Safety considerations in bus stop placement relate to both traffic safety and security. Transit agencies that do not have their own guidelines for bus stop locations may find it useful to review guidelines other agencies have adopted or the Institute of Traffic Engineers recommended practices for bus stop location.³⁹⁸

As to traffic safety, there are numerous operational considerations in determining a safe location, such as whether it is safer to stop nearside or farside at a particular intersection, where passengers are coming from or going to, and the location of the greatest amount of passenger traffic.³⁹⁹ Mid-block stops may encourage jaywalking,⁴⁰⁰ and thus could breach a duty of reasonable care in locating the bus stop. The location of a bus stop/shelter may also create a danger of injury to boarding or exiting passengers, either because the stopped bus blocks the view of oncoming traffic or because passengers must cross heavy traffic to reach the bus stop.⁴⁰¹

To the extent that bus stop locations provide or fail to provide a safe pathway for passengers to embark or alight, they may increase or decrease potential liability. Therefore, keeping safe pedestrian access in mind in locating bus stops should help to minimize liability arising from injuries to boarding, alighting, and waiting passengers.⁴⁰²

The physical environment, e.g. whether numerous nearby streets and alleys provide criminal escape routes, and surrounding land uses, e.g., crime generators such as liquor stores and vacant lots, can affect the likelihood of crime.⁴⁰³ Thus, certain environments are safer than others in terms of crimes occurring at bus stops.⁴⁰⁴ Locating bus stops away from convenience stores, bars, and abandoned buildings is generally considered to enhance security.⁴⁰⁵

A study of high-crime bus stops in Los Angeles showed that such bus stops are surrounded by evidence of “incivilities” such as litter and graffiti.⁴⁰⁶ On the other hand, placing bus stops/shelters near well-maintained

³⁹⁸ See KING, *supra* note 103, at 16–19, 25.

³⁹⁹ LACMTA Stops and Zones Department Policies and Procedures Manual. Bus Zones. Policy 6.0: Best practice on how to establish a new bus stop or bus zone, [www.mta.net/board/Items/2004/10 October/20041014OtherSectorGAT_Item9.pdf](http://www.mta.net/board/Items/2004/10%20October/20041014OtherSectorGAT_Item9.pdf).

⁴⁰⁰ Washington County Transportation Development Plan, Final Report, July 16, 2003, at D-2, http://www.washco-md.net/public_works/commuter/WashingtonCoTDPFinal.pdf

⁴⁰¹ See, e.g., Am. Employers Ins. Co. v. Metro Regional Transit Agency, 12 F.3d 591 (6th Cir. 1993).

⁴⁰² See TEXAS TRANSPORTATION INSTITUTE, *supra* note 1, app. D, Street-Side Studies (discussion of studies on traffic/bus operations around different types of bus stop locations and designs); app. E, Curb-Side Studies.

⁴⁰³ Loukaitou-Sideris, *supra* note 376; Katyal, *supra* note 372, at 1095.

⁴⁰⁴ See § VI.B.1, *Safety*, *supra* this report.

⁴⁰⁵ Boyd et al., *supra* note 389, at 3–16.

⁴⁰⁶ Loukaitou-Sideris, *supra* note 376.

³⁹³ NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 121, citing U.S. ACCESS BOARD, PUBLIC RIGHTS-OF-WAY ACCESS ADVISORY COMMITTEE, BUILDING A TRUE COMMUNITY: FINAL REPORT (2001). (Retrieved June 15, 2004, from <http://www.access-board.gov/prowac/commrept/index.htm>). The most current proposed right-of-way standards are discussed in III.B. *Accessibility of Bus Stop/Bus Shelter to Disabled Passengers*, *supra* this report.

³⁹⁴ See Palm Beach County, *supra* note 219, at 9.

³⁹⁵ www.nyc.gov/html/dot/html/permits/streetfurniture.html.

³⁹⁶ See Christopher, *supra* note 218, at 40.

³⁹⁷ Opportunities for Improving Ridership, CT Transit, Aug. 2005, p. 7: Lack of uniform signage made it difficult to find particular bus stops, www.fta.dot.gov/documents/CT_Hartford_Ridership_Report_Web_Sept_29.pdf.

businesses should deter crime.⁴⁰⁷ Both the business proprietors and the foot traffic attracted by their businesses may provide natural surveillance that will discourage criminal activity at the nearby bus stops/shelters.⁴⁰⁸ It may also be useful to gate off alleys that serve as potential criminal escape routes.⁴⁰⁹ The importance of the surrounding environment is illustrated by the findings of a study of Los Angeles bus stop crime that more than 50 percent of the 1,480 crimes committed at 60 bus stops occurred at 6 of those stops.⁴¹⁰

2. Access to Enclosed Private Property

Shopping centers, office parks, and private developments are all centers of activity whose patrons may benefit from, and indeed depend upon, transit access. In some jurisdictions, ordinances require transit access. Growth management legislation, zoning requirements, and land development regulations are examples of local legislative/regulatory authority that may be used to require transit access on private property.⁴¹¹ For example, development approvals may be predicated on provision of transit service; traffic mitigation agreements may require developers to construct bus shelters or otherwise allow transit access; and developer agreements may require transit access in exchange for reduced transportation impact fees.⁴¹² For example, a land development regulation could require bus stops:

New commercial developments exceeding 100,000 square feet in gross floor area and all new residential developments of more than 200 dwelling units shall provide on-site space for bus stops, to be coordinated with the transit agency. Such bus stops shall be separate and adjacent to travel lanes. In coordination with the transit agency, this requirement may be waived if there are existing transit stops in close proximity to the proposed project.⁴¹³

Thus, to the extent possible, working with local governments to incorporate requirements and/or incentives for transit access in development and planning processes will ease the process of gaining transit access to enclosed private property and reduce the ability of the owners of such property to withdraw permission for access.⁴¹⁴ However, absent legal requirements mandat-

ing that the owners of such private property provide transit access, transit operators can only gain access by negotiating agreements with the property owners. Even where the transit agency does not have the responsibility for placing bus stops, efforts by the transit agency to educate the responsible property owners/managers, such as local or corporate mall managers, concerning the importance of transit access to the community may be useful in facilitating such agreements.⁴¹⁵

Perhaps the most effective point for negotiating transit access is during the development process, as developers are probably in the best position to enter into agreements that will bind subsequent owners and property managers, thus offering continued transit access. In any event, in examining the problem of obtaining transit access, it is important to distinguish between potential private parties, as their interests are likely to differ. Developers will be interested in incentives during the development process, while owners/managers will be interested in incentives related to the cleanliness and maintenance of the bus stop.⁴¹⁶ Incentives that local governments can offer developers include lower parking and impact fees, lowered number of required parking spaces, and greater density than otherwise allowed under zoning regulations.⁴¹⁷

If negotiations take place after development, the likely private parties will be the owners or managers of the facility. These private parties may have a number of concerns about allowing transit access. These include:⁴¹⁸

- Loitering.
- Perceived high levels of crime.
- Feeling that the ridership is not part of their customer base.
- Damage to the parking lot, in particular damage to asphalt.
- Accumulation of trash near the bus stop.
- Bus fumes (where the bus stop is near an entrance).

In order to mitigate these concerns, transit agencies should be willing to provide incentives to private property owners. One study found the following to be the highest ranked incentives for getting private property owners to allow transit access:⁴¹⁹

⁴¹⁵ See *id.* at 19-20 (importance of transit access to community; mall decision-makers); pp. 30-31 (economic benefits to private property owners of transit access). Experiences in negotiating park and ride lots on private property are also relevant. See FRANCIS WAMBALABA & KIMBERLEE GABOUREL, CENTER FOR URBAN TRANSPORTATION RESEARCH, 9 COMMUTER CHOICE MANAGERS AND PARKING MANAGERS COORDINATION (2002). (importance of coordinating plans with private property owners, gaining support from local government), available at <http://www.nctr.usf.edu/pdf/473-134.pdf>

⁴¹⁶ HINEBAUGH ET AL., *supra* note 154, at 29-30.

⁴¹⁷ *Id.* at 13, 35.

⁴¹⁸ *Id.* at 10, 21, 25; WAMBALABA ET AL., *supra* note 415, at 22.

⁴¹⁹ HINEBAUGH ET AL., *supra* note 154, at 22-24; WAMBALABA et al., *supra* note 415, at 7-8.

⁴⁰⁷ *Id.*

⁴⁰⁸ See SMITH ET AL., *supra* note 367, at 220.

⁴⁰⁹ Loukaitou-Sideris, *supra* note 376.

⁴¹⁰ Katyal, *supra* note 372, at 1039 n.210 (March 2002), citing Anastasia Loukaitou-Sideris et al., *Measuring the Effects of Built Environment on Bus Stop Crime*, 28 ENV'T & PLAN. B: PLAN. & DESIGN 255 (2001).

⁴¹¹ HINEBAUGH ET AL., *supra* note 154, at 31-34. See also HENDRICKS & DYHOUSE, *supra* note 314, for additional references to using local government comprehensive planning and regulatory processes to require that private property owners provide transit access, www.dot.state.fl.us/research-center/Completed_Proj/Summary_PTO/FDOT_BC137_19_rpt.pdf.

