



Agenda Item No. 4

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole  
Meeting of November 13, 2009

From: Norma Jellison, Property Development & Management Specialist  
Z. Wayne Johnson, Deputy General Manager/Administration and Development  
Celia G. Kupersmith, General Manager

Subject: **APPROVE AN AMENDMENT TO SECTION I.G. OF THE 2009 MASTER  
ORDINANCE RELATIVE TO DISTRIBUTION OF WRITTEN MATERIALS  
THROUGH NEWSRACKS**

### **Recommendation**

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve an amendment to Section I.G. of the 2009 Master Ordinance to incorporate a new Section I.G., entitled REGULATIONS PERTAINING TO USE OF TRANSIT PROPERTIES FOR DISTRIBUTION OF WRITTEN MATERIALS THROUGH NEWSRACKS, which new section will require the consolidation of individual free-standing newsracks at the Larkspur Ferry Terminal, the C. Paul Bettini San Rafael Transit Center and the Santa Rosa Bus Facility into fixed, pedestal-mounted modular newsrack units, as outlined in the proposed Ordinance hereto.

### **Background**

On August 27, 2008, the San Francisco Bay Conservation and Development Commission issued Stipulated Cease and Desist Order and Civil Penalty Order No. CCD 1-08 ("BCDC Order") to the District that, among other things, required the District to remove all free-standing newsracks and install modular newsracks. The BCDC Order also required the District to enact an ordinance by January 1, 2010, that prohibits the placement of individual free-standing newsracks and that implements a program to remove free-standing newsracks placed in the public access areas of the Larkspur Ferry Terminal.

Many of the individual newsracks at the LFT and SRTC are poorly maintained and unsightly, and have from time to time prompted complaints from members of the public. Because the District is a transit provider, the free flow of pedestrian traffic at its transit facilities is critical to its operations. The unregulated placement of free-standing newsracks creates an impediment to public access and the unobstructed flow of pedestrian traffic, and raises health and public safety concerns. In 2008 and 2009, the District completed a number of improvements at the LFT, including the relocation and consolidation of all free-standing newsracks located in the courtyard area adjacent to the ticket entrance.

The proposed Newsrack Ordinance: (1) ensures that newsracks will not obstruct the free flow of pedestrian traffic at the District's transit facilities; (2) reduces the health and public safety issues raised by the presence of unregulated and poorly maintained free-standing newsracks; (3) permits the distribution of written materials through newsracks at the District's transit properties to the extent it is constitutionally protected; and (4) complies with the requirements of the BCDC Order.

### **Summary of Proposed Newsrack Ordinance**

The attached Newsrack Ordinance applies to the District's transit properties, specifically the Larkspur Ferry Terminal, Santa Rosa Bus Facility and San Rafael Transit Center. It prohibits free-standing newsracks at these facilities and permits only fixed, pedestal-mounted modular newsracks. The District will determine the location of all fixed, pedestal-mounted modular newsracks and will install and maintain the modular newsracks. The two existing modular newsracks located at the Santa Rosa Bus Facility will remain "as is" until the District decides to install new fixed, pedestal-mounted modular newsracks.

Each distributor must obtain a permit from the District to use one of the modular newsracks installed on the District property. If there is insufficient space for all permit applicants, the District will prioritize the space available based on the frequency of publication.

The distributor must maintain and repair its individual box within the modular newsrack. In addition, distributors that charge a fee for their publications must purchase, install and maintain their own locking and coin mechanisms. All distributors must maintain their individual newsrack box in good order and in a safe and clean condition.

The ordinance provides that the General Manager shall have the authority to impose conditions on the permit, to promulgate rules and regulations to avoid the risk of injury to persons or damage to property, and to assure the safe and orderly use of the District's transit properties.

### **Fiscal Impact**

The cost of installing modular newsrack units at the Larkspur Ferry Terminal was included in the overall project costs of the parking and access improvements project completed in FY 08/09 Ferry Transit Division. The estimated cost to install modular newsracks at the other District properties is \$14,000, and this cost will be covered by the operating division budget.

