



City of Cambridge

Calendar #20

IN CITY COUNCIL

November 20, 1995

COUNCILLOR DUEHAY

ORDERED: That the City Manager be and hereby is requested to direct the Law Department to specify in Ordinance language how the City Council could regulate the newspaper dispenser boxes on the sidewalk; and be it further

ORDERED: That the City Manager be and hereby is requested to report back to the Ordinance Committee of the next City Council.

In City Council November 20, 1995
Adopted by the affirmative vote of seven members.
Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "D. Margaret Drury".

ATTEST:-

D. Margaret Drury
City Clerk



CITY OF CAMBRIDGE

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October 30, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: *Newsracks--Awaiting Report Item #22*

Dear Mr. Healy:

Based on our earlier discussion of the issues raised by the City Council regarding newsracks on public sidewalks, I am recommending referral of the matter to the Planning Board for consideration of reasonable time, place, and manner regulations of these activities. I am attaching a recent article from the Zoning and Planning Law Report which reviews recent court decisions in the area of newsrack regulation. The Planning Board and the Community Development office should not hesitate to seek advice from this office as they consider the issue.

We have gathered additional information regarding attempts by other communities to regulate newsracks, and will be happy to share that information with the Planning Board and Community Development staff.

Please let me know if I can be of further assistance in this matter.

Very truly yours,

Donald A. Drisdell

cc. Susan Schlesinger

RECEIVED
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ZONING AND PLANNING LAW REPORT



Vol. 18, No. 1

January 1995

A PRIMER ON LOCAL CONTROL OF NEWSRACKS (Part II)

by Edward H. Ziegler Jr.

Edward Ziegler is Professor of Law at the University of Denver College of Law. He is a frequent author and speaker on planning and zoning law issues and is presently the principal author for revision of the five-volume treatise, Rathkopf's The Law of Zoning and Planning (Clark Boardman Callaghan).

- Total Bans on Public Property
- License Fees and Insurance
- Place and Manner Restrictions

(Recent Supreme Court decisions have focused attention on difficulties local governments may face in controlling the use of newsracks on streets and sidewalks and other public areas. The First Amendment protection accorded newsracks, boxes, and bins, both in these and numerous other court decisions, raises a variety of important legal issues involving the validity of local controls on these methods of "speech" distribution. This two-part article discusses court decisions addressing these and other issues related to the local control of newsracks.)

Validity of Total Bans

The United States Supreme Court has yet to expressly address the validity of a total ban of newsracks on public streets and sidewalks. However, at least five Justices of the Court have expressed, in recent years, some support for the validity of such a ban. See *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988) (Justice White dissenting, joined by Justices Stevens and O'Connor). "I believe that the First Amendment does not create a right of newspaper publishers to take a portion of city property to erect a structure to distribute their papers. There is no constitu-

tional right to place newsracks on the city sidewalks over the objections of the city." 108 S. Ct. at 2158. And see *Cincinnati v. Discovery Network, Inc.*, —U.S.—, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993) (Chief Justice Rehnquist dissenting, joined by Justices White and Thomas). "In my view the city may order the removal of all newsracks from its public right-of-ways if it so chooses. [Citation to *Lakewood* dissent.] But however it decides to address its newsrack problem, it should be allowed to proceed in the manner and scope it sees fit so long as it does not violate established First Amendment principles, such as the rule against discrimination on the basis of content."

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This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent person should be sought.—From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers.

Other court decisions suggest support for the validity of a ban on newsracks on sidewalks at least in some areas of a city. See *City of New York v. American School Publications*, 119 A.D.2d 13, 505 N.Y.S.2d 599 (dictum), *aff'd on other grounds*, 69 N.Y.2d 576, 509 N.E.2d 311 (1987); *Gannett Satellite Information Network v. Township of Pennsauken*, 709 F. Supp. 530 (D.N.J. 1989)(upholding newsrack ban on main street of business district); *Plain Dealer Publishing Co. v. City of Lakewood*, 794 F.2d 1139 (6th Cir. 1986), *aff'd on other grounds*, 486 U.S. 750 (1988)(upholding ban in residential areas). And see *Jacobsen v. United States Postal Service*, 993 F.2d 649 (9th Cir. 1992)(upholding ban at nonpublic forum post office and ingress and egress sidewalks). A total ban on newsracks on public sidewalks might well survive a First Amendment challenge if the prohibition is content-neutral and found to be narrowly tailored to its supporting interests. See *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984)(upholding ban on posting of private signs on public property based on city's interests in traffic safety and aesthetics).

