



THE CITY OF KEY WEST

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To: The City Commission for The City of Key West
From: Ron Ramsingh, Chief Assistant City Attorney
Date: August 12, 2020/ September 29, 2020
RE: Proposed ordinance revision limiting news racks on Duval St.
Sponsor: Mayor Johnston
Meeting date: September 1, 2020- First Reading

EXECUTIVE SUMMARY

Proposed Action: To amend the current news rack ordinance to limit the number of news rack to one every 70 feet.

Background: Currently in the City of Key West, there are 906 locations where licensed news racks are located and 255 recognized locations for news racks that are vacant. Mayor Johnston has proposed an ordinance to adjust the number of news racks that are on Duval Street in order to address pedestrian congestion issues, as well as aesthetic and safety concerns within the historic district.

Regulations that address 1st amendment concerns can trigger different types of constitutional analyses depending if the regulation is based on the content of the speech. Recently, a federal appeals court sided with the Beacon Hill Architectural Commission regarding an ordinance that was passed banning all street furniture including news racks in the Beacon Hill area of Boston. The U.S. 1st Circuit Court of Appeals in *Globe Newspaper*

Company v. Beacon Hill Architectural Commission found that the ordinance was content neutral, therefore an intermediate level scrutiny was applied.

In *Globe Newspapers*, the Court found that the regulation addressed a legitimate governmental concern, the regulation was narrowly tailored to meet those concerns, and that the application of the regulation left open ample, alternative channels for the communication to be disseminated.

Similarly, the city's concerns here are 3 fold:

1. Congestion. Many news racks crowd the already congested sidewalks of Duval Street, which is the most heavily traveled in the city by pedestrians. The current ordinance allows news racks to be grouped together in groupings of 4; thereby compounding the concern for Duval Street. Having already narrow sidewalks due to the historic design of Duval Street, there are few places on the historic sidewalks that alleviates the city's concern for safety. This ordinance proposal can significantly help to space out the news racks to address congestion.
2. Aesthetics. As part of the ongoing effort to restore the historic character of Duval Street, limiting the number of news racks can help improve the aesthetic presentation of the historic district.
3. Safety. You will hear from city officials that many of the news racks are used to deposit trash, and some are even as coolers to store alcoholic beverages; especially in the lower part of Duval Street.

Options:

1. To defeat this proposed ordinance. The current ordinance that treats Duval Street the same as the rest of the island will remain.
2. To pass this proposed ordinance thereby limiting the amount of news racks on Duval Street by spacing the news racks 70 feet apart.

Proposed Changes for 2nd Reading on 10/6/2020:

- Initial, one-time registration fee for the publisher increased from \$25.00 to \$50.00;
- Annual registration increased from \$10.00 per box to \$20.00 per box;

Other points discussed at 1st reading:

- There is currently a 10 foot stand off from any fire hydrant. That restriction is not being changed. Chief Averette agrees with the current regulation.
- City of Miami Beach charges \$75.00 for initial registration, \$25.00 annually per box and \$25.00 re-inspection fees.
- City of Tampa charges an annual fee of \$38.93 per box.