⁴¹² HINEBAUGH ET AL., *supra* note 154, at 14.

⁴¹³ *Id.* at 34.

⁴¹⁴ See *id.* at 41.

- Periodic cleanings.
- Maintenance of bus stops on site.
- Liability insurance.
- Installation of amenities (e.g., benches, trash receptacles, and lighting).
- Installation of concrete pads.

Other incentives include.⁴²⁰

- Recognizing the center in advertising and bus maps.
- Lighting.
- Hold harmless agreements.

In addition to offering incentives, the transit agency may need to educate the private property owner to lessen negative perceptions about bus passengers.⁴²¹

Given the turnover in management and control of enclosed private properties, it is important to keep track of all such agreements. Property managers may request that transit agencies remove their bus stops; since the managers may not have been party to the agreement granting access, it may be incumbent upon the transit agency to remind them of their contractual obligations.⁴²²

3. Procedural Issues

Unless the entity placing the bus stop owns the entire area where the bus stop is to be placed, and absent an existing agreement, that entity must obtain permission from the property owner(s), whether that property owner is the state, the municipality, or a private business. One or more agreements may be required to grant permission to locate and cover issues such as maintenance, indemnification, and insurance.

Multiple permits may be required to place shelters in the right-of-way. Where the state controls the right-of-way, state permission can be expected to be required to locate bus shelters.⁴²³ There may be an advantage to hiring a contractor that has received permission to install bus shelters state-wide.⁴²⁴ In addition to required permits, local governments may require an intergovernmental agreement to cover the installation and op-

⁴²⁰ HINEBAUGH ET AL., *supra* note 154, at 13.

⁴²¹ See FRANCIS WAMBALABA & JULIE GOODWILL, CENTER FOR URBAN TRANSPORTATION RESEARCH, UNIV. OF S. FLORIDA, 9 EVALUATION OF SHARED USE PARK & RIDE IMPACT ON PROPERTIES (2004).

⁴²² HINEBAUGH ET AL., *supra* note 154.

⁴²³ *E.g.*, UTAH ADMIN. CODE § R933-4-4, Permitting and Conditions for Valid Permits, www.rules.utah.gov/publicat/code/r933/r933-004.htm#E4.

⁴²⁴ *See, e.g.*, Manor Township, Lancaster County, Pennsylvania's Meeting Minutes, Feb. 7, 2005, www.manortwp.org/minutes.cfm?meetingid=862 (advertising company under consideration to install and maintain shelters had already received permission from state to install bus shelters in state right-of-way).

eration of transit amenities within the public right-of-way.⁴²⁵

4. Other Issues

Driver-created bus stops can give rise to liability where the unmarked stop does not provide a clear path for boarding and alighting. On the other hand, these bus stops can minimize liability where bus drivers avoid hazards such as icy pavement at the regular bus stop or where passengers are allowed to request a stop closer to work or home to avoid potentially crime-prone bus stops.⁴²⁶

Placement of bus stops and their amenities, e.g., benches, shelters, etc., are often a matter of great concern to community members.⁴²⁷ Thus, even where not required by law, transit agencies may want to conduct community outreach concerning the location of bus stops and how to furnish them.⁴²⁸

D. Maintenance

Keeping bus stops and shelters free of debris and the surrounding areas well maintained (e.g., landscaped to keep obstacles such as tree roots from intruding on pathways and adequately cleared of snow and ice) will help reduce liability in several respects. Proper maintenance will reduce potential slip and fall accidents; thus minimizing tort liability; assist in maintaining accessibility for disabled passengers;⁴²⁹ and as discussed *supra*, will discourage criminal activity. Thus, in addition to keeping debris and litter under control, maintenance efforts should ensure that graffiti and other incidents of vandalism are addressed promptly.

Crime-reporting efforts can be considered part of maintenance. Seattle Metro maintains reporting for loitering, broken glass, and graffiti at bus stops.⁴³⁰ Many transit agencies employ uniformed patrols to deter crime at bus stops; a smaller number deploy plainclothes officers to patrol and otherwise surveil crime-prone bus stops.⁴³¹

While it is possible to take a system-wide approach to maintenance—i.e., all in-house or all contracted out—a combination of efforts may be required for budgetary and/or organizational reasons. For example, Seattle has a mix of approaches to maintenance. The Seattle DOT maintains a limited number of trash cans at bus stops. Seattle Metro maintains trash cans at bus shelters.⁴³²

⁴²⁵ HINEBAUGH ET AL., *supra* note 154, at 37.

⁴²⁶ BENN, *supra* note 1, at 22.

⁴²⁷ *See, e.g.*, SACOG Planning Study, *supra* note 210, at 36; Northwest Community Planning Forum, March 2005, at 10.

⁴²⁸ *See* SACOG Planning Study, *supra* note 210, apps. C-1 & C-2.

⁴²⁹ *See, e.g.*, Palm Beach County, *supra* note 219, at 26 (importance of maintenance to keeping pathways debris-free).

⁴³⁰ Metro Bus Shelters, www.seattle.gov/economicdevelopment/biz_district_guide/biz_district_pages/METRO_bus_shelters.htm.

⁴³¹ NEEDLE ET AL., *supra* note 365, at 9–10, 17.

⁴³² Metro Bus Shelters,

Metro also runs an Adopt-A-Stop program at other bus stops to encourage businesses to keep such areas clean. Participants are eligible to receive 20 bus tickets per month; a litter container, which Metro attaches to the bus stop pole; free litter bags; and an optional Adopt-A-Stop sticker for the container, recognizing the volunteer or business who picks up litter at the stop. Participants are required to install the liners and remove the litter before the receptacle becomes unsightly, remove any graffiti from the receptacle, and notify Metro of any damage to the receptacle.⁴³³

Basin Transit Service in Klamath Falls, Oregon, requires its lead mechanic to visit bus stops at least monthly to inspect for cleanliness and needed maintenance. Members of senior management are expected to survey the conditions of bus stops and shelters as they travel throughout the system and to either correct conditions or report them to the maintenance staff.⁴³⁴

E. Options for Managing Bus Stops/Shelters

Assuming that a transit agency is authorized to manage the bus stops/shelters in its system, which will depend on ownership and control of the bus stops/shelters or statutory authority, the authority may consider whether to handle its bus stop/bus shelter operations entirely in-house, contract out some or all of its bus stop/bus shelter operations, or completely privatize its bus shelters.⁴³⁵ Generally, a franchise makes the franchisee globally responsible for designing, constructing, installing, and maintaining bus shelters. It would be possible to contract out any single subresponsibility, but it appears that maintenance is the one most commonly contracted out. It can be contracted out by the responsible public entity or a franchisee.

In determining whether to franchise, a primary consideration for the responsible public entity may be whether the entity wants advertising on its bus shelters. This decision may be affected by community pressure to avoid advertising.⁴³⁶ However, while it is possible to franchise bus shelters without advertising,⁴³⁷

www.seattle.gov/economicdevelopment/biz_district_guide/biz_dist_pages/METRO_bus_shelters.htm.

⁴³³ <http://transit.metrokc.gov/prog/aas/adopt.html>.

⁴³⁴ Basin Transit Location Policy, *supra* note 350.

⁴³⁵ *E.g.*, Palm Beach County, Florida, transitioned its system of selling advertising on shelters placed and maintained by the local transit agency to private ownership of the bus shelters. Palm Beach County, *supra* note 219, at 23.

⁴³⁶ *E.g.*, Alameda Bus Shelter Project: Volunteer community group Alamedans for Responsible Transit Shelters (ARTS) purchased and installed bus shelters; City of Alameda to cover cost of cleaning, repair, and other maintenance, www.alameda-transit.org/projects/shelters/index.html.

⁴³⁷ RFP No. 10-01-06, Bus Shelter Program, issued by Transit Management of Mobile, www.thewavetransit.com/BusinessInitiatives/files/BusShelterRFP.pdf. The RFP specifies no advertising on bus shelters. The system does place advertising on the outside of its buses. The Wave Transit MOVING BILLBOARD Advertising Program, www.thewavetransit.com/BusinessInitiatives/advertising.htm.

advertising is the mechanism for allowing the franchisee to provide bus shelters at little or no cost to the public entity and in fact affords the opportunity for payments to the public entity.⁴³⁸ Advertising may also be used to defray expenses in situations short of franchising.⁴³⁹

If the public entity is open to having advertising on its bus shelters, there is a threshold question of whether the local jurisdiction allows advertising on bus shelters, and if so, what limitations may exist on the type of advertising allowed. Where the local sign ordinance prohibits or restricts advertising on bus shelters or in the right-of-way, either amendments or case-by-case zoning variances may be required to allow bus shelter advertising. For example, in the case of Red Rose Transit in Pennsylvania, the local ordinance needed to be changed to allow off-site advertising on bus shelters and to allow a sign in the right-of-way. Absent the ordinance amendment, the transit agency would have to seek a zoning variance for each shelter application at a cost of \$500 per application.⁴⁴⁰

An alternative funding mechanism to franchising is to encourage neighborhood groups and businesses to adopt bus shelters and take care of them.⁴⁴¹

It is possible for the public entity to divide responsibility for street furniture; for example, franchising or contracting out the responsibility for bus shelters while retaining the responsibility for bus benches,⁴⁴² or vice versa.

