



Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL AND REDEVELOPMENT
AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: June 4, 2008

Council District: 3

SUBJECT: AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE PLACING A MORATORIUM ON THE INSTALLATION AND RELOCATION OF FREESTANDING NEWS RACKS WITHIN THE DOWNTOWN CORE AND CIVIC PLAZA REDEVELOPMENT PROJECT AREA; AND TO ESTABLISH A CONSOLIDATED PEDESTAL MOUNTED NEWS RACK ZONE PILOT PROGRAM WITHIN THOSE SAME PROJECT AREAS FOR THE PERIOD OF JULY 1, 2008, TO JUNE 30, 2010

RECOMMENDATION

It is recommended that the City Council approve an urgency ordinance:

- (a) Placing a moratorium on the installation and relocation of freestanding news racks within the Downtown Core and the Civic Plaza Redevelopment Project Area; and,
- (b) Establishing a consolidated pedestal mounted news rack pilot program within the Downtown Core and the Civic Plaza Redevelopment Project Area for a period of July 1, 2008 to June 30, 2010.

OUTCOME

The proposed moratorium on freestanding news racks and establishment of a pedestal mounted news rack pilot program would assist the City in regulating the appearance and placement of news racks on the public right-of-way, improve the flow of pedestrian movement, remove clutter and visual blight and improve the streetscape and aesthetics of the Downtown.

BACKGROUND

On October 2, 2007, the City Council accepted the "Small Wonders Work Plan." The "Small Wonders" are small-scale amenities that create a distinctive and lively street life. The News Rack Program is item #11 of the work plan. The purpose of this work plan was to achieve a thriving city center and advance the "Silicon Valley's City Center" vision promoted by 1stACT

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Silicon Valley and to be consistent with the Greater Downtown Strategy for Development: Strategy 2000, which focuses on the quality and importance of the pedestrian experience in Downtown. In 2003, the City Council approved San Jose's Downtown Streetscape Master Plan, which builds on the Strategy 2000 plan and provides guidelines for streetscape improvements for a pedestrian friendly Downtown. The Master Plan promotes the strategic placement and design of news racks, including use of consolidated pedestal mounted news racks (PMNs), which directly supports the quality of the pedestrian experience and overall aesthetic enhancement of the Downtown.

ANALYSIS

In order to establish the number, location, and condition of freestanding news racks in the Downtown, the Redevelopment Agency staff conducted a field survey in fall 2007 and updated it May 2008. The attached survey shows a proliferation of news racks with over 80 individual locations housing up to 25 individual freestanding news racks at each location. There are over 60 individual publishers currently represented on the street. While news racks serve as an important tool for the City and the right to distribute newspapers through news racks is protected by the First Amendment guarantees of free speech and free press, improperly placed racks can be eyesores and safety hazards for pedestrians.

The survey shows that racks are clustered into groups that range from a single rack to over twenty five individual racks. The freestanding news racks create physical and visual obstacles by limiting the amount of free sidewalk space and by blocking pedestrian traffic flow. Sometimes these racks are chained to either light poles, trees, trash cans or other racks and are often targets for graffiti and vandalism. Contributing to the visual clutter is the uncoordinated look of the racks and their lack of maintenance. Code Enforcement responds to citizen complaints regarding the placement and condition of news racks and also proactively addresses vandalism or lack of maintenance that contributes to downtown blight. In 2007, approximately 230 violations were addressed which resulted in 50 racks being impounded.

The City has the ability to regulate the number, appearance and location of news racks. News racks are already regulated by Chapter 13.18 of the San Jose Municipal Code. It regulates the place and manner in which the news racks are allowed to be placed on the street to ensure that the racks do not block pedestrian traffic on the sidewalks or create a nuisance. Planning, Building and Code Enforcement enforces these regulations. However, the current Code requirements do not specify design types or specific locations for news racks.

The intent of this ordinance is to support the implementation of the news rack element of the Streetscape Master Plan and to establish, on a pilot basis, a consolidated pedestal mounted news rack zone ("PMN Zone") within the Downtown Core and Civic Plaza Redevelopment Project Area.

The geographic area of the PMN Zone is consistent with the geographic area of that survey conducted as of May 30, 2008 which establishes the placement of news racks located within PMN Zone as of that date.

Freestanding News Racks

Staff recommends approval of an urgency ordinance to prohibit the placement of new and the relocation of existing freestanding news racks in the Downtown Core and Civic Plaza Area for a period of two years. This “freeze” would stop the proliferation of these devices that are currently cluttering the street and allow time for staff to implement on a pilot basis the pedestal mounted news rack program. In order to preserve the record of the status of the location of existing news racks so that they can be grandfathered in into the Zone, the ordinance needs to take effect as soon as possible.

The proposed Pilot Program provides for use of pedestal mounted news racks within four locations. Publishers of publications located within the four pilot program locations would be required to remove their existing news racks and place their publications and periodicals in the PMNs. Apart from this restriction, publications may continue to distribute in through all other permissible means. The ordinance anticipates that the Agency will install the PMNs within a period of six months or shortly thereafter. Redevelopment Agency staff anticipates installing and maintaining the PMNs in the pilot areas on a trial basis; however, at the May 20, 2008 community meeting, the publishers indicated a preference for their purchasing and installing the PMNs for security reasons. The ordinance allows the flexibility for staff to implement the program or utilize a third party for the purchase and installation of the PMNs.

The proposed PMNs will accommodate all publications in the PMN closest to the publication’s existing location, as shown in the Survey. The proposed pilot program locations are as follows:

- Market Street & Santa Clara Street (Zone 6D)
Southeast corner—along Santa Clara
- City Hall Plaza (Zone 7E)
Northeast corner –along Santa Clara Street
- Paseo de San Antonio & Second Street (Zone 13E)
West side of Second Street
- San Carlos Street and First Street (Zone 8F)
Southwest corner—along South First Street

The appearance and placement of the PMNs will follow the guidelines specified in the Streetscape Master Plan. Publication assignment will be allocated in a PMN pursuant to an objective lottery conducted by the Agency. In the event that the Agency purchases and installs the PMNs, the publications will be required to enter into a written license agreement with the Redevelopment Agency indemnifying and insuring the Redevelopment Agency and the City against any and all claims related to the distribution of the publication from the PMN. If the Agency enters into a contract with a third party to manage the Program, such contract will include the same protection for the Agency and the City.

Following the implementation of the Pilot Program, Agency staff will work with the publishing community to develop program guidelines for the full implementation of the pedestal mounted news rack program within a period of two years from the date of the approval of this ordinance.

EVALUATION AND FOLLOW-UP

The pilot program is proposed to be effective for up to two years from the effective date of this ordinance. This will allow the necessary time for staff to work with the publishers and Downtown community to develop the parameters and necessary revisions for the implementation of a permanent program.

PUBLIC OUTREACH/INTEREST

A community meeting was held on May 20, 2008. Eleven publications were represented, as well as the Downtown Association and 1stACT Silicon Valley. The proposed action does not meet any of the criteria for added outreach efforts. This report will be posted on the City and Agency websites and be made available for public review.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

COORDINATION

This memorandum was coordinated with Planning Building and Code Enforcement, Public Works Department, Department of Transportation the City Attorney's Office and the Redevelopment Agency's General Counsel.

COST IMPLICATIONS

The costs associated with the implementation of the pilot program are provided in the Small Wonders Budget.

CEQA

Exempt File No. PP08-104



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