Most court decisions, however, have held bans on newsracks in any public forum area unconstitutional. *E.g.*, *Jacobsen v. Petersen*, 728 F. Supp. 1415 (D.S.D. 1990); *Providence Journal Co. v. City of Newport*, 665 F. Supp. 107 (D.R.I. 1987); *Passaic Daily News v. City of Clifton*, 200 N.J. Super. 468, 491 A.2d 808 (1985); *Miller Newspapers v. City of Keene*, 546 F. Supp. 831 (D.N.H. 1982)(and cases cited therein); *Kash v. City of Los Angeles*, 138 Cal. Rptr. 53, 567 P.2d 1302 (1977). And see *Chicago Newspaper Publishers Ass'n v. City of Wheaton*, 697 F. Supp. 1465, 1469-71 (N.D. Ill. 1988)(holding invalid ban in residential areas applying "least restrictive means" strict scrutiny analysis); *Globe Newspaper Co. v. Beacon Hill Architectural Commission*, 847 F. Supp. 178 (D. Mass. 1994)(holding invalid ban in historic district as not narrowly tailored to supporting interests); see also *One World Family Now v. City of Key West*, 1994 WL 199909 (S.D. Fla.)(holding invalid ban on portable T-shirt table in historic district finding protected speech therein analogous to newsracks).

Even in contexts involving a nonpublic forum, bans on newsracks generally have been held invalid. See, *e.g.*, *Chicago Tribune Co. v. City of Chicago*, 705 F. Supp. 1345 (N.D. Ill. 1989)(wherein the court indicted that a ban on newsracks at an airport could not be supported by the city's interest in maximizing revenue from the sale of newspapers by authorized concessionaires and noted that the city had failed to demonstrate that newsracks posed a threat to public safety based on the possibility of explosives being placed therein). And see *Multimedia Publishing Co. v. Greenville-Spartanburg Airport*, 991 F.2d 154 (4th Cir. 1993)(ban on newsracks

inside airport terminal held unreasonable).

The court decisions holding bans invalid generally have ruled that the bans were not narrowly tailored to the public interests supporting the ban. Another important issue is the reviewing court's view of whether alternative outlets for the sale and distribution of newspapers and similar materials provide, as required by the First Amendment, ample alternative channels of communication for the protected "speech" affected by such a ban. Compare *Plain Dealer Publishing Co. v. City of Lakewood*, *supra* (upholding ban in residential areas where all residences were within one quarter mile from newsracks), with *Chicago Newspaper Publishers Ass'n v. City of Wheaton*, *supra* (holding invalid ban in residential area where some residences were more than three miles from a newsrack).

Place and Manner Restrictions

Numerous court decisions have upheld the First Amendment validity of content-neutral and reasonable place and manner restrictions on the placement of newsracks on public streets and sidewalks. Courts have upheld size, type, shape, location, installation, bulking, and maintenance requirements, as well as a variety of discretionary performance standards for newsracks. See, *e.g.*, *Duffy v. City of Arcadia*, 195 Cal. App. 3d 308, 243 Cal. Rptr. 87 (1987)(size, height, placement, and shape); *Jacobsen v. Crivo*, 851 F.2d 1067 (8th Cir. 1988)(size and location); *News Printing Co. v. Borough of Totowa*, 211 N.J. Super. 121, 511 A.2d 139 (1986)(size, location, installation, bulking, and performance standards); *Jacobsen v. Harris*, 869 F.2d 1172 (8th Cir. 1989) (size, type, and location); *Chicago Observer, Inc. v. City of Chicago*, 929 F.2d 325 (7th Cir. 1991)(size); *Gannett Satellite Information Network, Inc. v. Township of Pennsauken*, 709 F. Supp. 530 (D.N.J. 1989)(location and installation); *Kash Enterprises, Inc. v. City of Los Angeles*, 138 Cal. Rptr. 53, 562 P.2d 1302 (1977)(size, height, bulk, location, installation, maintenance, and performance standards). See generally "Controlling Newsracks," *Zoning News* (Oct. 1992); S. Meck, "Newsracks: Regulate with Caution," 46 *Land Use and Zoning Digest* No. 1 at 21 (Jan. 1994).

