

DATE: 6/15/99 AGENDA ITEM # \_\_\_\_\_  
( ) APPROVED ( ) DENIED  
( ) CONTINUED TO \_\_\_\_\_

TO: JAMES L. APP, CITY MANAGER

FROM: ROBERT A. LATA, COMMUNITY DEVELOPMENT DIRECTOR *RAL*

SUBJECT: CODE AMENDMENT 98004 (DISPLAY OF ADULT MATERIAL IN NEWSRACKS - CITY INITIATED)

DATE: JUNE 15, 1999

Needs: To consider a City-initiated code amendment to establish regulations for the display for adult material in newsracks.

- Facts:
1. The City's regulations for adult businesses are contained within Chapter 21.31 of the Zoning Code.
  2. The City Council is presently considering a proposal from local newspaper publishers and distributors for a voluntary agreement to regulate the placement and maintenance of newsracks, in lieu of an ordinance.
  3. As part of recent efforts to establish regulations for newsracks, it was determined that neither Chapter 21.31, nor any other provision in the Municipal Code, presently contain adequate regulations governing the display of adult material in newsracks.
  4. The City Attorney has advised that regulations governing the display of adult material in newsracks should be placed in both the Streets and Sidewalks Code and the Zoning Code.
  5. The Planning Commission is scheduled to review the attached ordinance at its meeting of June 8, 1999. The recommendation of the Planning Commission will be reported verbally to the Council on June 15, 1999.
  6. The proposed Code Amendment will have no potential for significant effect on the environment and is, therefore, not subject to the California Environmental Quality Act (CEQA). (Section 15061(b)(3) of the Guidelines to Implement CEQA)

Analysis and Conclusion:

There are not presently any newsracks in the City containing adult material. In order to effectively preclude any future problems, an ordinance is needed to address this aspect of use of newsracks.

The attached ordinance is based on similar provisions in newsrack ordinances adopted by several California cities. The language is consistent with Section 313 of the California Penal Code, which defines "harmful material".

It should be noted that the adult material regulations proposed in Section 1 of the attached ordinance are the same as those contained in the draft newsrack ordinance being considered by

the Council as a separate matter. In the event that the Council chooses to adopt a newsrack ordinance in lieu of the voluntary agreement proposed by newspaper publishers and distributors, Section 1 of the attached adult display ordinance will not be necessary. Section 2 of the attached adult display ordinance, which amends the Zoning Code to provide that the adult display regulations adopted for the public right-of-way also pertain to public and private property, will need to be revised to refer to Section 11.35.060 of the newsrack ordinance, rather than to Chapter 11.34 of the adult display ordinance.

Policy

Reference: Zoning Code Chapter 21.31, California Penal Code Section 313, Section 15061(b)(3) of the Guidelines to Implement CEQA

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Impact: None.

Options: After consideration of all public testimony, that the City Council consider the following options:

- a. Adopt the attached ordinance
- b. Amend, modify or reject the foregoing option.

Attachment:

1. Draft Ordinance Establishing Chapter 11.34 and Amending Chapter 21.31 of the Municipal Code to Establish Regulations for Display of Adult Material in Newsracks
2. Newspaper Notice

ORDINANCE NO. \_\_\_\_ N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
ESTABLISHING CHAPTER 11.34 AND AMENDING CHAPTER 21.31 OF THE MUNICIPAL CODE  
TO ESTABLISH REGULATIONS FOR DISPLAY OF ADULT MATERIAL IN NEWSRACKS

WHEREAS, it is necessary to protect minors from viewing harmful matter that may be offered for sale or distribution within newsracks located in public places, except in places where minors may be excluded;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 11.34 (Newsracks Displaying Adult Material) of the Municipal Code is hereby established to read as follows:

**11.34.010 Purpose.**

The purpose of this Chapter is to protect minors from viewing harmful matter that may be offered for sale or distribution within newsracks located in the public right-of-way.

**11.34.020 Definitions.**

- A. "Blinder Racks" shall mean any opaque sheets or covers placed in front of the newsrack or the publications contained therein to prevent exposure of all or a part of the publication to public view.
- B. "Harmful" material means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political or scientific value for minors.
- C. "Newsrack" shall mean any type of unmanned device placed upon any public right-of-way or public land for the vending of, or the free distribution of, newspapers or news periodicals, advertising fliers, or other written or printed publications.

**11.34.030 Limitations on Display of Harmful Matter in Newsracks.**

Material which is harmful to minors shall not be displayed in newsracks in a public place, other than a public place where minors are excluded, unless blinder racks are placed in front of the material in such a manner that the lower two-thirds (2/3) of the material is not exposed to public view.

**11.34.040 Enforcement.**

The Director of Public Works and/or the Police Chief shall have the authority to cause any newsrack in violation of the provisions of this Chapter to be removed. All violations of this Chapter are misdemeanor violations and enforceable as same.

SECTION 2. Chapter 21.31 of the Municipal Code is hereby amended to add Section 12.31.090 to read as follows:

**12.31.090 Limitations on Display of Harmful Matter in Newsracks.**

The limitations on display of material which is harmful to minors contained within Chapter 11.34 shall apply to public and private property as well as to the public right-of-way.

**SECTION 3. Publication.** The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

**SECTION 5. Inconsistency.** To the extent that the terms of provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

**SECTION 6. Effective Date.** This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on June 15, 1999, and passed and adopted by the City Council of the City of El Paso de Robles on the 6th day of July, 1999, by the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAINING:

\_\_\_\_\_  
Duane J. Picanco, Mayor

ATTEST:

\_\_\_\_\_  
Dennis Fansler, City Clerk

ED\CODE AMEND\NEWSRACKS\AMEND ADULT ORD 2

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL  
PROJECT NOTICING


Newspaper: TELEGRAM-TRIBUNE

Date of Publication: May 26, 1999

Meeting Date: June 8, 1999  
(Planning Commission)  
June 15, 1999  
(City Council)

Project: Code Amendment 98004  
(Newsrack Ordinance)

I, Lonnie Dolan, employee of the Community  
Development Department, Planning Division, of the City of  
El Paso de Robles, do hereby certify that this notice is a true  
copy of a published legal newspaper notice for the above  
named project.

Signed:   
Lonnie Dolan

NOTICE OF  
PUBLIC HEARING  
NOTICE IS HEREBY  
GIVEN that the Planning  
Commission and City  
Council of the City of El  
Paso de Robles will hold  
Public Hearings to con-  
sider Code Amendment  
98004, initiated by the  
City of Paso Robles, to  
amend Chapter 21.31 of  
the Zoning Code to  
establish regulations  
regarding display of adult  
material in newsracks.  
These hearings will take  
place in the Conference  
Room at the Paso Rob-  
les Library/City Hall,  
1000 Spring Street, Paso  
Robles, California, at the  
hour of 7:30 PM on the  
following dates:  
Planning Commission:  
Tuesday, June 8, 1999;  
City Council: Tuesday,  
June 15, 1999.  
All interested parties may  
appear and be heard at  
the above hearing.  
Comments on the pro-  
posed code amendment  
may be mailed to the  
Community Development  
Department, 1000 Spring  
Street, Paso Robles, CA  
93446 provided that such  
comments are received  
prior to the time of the  
hearing.

If you challenge the  
Code Amendment in  
court, you may be limited  
to raising only those  
issues you or someone  
else raised at the public  
hearing described in this  
notice, or in written cor-  
respondence delivered to  
the Planning Commis-  
sion at, or prior to, the  
public hearings.  
Ed Gallagher, Housing  
Programs Manager  
MAY 26, 1999 5156629