



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: August 22, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Alex D. McIntyre, City Manager

PREPARED BY: Matthew Lee, P.E., Public Works Director
Ana Morales, Management Analyst

SUBJECT: Consider Adoption of a Resolution Approving the Newspaper Rack and Enclosure Models and Locations and Determining the Project is Exempt Under the California Environmental Quality Act

BACKGROUND:

At the July 25, 2023, Regular Council Meeting, City Council pulled the consent item 6.m. for questions and discussions. The staff report with attachments is provided as Attachment 2, the agenda item was continued by the City Council to the August 22, 2023, Regular City Council meeting so that Staff could respond to the questions posed.

DISCUSSION:

City Council Response

On July 25, 2023, staff presented to City Council a resolution approving the newspaper rack and enclosure models and locations. Several questions were presented by City Council and via public comment; therefore, the City Council continued the agenda item to August 22, 2023. Below are the questions posed, followed by responses.

1, What legal requirements does the City have to provide newspaper racks?

Newspaper racks on public sidewalks are a means of distributing speech that is protected by the First Amendment to the United States Constitution. This is reflected in the City's regulation of newspaper racks in Chapter 8.32 of the San Bruno Municipal Code. Specifically, Section 8.32.010 states that "*The streets, sidewalks and public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and that access to and use of these areas for such purposes is not to be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or where such use presents a hazard to persons or property.*" Thus, the City is legally required to permit newspaper racks in a manner consistent with the Ordinance and the First Amendment to the United States Constitution. The Municipal Code governs the permitting, design, placement, standards, maintenance, abatement of violation, and amortization requirements. These regulations promote the public health, safety and welfare and the aesthetic qualities of the City by controlling the placement, size, construction, and appearance of news racks.

City staff recommends the installation of four fixed pedestal newspaper racks in the currently permitted locations where demand appears to be the highest based on the current vendors and the types of businesses at these locations. Staff recommends adding two additional bins to be included in the new newspaper racks to allow for an increase in additional permitted vendors who may seek to distribute their publication in San Bruno. Thus, the City could better meet additional demand without having to make any further installations and modifications to the newspaper racks and enclosures.

2. Confirm active list of newspaper rack vendors and their restocking frequency.

City staff confirmed that the current vendors are:

- San Mateo Daily Journal - Daily
- SF Examiner – Staff reached out to this publication to confirm activity and restocking frequency but did not receive a response. Observation of current newspaper racks indicates that this publication likely is restocked each weekend.
- SF Chronicle – Staff reached out to this publication to confirm activity and restocking frequency but did not receive a response. Observation of current newspaper racks indicates that this publication likely is restocked each weekend.
- EI Reportero – Weekly

In addition, there are two previous vendors, SF Evergreen and Bay Classifieds, that no longer appears to be in business based on internet research and observation of current newspaper racks.

3. Can the bins at 500 and 501 San Mateo Avenue (across the street from one another) be consolidated since they host the same permitted vendor?

In July it was determined that the singular bin at 500 San Mateo Avenue hosted the San Mateo Daily Journal (free bin) and the singular bin at 501 San Mateo Avenue hosted the SF Chronicle (coin-operated bin). In early August it was identified that the newspaper rack location at 500 San Mateo Avenue was consolidated with the 501 San Mateo Avenue location, and the two singular bin racks were placed side-by-side from one another.

4. Is there a direct correlation between number of bins and installation cost?

Installation cost is fixed and is not divisible by the quantity of newspaper racks/enclosures that we install because of certain economies of scale. For example, equipment rentals have fixed mobilization and demobilization costs. Another example is coordination work is mostly a fixed cost as well.

5. Can business owners can have the same news rack vendors on both sides of the street which the City cannot prevent because it is on their easement? Is there anything in the Municipal Code addressing this? Can we stop this situation if it's on the public right-of-way?

The Municipal Code regulates newspaper racks in the City's rights-of-way, by requiring vendors to obtain a City permit and to adhere to certain placement, design, and maintenance standards. The City's regulations cannot be a restraint on speech protected by the First Amendment. If the City receives an application for a newspaper rack permit, it must process that application pursuant to the City Municipal Code and in compliance with the First Amendment. Any limits on the location of a newspaper rack cannot be a prohibited restraint on protected speech and must be related to proper placement, design standards, and priority of placement for multiple

vendors, as specified in the Municipal Code. Newspaper companies are well aware of their rights to use news racks to distribute papers, as found in a local advertisement in the Daily Post, which is provided as Attachment 3.

