



OFFICE OF THE CITY MANAGER

MEMORANDUM

December 11, 2000

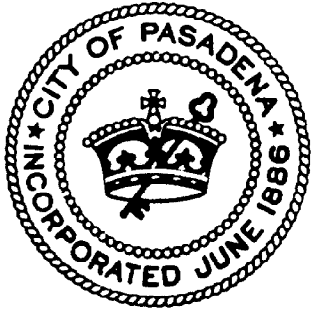
**TO:** City Council  
**FROM:** City Manager  
**SUBJECT:** Proposed Amendments to the New Rack Ordinance

On December 6, 2000, staff presented to the Business Enterprise committee the proposed amendments to the News Rack ordinance. BEC approved the staff recommendation, but requested that staff provide additional recommendations on a reduced initial fee to provide an incentive for vendors to participate in an expedited implementation program. Staff will provide further information on this issue on Monday night.

Respectfully submitted,

CYNTHIA J. KURTZ  
City Manager

12/11/2000  
5.A.1.



# Agenda Report

TO: CITY COUNCIL THROUGH THE  
BUSINESS ENTERPRISE COMMITTEE

DATE: December 6, 2000

FROM: City Manager

SUBJECT: Proposed Amendments to the News Rack Ordinance

## **RECOMMENDATIONS:**

It is recommended that the City Council:

1. Direct the City Attorney's office to prepare amendments to the existing News Rack Ordinance, which will better regulate the placement of news racks, and approve, in concept, the proposed fee structure.
2. Acknowledge that the proposed amendments to be categorically exempt under the California Environmental Quality Act (CEQA) in accordance with Article 19, Section 15302 (Class 2), subsection (b) of the Resources Agency of California Guidelines (replacement of existing structures and facilities where the new structure will be located on the same site as the structure replaces and will have substantially the same purpose and capacity of the structure replaced), and authorize the City Manager to execute and the City Clerk to file a Notice of Exemption for the project with the Los Angeles County Clerk.

## **DESIGN COMMISSION'S RECOMMENDATION:**

On June 12, 2000, staff returned to the Design Commission with revised amendments to the News Rack Ordinance. The Design Commission reviewed staff's original proposal on September 13, 1999. The Design Commission reviewed the revised proposed amendments to

the News Rack Ordinance and recommended the City Council approve the proposed amendments with the following addition:

The logo shall not exceed a specific percentage of the area. A suggestion of 10%-20% was made with the intent that the logo can be read from across the street.

Staff's proposal does not address the size of the logo.

#### **PLANNING COMMISSION'S RECOMMENDATION:**

On June 14, 2000, staff returned to the Planning Commission with revised amendments to the News Rack Ordinance. The Planning Commission reviewed staff's original proposal on September 22, 1999. The Planning Commission reviewed the proposed amendments to the News Rack Ordinance and recommended that the City Council approve the proposed amendments.

#### **EXECUTIVE SUMMARY:**

On February 2, 2000, staff presented the proposed amendments to the Business Enterprise Committee (BEC) for review and approval. A copy of this report is attached. Concern was raised by the publishers/distributors about the proposed style of news racks for the Old Pasadena and Playhouse Districts and to the many different proposed placement restrictions. Staff was asked to meet with the publishers/distributors and the community groups to determine a news racks style that would be accepted by all affected parties and to review the proposed placement standards. A meeting was held on March 31, 2000, with representatives from the Old Pasadena Business and Professional Associations, the Old Pasadena Streetscapes and Alley Walkways Core Group (Core Group), and publishers/distributors. It was agreed by the majority in attendance to use an interim style in Old Pasadena that was consistent with what is proposed for the remainder of the City. It was also agreed that a task force be formed, comprised of representatives from the Old Pasadena business district and the Core Group, City staff, and publishers/distributors to determine a style that would be acceptable.

The significant proposed changes to the ordinance include developing a permit process, with associated fees, for all news racks; limiting the number of news racks per block; limiting the number of news racks adjacent to designated parking stalls and loading/unloading zones; requiring that all news racks be bolted to the sidewalk; and other miscellaneous placement and maintenance requirements.

Implementation of the ordinance will be performed in phases. Staff will begin with the more congested areas, such as Old Pasadena, South Lake Avenue and the Playhouse District. Once these areas are complete, the new ordinance will be applied to the rest of the City. It is anticipated that the new ordinance will take approximately six months to one year to implement.

The purpose of these proposed amendments is to more effectively balance the following interests: the right of access of a free press to a public forum; the right of the public to an unimpeded and hazard free path of travel over the public right-of-way; public liability issues; and aesthetics of an urban environment with less clutter.