Ordinances may prohibit double-deck newsracks and installation requirements may prohibit newsracks from being chained to utility poles or other public structures or fixtures. *Duffy v. City of Arcadia*, 915 Cal. App. 3d 388, 243 Cal. Rptr. 87 (1988)(upholding the following size restriction: "No newsrack shall exceed four (4) feet in height, thirty (30) inches in width or two (2) feet in thickness"); *Gannett Satellite Information Network, Inc. v. Township of Pennsauken*, 709 F. Supp. 530 (D.N.J. 1989)(upholding requirement that newsracks be secured on level surface).

Location restrictions may prohibit newsracks near driveways, crosswalks, entrances, fire hydrants, call

boxes, bus shelters and benches, and public areas improved with lawn, flowers, shrubs, trees, or other landscaping, etc. See, e.g., *News Printing Co. v. Borough of Totowa*, 211 N.J. Super. 121, 511 A.2d 139 (1986); *Gold Coast Publications v. Corrigan*, 798 F. Supp. 1158 (S.D. Fla. 1992). Restrictions also may prohibit off-site advertising on newsracks. *Chicago Observer, Inc. v. City of Chicago*, 929 F.2d 325 (7th Cir. 1991).

Aesthetic Concerns

Court decisions have recognized a city's aesthetic interests in preventing visual clutter and in protecting the visual character of an area in adopting newsrack regulations. E.g., *Gannett Satellite Information Network, Inc. v. Township of Pennsauken*, 709 F. Supp. 530 (D.N.J. 1989); *Duffy v. City of Arcadia*, 195 Cal. App. 3d 310, 243 Cal. Rptr. 87 (1987); *News Printing Co. v. Borough of Totowa*, 211 N.J. Super. 121, 511 A.2d 139 (1986).

In *Gold Coast Publications, Inc. v. Corrigan*, 798 F. Supp. 1558 (S.D. Fla. 1992), a federal district court in Florida held invalid restrictions requiring uniformity of colors (gloss brown or beige) and limiting the size of lettering on newsracks to 1 3/4". The court found these restrictions were not narrowly tailored to the city's aesthetic interest. The court explained:

The city simply has not shown how requiring newsracks to be gloss brown or beige and limiting the size of lettering on the sides of newsracks advances its interest in aesthetics. Uniform color essentially renders the newsracks invisible, which is especially detrimental to new market entries such as *Exito* or *New Times*. Where a newspaper relies largely on its unique coloring and logo scheme to improve its circulation, and the public right of access to newspapers depends on its familiarity with that scheme, restrictions mandating homogeneity of color are not merely incidental, but rather disproportionate restraints on freedom of expression. The effect on *Exito's* First Amendment freedoms is broader than necessary to serve the city's weighty aesthetic goals, and is thus constitutionally intolerable.

Id. at 1571.

The constitutional problem with the restrictions imposed in *Gold Coast Publications, supra*, could presumably be corrected by allowing part of the area on the outside of a newsrack to display the distinctive colors and logo of the publisher with larger lettering. The opinion of the court therein pointed out that the aesthetic restrictions in question lacked any distinctive supporting visual context since the city authorized a variety of colors and lettering size on other street furniture and architectural projections in the area.

Ordinance Provisions Upheld

In *Kash Enterprises, Inc. v. City of Los Angeles*, 138 Cal. Rptr. 53, 562 P.2d 1302, 1305 (1977), the court up-

held as constitutional the following ordinance provisions regulating newsracks. The court interpreted the term "attractive" in section (f)(3)(H) below to mean "neat" and "clean" as used in that same provision.

Los Angeles Mun. Code Sec. 42.00

(f) Streets - Newsracks

(1) No person shall install, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public street, or which rests, wholly or in part, upon, along or over any portion of a roadway.

(2) No person shall install, use or maintain any newsrack which in whole or in part rests upon in or over any sidewalk or parkway, when such installation, use of [sic] maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location, or when such newsrack interferes with the cleaning of any sidewalk by the use of mechanical sidewalk cleaning machinery.

(3) Any newsrack which in whole or in part rests upon, in or over any sidewalk or parkway, shall comply with the following standards:

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(A) No newsrack shall exceed five feet in height, thirty inches in width, or two feet in depth.

(B) Newsracks shall only be placed near a curb or adjacent to the wall of a building. Newsracks placed near the curb shall be placed no less than eighteen inches nor more than twenty-four inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six inches from the wall. No newsrack shall be placed or maintained on a sidewalk or parkway opposite a newsstand or another newsrack.

(C) No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.

(D) Newsracks may be chained or otherwise attached to one another; however, no more than three newsracks may be joined together in this manner, and a space of no less than eighteen inches shall separate each group of three newsracks so attached.