Attachment: Proposed Ordinance

**GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT**

**ORDINANCE NO. 2009-**

**AN ORDINANCE TO AMEND MASTER ORDINANCE 2009, AS AMENDED,  
TO REGULATE THE DISTRIBUTION OF WRITTEN MATERIALS FROM NEWSRACKS**

November 20, 2009

THIS ORDINANCE is adopted with reference to the following facts and circumstances which are found and declared by the Board of Directors:

1. The Golden Gate Bridge, Highway and Transportation District (“District”) is a special district formed pursuant to California Streets and Highways Code Sections 27000, et. seq. Its mission is to provide safe and reliable operation, maintenance, and enhancement of the Golden Gate Bridge (“Bridge”) as well as transportation services for customers within the U.S. Highway 101 Golden Gate Corridor, including ferry and bus service.

2. The District’s bus and ferry properties are critical transit facilities with the primary purpose of transporting passengers within the North Bay and between the North Bay and San Francisco (“Transit Properties”).

3. The District owns, operates, or manages certain Transit Properties on which the distribution of written materials through newsracks has historically occurred, specifically the Larkspur Ferry Terminal (“LFT”), the Santa Rosa Bus Facility (“SRBF”), and the C. Paul Bettini San Rafael Transit Center (“SRTC”).

4. Until recently, approximately fifty free standing newsracks were located at the LFT, and currently approximately fifteen free standing newsracks and four modular units are located at the SRTC. Because distributors are responsible for providing their own newsracks, there is no uniformity in their overall appearance and some have been poorly maintained by their owners, creating potential health and safety hazards and prompting occasional complaints from members of the public to the District.

5. The result has been cluttered, potentially unsafe, and unattractive newsracks. The LFT, SRTC, and SRBF are all transit facilities and must allow for unimpeded movement of a large number of people during congested periods of time in a relatively small and limited space. The free flow of pedestrian traffic is critical to the District’s operations and the safety of those using the Transit Properties.

6. The District operates its facilities at the LFT subject to a permit from the San Francisco Bay Conservation and Development Commission (“BCDC”). In August, 2008, BCDC issued a Cease and Desist Order to the District to move the freestanding newsracks and improve public access at the LFT, which the District has since done with the installation of fixed pedestal mounted modular newsracks.

7. The District has identified a similar need at the SRTC to consolidate the free standing newsracks into fixed pedestal mounted modular newsracks, and place the fixed pedestal mounted modular

newsracks in an accessible location that allows the District to conduct its transit operations in a safe, efficient and unimpeded manner.

8. Publications are distributed through modular newsracks at SRTC and the SRBF and the District desires to establish a program to manage the existing modular newsracks to ensure that the modular newsracks remain in a safe, working, and clean condition.

9. The District has a substantial governmental interest in (1) complying with BCDC's Cease and Desist Order; (2) ensuring the free flow of pedestrian traffic through its Transit Properties; (3) maintaining safe, unobstructed facilities; and (4) maintaining an attractive, uncluttered appearance at its properties. At the same time, the District also desires to permit the use of its Transit Properties to distribute written materials from newsracks in accordance with applicable legal principles.

10. The District has determined that having modular newsracks and placing the modular newsracks in specific locations is necessary to balance its substantial governmental interests with the publishers' desire to distribute their written materials on Transit Properties.

11. This Ordinance is intended to implement reasonable time, place, and manner regulations on the distribution of written materials at Transit Properties. Specifically, the regulations balance the right to distribute written materials from newsracks with the District's obligation to ensure that the Transit Properties are as safe and secure as reasonably possible for all who use them and that the distribution of written materials does not impede or interfere with Districts primary purpose of providing transportation service.

12. The District has carefully reviewed the proposed rules and regulations and has determined the following newsrack ordinance is necessary to ensure the public health, safety and welfare, maintain the free flow of pedestrian traffic, comply with the BCDC Cease and Desist Order and protect and enhance the cleanliness and overall aesthetic appearance of property owned or controlled by the District while complying with federal and state constitutional principles.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE GOLDEN GATE BRIDGE, HIGHWAY, AND TRANSPORTATION DISTRICT AS FOLLOWS:

Section 1. The Board hereby adopts regulations pertaining to distribution of written materials through newsracks, as delineated below.