F. Advertising

Decisions concerning advertisements on bus shelters involve not only the policy questions discussed in the preceding section, but legal issues concerning compliance with state and local codes and constitutional limitations that can be placed on advertising.

The public entity must determine whether bus shelter advertising is permitted under state and local law, which is usually a sign code issue. Depending on the code, bus shelter advertising may be:

- Allowed without restriction.
- Allowed only in certain locations.

⁴³⁸ Section V.A, *Franchise Agreements*, *supra* this report.

⁴³⁹ Red Rose Transit Agency in Lancaster County proposed to cover maintenance of bus shelters through advertising; RRTA proposed to purchase the shelters and have the advertising company install, light, and maintain the shelters. Manor Township, Lancaster County, Pennsylvania's Meeting Minutes, Feb. 7, 2005, www.manortwp.org/minutes.cfm?meetingid=862.

⁴⁴⁰ *Id.*

⁴⁴¹ *E.g.*, VIA Metropolitan Transit, Adopt-A-Bus-Shelter Program, www.viainfo.net/Community/AdoptAStop.aspx.

⁴⁴² City of Pasadena, California: Street Maintenance and Integrated Waste Management division responsible for maintenance and repair of bus benches; private contractor maintains bus shelters, www.ci.pasadena.ca.us/publicworks/smiwmII/tips_sm.asp#four.

- Allowed with a variance.
- Prohibited altogether.
- Prohibited in the state right-of-way.
- Prohibited in residential zones.
- Allowed on bus shelters installed by public operators only, subject to restrictions.

Washoe County, Nevada, for example, restricts bus shelter advertising to bus shelters installed and maintained by public transit operators. The code also restricts the size of bus shelter advertising displays and requires that they not restrict visibility.⁴⁴³

In addition, sign codes may restrict the advertising medium. For example, sign codes may prohibit flashing or otherwise moving signs, or signs that emit odors.⁴⁴⁴ Where advertising is prohibited, the transit agency may have to engage the political process in order to be able to access this source of revenue.⁴⁴⁵

Provided that advertising is allowed, restrictions on content will be subject to constitutional limitations. Categorical limitations on the amount, if any, and placement of advertising that can be related to political campaigns, alcohol, tobacco, and firearms are generally permissible, as are prohibitions on obscene material. Restrictions as to specific content will raise constitutional issues. For example, as noted, *supra*, while the public entity may ban political advertising altogether, it cannot allow such advertising but reject specific political advertisements based on the political views expressed.

Regardless of municipal restrictions on advertising, the responsible public entity should ensure that, for passenger security, advertising does not obscure too much of the shelter area.⁴⁴⁶

VII. AGREEMENTS: MAJOR ISSUES

Transit agencies may be party to—or may be consulted by the parties to—specific bus stop-related agreements: franchise agreements, service agreements, and agreements allowing access to private property. This part covers issues that are unique to transit stop

⁴⁴³ Washoe County Development Code, § 110.502.23 Bus Shelters, www.co.washoe.nv.us/comdev_files/dc/031406_division_five.pdf

⁴⁴⁴ Rachel Gordon, *Ad Firm With a First—But Will It Whiff by Mixing Cookies, Muni?*, SAN FRANCISCO CHRONICLE, Nov. 30, 2006. www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/30/BAGC2MMHUO1.DTL

⁴⁴⁵ Letter of Advice: Bus Shelter Advertising in Seattle, Dec. 22, 2006, www.metrokc.gov/kcdot/getinvolved/tac/advice_06shelterads.stm.

⁴⁴⁶ See San Diego Police Department Neighborhood Policing Resource Team, Crime Prevention Through Environmental Design (CPTED) for Urban Village Centers, May 2005 (recommending bus shelters be transparent so that their interiors can be viewed from the surrounding area), www.sandiego.gov/police/pdf/CPTEDvillagesmay2005.pdf.

agreements as well as selected issues that should be covered in other types of municipal contracts but are particularly important in the context of bus stop agreements. Bus stop agreements should also include any provisions required by the particular jurisdiction where the bus stops are located and/or provisions required by the Federal Transit Administration. Those additional required provisions are not reviewed here.

A. Major Issues to Cover in Bus Shelter Franchise Agreements

Based on a review of franchise agreements⁴⁴⁷ and the case law, the following issues in particular should be addressed in bus shelter franchise agreements:

Exclusivity: Whether the franchise agreement is exclusive.

Term: Length of the agreement, renewal options, ownership of shelters at the end of the term, and any bonus for a lengthy term.⁴⁴⁸ Generally these agreements are long term, between 10 and 20 years. The District of Columbia negotiated a bonus payment in exchange for granting a 20-year franchise.

Number and location of shelters: Specify actual numbers and locations or parameters for determining numbers and locations, including geographic distribution requirements and parameters for increasing initial numbers, and adding or changing locations.

Design: Who is responsible, timeframe for final design approval, public input requirements, transit agency's right of input/approval; state-of-the art requirements; and franchisor's rights of ownership to specified design elements.

Permits/permission: Allowable timeframe for obtaining necessary permission from private property owners and permits from local jurisdictions,⁴⁴⁹ local processes that must be followed.⁴⁵⁰

Contingency for no-advertising areas: In the case of transit agencies that provide service in more than one jurisdiction, specify responsibilities for jurisdictions that do not allow advertising (e.g., transit agency to provide and maintain shelters in those jurisdictions, or franchisee to do so at additional cost).

Transfer, subcontracts: Whether franchisee can transfer the franchise, and if so under what conditions, in-

⁴⁴⁷ See appendices for additional details.

⁴⁴⁸ District DOT Bus Shelter Franchise Agreement. Attachment G—Payment and Compensation Schedule, www.ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/informatio/n/studies/bussshelter/Bus_Shelter_2.pdf.

⁴⁴⁹ San Mateo County Transit District, Minutes of Finance Committee Meeting, Feb. 22, 2006, www.samtrans.org/pdf/BOD_Agenda_Reports/03_15_06/FIN_1_Minutes.pdf.

⁴⁵⁰ Exhibit A—Recommended Appendix G Ordinance Changes (dated Aug. 14, 2006), at 7-8, www.ci.minneapolis.mn.us/council/2006-meetings/ingstings/20060901/docs/02_Appendix_G_revision_081406_v2.pdf.

cluding right of refusal;⁴⁵¹ requirements to notify of change in control of franchisee and franchisor's options; parameters of allowed subcontracting and right of refusal.

Fee structure: Options include a percentage of advertising revenues and minimum guarantee fee; in-kind payments from franchisee (free advertising about municipality in advertising placed by franchisee in other locations); enhanced revenue sharing near high-value advertising locations.

Construction: Compliance with ADA and all other accessibility-related laws, including sight and hearing-impaired features; construction tasks, per construction management schedule; electrical requirements, including code requirements; signage; right to modify shelters.

Placement: Parties with placement input; site plans ensuring pedestrian access; public hearing requirements.

Installation: Scheduling; transit agency's right to inspect and require changes; responsibility for cost of changes required by franchisor; responsibility for coordinating with utility companies and responsibility for utility damage; progress reports on installation; parameters for relocating existing shelters.

Illumination: Standards; responsibility for electrical work, utility payments.

Right of abutting property owners: If abutting property owners have a right of first refusal on shelter construction, specify time frame for exercising right and terms under which such shelters shall be constructed

Coordination: Franchisee to coordinate all required work with utility companies and all relevant government agencies.

Licensing: Require all work be done by licensed professionals.

Maintenance requirements: Precise description of scope of requirements for areas surrounding bus stop/shelter, including sidewalks to be maintained, repaired, and replaced; cleaning/graffiti removal cycles; inspection requirements, and time frame for making needed repairs or replacements; system for receiving and responding to complaints; standards for repair/replacement parts.

Trash: Containers (who provides, who empties, how frequently), other trash (who removes, within what area, how frequently); cost, if any, for franchisee to remove trash; if public entity has responsibility for trash, consider whether minimum guarantees exceed costs.

Advertising: Space limits, restrictions on type of advertising, public service requirements, including neighborhood specific information; minimum/maximum amounts of advertising displayed per shelter and overall throughout system; geographic restrictions on adver-

tising; noncompete clauses; transit agency's right of review.

Ancillary programs: Inclusion of programs such as public bike rental and historic trails.

Insurance and bonding: Duty to obtain liability, worker's comp, auto insurance; appropriate levels of insurance, type of insurance company; public entities/individuals that must be covered by liability insurance; requirement that any subcontracts contain equivalent liability insurance provision in favor of transit agency; performance and prompt payment bonds.

Indemnification: Specify indemnification language, providing maximum indemnification allowed under state law (but no more); specify obligation to defend; require that any subcontracts contain equivalent provision in favor of transit agency.

Disposition of shelters: Terms for conveying shelters to successor franchisee; conditions under which removal is required; terms for removal, including restoration of street/sidewalk; penalties, if any, for failing to remove as required.

