



# MEMORANDUM

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**TO:** GAINESVILLE COMMUNITY  
REDEVELOPMENT AGENCY  
JOHN R. BARROW, CRA Chair  
CHUCK CHESTNUT, CRA Vice-Chair  
TOM BUSSING, CRA Member  
PEGREEN HANRAHAN, CRA Member  
WARREN NIELSEN, CRA Member

**FROM:** CHARLES L. HAUCK, Sr. Assistant City Attorney

**SUBJECT:** NEWSRACK REGULATION/CITY SOLUTIONS

**DATE:** February 25, 2002

Last year, some discussion was had concerning regulation of newsracks in community redevelopment districts, primarily through the utilization of a modular newsrack system promoted by a Florida company called "City Solutions." This office was asked to provide some advice to the CRA regarding the legal issues related to such a proposal.

Initially, I note that the regulation of newsracks in the public right-of-way would need to occur through an ordinance passed by the City Commission of the City of Gainesville, after two (2) public hearings. Based upon an appropriate record, a carefully crafted ordinance could be sustained.

In Gold Coast Publications, Inc. v. Corrigan, 42 F.3d 1336 (11<sup>th</sup> Cir. 1984), the court allowed the City of Coral Gables to regulate the location, design, lettering and color of newsracks placed on public rights-of-way, through the use of a permit system. The city had convened a task force to study how to improve the appearance of its business district. The task force developed a proposed ordinance regulating newsracks, and revised its proposal based on public hearings. The ordinance set up a permit system for placing newsracks on rights-of-way and provided that all newsracks be a certain design and color scheme, and contain no advertising except that the name of the paper and its logo be no more than 1 ¼ inches high. Location was restricted to within 18 and 24 inches of a curb or parallel to a building, and not more than 6 inches from the building's wall. Newsracks were prohibited within certain distances of crosswalks, bus stops, benches, fire hydrants, emergency call boxes, driveways and other street features.

The court found that the regulations were content-neutral because they applied to all newspapers. The regulations served the significant government interests of safety and aesthetics. It held that the standard for determining whether the regulations were "narrowly tailored" was that they were "not substantially broader than necessary," and found that the regulations met this standard. Finally, it found there were adequate alternative channels since there were numerous possible locations for the newsracks on public property, and the publishers could display the name and logo of their newspapers in the color of their choice.

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MEMORANDUM



TO : [Illegible]

FROM : [Illegible]

SUBJECT : [Illegible]

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Some of the stated purposes of the ordinance were to (1) provide for pedestrian and driving safety and convenience; (2) restrict unreasonable interference with the flow of pedestrian or vehicular traffic; (3) provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants and mail boxes; (4) relocate and/or replace newsracks which result in a visual blight; and (5) maintain and protect the values of the surrounding properties.

Two years later, in Globe Newspaper Co. v. Beacon Hill Architectural Commission, 100 F.3d 175 (1<sup>st</sup> Cir. 1996), an outright ban on newsracks in the Beacon Hill Historic District was sustained. Again, this ban was put in place after years of discussion and hearings on the matter. These hearings involved, among other things, careful consideration of the burdens (on speech) and the benefits associated with the particular ban, and the alternative methods of communication available. In this case, the ban was justified entirely on aesthetics reasons and, as such, the court required that it be part of a comprehensive and coordinated effort to address aesthetic concerns within the affected community.

Finally, last month, in Atlanta Journal and Constitution v. City of Atlanta, Department of Aviation, 277 F.3d 1322 (11<sup>th</sup> Cir. 2002), the Court struck down the Hartsfield Airport's regulatory scheme, which sought to lease space in government-owned newsracks to publishers desiring to sell their newspapers within the terminal. The airport-owned newsracks contained advertising by advertisers selected by the city (in this case, Coca-Cola, as part of the 1996 Olympic promotions). The airport-owned newsracks would replace private newsracks and a modest, but profit-making, "rental fee" would be charged. The decision as to whether to allow a particular publication into the newsracks would be based upon an analysis of the "diversity of publications otherwise available".

Unfortunately, the city conducted no study of issues relating to safety, security, aesthetics, traffic flow, etc., to justify the scheme. The particular locations of the newsracks were apparently also unrelated to such concerns. The scheme, however, was actually struck down on the basis that the plan allowed advertisements for Coca-Cola, but not for the newspapers themselves, imposed a fee in excess of the regulatory costs, and vested unbridled discretion in the administrators to determine which publications to allow and which to not allow, i.e., the "diversity" test.

Summarizing, it is apparent that a content-neutral regulation imposing restrictions on the size, location and design/color of newsracks will be upheld if imposed under a regulatory scheme with sufficient standards and safeguards to prevent the exercise of unbridled discretion. The safety and aesthetic justifications for such, and the balance between these interests and First Amendment concerns, should be carefully developed.

In the present situation, the reasons advanced by staff to support regulations of newsracks concern both safety and aesthetics. The city would not be required to address the issue citywide; it can attempt to deal with the perceived problem on a smaller scale at first, especially if the problems are greater in one or more distinct areas. To the extent that there are certain areas in the city where there are greater aesthetic issues, i.e., infrastructure has been upgraded to create a more pleasing appearance, and the nature of the location creates greater safety issues (heavier pedestrian, vehicular, transit traffic, narrower sidewalks, etc.), these areas would logically be the

first place to address the issue. These areas may or may not fit within the boundaries of one or more community redevelopment districts, but could arguably be describable in some sort of overlay district wherein the regulation will take effect. The exact regulations would need to be considered and developed by Community Development staff after a referral from the City Commission to the City Manager.

With one exception mentioned below, the City Solutions program can certainly be a part of this regulation, provided that it otherwise complies with the regulatory scheme, i.e., color, location, with perhaps an exemption being made as to size, while still allowing publishers to utilize individual newsracks that met the regulatory requirements. As a matter of economics, an offer of free space in a City Solutions modular newsrack should appeal to publishers who wish to avoid the initial and maintenance costs of their newly designed, colored, etc. newsracks.

One feature of the City Solutions program that is more problematic is the proposal to allow off-site advertising on the back of the modular newsrack. It may be difficult to sustain allowing such advertising on the modular rack while disallowing advertising on individual newsracks, or other off-site structures located in the right-of-way. Furthermore, allowing off-premises advertising on the modular rack would certainly require an exemption from the city's current ban on billboards. Such an exemption might undercut the city's ability to otherwise defend its ban. These latter issues would also need to be examined by Community Development staff, prior to negotiating any agreement with City Solutions, without regard as to whether there is otherwise an attempt to regulate all newsracks.

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cc: Wayne Bowers, CRA Executive Director  
Karen Slevin, CRA Manager