(E) No newsrack, or group of attached newsracks allowed under paragraph (D) hereof, shall weigh, in the aggregate, in excess of 125 pounds when empty.

(F) No newsrack shall be placed, installed, used or maintained:

- (1) Within three feet of any marked crosswalk.
- (2) Within fifteen feet of the curb return of any unmarked crosswalk.
- (3) Within three feet of any fire hydrant, fire call box, police call box or other emergency facility.
- (4) Within three feet of any driveway.
- (5) Within three feet ahead of, and fifteen feet to the rear of any sign marking a designated bus stop.
- (6) Within three feet of any bus bench.
- (7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet.
- (8) Within three feet of any area improved with lawn, flowers, shrubbery, trees or within three feet of any display window of any building abutting the sidewalk or parkway or in such manner as to impede or interfere with the reasonable use of such window for display purposes.

(G) No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

(H) Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times.

(4) Every person who places or maintains a newsrack on the streets of the City of Los Angeles shall have his

name, address, telephone number affixed thereto in a place where such information may be easily seen.

In *Jacobsen v. Crivaro*, 851 F.2d 1067, 1068-69 (8th Cir. 1988), the court upheld the constitutionality of the following ordinance provisions regulating newsracks adopted by the City of Des Moines:

Des Moines Mun. Code 23-24

(a) No license or lease required under this subchapter shall be granted for any encroachment until the required fee has been paid, and until an application with complete plans shall have been filed with and approved by the director.

(b) No license or lease shall be granted or renewed for any encroachment when it would unreasonably obstruct the rights of travel which the general public has on any public property or would unreasonably interfere with or impede the flow of pedestrian or vehicular traffic.

(c) No license or lease shall be granted or renewed for any encroachment that would be placed or erected upon a sidewalk so as to occupy more than 25 percent of the width of the sidewalk.

(d) No license or lease shall be granted or renewed for any encroachment that would be placed or erected at a street corner within the vision clearance triangle described in section 27-14 of this code.

(e) No license or lease shall be granted or renewed for any sign which extends over the surface of any public property in cases where the city has contracted with another public body to prohibit the encroachment of signs over the surface of such public property.

23-25 SPECIAL REGULATIONS REGARDING NEWSRACKS AND TRASH CONTAINERS.

(a) In addition to the general regulations set forth in this subchapter, newsracks and trash containers on public property are subject to the regulations of this section; provided, however, that newsracks within the skywalk system are subject to the regulations of section 23-35.01 of this code and are exempt from the provisions of this section.

(b) No newsrack shall be located:

- (1) Within five feet of any fire hydrant, fire or police alarm box, or other emergency facility;
- (2) Within two feet of any marked crosswalk or any driveway;
- (3) Where it restricts access to a bus shelter or a bus bench;
- (4) Where it interferes with loading or unloading at the front and rear doors of buses;
- (5) On any handicap access ramp;

(6) In such a manner as to reduce the clear space for the passageway of pedestrians on sidewalks to a continuous and unobstructed width of less than six feet;

(7) On the right-of-way of any street where parking is prohibited on both sides for all or any portion of the day or within 50 feet of such street on the right-of-way of any intersecting street, except that this provision shall not apply to "C-3" Central Business District Commercial District zoned areas.

(c) Newsracks on public street right-of-way shall only be placed either (a) not more than one foot back from the face of the curb, or (b) not more than six inches from a public utility pole or a traffic sign pole located near the curb, or (c) parallel to the wall of a building and not more than six inches from the wall. Newsracks placed near the curb shall be placed so that the opening through which newspapers or news periodicals are dispensed does not face the curb line.

(d) No newsrack shall exceed five feet in height or two feet in depth. The maximum width of a newsrack shall be computed by multiplying by two and one-half feet the number of laterally-installed vending compartments, which number shall not include vending compartments installed on top of other such compartments.

(e) A licensed newsrack may be moved to a new site without the requirement of a new application and fee, provided that a site plan showing the exact new location is filed with the director no later than the next business day of the city after the move, and provided that the placement of the newsrack at the new site is in compliance with the requirements of this subchapter and any other applicable legal requirements.

See the extensive restrictions on placement, mounting, installation, and maintenance upheld and reproduced in the appendix to the opinion in *Gold Coast Publications v. Corrigan*, 798 F. Supp. 1158 (S.D. Fla. 1992).