While not necessarily a major issue, transit agencies may want to consider mandating the use of new technology in bus shelter design. The Design Article of the WMATA Franchise Agreement, for example, requires that the franchisee provide a bus map program with NextBus-ready capabilities.⁴⁵²

B. Major Issues to Cover in Service Provider Agreements

The issues that should be included in service provider agreements depend in part on the type and scope of service to be provided. For example, a maintenance-only agreement should not require design or construction provisions; an installation-only agreement should not require maintenance provisions. However, regardless of the type of service to be provided, the following issues should be included in service agreements:

Exclusivity: Whether the service provider agreement is exclusive.

Term: Length of the agreement; renewal options; bonus for lengthy term.

Permits/permission: Allowable timeframe for obtaining necessary permission from private property owners and permits from local jurisdictions; local processes that must be followed.

Transfer, subcontracts: Whether the service provider can transfer the agreement, and if so, under what conditions, including right of refusal; requirements to notify of change in control of service provider's company, public entity's options; parameters of allowed subcontracting, right of refusal.

Fee structure: Type and frequency of payments.

⁴⁵¹ Minneapolis requires notice to and approval by the city before the franchisee may transfer the franchise. Request for City Council Committee Action from the Department of Public Works, Aug. 22, 2006, www.ci.minneapolis.mn.us/council/2006-meetings/20060922/Docs/04_Bus_Shelter_Franchise.pdf.

⁴⁵² Bus Shelter Franchise Agreement, art. IV, Design, § 9, www.ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/informatio/n/studies/bushelter/Bus_Shelter_1.pdf. NextBus is a real-time passenger information system, www.nextbus.com/corporate/press/index.htm.

Coordination: Service provider to coordinate all required work with utility companies and all relevant government agencies.

Ancillary programs: Specify if relevant.

Insurance and bonding: Duty to obtain liability, worker's comp, auto insurance; appropriate levels of insurance, type of insurance company; public entities/individuals that must be covered by liability insurance; requirement that any subcontracts contain equivalent liability insurance provision in favor of transit agency; performance and prompt payment bonds.

Indemnification: Specify indemnification language, providing maximum indemnification allowed under state law (but no more); specify obligation to defend; require that any subcontracts contain equivalent provision in favor of transit agency.

In addition, transit agencies could review the issues set forth in Section A to determine which of the service-specific issues are relevant to their agreement for provision of services. It may also be advisable to specifically require maintenance providers (whether providing service under a franchise or maintenance agreement) to comply with ADA requirements, including maintaining accessible space surrounding the bus shelter, and to notify the transit agency of any accessibility issues that arise.

C. Major Issues to Cover in Agreements with Enclosed Private Property Owners

To best ensure transit access, it is important to enter into a written agreement with the party with the widest authority available. For example, an agreement with a mall manager may not survive a turnover in mall management, whereas an agreement with the property owner may be of greater duration. Thus, to the extent feasible, agreements should be with the property owner, to ensure stability of access.⁴⁵³ Agreements with developers, particularly if they can be written to run with the land, are perhaps the most advantageous.

The following issues should be addressed:⁴⁵⁴

- Specific site location.
- Time frame and minimum periods for notice of termination.
- Specific improvements to be made at the bus stop (lighting, signage, markings, etc.).
 - Responsibility for installation of each amenity.
- Vehicle and pedestrian access.
 - Number of trips allowed per day.
 - Permissible hours of operation.
- Maintenance of the bus stop.
- Liability for injuries and damages.
- Payments.
- Security.

Maintenance may be included in the overall access agreement or covered in a separate maintenance agreement. In either case, maintenance issues that should be covered include:⁴⁵⁵

- How frequently the bus stop will be cleaned/maintained.
- The physical area subject to the agreement.
- Responsibility for amenities, including standards for replacement.
- The structural and maintenance requirements for concrete pads.

VIII. CONCLUSIONS

A transit agency is responsible for bus stops on property it owns or controls. However, absent state or local law giving the transit agency control over bus stops or an agreement to that effect between the transit agency and the local jurisdiction, the transit agency should not be responsible for bus stop conditions on municipal property, such as a public right-of-way. The exception to that rule is when the actions of the transit agency create a dangerous condition (for example by damaging the area around the bus stop), or when a bus driver stops in such a way as to breach the transit agency's duty to passengers of a reasonably safe path to board or alight. Even where the transit agency controls the bus stop area, in order to be liable for a dangerous condition it did not create, the agency must have actual or constructive notice of the dangerous condition and a reasonable opportunity to correct it.

Thus, for many transit agencies, liability for injuries related to bus stops is most likely to be sustained for injuries caused by conditions created by the transit agency. Appropriate protocols for approaches to bus stops, and training on those protocols, are advised to minimize potential liability, as are maintenance procedures that require prompt repair to areas around bus stops under the transit agency's ownership, control, or contractual obligation. Where the municipality is responsible for bus stops, the transit agency should notify the responsible municipality when any damage to a bus stop area occurs.

In addition to tort liability, transit agencies should consider the following legal issues: Transit access to enclosed private property, accessibility of bus stops and bus shelters to disabled passengers, civil rights, advertising, environment, and enabling legislation. Unless the local jurisdiction already mandates transit access, the transit agency may need to work with the jurisdiction to incorporate access requirements/incentives into the community development planning process. In addition, the transit agency may need to negotiate agreements with developers/owners/managers of existing properties. This latter approach is likely to require offering incentives to those private parties, and possibly educating them about the need for, benefits of, and po-

⁴⁵³ HINEBAUGH ET AL., *supra* note 154, at 41.

⁴⁵⁴ WAMBALABA ET AL., *supra* note 415, at 20; HINEBAUGH ET AL., *supra* note 154, at 38.

⁴⁵⁵ HINEBAUGH ET AL., *supra* note 154, at 40.

tential liabilities for refusing transit access to their property.

There are numerous governmental processes associated with bus stops/bus shelters, including processes dealing with placement, design, building/electrical permits, and sign codes. The processes for placing and relocating bus stops/bus shelters are likely to involve multiple parties in addition to the transit agency, including municipal traffic departments, elected officials, agencies dealing with transit-dependent populations, and community stakeholders such as neighborhood associations.

Whether or not a transit agency is legally responsible for bus stop conditions in its service area, the agency has a strong interest in having safe, accessible, well-maintained bus stops. Thus, where a transit agency is not responsible, it should get involved in planning and other governmental processes to have input into bus stop design and placement to help prevent common problems. Critical design safety factors include lighting and the bus stop's environment. Safety is also a key factor in bus stop placement.

Transit agencies that do have responsibility for bus stops or bus shelters have options for managing them, notably franchising the bus shelters. Often an attractive option, franchising is most cost-effective if sup-

ported by advertising, which is not an option in all jurisdictions because of legal restrictions on advertising in the public right-of-way. Where advertising is allowed, it must comply with state and local legal requirements, as well as with constitutional parameters for regulating speech.

Where the transit agency is responsible for bus stops and franchises or contracts out any services regarding the bus stops, it is critical that the agency's agreements describe in detail the responsibilities of the franchisee or contractors to minimize any possibility that the transit agency will be found liable for breaches of duty to passengers in furnishing such services. In addition, well-drafted indemnification and insurance clauses, including duty to defend provisions, in any agreement related to bus stops and bus shelters are critical to mitigating the risk and expense of litigation. Such clauses must be specific to be enforceable, and should comply with any limitations on indemnification for the indemnitee's own negligence.

APPENDIX A: Sample RFP for Franchise Agreements

Request for Proposals, RFP # 10-01-06, Bus Shelter Program Issued by Transit Management of Mobile, <http://www.thewavetransit.com/BusinessInitiatives/files/BusShelterRFP.pdf>.

Sections:

- 1.0 PROPOSALS RECEIVED
- 2.0 SEALED PROPOSALS
- 2.1 PROJECT SCHEDULING
- 3.0 AUTHORIZATION OF PROPOSAL
- 3.1 AUTHORIZED SIGNATURE
- 4.0 PROPOSAL FORMAT
- 4.1 PROPOSAL FORMS
- 5.0 APPROVED EQUALS
- 5.1 BRAND NAMES
- 5.2 APPROVED EQUALS
- 6.0 PROTEST PROCEDURES
- 6.1 GENERAL
- 6.2 PROTESTS BEFORE OPENING
- 6.3 PROTEST AFTER OPENING/PRIOR TO AWARD
- 6.4 PROTESTS AFTER AWARD
- 6.5 FTA PROTEST REVIEW PROCEDURES
- 7.0 ADDENDUM
- 8.0 PROPOSALS WITHDRAWAL
- 9.0 PROPOSAL REJECTION
- 10.0 PROPOSAL EVALUATION/QUALIFICATION FOR AWARD
- 11.0 PROPOSAL AWARD
- 12.0 PROPOSALS ACCEPTED
- 13.0 REMEDIES/SANCTIONS FOR BREACH OF CONTRACT
- 14.0 CONTRACT SUBLETTING
- 15.0 CONTRACT DOCUMENTS
- 15.1 CONTRACT CHANGES
- 16.0 INDEMNIFICATION

17.0 PROPRIETARY RIGHTS/RIGHTS IN DATA

18.0 APPLICABLE LAW

18.1 NON-DISCRIMINATION

19.0 TAX EXEMPTION

20.0 USE OF THE WAVE TRANSIT'S NAME IN ADVERTISING AND PUBLIC RELATIONS

21.0 PROPOSERS RESPONSIBILITY

22.0 COMPLIANCE WITH SCOPE OF WORK

23.0 PRICING

24.0 TERMS OF PAYMENT

25.0 INSURANCE ****IMPORTANT****

26.0 CORRESPONDENCE

OUTLINE OF SCOPE OF SERVICES 20

ATTACHMENTS (PHOTOS)

FTA CLAUSES

FORMS AND CERTIFICATES

Text of selected sections of RFP:

16.0 INDEMNIFICATION

The contractor shall indemnify, save, defend and hold harmless The Wave Transit, the City of Mobile, and First Transit, Inc., their officers, agents and employees free of all losses, damages, claims and expenses in any wise arising or resulting from the actions and omissions of the Contractor, its employees, agents or contractors in the performance of its services hereunder.

