

TO: James L. App, City Manager

FROM: Meg Williamson, Assistant to the City Manager

SUBJECT: Tribune Newsrack Settlement

DATE: February 1, 2005

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Needs: For the City Council to approve appropriation and authorize payment pursuant to the stipulation entered into for the San Luis Obispo Tribune legal challenge.

Facts:

1. The City Council first adopted a Newsrack Ordinance in 1999 and later updated the ordinance in 2000.
2. The ordinance was intended to establish a comprehensive set of criteria for newsracks located in the public right of way. Specifically, the intent was to protect public safety for pedestrians, protect appearance in the historic downtown, enhance economic vitality city-wide, and reduce the City's risk exposure.
3. Subsequent to adoption in 2000, the ordinance was challenged in court by the Tribune News, alleging that the restriction on the number of newsracks that could be placed on sidewalks was a violation of First Amendment rights.
4. The City Council was kept apprised of the status of the lawsuit, choosing not to abandon its position on the appropriateness and fairness of the ordinance.
5. In December 2002, the Superior Court of the County of San Luis Obispo rendered a decision on the City's newsrack ordinance which invalidated the limitations on the maximum number of newsracks per block face, along with the lottery system for issuance of newsrack permits where the number of permit applications exceeded the number of newsracks allowed on a block face.
6. The appellate court upheld the decision of the Superior Court in 2004, indicating the scope of the ordinance was overly broad because it covered the entire City.
7. In conjunction with the Court of Appeal determination, the City of Paso Robles is responsible for payment of attorney fees for the plaintiffs.

Analysis  
and

Conclusion:

The City's pursuit of an ordinance to regulate the number and placement of freestanding newsracks was intended to reduce visual clutter on sidewalks and other public areas, while protecting public safety. The Tribune challenged the City's ordinance based on First Amendment rights. While there was never any intention to interfere with the circulation or distribution of published materials, the Tribune prevailed and the City must cover costs that were stipulated in the Superior Court Case.

Policy

Reference:

Superior Court Case No. CV 000591A

Fiscal Impact:

Pursuant to the stipulation the City entered into in the San Luis Obispo Tribune court case, the City has agreed to pay the following amounts:

To San Luis Obispo Tribune - \$92,948.57

To Raike Publishing Company - \$17,470.00

The cost of the City's attorney fees was budgeted for. However the noted stipulated costs were not. Therefore, it will be necessary for the City to appropriate the funds from general fund reserves to cover the required expenditure.

Options:

For the City Council to:

Adopt Resolution No. 05-xx appropriating \$110,500 to Budget Account No. 100-110-5235-101 and authorize payment pursuant to the stipulation.

(Note: There is no option to making the payment – only what account the payment is made from).

Attachment:

1. Resolution No. 05-xx appropriating funds and authorizing payment

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
AUTHORIZING APPROPRIATION AND APPROVING PAYMENT PURSUANT  
TO STIPULATION ENTERED WITH THE SAN LUIS OBISPO TRIBUNE  
COURT CASE NO. CV 000591A

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WHEREAS, the City of Paso Robles first adopted a Newsrack Ordinance in 1999 and later updated the ordinance in 2000; and

WHEREAS, the ordinance was intended to establish a comprehensive set of criteria for newsracks located in the public right of way; and

WHEREAS, the ordinance was challenged in court by the Tribune News, alleging that the restriction on the number of newsracks that could be placed on sidewalks was a violation of First Amendment rights; and

WHEREAS, the City Council was kept apprised of the status of the lawsuit, choosing not to abandon its position on the appropriateness and fairness of the ordinance; and

WHEREAS, in December 2002, the Superior Court of the County of San Luis Obispo rendered a decision on the City's newsrack ordinance which invalidated the limitations on the maximum number of newsracks per block face, along with the lottery system for issuance of newsrack permits where the number of permit applications exceeded the number of newsracks allowed on a block face; and

WHEREAS, the appellate court upheld the decision of the Superior Court in 2004, indicating the scope of the ordinance was overly broad because it covered the entire City; and

WHEREAS, in conjunction with the Court of Appeal determination, the City of Paso Robles is responsible for payment of attorney fees for the plaintiffs.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles approves a one-time budget appropriation for \$110,500 to Account No. 100-110-5235-101 from general fund reserves to cover the stipulated costs in Superior Court Case No. CV 000591A; and

THEREFORE BE IT FURTHER RESOLVED to authorize city staff to make payment to the San Luis Obispo Tribune in the amount of \$92,948.57 and to Raikes Publishing Company in the amount of \$17,470 as stipulated in the case.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 1st day of February 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Frank R. Mecham, Mayor

ATTEST:

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Sharilyn M. Ryan, Deputy City Clerk