Section 2. Section I, “GENERAL PROVISIONS,” as amended, is revised by adding a new Subsection G, entitled “REGULATIONS PERTAINING TO USE OF TRANSIT PROPERTIES FOR DISTRIBUTION OF WRITTEN MATERIALS THROUGH NEWSRACKS,” and by re-lettering the existing Section I.G., and all subsequent sections sequentially, as follows:

**G. REGULATIONS PERTAINING TO USE OF TRANSIT PROPERTIES FOR DISTRIBUTION OF WRITTEN MATERIALS THROUGH NEWSRACKS**

**1. Definitions**

- a. **Abandoned newsrack box** means any newsrack box in a fixed pedestal mounted modular newsrack which does not contain the publication that is authorized to be distributed from the newsrack unit for ten (10) calendar days. However, a newsrack box will not be deemed abandoned if the District receives notice from the distributor that there is a labor strike or any temporary and extraordinary interruption of the distribution of the publication.
- b. **Distributor** means any individual or firm that that uses any newsrack or, newsrack box for the distribution of a publication. Distributors include publishers of written materials, if those publishers are also responsible for the distribution of the publication.
- c. **District property** means property owned, controlled, or leased by the District.
- d. **Fixed pedestal mounted modular newsrack** means a single pedestal mounted newsrack attached to the sidewalk, pathway, or public right-of-way containing separate newsrack boxes for two or more publications, where each newsrack box has separate coin and lock mechanisms or separate receptacles or compartments from which the publication is dispensed. A fixed pedestal mounted modular newsrack consists of the frame and pedestal that mounts to the sidewalk, but not the individual newsrack boxes for the publications.
- e. **Newsrack** means any self-service or coin-operated box, container, unit, or other dispenser installed, used, or maintained for the display and sale or distribution of publications.
- f. **Permit** means a permit issued by the District for the use and operation of a newsrack box or single-publisher split box unit in one of the fixed pedestal mounted modular newsracks.
- g. **Publication** means any written material distributed through newsracks, such as newspapers, periodicals, magazines, and other materials, whether distributed for a charge or free.

- h. **Sidewalk** means any pathway or walkway dedicated to public use and provided for the primary use of pedestrians.
- i. **Newsrack box** means one box or single-publisher split box or honor box in a fixed pedestal mounted modular newsrack for the distribution of publications.

2. **Permit Process**

- a. A distributor may use a newsrack box in one of the fixed pedestal mounted modular newsracks located on District property provided the distributor has obtained a permit from the District and complies with the terms and conditions of the permit and all provisions of this Ordinance.
- b. An application for the use of one of the newsrack boxes in a fixed pedestal mounted modular newsrack must include the following information:
  - i. The location of the fixed pedestal mounted modular newsrack where the distributor desires to distribute the publication;
  - ii. The name, contact person, mailing address, and telephone number of person(s) or organization requesting a permit;
  - iii. The name of the publication to be sold or distributed from the newsrack box and a copy of a recent issue of the publication;
  - iv. The frequency of publication of the material to be sold or distributed from the newsrack box;
  - v. A statement that the distributor has read this Ordinance in full and agrees to abide by all the District's rules and regulations; and,
  - vi. A Certificate showing that the distributor has current public liability and property damage insurance naming the District as an additional insured, in an amount and with conditions acceptable to the District. The distributor must maintain current public liability and property damage insurance so long as it uses a fixed pedestal mounted modular newsrack on District property.
- c. The District will grant the requested permit within fifteen (15) business days if the permit application complies with subsection 2(b) and if there is sufficient space within the fixed pedestal mounted modular newsrack to accommodate the requested permit application.
- d. If there is insufficient space to accommodate all permit applicants, priority will be given to permit applicants as space becomes available as follows:

- i. First priority will be given to publications that are currently distributed at the specific location where the modular newsrack is located;
  - ii. Second priority will be given to daily publications, i.e. publications published at least five (5) times a week;
  - iii. Third priority will be given to publications published more than once but fewer than five (5) times per week;
  - iv. Fourth priority will be given to weekly publications;
  - v. Fifth priority will be given to bi-weekly publications;
  - vi. Sixth priority will be given to monthly or less frequent publications.
  - vii. The District will maintain separate waiting lists for the LFT, SRTC, and SRBF for publications that have fulfilled the application requirements but were not assigned a slot because of insufficient space. If a newsrack box becomes available, the District will make the unit available to distributors based on the priority categories established above in descending order. If there are multiple distributors on the waiting list in any one priority category, the District will make the newsrack box available on a first come, first served basis. The District will contact the distributor in the order it appears on the waiting list and each distributor will have ten (10) calendar days to accept or reject the available newsrack box in the fixed pedestal mounted modular newsrack. If the District receives no response from the distributor within ten (10) calendar days, the distributor forfeits its right to a newsrack box , will be removed from the waiting list, and the District will make the newsrack box available to the next distributor on the waiting list.
- e. Newsrack permits may not be sold, transferred or assigned.
  - f. The District will not consider the content of a publication in deciding whether to grant or approve a permit.
  - g. After the permit for a publication is approved, the distributor will be assigned a newsrack box in one of the fixed pedestal mounted modular newsracks.
  - h. Failure to comply with the permit or any part of this Ordinance will result in the revocation of the permit.