17.0 PROPRIETARY RIGHTS/RIGHTS IN DATA

The term **subject data** used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in scope of work or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to; computer software, engineering drawings and associated list, scope of work, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term **subject data** does not include financial reports, cost analysis, and similar information incidental to contract administration.

The procuring agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes.

1. Any subject data, required to be developed and first produced in the performance of the contract and specifically paid for as such under the contract, whether or not a copyright has been obtained; and

2. Any rights of copyright to which the contractor, subcontractor or supplier purchase ownership for the purpose of performance of the contract and specifically paid for as such under the contract.

The contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the contract.

20.0 USE OF THE WAVE TRANSIT'S NAME IN ADVERTISING AND PUBLIC RELATIONS

The Wave Transit reserves the right to review and approve The Wave Transit related copy prior to publication. The contractor shall not proceed with The Wave Transit related copy to be published in the contractor's advertisement or public relations program until submitting The Wave Transit related copy and receiving prior written approval from The Wave Transit. The contractor shall agree that material published about or referring to The Wave Transit and its equipment shall be factual and in no way imply that The Wave Transit encourages the contractor's firm or service.

25.0 INSURANCE ****IMPORTANT****

****Insurance Requirements: \$1,000,000.00 (One Million Dollars)****

If requested by The Wave Transit the proposers shall furnish satisfactory proof of insurance that may be required. On each policy of insurance required hereunder, The Wave Transit, the City of Mobile, and First Transit, Inc., shall be named as additional insured.

In addition, the proposers shall maintain in effect at all times during the performance of work under this contract workmen's compensation insurance as required by state law.

****Insurance Requirements: \$1,000,000.00 (One Million Dollars) ****

Unless specific requirements are listed below, the bidder shall obtain and thereafter maintain and pay the premiums for insurance of the types and the limits that it deems sufficient for its protection.

Additional insurers required by contract should be automatically included in all of the Bidder's insurance programs:

[The Wave Transit (Employee unit)]

[First Transit, Inc.]

[City of Mobile]

In any event, the bidder shall maintain and pay the premiums for insurance of the types and in the limits of not less than the following:

1) a) Worker's Compensation of not less than \$1,000,000.

b) Employer's Liability Insurance endorsed with a Broad Form All States Coverage, which shall cover all the Bidder's employees engaged in the performance of the works.

This coverage should not be less than 1,000,000.

2) Comprehensive. General Liability Insurance Coverage with limits not less than required.

Umbrella Liability Insurance below and covering at least:

a) Operations – Premises Liability

b) Independent Contractor's Liability

c) Broad Form Contractual Liability covering the bidder's obligations.

d) Completed Operations Liability

e) Personal Injury Liability including claims arising from employees of the Bidder.

f) Broad Form Property Damage Liability

3) Excess and Umbrella Liability Insurance in excess of 1) (b), and 2) above of not less than \$3,000,000.

4) All such insurance as indicated above shall be provided by insurance companies having a Best's rating of not less than A: VI, as shown in the current issue of Best Key Rating Guide Property-Casualty.

5) Proof that such insurance coverage exists shall be furnished to WTS before the Bidder commences any of the parts of the work of the Contract. The Bidder agreed that if any policy of insurance is in effect in such manner as to affect the insurance called for herein,

30 days notice in writing shall be given to WTS prior to any such change or cancellation.

6) The Bidder shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and those of all applicable State Acts, Laws or Regulations during the conduct of and the Bidder's performance of this Contract. The Bidder shall indemnify WTS for fines, penalties and corrective measures that result from the acts of commission or omission of the Bidder, its subcontractors, if any, agents, employees and assigns and their failure to comply with such safety rules and regulations.

7) WTS will give to the Bidder prompt notice in writing of the institution of any suit or proceeding and permit the Bidder to defend same, and will give all needed information, assistance, and authority to enable the Bidder to do so. The Bidder shall similarly give WTS immediate notice of

any suit or action filed or prompt notice of any claim arising out of the performance of the Contract. The Bidder shall furnish immediately to WTS copies of all pertinent papers received by the Bidder.

8) The Bidder shall require its subcontractors, if any, to obtain an amount of insurance coverage, which is deemed adequate by the Bidder. The Bidder shall be liable to the extent that the subcontractor insurance coverage is inadequate. The subcontractors, prior to commencing any of the work, shall submit certificates evidencing such insurance coverage to the Bidder.

9) WTS reserves the right to inspect in person, prior to commencement of the work, all of the Bidder's insurance policies in regard to insurance required herein.

The Evaluation Criteria [for shelter design] will be as followed:

- Safety concerns.
- Lighting options (Incandescent, fluorescent, solar, etc).
- ADA issues.
- Entry and exit from the shelter.
- Curb appeal based on area of town (color, design, size, etc.).
- Drainage issues (if any).
- Weather conditions to be concerned about (rain, sun, wind, etc.).
- Traffic patterns (safety).
- Most probable areas for trip generation (i.e. ridership).
- See through ability.

APPENDIX B: Sample Franchise Agreements

The District of Columbia franchise agreement is available at www.ddot.dc.gov/cwp/view,a,1255,q,633272.asp.

St. Paul, Minnesota⁴⁵⁶

Appendix I. Bus Stop Shelter Franchise*

*Editor's note—Appendix I, §§ 1--28, is derived from Ord. No. 17237, §§ 1--28, adopted May 9, 1985. Section 27 of Ord. No. 17237 deems that said ordinance be incorporated into the Legislative Code, but does not specify the exact nature of that incorporation. At the editor's discretion, therefore, Ord. No. 17237 has been included as App. I.

Section 1. Grant.

Acting pursuant to the authority granted to the City of Saint Paul by the Minnesota State Legislature pursuant to Minnesota Statutes, Section 160.27, Subdivision 2, the council of the City of Saint Paul does hereby grant to Ad Shelters, Inc. (hereinafter referred to as "company") a nonexclusive bus stop shelter franchise subject to all the terms and conditions set forth in this franchise ordinance.

(Ord. No. 17237, § 1, 5-9-85; C.F. No. 95-516, § 1, 6-7-95; C.F. No. 05-457, § 1, 6-8-05)

Section 2. Rights and privileges of company.

The franchise granted by the city shall grant to the company the right to place and maintain within the limits of any streets within the City of Saint Paul, for the convenience and comfort of persons waiting for buses at such locations as may be designated by the city in the manner provided herein, bus shelters with advertising displayed thereon subject to the limits and conditions set forth in this franchise ordinance.

(Ord. No. 17237, § 2, 5-9-85; C.F. No. 95-516, § 2, 6-7-95; C.F. No. 05-457, § 2, 6-8-05)

Section 3. Agreement.

Upon adoption of this franchise ordinance and execution of the acceptance thereof by the company, the company agrees to be bound by all the terms and conditions contained herein. The company also agrees to provide all services set forth in its application and by its acceptance of the franchise, company specifically agrees that the company's application is thereby incorporated by reference and made a part of this franchise ordinance. In the event of a conflict between the appli-

⁴⁵⁶ www.stpaul.gov/code/appi.html.

cation made by the company and the provisions of this ordinance, that provision which provides the greatest benefit to the city in the opinion of the city council shall prevail.

(Ord. No. 17237, § 3, 5-9-85; C.F. No. 95-516, § 3, 6-7-95; C.F. No. 05-457, § 3, 6-8-05)

Section 4. Term—Renewal.

The term of this franchise granted by the city shall be for a term of ten (10) years from and after July 1, 2005. Thereafter the franchise may be renewed for an additional ten-year term on such terms and conditions as may be mutually acceptable to the city council and company.

(Ord. No. 17237, § 4, 5-9-85; C.F. No. 95-516, § 4, 6-7-95; C.F. No. 05-457, § 4, 6-8-05)

Section 5. Commencement of term.

The franchise term shall commence with the effective date of this ordinance; provided, that the company has filed within thirty (30) days after publication of this ordinance a written acceptance hereof with the city clerk in such form as the city attorney may approve; and provided, that a bond or letter of credit and the evidence of comprehensive liability insurance, which are required by this ordinance, shall have been approved and have been filed with the city clerk within ninety (90) days after the publication of this ordinance.

