



DATE ISSUED: August 2, 2006

REPORT NO: 06-115

ATTENTION: Land Use and Housing Committee
Docket of August 9, 2006

SUBJECT: Proposed Amendments to the Newsrack Ordinance

REFERENCE:

REQUESTED ACTION: The Land Use and Housing (LU&H) Committee is requested to recommend the City Council adopt the proposed amendments to the Newsrack Ordinance, including establishing a Newsrack Permit with an associated fee and requiring that newracks be adequately insured and maintained to protect the public health, safety, and general welfare.

STAFF RECOMMENDATION: Adopt the recommended ordinance amendments and the proposed fee.

SUMMARY: Newsracks, for the purpose of these proposed ordinance amendments, are any unattended structure within the public right-of-way that contains publications available to the public. Newsracks are regulated because the uncontrolled proliferation and placement of newsracks in the public rights-of-way presents an inconvenience and/or danger to the safety, health and welfare of persons using the rights-of-way, including unreasonable interference with the flow of pedestrian or vehicular traffic, persons entering and exiting vehicles and buildings, as well as performance of essential utility, traffic control, and emergency services and repairs.

The dissemination of protected material on the public rights-of-way by means of newsracks falls with the constitutional guarantees of freedom of speech and freedom of press. Although the distribution of periodicals through newsracks is entitled to constitutional protection, this principle does not ordain that newsracks are immune from regulation by local municipalities. Localities retain authority to impose reasonable time, place, and manner regulations on newsracks so as to protect legitimate governmental interests. The proposed amendments are sufficiently narrowly tailored to protect the public health, safety, and general welfare, while at the same time preserving First Amendment rights.

A Newsrack Ordinance Taskforce (Attachment 1) was convened to recommend revisions to the City's newsrack ordinance for the benefit all interested parties. The Taskforce determined the public's primary concerns included the uncontrolled proliferation and placement of newsracks within the public right-of-way, the lack of maintenance and upkeep of newsracks, the inability to discern the identities of the parties responsible for the newsracks, the lack of accountability for damages to persons or property associated with newsracks, and lack of adequate enforcement of violations associated with newsracks. The publishers' primary concerns included the requirement of a six-foot clear path of travel, which exceeded disabled access standards, and the restriction of newsracks adjacent to red curbs. In addition to structural and location restrictions, the Taskforce recommended requirements for permits, insurance, and indemnification as a means to manage the uncontrolled proliferation of newsracks. A website summary prepared by The Newspaper Association of America of other jurisdiction activity with respect to similar regulations is provided

in Attachment 2. A summary of newsrack ordinance provisions in other cities is also attached (Attachment 4).

The draft ordinance is attached to this report (see Attachment 3, Proposed Newsrack Ordinance Amendments). The following is a brief summary of the most significant amendments that address four issues: Maintenance, Appearance and Dimensions; Location; Enforcement; and Permit, Indemnification and Insurance Requirements.

Maintenance, Appearance, and Dimensions

- Newsracks would be required to meet general safety requirements that would preclude them from becoming a safety hazard or unreasonably interfere with or obstruct the flow of pedestrian or vehicular traffic.
- The maintenance standards were expanded to include removal of trash, debris, foreign objects, graffiti, stickers, and dents.
- The dimension standards were revised to address the different types of newsracks proposed.
- Restrictions were placed on the height of operating elements of the newsracks to ensure that disabled access requirements are met.
- Only drop in type anchor bolts may be used when newsracks are permanently affixed to the sidewalk to minimize the risk of creating a tripping hazard after removal.
- Responsible parties (such as publishers and distributors) would be required to repair any damage to the sidewalk after a newsrack is removed, including matching the color and texture of the underlying sidewalk to the extent reasonably feasible.
- Newsracks would be required to provide weather protection for publications such as doors or other similar devices designed to ensure publications do not get wet or fly out of newsracks during rainy or windy conditions.