License Fees and Insurance

Government may not profit by imposing licensing and permit fees on the exercise of First Amendment rights and is prohibited from raising revenue under the guise of defraying its administrative costs. *E.g.*, *Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1205 (11th Cir. 1991). Licensing and permit fees, however, may constitutionally be imposed on the placement of newsracks on public property so long as the city demonstrates that the fees imposed are no more than necessary to cover the administrative costs of its permitting and regulatory scheme. *See Gold Coast Publications v. Corrigan*, 798 F. Supp. 1558, 1572 (S.D. Fla. 1992) (the ordinance required a one-time \$50 certificate of compliance fee, \$10 per installed newsrack, and a \$5 reinspection fee for failed inspections and specified that any funds left over after

defraying administrative costs would be returned to newspaper publishers in proportion to their respective contributions); *Jacobsen v. Harris*, 869 F.2d 1172, 1174 (8th Cir. 1989); *Jacobsen v. Crivaro*, 851 F.2d 1067, 1071 (8th Cir. 1988) (\$10 annual fee).

Courts have upheld the requirement that private owners of newsracks placed on public property secure liability insurance in an amount reasonable to cover possible claims related to the newsracks. *E.g.*, *Gold Coast Publications, Inc. v. Corrigan*, 798 F. Supp. 1558, 1572 (S.D. Fla. 1992); *Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1206 (11th Cir. 1991); *Jacobsen v. Harris*, 869 F.2d 1172, 1174 (8th Cir. 1989).

In upholding the validity of such a requirement, the court in *Jacobsen v. Harris, supra*, commented:

Regarding the ordinance's mandatory insurance coverage, *Jacobsen* contends the requirement is an unreasonable restraint on his First Amendment rights. *Jacobsen* argues the absence of a history of claims against the City involving newsracks and the expense of "obtaining a hold harmless insurance policy," in and of themselves, militate against any insurance requirement. *Jacobsen* does not, however, challenge the district court's finding that "the amount of [coverage] required is reasonable." Thus, we do not consider this issue. *See Eastern Conn. Citizens Action Group v. Powers*, 723 F.2d 1050, 1057 (2d Cir. 1983).

The City has a legitimate interest in protecting itself from liability for injuries associated with the use of its property. *See id.* at 1056. In addition, the City need not provide *Jacobsen* with the least expensive method of exercising his First Amendment freedoms. *See Gannett Satellite Information Network, Inc. v. Metropolitan Transp. Auth.*, 745 F.2d 767, 774 (2d Cir. 1984). Here, a City official testified that all individuals using City property are required to carry insurance against claims for personal injury and property damage occurring as a result of any obstructions placed on City property. The same official also testified that although no claims had been filed that were related specifically to newsracks, claims arising from objects placed in the public right-of-way were made quite often. Under these circumstances, we believe the City's insurance requirement, as challenged by *Jacobsen*, is not invalid.

Different treatment of newsracks, with respect to insurance requirements and other similar uses on public property, will likely be held unconstitutional. *See Sentinel Communications Co. v. Watts, supra* (different treatment of newsracks and vending machines); *Plain Dealer Publishing Co. v. City of Lakewood*, 794 F.2d 1139 (6th Cir. 1986), *aff'd on other grounds*, 486 U.S. 750 (1988) (different treatment of newsracks and telephone equipment and bus shelters). *And see Minneapolis Star & Tribune Co. v. Commissioner of Revenue*, 460 U.S. 575, 103 S. Ct. 1365, 75 L. Ed. 2d 295 (1983).

Notice and Hearing

In the absence of an emergency situation involving public health or safety, courts generally have held that procedural due process requires notice and the opportunity to be heard in regard to governmental removal of newsracks located on public property. *E.g.*, *Jacobsen v. Petersen*, 728 F. Supp. 1415 (D.S.D. 1990); *Jacobsen v. Harris*, 869 F.2d 1172 (8th Cir. 1989); *Miller Newspapers, Inc. v. City of Keene*, 546 F. Supp. 831 (D.N.H. 1982); *Kash Enterprises v. City of Los Angeles*, 138 Cal. Rptr. 53, 562 P.2d 1302 (1977); *Gluck v. County of Los Angeles*, 93 Cal. App. 3d 121, 155 Cal. Rptr. 435 (App. 1979).