### **BACKGROUND:**

In recent years, the city has seen a proliferation of news racks on our city sidewalks. As a result, staff has received many complaints from businesses and residents that news racks impede pedestrian flow, create a hazard for people exiting parked cars, and create clutter and an increasingly unsightly condition. The current ordinance, approved in 1973, provides the City with some placement standards and guidelines; however, it doesn't address the vast numbers of news racks that the City is faced with today. In order to ensure public safety, liability concerns, and the issue of aesthetics, staff proposes to amend the current ordinance to address these issues. Under current case authority, these are significant state interests, which support the City's adoption of guidelines to regulate the placement of news racks. As long as any such guidelines are not content based, are narrowly tailored to serve the stated interests and newspapers have ample alternative channels for distribution on the sidewalks, they will not be found an unreasonable restraint on freedom of the press. A copy of the current news rack ordinance is attached to this report.

The Public Works & Transportation Department has contacted many cities in Southern California, as well as other cities in California, to review their current news rack ordinances and determine if there are policies appropriate to implement in Pasadena. Staff found that many cities had similar concerns and had addressed them in their ordinances. Some of the cities contacted were South Pasadena, Glendora, Whittier, Norwalk, Burbank, Glendale, Monterey Park, Beverly Hills, and Livermore. Many of the cities that were reviewed had developed a permit process for the placement of news racks that included a permit fee, had limited the number of news racks per city block, and had specific sections with regard to maintenance and adult publication restrictions. Legal research was conducted to insure that the full extent of the rights of the press was understood and respected in any proposal. In addition, staff has met with representatives from the Star News, LA Times, USA Today, Pasadena Weekly, New Times, Working World and other publications regarding our proposed amendments to the ordinance.

### **Associations' Review and Comment**

The proposed amendments were presented to the South Lake Business Association, the Old Pasadena Business and Professional Association, the Old Pasadena Streetscapes and Alley Walkways Core Group, and the Playhouse District.

South Lake Business Association

At the Board Meeting on August 17, 1999, staff presented the proposed amendments for comment. They were pleased with the proposed amendments and are in favor of the changes.

Old Pasadena Business and Professional Association

At the Board Meeting on August 23, 1999, staff presented the proposed amendments for comment. Representatives were also present at the March 31, 2000, meeting where revised amendments were discussed. They were agreeable to the proposed revisions and had concerns about maintenance and news rack style. It was explained that the maintenance section of the ordinance was going to be more specific as to the condition of news racks. At the meeting on March 31<sup>st</sup>, they were in agreement to the interim solution of having the publishers/distributors use their existing news racks mounted on the City-approved trays with the intent to proceed with a task force to determine a style that would be acceptable to all affected parties.

Old Pasadena Streetscapes and Alley Walkways Core Group

Members of this group were invited to the March 31, 2000, meeting to discuss amendments to the proposed news rack style. They were in agreement to move forward with the proposed amendment to use the publishers/distributors existing news racks mounted on City-approved trays with the intent to proceed with a task force to determine a style that would be acceptable to all affected parties.

Playhouse District

At the General Membership Meeting on September 8, 1999, staff presented the proposed amendments for comment. Staff also contacted them after the February BEC meeting to see if they were agreeable to using the news rack style that is proposed for the remainder of the City. They presented this to their board and returned to staff with an approval.

There was concern about the placement of news racks along business frontages. Staff had originally proposed to prohibit the placement news rack within three feet of the entrance of any business. As a result of reviewing the many placement restrictions, as requested by the BEC, staff elected to not require this restriction. It was determined that the existing and proposed restrictions would be sufficient in managing the placement of news racks.

Publishers'/Distributors' Review and Comment

On November 16, 1999, and January 4, 2000, staff held meetings with affected publishers and distributors. A third meeting, held on March 31<sup>st</sup>, was a result of staff's efforts to come to some solutions regarding issues that were raised at the February BEC meeting.

Prior to the February BEC meeting, the publishers/distributors had three main issues. They were 1) the special racks that were proposed for the Old Pasadena and Playhouse districts, 2) the proposed maximum of six news racks in a group and the proposed maximum per block of 12 news racks, and 3) the method of determining priority of the news racks.

The first concern regarding the proposed type of rack was two-fold. The originally recommended news rack style for the two districts was significantly smaller in size than their existing news racks. This, coupled with limiting a publisher to only one rack within a certain distance of another rack that carries the same edition of the same publication, greatly reduced the volume of publications available to their readers. The other concern was the expense in changing out their existing racks to this proposed style, including the cost of carrying extra parts for maintenance purposes. At the March 31<sup>st</sup> meeting, a recommendation was made and agreed upon to allow the publishers/distributors to use their own racks on City-approved trays while a task force was formed to develop a news racks style that would be acceptable to all affected parties.