Location

- Special provisions were made for the Historic Gaslamp District because of its national historic designation and location between the Ballpark, Convention Center, and Downtown, thereby generating greater numbers of visitors including higher densities of pedestrians and vehicular traffic. The publishers and the Gaslamp District reached an agreement establishing 10 locations in the District where each “corral” can accommodate up to eight newsracks. A permit process providing equal access will determine what newsracks are placed in each corral. The publishers will pay for the costs and maintenance of the corrals. Attachment 5 shows the proposed locations for the Historic Gaslamp District.
- Visibility standards at traffic intersections have been clarified.
- There are approximately 3,500 stops, 2,000 benches, and 350 shelters maintained by the Metropolitan Transit System. The clearances for newsracks at Metropolitan Transit District (MTD) stops have been increased to reflect MTD operational requirements. The clearance behind bus and trolley stops is extended to 30 feet, and to 100 feet on Broadway between Harbor Drive and Park Avenue.
- Free path of travel dimension was reduced from 6 feet to 4 feet.
- Newsracks would be allowed near curbs painted red, and could be located within 6 inches of curbs where no stopping, standing or parking is allowed.

Enforcement

- Provisions were added for cost recovery and penalties, and associated appeals were made consistent with Chapter 1 of the San Diego Municipal Code.

Permit, Indemnification, and Insurance Requirements

- A permit would be required for the installation and continued use of newsracks in the public right-of-way. The estimated cost of a permit is \$10 per newsrack per year. The requirements of the permit would be:
 - Maintenance by the responsible parties of a list of all newsrack locations to be made available upon request for auditing purposes.
 - Proof of current insurance in an amount adequate to protect the public health and safety in its use of the public right-of-way and subject to approval by the City Attorney.
 - A hold harmless agreement subject to approval by the City Attorney indemnifying the City from liability associated with the newsracks.

Process of Determining Initial Permit Fees

Major publications reported having the following numbers of newsracks in the City: The San Diego Union-Tribune (1,094), The Los Angeles Times (650), USA Today (167), and The Wall Street Journal (100). This amounts to approximately 2,000 racks for the major publishers. (For the purposes of this estimate, it was assumed that there are approximately 1,000 newsracks maintained by minor publishers). Attachment 6 shows an estimate process based on 3,000 newsracks with 20% subject to annual inspection. Given this scenario, the permit cost per newsrack would be approximately \$10.

FISCAL CONSIDERATIONS: The permit fee, if adopted, will offset expenses associated with permit issuance and pro-active enforcement for approximately twenty percent of the citywide newsracks located in the public right-of-way. The proposed Fee Schedule is listed in Attachment 6.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: The City first adopted an ordinance regulating newsracks on December 6, 1974, and then amended the ordinance in 1996. Over the years, the publishing industry has expressed concern that the ordinance is overly restrictive. At the same time, business districts, planning groups, residents, the Metropolitan Transit District, and others have expressed concerns that the proliferation of newsracks in the public right-of-way was affecting their business, quality of life, community esthetics, safety, and obstruction-free use of the public right-of-way.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Neighborhood Code Compliance (NCCD) began a process to bring stakeholders and interested parties together to develop ordinance amendments (see Attachment 1, Newsrack Ordinance Taskforce Roster). Over the last 24 months, this Taskforce has met 14 times before reaching consensus on the issues. The process was collaborative and inclusive, and involved in-depth discussions of proposed amendments and their implications.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders include participants with the Newsrack Ordinance Taskforce meetings comprised of representatives of publishers, distributors, Business Improvement Districts, and the Community Planners Committee, as well as other interested persons.

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Attachments:

1. [Newsrack Ordinance Taskforce Roster](#)
2. [Newspaper Association of America Summary of Activities in Other Cities](#)
3. [Proposed Newsrack Ordinance Amendments, dated 12/20/05](#)
4. [Summary of Newsrack Ordinance Provisions in Other Cities](#)
5. [Map of Proposed Corral Locations in the Historic Gaslamp Planned District](#)
6. [Estimated Permit Fees](#)