



Request for City Council Committee Action From the Departments of Public Works

Date: December 2, 2008

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Referral: Honorable Don Samuels, Chair Public Safety and Regulatory Services

Subject: **News Rack Ordinance**

Recommendation:

- a) Amend Title 17 of the Minneapolis Code of Ordinances relating to *Streets and Sidewalks* by adding a new Chapter 464 relating to *Newsracks*, regulating the placement of news racks, designating personnel to enforce the ordinance, and providing for a fee;
- b) Amend Title 17, Chapter 439 of Code relating to *Streets and Sidewalks: Nicollet Mall*, amending the list of permitted uses to add Chapter 464 relating to *Newsracks*;
- c) Repeal Chapter 451 relating to *Newstands*; and
- d) Amend Title 1, Chapter 2 of Code relating to *General Provisions: Administrative Enforcement and Hearing Process*, amending the list of persons authorized to issue citations to include the Departments of Regulatory Services and Public Works for newsracks.

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Approved by: _____
Steven A. Kotke, P.E., City Engineer, Director of Public Works

Rocco Forte, Assistant City Coordinator

Presenters: Pat Hilden, Licenses and Consumer Services
Ricardo Cervantes, Licenses and Consumer Services

Reviews:

Permanent Review Committee (PRC):	Not Applicable
Civil Rights Affirmative Action Plan:	Not Applicable
Policy review Group (PRG):	Not Applicable

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase

- ___ Action requires use of contingency or reserves
- ___ Business Plan: ___ Action is within the plan. ___ Action requires a change to plan.
- ___ Other financial impact (Explain):
- ___ Request provided to department's Finance Dept. contact when provided to the Committee Coordinator

Background

The City does not currently have an enforceable ordinance that governs newsracks, newspaper boxes or other devices for self vending publications on the public right of way. The Minneapolis Code of Ordinances still contains Chapter 451 relating to "Newsstands". This ordinance, however, was declared unconstitutional in 1983 by Hennepin County District Court Judge Stanley Kane. Judge Kane permanently enjoined enforcement of the ordinance.

In 1999, the Minneapolis City Attorney's Office was requested to prepare a draft ordinance governing newsracks in light of various cases that had approved the regulation of newsracks. There were wide ranging discussions regarding this ordinance. We shared our draft ordinance with the City of St. Paul. They also initiated discussion about enacting a Newsrack Ordinance. St. Paul eventually adopted a Newsrack Ordinance in 2000 after significant amendments to the original draft. Our draft ordinance was never introduced in Minneapolis.

St. Paul's amended ordinance took a "list approach" and did not attempt to give a permit for a specific spot on the ground as had been originally proposed in the original 1999 draft. The St. Paul ordinance also did not impose a fee for newsracks at the time that it was adopted in 2000. The City of St. Paul did, however, impose a fee for newsracks in 2005, which is currently in effect. Under the list approach adopted by the City of St. Paul, those who want to have a newsrack in the City provide a list of all the locations for their newsracks by address or intersection. They also put an approved sticker or information tag on each newsrack with contact information and a number that corresponds to its number on the list. The St. Paul ordinance also contains explicit rules and regulations for determining an appropriate location for a newsrack on the public right of way.

A number of complaints have been made over the years about the lack of an enforceable newsrack ordinance in Minneapolis. Complaints are commonly made by those complaining that newsracks block their access from the street, interfere with their ability to cross the street, interfere with their ability to get out of cars legally parked on the street, or block visual access to their business. Complainants have inquired as to what ordinance is in place governing the locations of these newsracks. They have been met with the answer that no enforceable ordinance is currently in place in Minneapolis.

Council Member Ralph Remington requested that the Minneapolis City Attorney's Office draft an ordinance so that the City would have an enforceable ordinance in place to govern the location of newsracks and to provide for enforcement of the ordinance. It was requested that the ordinance be based upon the St. Paul ordinance that has been in effect for eight years. The draft ordinance that is being presented to the Council has a new Chapter 464 that is in many cases word for word the same ordinance that is in place in the City of St. Paul. There have been a few changes made. In Chapter 464.100(O), the draft Minneapolis ordinance limits newsracks within 20 feet of an intersecting street to a height of 36 inches plus the height of a coin box, if there is one. This change from the St. Paul ordinance is made to be consistent with another Minneapolis ordinance that restricts encroachments within 20 feet of an intersecting street. Minneapolis also differs from the St. Paul ordinance in 464.100(M) by allowing only four newsracks to be chained together in a row rather than the six permitted by the St. Paul ordinance. This draft requires a space of three feet after every bank of four newsracks. There also are some other minor changes in 464.100. This draft ordinance is currently drafted to

become effective on October 1, 2009. The period between passage and October 1, 2009 is the implementation period for the ordinance. During that time the Director of Regulatory Services will present a plan for implementation of the ordinance and will communicate that plan to newsrack holders so that they will be ready for the implementation date of the ordinance on October 1, 2009.

There is a substantial amount of case law regarding regulation of newsracks. The United States Supreme Court has decided cases regarding regulation of newsracks. The Court threw out a regulation which required a permit for newsracks, but which set no standards for obtaining the permit. Subsequently, many cases have been decided by the United States Courts of Appeal for the various circuits around the country. The cases make it clear that cities are allowed to regulate newsracks as a time, place and manner regulation. These regulations are required to be narrowly drawn to achieve an important governmental objective.

Newsrack regulations are also required to be content neutral. If a City attempts to regulate newsracks in a way that is not content neutral, then the standard is that the regulation must be necessary to serve a compelling government interest. This is commonly called "strict scrutiny". Regulations rarely survive judicial review under this test. A regulation becomes a content based regulation subject to strict scrutiny when it either is based upon the content of the speech in the publication or when there is significant discretion vested in public officials so that decisions could be based upon the content of the publication. As a result, newsrack regulation should not ask the content of a particular publication and should contain content neutral standards that do not allow significant discretion to be exercised by a public official for or against a publication based upon its content.

The draft ordinance has been drafted to be a content neutral time, place and manner regulation. Newsracks currently have no regulation specifically directed toward them in Minneapolis. They can block sidewalks making access difficult for the handicapped, they can also impede bicycles, pedestrians, delivery vehicles and others if placed without regard to any set of regulations. An important governmental interest in newsrack regulation has been identified. At the same time the draft preserves the availability of numerous locations and leaves many alternative means of communication available.

The draft ordinance contains a fee provision. It is anticipated that the fee would be set based upon the total annual cost of regulation as then divided by the total number of newsracks that it is anticipated would be located on the public rights of way in the City. The money collected in newsrack fees would then be devoted to funding enforcement of the newsrack ordinance. The fees would fund one full-time inspector in the Department of Regulatory Services who would enforce the newsrack ordinance. The Department of Public Works would assist by impounding newsracks when an inspector determines that a newsrack needs to be removed for non-compliance. The draft ordinance provides substantial due process for newsrack owners before newsracks can be removed or before they can be tagged. Pursuant to Section 464.110, newsrack owners will receive a notice of violation and will have the opportunity for administrative process before their newsrack would be removed.

Attachments: Staff Report
Staff Survey of Other Cities
Hearing Notice

CC: Mayor Rybak
Council Member Remington
Noah Schuchman