The second concern regarding the limitation of the number of racks in a group and the number of racks per block was believed to be too restrictive, especially with the proposed amendment to eliminate news racks from areas where there are designated parking stalls and loading/unloading zones. With this and the other existing placement restrictions, there may be blocks where the proposed maximums will never be reached, and on other blocks, the proposed maximums could be exceeded if allowed. Staff agreed with this concern and adjusted the proposed limitations to a maximum of 18 news racks per block. In addition, in staff's review of the placement restrictions, the proposal to eliminate news racks from areas adjacent to designated parking stalls was changed to allow a maximum of two news racks adjacent to these areas.

A recommendation on the third concern, regarding the determination of priority, is discussed in the next section under "Publication Priority."

### **PROPOSED AMENDMENTS:**

The proposed amendments are intended to ensure public safety and to reduce liability concerns. While addressing these concerns, the department has looked at the proposed amendments from a perspective that will also address the issue of aesthetics. Some of the proposed amendments include increasing the distances in existing placement criteria and the addition of new placement criteria. In order to address the issues that relate to enforcement, clutter, and maintenance, new procedures and standards are being introduced. They are as follows:

#### **Permit Required and Fees.**

It is recommended that a permit be required for the installation, use and maintenance of any news rack that is placed within the public right-of-way. Each publication will be required to provide the following:

1. Name, address and telephone number of the owner of the news rack;
2. Name, address and telephone number of the responsible person whom the City may notify or contact at any time concerning the owner's news rack;
3. The number of news racks and the exact proposed location of each;
4. The names of the newspapers or periodicals to be contained in each news rack;

#### 5. A hold harmless agreement.

If approved, an initial application fee will be required for the permit. A study has been conducted to establish the amount of the fee on a cost recovery basis. The recommendation at this time is \$40 per location plus \$10 per each additional rack (some distributors handle more than one publication). Once a permit is established, it will be renewed annually with a permit fee of \$10 per news rack.

#### Limit the number of News Racks per City Block

In review of the average length of city blocks within areas where there is a high concentration of news racks, and taking into consideration other factors such as sidewalk dining, designated parking stalls, miscellaneous utilities and other street furniture, it is the recommendation of staff that a maximum of 18 news racks can be accommodated along any block within the City without undermining the safety of pedestrians. It is recommended that this standard be managed so that no more than three news racks are attached to each other with a minimum of three feet between groups; provided, however, that a standard of no more than 18 news racks be allowed on any one block, unless otherwise determined by the Director. "Block" shall mean one side of a street between two consecutive intersecting streets.

In the event more than 18 applications for news racks are received for a particular block, staff will conduct a study to determine whether or not additional news racks can be accommodated under standards to be set forth in the ordinance. In this fashion, the City can assure that limitations on news racks which actually exclude publications are, in fact, based upon the characteristics of a particular block and not on a general standard.

#### Publication Priority

In locations where there are more publications than can be accommodated, it will be necessary to establish priorities for placement among the applications. Any priority, which implicates the content of a publication, would be subject to a high legal standard (strict scrutiny to insure that the regulation serves a compelling governmental interest) because of the obligation of government to remain neutral with respect to the press. Therefore, staff is not recommending any priority based upon local content, adjudicated status, advertising supplements, etc. Staff is instead recommending that priority be given based solely upon the content-neutral characteristic of "frequency of publication" of an applicant. This would mean that a 7-day a week publication would have priority over a 5-day a week publication, and so on. In approving this proposal, City Council is being asked to concur that more frequent publications are more time sensitive and are more likely to have a higher rate of turnover per issue and, therefore, should be more readily available to the public where space allocation is an issue.

#### New rack style requirements

The City Council approved Design Elements, as a result of approved concept plans, for the Old Pasadena District and the Playhouse District on March 18, 1996, and November 18, 1996, respectively. In both of these documents, a specific style news rack is specified to be used in their districts. Both have approved National Newsvend Model N-30 to be

the style to use in their districts with Tavern Square Green as the color for Old Pasadena and Matt Black as the color for the Playhouse District. A photograph of this style is attached to this report and an example of this type of rack can be found at the pilot location on the southeast corner of Colorado Boulevard and Fair Oaks Avenue. The proposed style is the single row of three racks.

There was much concern raised about this style by the publishers/distributors at the February BEC meeting. At the direction of the BEC, staff met on March 31<sup>st</sup> with the publishers/distributors and community groups to determine a style that was acceptable to all affected parties. At that meeting, the majority in attendance agreed to accept the style proposed for the remainder of the City as an interim style for these areas until, by way of a task force, a news rack style can be developed that would be acceptable to the publishers/distributors and the business associations.