6. Can the material be ceramic coated?

The newspaper racks will have a black polyester powder coating, which is the only type of finish provided by the manufacturer. According to the manufacturer: *“Polyester powder coating is the most common of the powder coatings—and for good reason. It provides excellent impact resistance and flexibility; good mechanical resistance; and good chemical resistance. It also has a low curing temperature, and is therefore suitable for sensitive components. It provides UV resistance, which means it’s a good choice for a variety of indoor and outdoor applications. Plus, UV protection isn’t the only reason to choose polyester powder coating for outdoor applications—it also offers excellent protection from rain, wind, and other damaging elements. In addition to being practical, polyester powder coating is attractive. It comes in a vast array of colors and gloss levels, and is thus perfect for situations where aesthetics matter.”*

Staff’s recommendation for the newspaper rack enclosure design and material is compatible and in alignment with the *San Mateo Avenue Conceptual Streetscape Plan’s*¹ (Plan) preferred design characteristics of “*simple*”, “*elegant*”, and “*unique*” and preferred furnishing material of “*stainless-steel or silver-colored metal (e.g., aluminum or powder coated steel)*”. Staff’s recommendation is that the enclosures are stainless steel to align with the design characteristics described above, in addition to Streets Staff confirming that this material would hold up better over time than silver-colored metal.

7. Is spacing between the racks adequate? Should anything change with how the racks are currently configured along downtown San Mateo Avenue?

The spacing between the racks appears adequate based on current demand by the vendors and are located near key corners and downtown businesses including eating and drinking establishments whose customers are seeking out newspapers.

Final Recommended Newspaper Rack Configuration

The number of newspaper racks has been reduced from five to four, leaving four sets of newspaper racks to be replaced, as follows, at the following locations:

- 1) 424 San Mateo Avenue – 2-bin rack
- 2) 466 San Mateo Avenue – 2-bin rack
- 3) 487 San Mateo Avenue – 4-bin rack
- 4) 501 San Mateo Avenue – 4-bin rack

In total, these four locations provide twelve bins. This includes two empty additional bins for potential future vendors, which ensures that future requests can be accommodated with the City’s newspaper racks. The removal of the additional rack location is estimated to save approximately \$10,000 from this project.

FISCAL IMPACTS:

The cost (design, material, tax, shipping, and installation) to replace the four newspaper racks with the addition of the four newspaper rack enclosures is below the total budget of \$106,433

¹ <https://www.sanbruno.ca.gov/DocumentCenter/View/1688/San-Mateo-Avenue-Conceptual-Streetscape-Plan-PDF>

that is currently available based on the adopted CIP Project #60027: *Downtown Trash Receptacles & Newspaper Racks & Enclosures* as part of the City's *Adopted Fiscal Year 2023-24 Operating and Capital Improvements Program (CIP) Budgets*². No additional costs are anticipated in order to purchase and install the newspaper rack and enclosures. All contracts for the purchase and installation of the newspaper racks and enclosures are within the approval authority of the City Manager and the Public Works Director.

ENVIRONMENTAL IMPACT:

This action is exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301(c), existing facilities which exempts minor alterations of existing streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities. This project will not cause an expansion of an existing use of the streets.

RECOMMENDATION:

Consider adopting a resolution approving the newspaper rack and enclosure models and locations and determining the project is exempt under the California Environmental Quality Act.

ALTERNATIVES:

- 1) Direct staff to terminate the proposed purchase of newspaper racks and newspaper rack enclosures and investigate alternative designs and options.
- 2) Do not proceed with this project.

ATTACHMENTS:

- 1) Resolution
- 2) July 25, 2023 Staff Report 6.m. for Newspaper Racks and Enclosures
- 3) Newspaper Advertisement about Newspaper Rack's and First Amendment Rights

² <https://www.sanbruno.ca.gov/ArchiveCenter/ViewFile/Item/160>