



JERRY SANDERS
MAYOR

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JUL 27 2012

SAN DIEGO
COUNTY GRAND JURY

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JUL 23 2012

July 17, 2012

Honorable Robert J. Trentacosta
Presiding Judge
San Diego Superior Court
220 West Broadway
San Diego, CA 92101

Subject: 2011/2012 San Diego County Grand Jury Report "City of San Diego Newsrack Permits and Enforcement"

Dear Judge Trentacosta:

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City of San Diego provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report. Clarifications to some facts presented in the Grand Jury Report are included in this response.

BACKGROUND

The City of San Diego first adopted the Newsrack Ordinance on December 6, 1974. Over the years, the publishing industry expressed concerns that the ordinance is overly restrictive. At the same time, business districts, planning groups, residents, the Metropolitan Transit District, and others 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.

In 2006, a Newsrack Ordinance Task Force was convened to recommend revisions to the ordinance. Those revisions resulted in the adoption of new amendments to the ordinance on March 28, 2007. The amendments included Section 62.1014 which established an annual permit fee to recover the costs of processing the permit application and enforcing permit requirements. The fee was set at \$10 per newsrack per year. The fee was increased to \$15 per newsrack per year effective January 1, 2010. The increase was approved by the City Council in April 2009 and is in accordance with San Diego Municipal Code, Section 62.1014. The fee was increased to \$20 per newsrack per year effective July 1, 2012.

While staff did provide some input to the Grand Jury during their investigation, we were not given any information regarding their survey methodology or compiled data. We are therefore unable to verify the accuracy of the data and the conclusions drawn from that data.

FINDINGS

Finding 01: Of the 555 newsracks on City property surveyed by the Grand Jury in 2011, only 326 (59 percent) were covered by a permit.

Partially Disagree. The report did not provide the addresses or specific locations of the newsracks surveyed. The City is unable to verify the accuracy of these figures.

Finding 02: The 555 newsracks surveyed contained 62 publications, 22 of which had no City permit.

Partially Disagree. The report did not provide the addresses or specific locations of the newsracks surveyed. The City is unable to verify the accuracy of these figures.

Finding 03: If that compliance rate held city-wide, there are potentially around 1,600 newsracks without a City permit.

Partially Disagree. Without more detail as to the survey performed, the City cannot determine the accuracy of the Grand Jury's finding. We observe in the report that the areas surveyed by the Grand Jury appear to be those with the highest concentration of newsracks. Other areas would not have as high a concentration and the Grand Jury's extrapolation is therefore not an accurate representation of the number of newsracks City-wide. The claim of 1,600 is likely too high. Further, the number of newsracks in the City is in decline. In 2011, The City issued permits for 2,363 newsracks containing 40 publications. In 2012, the City issued permits for 1,898 newsracks containing 31 publications.

Finding 04: The City is failing to collect thousands of dollars in permit fees.

Disagree. The exact number of non-permitted newsracks in the City is unknown and we have no information to accurately describe a loss of permit fees. The City of San Diego does not perform pro-active enforcement for newsracks as it would be cost prohibitive. When a complaint is received regarding a newsrack, the City ensures that the newsrack is permitted and the fee is collected.

Finding 05: The quantity and quality of information provided on permit applications vary widely.

Agree. In some cases, the applicants do not initially provide all the required information. However if information is missing, the City contacts the applicant to obtain the required information prior to permit issuance.

Finding 06: The inconsistency in format and level of detail makes the permit files difficult to work with.

Disagree. While the initial information may be incomplete, corrections are requested and required. Working with these files is no more difficult than working with many other case or permit records.

Finding 07: It is difficult to check the permit status of a newsrack.

Disagree. It is true that the newsrack permit records are not presently included within the Department's tracking system, however, the records are available for review and inspection.

Finding 08: The condition problems are unattractive and detract from San Diego's image as "America's Finest City."

Agree. Newsracks with condition problems are unattractive.

Finding 09: Enforcement of Port and MTS permit and condition requirements should bring in additional revenue and improve the appearance of their properties.

Not Applicable to the City.

RECOMMENDATIONS

12-01: Issue a sticker for each permitted newsrack showing the current permit information (publication, distributor, year, rack number and location), either in print or digital form, and require those stickers to be displayed on all newsracks.

Response: This recommendation has not yet been implemented but may be in the future. The City will explore methods to condense the permit information and print it on a sticker that can be affixed on each permitted newsrack. We anticipate completing this analysis by January of 2013.

12-02: Develop a searchable, sortable database of information about each newsrack listed in a permit application. Require permit applicants to submit their newsrack information in a digital format compatible with that database.

Response: This recommendation has not yet been implemented but may be in the future. This recommendation requires further analysis to determine the costs, funding source and software compatibility. The City will explore a software system that is user-friendly for publishers to submit their applications, including location of each newsrack, in a database. We anticipate completing this analysis by January of 2013.

12-03: As funds allow, acquire hand-held devices that will link to that database from the field.

Response: This recommendation has not yet been implemented but may be in the future. This recommendation requires further analysis to determine the costs, funding source and software compatibility. The City will explore the feasibility and the associated costs with new hand-held devices that will link to that database. We anticipate completing the analysis by January of 2013.

12-04: Develop a systematic field enforcement program that regularly reviews newsrack permit status and condition.

Response: This recommendation will be not be implemented. Regular reviews would require a proactive program. A proactive program for low priority violations such as newsracks cannot be initiated due to prohibitive personnel costs. An effective proactive program for newsracks would likely require more than two full time dedicated staff members. That level of cost cannot be recovered under the existing permit fee structure. It should also be noted that raising the permit fees is always opposed by the industry as being cost prohibitive.

12-05: Be more aggressive in following up on complaints and Notices of Violation, so that problems are corrected quickly.

Response: This recommendation will be implemented with the hiring of two Code Compliance Officers in August, 2012. We expect the response times to improve. Currently, non-hazardous newsrack violations remain a low priority and there is no present basis to raise their priority in the system.

12-06: Periodically review distributors' maintenance logs, especially in light of a documented condition violation.

Response: This recommendation will be implemented as part of our standard training for Code Compliance Officers beginning in August, 2012.

Please contact Kelly Broughton, Development Services Department Director at 619-321-3233 if you have any questions.

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Sincerely,



JERRY SANDERS
Mayor

cc: San Diego County Grand Jury
Chief Operating Officer
Assistant Chief Operating Officer
City Clerk
Development Services Department Director
Administration Department Director