RECENT CASES

Third Circuit Fashions a Test for Sign Regulations

The Third Circuit Court of Appeals struck down Delaware sign regulations in *Rappa v. New Castle County*, 18 F.3d 1043 (3d Cir. 1994). The invalid statute generally banned outdoor advertising along state highways, but contained exceptions for certain kinds of signs, including signs advertising local industries or meetings. The Third Circuit held that because of these exceptions, the statute impermissibly discriminated among different kinds of signs "unrelated to the property or its use." The court reached this result without relying on the Supreme Court's plurality decision in *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981). After examining *Metromedia* at length, the Third Circuit concluded that "[s]ince the opinions in *Metromedia* share no common denominator, they do not establish a governing standard for future cases." 18 F.3d at 1060. The court then determined that the governing standard should relate to the importance of having a particular sign at a particular location. "A sign that says 'Speed Limit 55' or 'Rest Stop' is more important on a highway than is a sign that says 'Rappa for Congress' . . . [P]lacing a sign that says 'Rappa for Congress' or 'Drink Pepsi' on a highway, while it may be an important means of communication because of the number of travellers on the highway, has no relationship to the property on which it is placed or to the fact that it is next to a highway." *Id.* at 1064. The court took a deep breath and continued:

Thus we conclude that when there is a significant relationship between the content of particular speech and a specific location or its use, the state can exempt from a general ban speech having that content so long as the state did not make the distinction in an attempt to censor certain viewpoints or to control what issues are appropriate for public debate and so long as the exception also survives the test proposed by the *Metromedia* concurrence: i.e. the state must show that the exception is substantially related to advancing an important state interest that is at least im-

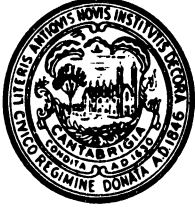
portant as the interests advanced by the underlying regulation, that the exception is no broader than necessary to advance the special goal, and that the exception is narrowly drawn so as to impinge as little as possible on the overall goal.

Id. at 1065.

Florida Court Examines Maps for Future Roadways

An important 1990 Florida decision, *Joint Ventures, Inc. v. Dept. of Transportation*, 563 So. 2d 622 (Fla. 1990), was revisited by the Supreme Court of Florida in two 1994 land use planning cases involving future roadways: *Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corp.*, 640 So. 2d 54 (Fla. 1994); and *Palm Beach County v. Wright*, 641 So. 2d 50 (Fla. 1994). As explained by the court in *Wright* and *A.G.W.S.*, the *Joint Ventures* decision involved the invalidization, on due process grounds, of Florida statutory provisions that authorized the filing of "maps of reservation" by the state department of transportation. The intended effect of the maps was to prohibit all development in areas that would eventually be purchased by the department for use as roads. In other words, the sole purpose of the statutory provisions in *Joint Ventures* was to freeze development so as to depress land values in anticipation of eminent domain proceedings. The statutory provisions were therefore struck down as an improper exercise of police power. However, in *A.G.W.S.*, the court held that landowners with property inside the boundaries of the invalidated maps of reservation were not legally entitled to receive per se declarations of a temporary taking. The court ruled that any property owner seeking compensation would have to show that the filing of a map of reservation resulted in a loss to that owner of substantially all of the economically beneficial or productive use of his or her land.

In *Wright*, the court upheld a county "thoroughfare map," which designated corridors for future roadways. The map was adopted in conjunction with the county's comprehensive plan, which prohibited any land use activity that would impede future construction of roadways. Affected landowners argued that the thoroughfare map was functionally indistinguishable from the maps of reservation invalidated in *Joint Ventures*. The court found that under *A.G.W.S.*, the adoption of the thoroughfare map did not constitute a per se temporary taking. Moreover, the court held that unlike the government action taken in *Joint Ventures* (motivated only by a desire to reduce future eminent domain costs), the adoption of the thoroughfare map in conformance with a comprehensive plan was a proper use of the police power that substantially advanced the state's legitimate interest in planning for future growth. Among other factors, the court noted that while the *Joint Ventures* maps were intended to irrevocably prohibit all development in designated areas, the thoroughfare maps would limit development only to the



24.

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

November 6, 1995

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 21, regarding the regulation of newspaper dispenser boxes on public sidewalks, received from Donald A. Drisdell, Deputy City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #24

Cal #22
CM-315

Relative to Awaiting Report Item
Number Twenty-one, regarding the
regulation of newspaper dispenser
boxes on public sidewalks.

for original order see
1995 City Manager
Request # 245.

Referred to Ordinance
Committee. November 20, 1995
sent to VMR 11/21/95

In City Council November 6, 1995

Tabled by Councilman
Dunbar.