(Ord. No. 17237, § 5, 5-9-85; C.F. No. 95-516, § 5, 6-7-95; C.F. No. 05-457, § 5, 6-8-05)

Section 6. Area.

This franchise is granted for the entire area of the City of Saint Paul as it exists and as its borders may from time to time be changed.

(Ord. No. 17237, § 6, 5-9-85; C.F. No. 95-516, § 6, 6-7-95; C.F. No. 05-457, § 6, 6-8-05)

Section 7. Police powers.

In accepting this franchise the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

(Ord. No. 17237, § 7, 5-9-85; C.F. No. 95-516, § 7, 6-7-95; C.F. No. 05-457, § 7, 6-8-05)

Section 8. Other franchises.

No bus stop shelters with advertising displayed thereon shall be allowed to occupy or use a right-of-way of any street or highway within the City of Saint Paul without a franchise. This shall not, however, include non-advertising shelters constructed by Metro Transit. The rights hereby granted are not exclusive and the city may grant like rights and responsibilities to other persons during the term of this franchise.

(Ord. No. 17237, § 8, 5-9-85; C.F. No. 95-516, § 8, 6-7-95; C.F. No. 05-457, § 8, 6-8-05)

Section 9. Notices.

All notices from company to the city pursuant to this franchise shall be to the director of the department of public works unless otherwise stated herein, or to any other officer designated by the director of the department of public works. Company shall maintain throughout the term of this franchise a local office and address for service of notices by mail. Company shall also maintain with the city a local office and telephone number for the conduct of matters related to this franchise open during normal business hours.

(Ord. No. 17237, § 9, 5-9-85; C.F. No. 95-516, § 9, 6-7-95; C.F. No. 05-457, § 9, 6-8-05)

Section 10. Fee for franchise—Minimum fee.

In consideration of the rights granted the company by this franchise, the company agrees to pay the city a fee based upon the annual gross revenue collected that the company derives from advertising on shelters located within the city in accordance with the following schedule:

(1) If annual gross revenues are less than four hundred twenty-five thousand dollars (\$425,000.00): Nine (9) percent.

(2) If annual gross revenues are four hundred twenty-five thousand dollars (\$425,000.00) but less than four hundred seventy-five thousand dollars (\$475,000.00): Ten (10) percent.

(3) If annual gross revenues are four hundred seventy-five thousand dollars (\$475,000.00) but less than five hundred fifty thousand dollars (\$550,000.00): Eleven (11) percent.

(4) If annual gross revenues are more than five hundred fifty thousand dollars (\$550,000.00): Twelve (12) percent.

The fee shall be paid to the Saint Paul Public Works Department—Accounting Section quarterly within thirty (30) days after the expiration of each calendar quarter. Each payment shall be based upon the gross advertising revenues received in the preceding calendar quarter. The quarterly fee payment due shall be determined by multiplying the gross revenues for the quarter by that percentage that would be applied assuming that the annual gross revenues will be four (4) times the gross revenues for that quarter.

The gross revenue as defined shall mean all advertising revenue derived directly or indirectly by the company, its affiliates, subsidiaries, apparent or any person in which the company has a financial interest, from or in connection with the operation of the franchise prior to any deduction; provided, however, that this shall not include any taxes on services furnished by the company herein imposed directly upon any advertiser by the city, state or other governmental unit and collected by the company on behalf of said governmental unit.

(Ord. No. 17237, § 10, 5-9-85; C.F. No. 95-516, § 10, 6-7-95; C.F. No. 05-457, § 10, 6-8-05; C.F. No. 05-457, § 10, 6-8-05)

Section 11. Accounts and records.

The company shall keep books of account and records of all business transacted and costs incurred in connection with the purchase, manufacture and installation of the shelters and advertising on shelters, showing all financial transactions including receipts and disbursements and the particulars thereof in a form satisfactory to the director of the department of finance and management services. Company shall make such books of account and records available at all reasonable times for inspection, examination or audit by city officers, employees or agents. Company shall submit such statements in regard to revenues the city's director of the department of finance and management services may reasonably require.

The company shall file annually with the city no later than one hundred twenty (120) days after the end of the company's fiscal year, a copy of a financial report applicable to the Saint Paul Bus Shelter System, including an income statement relating to its operations during the fiscal year and a balance sheet, both of which shall be certified as correct by an independent certified public accountant, and a statement of its properties, equipment and facilities which are located upon the streets, highways and public places within the city giving its investment in such facilities on the basis of original cost, less applicable depreciation. These reports shall be certified as correct by an authorized officer of the company and shall be submitted along with such other reasonable information as the city shall request with respect to the company's facilities and expenses related to its bus stop shelter system operations within the city.

The company shall also file with the city clerk copies of its articles of incorporation, bylaws, agreements with any other person relating to the ownership of the bus stop shelter system, and amendments of such documents as they become effective.

(Ord. No. 17237, § 11, 5-9-85; C.F. No. 95-516, § 11, 6-7-95; C.F. No. 05-457, § 11, 6-8-05)

Section 12. Insurance.

The company shall, during the entire term of this franchise and extensions thereof, maintain in force, at its own expense, a policy of comprehensive liability insurance to be filed and maintained with the department of finance and management services. The insurance policy shall insure the city, members of its board and commissions and its officers, employees and agents, and the company from all liability on account of injuries, death or damage to any person or persons and damage to property arising out of or resulting from or in connection with the construction, operation, maintenance, location, placement or removal of any shelter or other facility of the company, or oc-

casioned by any of the activities of the company, its officers, agents or employees under this franchise. Minimum liability limits under the policy are to be one million dollars (\$1,000,000.00) for bodily injury or death of any one person; two million dollars (\$2,000,000.00) for bodily injury or death of more than one person in a single occurrence; and one million dollars (\$1,000,000.00) for property damage to one claimant and two million dollars (\$2,000,000.00) for more than one claimant in a single occurrence.

The policy shall be of type in which coverage is restored immediately after the occurrence of any loss or accident from which liability may thereafter accrue. The policy shall contain an endorsement which shall provide that no cancellation shall become effective without thirty (30) days' prior written notice to the city of intent to cancel or not to renew. In the event such insurance is cancelled and the company shall fail to immediately replace it with another equivalent policy, the city may terminate their franchise and declare it to be forfeited.

(Ord. No. 17237, § 12, 5-9-85; C.F. No. 95-516, § 12, 6-7-95; C.F. No. 05-457, § 12, 6-8-05)

Section 13. Indemnification.

A. The company shall fully indemnify, defend and save harmless the city, its officers, board, commissions, employees and agents from any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the city in connection therewith):

(1) For injury or death to any person or persons or damage to property arising from or in connection with the acts of the company, its officers, agents or employees in the construction, operation, maintenance, location, placement or removal of any bus stop shelter or other facility of the company;

(2) Arising out of replacement or display of any advertisements, notices, signs or posters on any shelters; or

(3) Arising out of the exercise of any other right or privilege under the franchise.

B. In the event that suit is brought or that damages or other recourse shall be sought against the city, either independent or jointly with the company on account of or arising out of any injury, death, property damage or activity of the company referred to in subparagraph A of this section, the company, upon notice by the city, shall defend the city in such suit or action at the cost of the company, and in the event of final judgment being obtained against the city, either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom. The company shall pay all expenses incurred by the city in defending itself with regard to all damages and liability referred to in this section. Nothing

herein shall be deemed to prevent the city from participating in the defense of any litigation by its own counsel at its own sole cost and expense.

(Ord. No. 17237, § 13, 5-9-85; C.F. No. 95-516, § 13, 6-7-95; C.F. No. 05-457, § 13, 6-8-05)

Section 14. Assignment or transfer.

A. The franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior consent of the Saint Paul City Council which consent shall not be unreasonably withheld. Any assignee, lessee, mortgagee and any person or entity having or acquiring any interest, right or title in or to the facilities that are installed or operated hereunder must show financial responsibility as determined by the city and agree to comply with all provisions of the franchise. Any document by which any interest, right or title to the franchise or the facilities that are installed or operated hereunder are transferred to or vested in any person shall, by its terms, be expressly subordinate to the terms and conditions of the franchise.

B. The company shall notify the city by certified mail, return receipt requested, of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company or the facilities installed hereunder. The word "control," as used herein, is not limited to major stockholders but includes actual working control in whatever manner exercised. Any transfer, sale or assignment of the franchise, or control of the company, or facilities that are installed or operated hereunder, shall be cause for forfeiture of the franchise unless and until the city shall have consented thereto, which consent shall not be unreasonably withheld. The city shall be deemed to have consented to a transfer or acquisition of stock in the company unless the city disapproves the same within thirty (30) days after receipt of notice of any proposed or actual transfer of stock or notifies the company within thirty (30) days that additional time is necessary to consider the matter. The company shall, when it files its acceptance of this franchise, also file a list of its stockholders, all agents or nominees of the company and all persons having a beneficial interest therein, stating the nature of such interest.

(Ord. No. 17237, § 14, 5-9-85; C.F. No. 95-516, § 14, 6-7-95; C.F. No. 05-457, § 14, 6-8-05)

Section 15. Locations.