As a result, it is recommended that throughout the city the publishers/distributors use their standard news rack style with the addition of mounting them on tray that holds three news racks. The proposed style of tray is National Newsvend Three Placement Mount No. 33003. If there is only room for one or two news racks, National Newsvend Single Placement Mount No. 33001 and Two Placement Mount No. 33002 are recommended. A photograph of the proposed style is attached to this report and an example of the proposed style of new rack and tray combination can be found at the pilot location on the northwest corner of Lake Avenue and California Boulevard. The style with a maximum of three racks mounted on a tray is the style that is being recommended. In addition, all news racks shall have a single pedestal or multiple post mount, which shall be securely anchored to the ground.

#### Placement Restrictions

It is proposed to maintain the existing placement restrictions that can be found in Section 12.08.050 of the Pasadena Municipal Code with some amendments and additions. The amendments to existing restrictions include adding distance restrictions from street lights, traffic signals, and utility boxes not described in the current ordinance, and increasing the distance from a driveway to ten feet (currently the distance is five feet).

After further review of our placement standards, as requested by the BEC based on concerns of the publishers/distributors, staff recommends allowing a maximum number of two news racks adjacent to designated parking stalls where space is available, allowing news racks near entrances of building if other placement restrictions permit this, and maintaining the existing distance of 100 feet between news racks with publications of the same edition.

#### Restriction to "Harmful Matter" publications.

The recommendation is to require news racks which exhibit "harmful matter" material, as defined in Section 313(a) of the Penal Code of the State of California, to have devices which are commonly known as "blinder racks" in front of the material, so that the lower two-thirds of the matter is not exposed to view.



**Develop a stronger maintenance section.**

The recommendation is to separate the current maintenance paragraph from the Installation and Maintenance Standards Section (Section 12.08.050) of the current ordinance and create a new section entitled "Maintenance Standards." It is recommended that the section address specific issues such as keeping the news racks reasonably free of dirt, chipped or peeling paint, graffiti, rust, discoloration in the clear plastic and glass parts, and broken structural parts. Staff also plans to address the issue of empty racks in this section by stating the number of days a news rack may remain empty or may contain an outdated edition of a publication before the news rack is deemed to be in violation of the ordinance.

**ENVIRONMENTAL DETERMINATION:**

Under the State Guidelines for the Implementation of the California Environmental Quality Act (CEQA), these proposed amendments are categorically exempt since the amendments consist of the replacement of existing commercial facilities with new and/or revised existing facilities of substantially the same size, purpose, and capacity. Therefore, it is recommended that a Notice of Exemption be filed with the Los Angeles County Clerk.

**FEE SCHEDULE:**

Staff recommends that an initial application fee be established to cover the costs of determining the location of news racks and for the issuance of a permit under the proposed amendments to the news rack ordinance. Based on review of other cities with existing permit processes and fees in place, and a study of the fee on a cost recovery basis, staff recommends an initial application fee of \$40 per location plus \$10 for each additional rack (some distributors handle more than one publication, yet they would receive one permit for all news racks under their control). Staff also recommends an annual renewal fee, in the amount of \$10 per news rack, to cover inspection costs associated with the renewal of a permit. This amount is consistent with the renewal fees in cities that currently have an annual permit process for news racks.

**FISCAL IMPACT:**

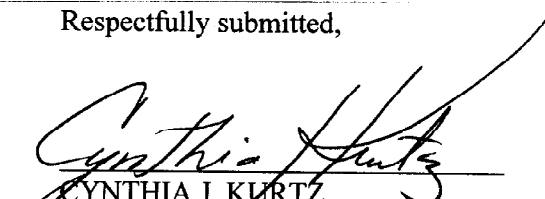
The City will receive revenue in the way of permit fees. The amount of revenue will depend on the number of news racks permitted within the public right-of-way. This revenue amount will be used to cover staff time associated with the inspection and processing of the news rack permits.

Currently, staff believes there are approximately 1,500 news racks placed within the public right-of-way. If the proposed amendments are approved, it is anticipated that this number will be reduced to approximately 1,000 news racks. This will generate revenue of approximately

\$10,000 in annual permit fees. Based on the study to determine the fees mentioned above, this will cover the anticipated annual cost of inspection for the 1,000 news racks.

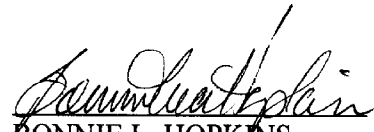
As a result of the cost recovery study, the City will not be required to subsidize the cost of inspection for the initial application and the annual permit.

Respectfully submitted,



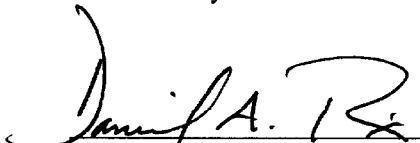
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