### 3. **Fixed Pedestal Mounted Modular Newsrack Installation and Maintenance**

- a. The District will purchase and install and repair and maintain the fixed pedestal mounted modular newsracks, exclusive of the newsrack boxes, except for the two modular newsracks that are located at the SRBF as of the date of this Ordinance until such time as the District installs new fixed pedestal mounted modular newsracks at the SRBF. The District also will purchase and install the newsrack

boxes for the initial transition to the District purchased fixed pedestal mounted modular newsracks.

- b. Only fixed pedestal mounted modular newsracks will be permitted on District property. The District will determine the location for the installation of all fixed pedestal mounted modular newsracks.

#### 4. **Regulations**

- a. Distributors that charge a fee for their publication are responsible for installing, maintaining, and repairing their own locking and coin collection mechanism for their newsrack box.
- b. Each distributor is responsible for maintaining its particular newsrack box in good working order and for notifying the District if the distributor stops distributing the publication from the newsrack box.
  - i. If a distributor fails to maintain a newsrack box in good working order and in a safe and clean manner (e.g. with no graffiti) or if a newsrack box is deemed an abandoned unit, the District will send a Notice to Cure to the contact person listed on the permit application.
  - ii. The distributor will have five (5) business days to correct the violation in the Notice to Cure.
  - iii. If after five (5) business days the distributor has not corrected the violation or if the distributor has not contacted the District to arrange for additional time to cure the violation because it was not possible to cure the violation within the five (5) business day time period, the District will revoke the permit for that newsrack box and the District may reassign the unit to another publication.
- c. Distributors may not display advertisements of any kind on the fixed pedestal mounted modular newsracks or the individual newsrack boxes.
- d. No publication may be kept or maintained in any newsrack box so as to expose to the public view any statements, words, pictures, illustrations, cartoons or drawings describing or showing any explicit sexual acts or sexual organs.
- e. Distributors must indemnify the District against all claims, damages, injuries, and liabilities arising from the Distributor's use of District property to distribute a publication from a newsrack or newsrack box.
- f. The General Manager shall have the authority to impose conditions on the permit and promulgate rules and regulations to avoid the risk of injury to persons or damage to property and to assure the safe and orderly use of the District's Transit Properties.

5. **Unauthorized Newsrack.**

- a. All newsrack boxes on District property that are not in full compliance with this Ordinance and the permit are unauthorized newsracks.
- b. The District may remove any unauthorized newsrack or newsrack box on District property.

6. **Violations or Failure to Comply with the Requirements of Section I.G of the Master Ordinance.**

- a. If a distributor violates a condition of a permit, or fails to comply with the requirements of Section I.G of the Master Ordinance, the District may revoke the permit.
- b. The General Manager or her designee shall promulgate rules and regulations regarding the revocation or denial of a permit. These rules and regulations shall include a process for an administrative appeal of any decision to deny, revoke, or suspend a permit.
- c. In addition, any person who violates Section I.G. of the Master Ordinance or the rules and regulations implemented pursuant to this Section I.G will be subject to the sanctions and penalties of all applicable statutes, including but not limited to California Streets and Highways Code Section 27174.1, 27174.2, and 27176.

7. **Notice Procedures**

- a. Notice required pursuant to this Ordinance will be given either by personal delivery or by deposit in the United State mail, first class postage prepaid, addressed to the person to be notified at his last know address. Notice will be deemed to have occurred as of the date and hour of personal delivery or as of the date of deposit of written notice in the United States mail.
- b. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity will not affect any other provisions or application of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

Section 3. The effective date of this Ordinance shall be November 20, 2009.

**ADOPTED** this day of 20<sup>th</sup> day of November 2009, by the following vote of the Golden Gate Bridge, Highway and Transportation District Board of Directors:

**AYES ( ):**

**NOES ( ):**

**ABSENT ( ):**

**ATTEST:**

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**Albert J. Boro**  
**President, Board of Directors**

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**Janet S. Tarantino**  
**Secretary of the District**