No shelter shall be placed upon the public street or highway right-of-way until the following procedure has been accomplished and the location has been approved by the council;

A. The company shall give written notice to abutting property owners at least ten (10) days prior to the date set for a public hearing and furnish them with a site plan upon their request.

B. The company shall print in a newspaper of general circulation in the City of Saint Paul at least ten (10) days prior to the date set for public hearing, notice of such public hearing.

C. The company shall submit to the director of public works ten (10) copies of a site plan, a description of how electrical service will be provided and any unique shelter design required to accommodate the shelter to the location, and any other information the director may require. No shelter may be placed upon the public right-of-way unless the site plan is approved by the director.

D. The company shall notify all utility locaters and submit to the director proofs that such notice has been given.

E. The company must obtain all building and other required permits from the city or any other agency of government as the law requires, including a permit from the proper road authority if other than the city.

The council shall hold a public hearing with regard to the approval of all new locations. All locations and installations must conform to the zoning ordinance of the city.

(Ord. No. 17237, § 15, 5-9-85; C.F. No. 95-516, § 15, 6-7-95; C.F. No. 05-457, § 15, 6-8-05)

Section 16. Performance bond.

Within ninety (90) days after the publication of this ordinance, the company shall file with the city clerk a performance bond in the amount of twenty-five thousand dollars (\$25,000.00) in favor of the city. The bond shall be maintained throughout the term of the franchise and until the company shall have liquidated all of its obligations with the city. In the event the company fails to comply with any law, ordinance or regulation governing the franchise or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the company's application which is incorporated as though fully set out herein, there shall be recoverable, jointly and severally, from the principal and surety of the bond any damages or loss suffered by the city as a result, including the full amount of any compensation due the city, indemnification for the cost of removal and storage of any shelter, plus a reasonable allowance for attorney's fees, including the city's legal staff, and costs up to the full amount of the bond.

The bond shall also be conditioned upon the removal at the expiration or termination of the franchise of the company's shelters and the restoration of the streets and public places of the city to their former condition. The bond shall contain an endorsement that no cancellation shall be effective until ninety (90) days after receipt by the city clerk of a written notice of intent to cancel or not to renew sent by certified mail, return receipt requested. No cancellation shall be effective if the surety has received notice by the city of the company's default. The bond may not be cancelled

and shall remain in effect in the period commencing at the expiration or termination of the franchise and for three hundred sixty-five (365) days thereafter.

(Ord. No. 17237, § 16, 5-9-85; Ord. No. 17575, § 1, 7-19-88; C.F. No. 95-516, § 16, 6-7-95; C.F. No. 05-457, § 16, 6-8-05)

Section 16A. Optional letter of credit.

In lieu of the performance bond required under Section 16, the company may elect to give the city a letter of credit for twenty-five thousand dollars (\$25,000.00) issued by a bank in the metropolitan area. The letter of credit shall provide that it may be drawn upon under the same circumstances as a surety would be subject to a claim under its bond as provided in Section 16 with respect to the performance bond, except that the letter of credit shall be subject to a draw without any previous demand upon, or notice to the company. The letter of credit shall also be subject to a draw if it is effective for a limited term and is not replaced by a replacement letter of credit at least thirty (30) days before expiration. The letter of credit shall also be in a form approved by the city attorney and shall be on file with the city clerk and remain so until three hundred sixty-five (365) days after the expiration or termination of the franchise.

(C.F. No. 95-516, § 16A, 6-7-95; C.F. No. 05-457, § 16A, 6-8-05)

Section 17. Removal of shelter.

A. The council may order company to remove any shelter when it reasonably determines that it is no longer of any benefit to the public, when there is no longer a bus stop at the location or when it finds that maintenance is inadequate under Section 20 herein. If the city requires removal of a bus shelter because of relocation of all or part of a bus route, the city shall give the company a reasonable period of time to remove the shelters thereof. If the city requires the removal of more than four (4) bus shelters because of the relocation of a bus route, the reasonable costs of removing or relocating the shelters may be set off against the franchise fee due the city.

B. If a shelter must be temporarily removed for construction done by any governmental unit or its contractor, company shall, after being given two (2) weeks' written notice, at its own cost remove the shelter promptly when requested to do so by the director of public works. The city may also, upon two (2) weeks' written notice, order the company to temporarily remove a shelter for an abutting owner's construction at such owner's expense. The city shall not be required to provide two (2) weeks' advance written notice when and in the event the removal of the shelter is required on account of an unexpected or emergency situation.

C. If the company fails promptly to remove a shelter when ordered to do so by the director of public works or council, the city may have the shelter removed within thirty (30) days after written notice to the company, and the company shall pay the cost of removal or storage thereof.

(Ord. No. 17237, § 17, 5-9-85; C.F. No. 95-516, § 17, 6-7-95; C.F. No. 05-457, § 17, 6-8-05)

Section 18. Public works to regulate installation.

The director of public works shall regulate the installation of shelters and if, in the opinion of the director of public works, the shelter installation is hazardous, the director may order the company to take necessary steps at its own cost to remove or relocate the shelter or make the necessary repairs to correct the hazard. The director of public works has the right to conduct reasonable inspections of shelters for this purpose.

In regulating the installation of shelters, the director of public works shall regulate the size of shelters installed, its orientation or placement on the site, and any preparatory or remedial site work. When the city has approved a site plan, the company shall submit detailed amended plans showing any discrepancies between the site plan approved and the work completed. The company shall install and maintain a minimum of one hundred (100) shelters within the franchise area unless otherwise approved by the city.

(Ord. No. 17237, § 18, 5-9-85; C.F. No. 95-516, § 18, 6-7-95; C.F. No. 05-457, § 18, 6-8-05)

Section 19. City may require shelters—Installation schedule.

The city may require the company to install shelters at such locations it may reasonably designate within the city and may require the company to take the procedural steps necessary for the approval of such locations as specified in Section 15 herein within thirty (30) days after it designates such location or locations.

Shelters shall be installed at a location within three (3) months after the location is approved by the council; provided, however, that the company shall not be required to install more than twenty (20) shelters in any three-month period. The months of December, January, February and March shall not be included in determining either three-month period.

If the company establishes that the cost of maintaining a shelter exceeds the actual costs of installing the shelter, the company shall not be required to keep and maintain a shelter at such location; otherwise no shelter may be removed from an approved location without the consent of the council. The city shall not permit any other bus stop shelter franchisee to install or retrofit a shelter within one block of a shelter installed and maintained by the company in the central business district or two (2) blocks in the remainder of the city.

(Ord. No. 17237, § 19, 5-9-85; C.F. No. 95-516, § 19, 6-7-95; C.F. No. 05-457, § 19, 6-8-05)

Section 20. Maintenance.

The company will maintain all shelters to the reasonable satisfaction of the director of public works as set out below. Maintenance includes cleaning and washing the entire shelter inside and out; removal of graffiti, stickers, posters, notices and the like; removal of litter within fifty (50) feet of the company's shelter in an area between the public sidewalk right of way property line on the shelter side of the street and the street curbline on the shelter side of the street, weeds and grasses inside and adjacent to the shelter; repair and replacement of damaged or broken parts; the supply of replacement parts; replacement of burned-out lighting fixtures; the supply of electrical energy; and clearing snow from inside the shelter, and cleaning snow, dirt and debris in the area between the shelter and the curbline. The company is not required to remove litter on any adjacent private property. The company shall clean and wash and remove graffiti, stickers, posters, litter and weeds at each shelter at least once every week, or more frequently if required, to keep each shelter free of any noticeable accumulation of dirt, dust, marks, stickers, posters, litter or weeds. In addition, the company shall remove litter from specific shelter(s) on a complaint basis within twenty-four (24) hours of receiving notice from the director of public works or designee.

The company shall inspect each shelter at least once every seven (7) calendar days for any damaged or broken parts or burned-out lighting fixtures and the company shall repair or replace damaged or broken parts and burned-out lighting fixtures within twenty-four (24) hours after the company becomes aware of the damage, breakage or burn-out.

(Ord. No. 17237, § 20, 5-9-85; C.F. No. 95-516, § 20, 6-7-95; C.F. No. 05-457, § 20, 6-8-05)

Section 21. Advertising.

The company shall limit advertising to one-third (1/3) of the area of the vertical surface of the shelter. All advertising panels shall not be larger than four (4) feet by six (6) feet in dimension, except for specially designed artwork on shelters that provides additional revenue and is approved on a case by case basis by the director of public works or designee. The company shall not permit obscene, immoral or indecent advertising or political advertising of any character. The company shall not allow more than sixty (60) percent of the company's combined total advertising space on all shelters in the city to alcoholic beverage products at any time. There shall be no tobacco products advertised in accordance with state and federal laws. The company, in accepting this franchise, agrees to remove any advertising which the council determines to be inappropriate to the particular location or surroundings of the shelter or inappropriate as a use of the public street right-of-way. The company shall provide equal access to all advertisers at reasonable rates. The company shall, upon notice, remove any advertisement of a private company or a commercial product or ser-

vice that has been placed or displayed on a shelter on the same street and within one (1) city block of any property owned or leased by a company which is in competition with, or which, as its principal and primary business, markets a product or service which is advertised.

The city has the right to use up to five (5) percent of the advertising panels for their own departmental public service announcements with a sixty (60) day advance notice and such space shall be subject to availability. City's announcement posters may be rotated to different locations as panels are sold to advertisers. City will provide franchisee with announcement posters ready to install.

Advertising may be placed on shelters only in accordance with the Saint Paul Zoning Ordinances.

(Ord. No. 17237, § 21, 5-9-85; C.F. No. 95-516, § 21, 6-7-95; C.F. No. 05-457, § 21, 6-8-05)

Section 22. Forfeiture.

A. The city shall, in addition to any other rights it may have, have the right to declare that the company has forfeited the franchise in the event of a substantial breach of its terms and conditions, including, but not limited to, the following circumstances:

(1) If the company becomes insolvent or is declared bankrupt or makes any assignment for the benefit of its creditors; or

(2) If the company assigns or transfers or attempts to assign or transfer the franchise, or sells or leases or attempts to sell or lease any of its shelters without the council's permission; or

(3) If the company fails to install shelters on schedule as required in Section 19 of this ordinance, or fails to conform to the specifications contained in its application or the invitation for applications, or fails to construct the shelters in a workmanlike manner to the satisfaction of the director of public works and in conformity, with this ordinance, or if the company refuses or neglects when so ordered to take down, rebuild or repair any defective or unsatisfactory work or to maintain the shelter as required under Section 20 herein; or

(4) If the company fails to remove any shelter when ordered to do so in accordance with this ordinance; or

(5) If the company refuses or neglects to comply with any reasonable order of the director of public works; or

(6) If the company persists in any course of conduct in violation of any of the provisions of this ordinance; or

(7) If the city receives notice of intention not to renew or the company fails to keep in force its insurance, bond and letter of credit required herein.

The foregoing shall not constitute a substantial breach if the breach occurs as a result of circumstances over which the company has no control. The company shall not be excused by mere economic hardship nor by the neglect of its officers, agents, or employees.

B. The director of public works may make a written demand by certified mail that the company comply with any such provision, rule, order or determination under or pursuant to this franchise. Such notice shall be entitled "Forfeiture and Termination Notice." If the violation by the company continues for a period of thirty (30) days or more following such written demand, without having been corrected or remedied, the matter of forfeiture and termination of the franchise shall then be taken before the city council. The city shall cause to be served upon the company at least twenty (20) days prior to the date of such council meeting a written notice of intent to terminate the franchise, including the time and place of the meeting. Public notice shall be given of the meeting and issue which the council is to consider. The city council shall hear and consider the issue and the council shall, in its discretion, determine whether there has been a substantial breach. If the council determines that there has been a substantial breach, the company shall have such period of time as the council may set, but not less than thirty (30) days in which to cure the breach; provided, that no opportunity for cure need be given for fraud or misrepresentation. At the expiration of the period of time set for compliance, the council may terminate the franchise forthwith upon finding that the company has failed to cure the breach. If the company fails to cure, the city or any stockholder of the company may cure and the expense incurred shall be a debt of the company to the stockholder or the city, as the case may be.

C. There is no intention that the shelters shall be forfeited in the event of a forfeiture of the franchise, except as follows: In the event of forfeiture, the company shall forfeit to the city all equipment and facilities that may be located along, over or under any street or highway within the city, unless such property is removed by the company within ninety (90) days from the date of forfeiture. The performance bond or letter of credit posted in accordance with Section 16 or Section 16A shall remain posted to insure that the streets, highways and public places from which such equipment is removed shall be placed in good condition.

(Ord. No. 17237, § 22, 5-9-85; C.F. No. 95-516, § 22, 6-7-95; C.F. No. 05-457, § 22, 6-8-05)

Section 23. Disposition of shelters on expiration of franchise.

A. In the event that the franchise expires and is not renewed, the city may purchase the shelters and facilities then in place upon such terms and for such consideration as may be agreed to by the city and the company prior to the expiration of the franchise. If prior to the expiration of the franchise or within ninety (90) days following such expiration the city elects to award a franchise

to any other person or company, and the city elects to have the new franchisee operate and maintain the shelters which have been installed pursuant to this franchise, then the new franchisee shall purchase such shelters on such terms and for such consideration as may be agreed to by the new franchisee and the company.

B. Notwithstanding the provisions of paragraph A of this section, in the event that the term of this franchise expires and the city and company have not renewed the franchise for an additional term, the company shall at its own expense remove all of the shelters and facilities which it has installed or caused to be installed upon or below the public streets and highways or public places of the city and shall restore the streets and highways of the city to their former condition in a manner satisfactory in the judgment of the director of public works. If the company fails to remove all such shelters and facilities within ninety (90) days after the expiration of the franchise, the city may have the shelters and facilities removed and require the company to pay the cost of such removal. In the event that the shelters and facilities have not been sold pursuant to paragraph A of this section or removed by the company, all right and title to the shelters shall be deemed to have passed to and vested in the city. The company agrees that in such circumstances it will execute such documents as the city attorney may require to transfer the title to such shelters and facilities.

(Ord. No. 17237, § 23, 5-9-85; C.F. No. 95-516, § 23, 6-7-95; C.F. No. 05-457, § 23, 6-8-05)

Section 24. Right of abutting property owner to construct shelter.

Abutting property owners shall have the first right and privilege to construct, operate and maintain shelters upon the public right-of-way of streets and highways of the city, at locations on or adjacent to the property of the owner. The abutting property owner shall give written notice to the council and the company of its election to construct a shelter at a given location no later than the date of the public hearing for the location of any shelter. If the abutting property owner so elects, the company may not construct a shelter at that location unless the abutting property owner consents in writing or fails to take affirmative measure to construct the shelter within ninety (90) days of its election.

By electing to exercise its aforementioned first right and privilege, the abutting owner agrees to:

- (A) Permit no advertising on the shelter.
- (B) At all times maintain insurance pursuant to the terms of Section 12 of this ordinance.
- (C) Acknowledge that its rights are subject to the police power of the city pursuant to Section 7 of this ordinance.
- (D) Defend, indemnify and hold harmless the city, its officers and employees according to the terms and conditions of Section 13 of the ordinance.

(E) Submit all plans, specifications and drawings to the director of public works for approval prior to commencement of construction of the shelter. The director of public works shall regulate the installation of the shelters pursuant to Section 18. If the structural design of the shelter is similar to the structural design of the company's shelter, the director of public works shall require for his approval that the design, plans and engineering specifications be at least substantially equivalent in quality to those of the company's shelters.

(F) Maintain its shelter pursuant to Section 20 of this ordinance.

In the event the abutting owner fails to comply with any of the terms and conditions hereof, the city may require the owner to remove the shelter at its own expense.

(Ord. No. 17237, § 24, 5-9-85; C.F. No. 95-516, § 24, 6-7-95; C.F. No. 05-457, § 24, 6-8-05)

Section 25. Civil rights.

The company shall at all times comply with the provisions of Chapter 183 of the Saint Paul Legislative Code and applicable state and federal law regarding nondiscrimination and civil rights.

(Ord. No. 17237, § 25, 5-9-85; C.F. No. 95-516, § 25, 6-7-95; C.F. No. 05-457, § 25, 6-8-05)

Section 26. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Ord. No. 17237, § 26, 5-9-85; C.F. No. 95-516, § 26, 6-7-95; C.F. No. 05-457, § 26, 6-8-05)

Section 27. [Incorporation in Legislative Code.]

This ordinance shall be deemed a part of the Saint Paul Legislative Code and shall be incorporated therein as Appendix I.

(Ord. No. 17237, § 27, 5-9-85; C.F. No. 95-516, § 27, 6-7-95; C.F. No. 05-457, § 27, 6-8-05)

Section 28. [Effective date.]

This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication.

(Ord. No. 17237, § 28, 5-9-85; C.F. No. 95-516, § 28, 6-7-95; C.F. No. 05-457, § 28, 6-8-05)

ACKNOWLEDGMENTS

This study was performed under the overall guidance of TCRP Project Committee J-5. The Committee is chaired by **Robin M. Reitzes**, San Francisco City Attorney's Office, San Francisco, California. Members are **Rolf G. Asphaug**, Denver Regional Transportation District, Denver, Colorado; **Darrell Brown**, Transit Management of Southeast Louisiana, Inc., RTA New Orleans, New Orleans, Louisiana; **Dorval Ronald Carter, Jr.**, Chicago Transit Authority, Chicago, Illinois; **Dennis C. Gardner**, Ogletree, Deakins, Nash, Smoak & Stewart, Houston, Texas; **Clark Jordan-Holmes**, Joyner & Jordan-Holmes, P.A., Tampa, Florida; **Sheryl King Benford**, Greater Cleveland Regional Transit Authority, Cleveland, Ohio; and **Alan S. Max**, City of Phoenix Public Transit Department, Phoenix, Arizona. **Rita M. Maristch** provides liaison with the Federal Transit Administration, and **James P. LaRusch** serves as liaison with the American Public Transportation Association. **Gwen Chisholm Smith** represents the TCRP staff.

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