

PENINSULA CORRIDOR JOINT POWERS BOARD

ORDINANCE NO. 1

**AN ORDINANCE TO REGULATE THE DISTRIBUTION
OF WRITTEN MATERIALS, ASSEMBLIES, DEMONSTRATIONS
AND OTHER EXPRESSIVE ACTIVITY ON PROPERTY OWNED OR
CONTROLLED BY THE PENINSULA CORRIDOR JOINT POWERS BOARD**

THIS ORDINANCE is adopted with reference to the following facts and circumstances which are found and declared by the Board of Directors.

1. In September 1988, the City and County of San Francisco, the Santa Clara County Transit District and the San Mateo County Transit District (collectively referred to as "Member Agencies") entered into a Joint Powers Agreement creating the Peninsula Corridor Joint Powers Board ("JPB") for the purpose of conducting planning studies related to the Peninsula Commute Service ("PCS").

2. In October 1991, the Member Agencies amended the Joint Powers Agreement to enable the JPB to plan, oversee and operate the PCS following the transfer of the system assets from the State of California to local control.

3. On December 27, 1991, the JPB purchased the Peninsula Corridor railroad right of way from Southern Pacific. In July, 1992, the JPB, through its contracted operator, began operation of the PCS.

4. Since taking over the operation of the railroad, the JPB has received requests from different groups and individuals

to engage in expressive activity at various train stations along the PCS.

5. The JPB's primary purpose is to plan and develop transportation facilities and to provide public transportation services in the form of passenger commute rail service in the Peninsula Corridor. Assemblies, demonstrations, distribution of written materials and other expressive activity, absent some reasonable regulation, may unreasonably interfere with the JPB's primary purpose of providing public transportation services.

6. It is a significant objective of the JPB to secure and promote the health, safety, welfare and convenience of persons in their use of property owned or controlled by the JPB and to prevent unreasonable interference with such use. Another important objective of the JPB is to provide consistent, accessible, ridership-enhancing public information.

7. The Board desires to ensure the safety of the JPB, its staff, agents, operator, operator's employees and the public, to prevent interference and obstruction with the efficient conduct of its primary transportation responsibilities, to protect property owned or controlled by the JPB and to enhance the aesthetic nature of such property, while at the same time permitting use of its facilities for ancillary purposes to the extent that these activities are constitutionally protected and can be carried out without undue interference with the JPB's primary mission.

8. To that end, the Board considers it in the best interest of the public to establish rules and regulations governing the use of property owned or controlled by the JPB for these ancillary expressive purposes.

9. The Board has carefully reviewed the proposed rules and regulations and has determined that adoption of such rules and regulations is necessary to ensure public safety, maintain the free flow of pedestrian traffic and protect and enhance the cleanliness and overall aesthetic appearance of property owned or controlled by the JPB in a manner consistent with federal and state constitutional requirements.

NOW, THEREFORE, BE IT ORDAINED by the Peninsula Corridor Joint Powers Board as follows:

SECTION I. DISTRIBUTION OR SALE OF PRINTED MATERIALS THROUGH NEWSRACKS.

A. DEFINITIONS.

1. A "newsrack" is any self-service or coin-operated box, device, container, storage unit or other dispenser placed, installed, used or maintained for the display, distribution or sale of newspapers, magazines, periodicals or any other publication.

2. A "newsrack owner" is the person(s) requesting a permit and who is responsible for the placement, installation, use and maintenance of any newsrack.

B. PERMIT REQUIRED FOR DISTRIBUTION OR SALE OF WRITTEN MATERIALS THROUGH NEWSRACKS. Persons may place, install, use or maintain any newsrack on property owned or controlled by the JPB

provided they have obtained a permit from the JPB and comply with its terms and conditions and other provisions of this Ordinance.

1. Applications for the placement, installation and use of newsracks shall be submitted to the JPB and must include all of the following information:

a. The name, contact person, mailing address, and telephone number of person(s) or organization requesting a permit;

b. The name of the publication to be sold or distributed from the newsrack and a copy of a recent issue of the publication;

c. The location (i.e. which train station) and duration of the proposed placement of the newsrack;

d. The frequency of publication of the material to be distributed or sold from the newsrack; and

e. A statement that the newsrack will be placed, installed, used and maintained in compliance with the rules of the JPB and that such newsrack will not interfere with the safe and efficient operation of the PCS.

2. The Executive Director, or his designee, shall grant the requested permit if the permit application complies with Subsection B of this Section I and there is sufficient space at the requested location to install an additional newsrack. All newsrack owners who obtain a newsrack permit shall also obtain and display an identification/permit marker provided by the JPB

on the front of the newsrack near the lower left face of the dispenser door.

3. If sufficient space does not exist to accommodate all newsracks sought to be placed at any given location, the Executive Director, or his designee, shall give priority to permit applicants as space becomes available on a first come, first served basis as follows:

a. First priority shall be given to daily publications, i.e., those publications published at least five (5) times a week;

b. Second priority shall be given to publications published more than once but fewer than five (5) times per week;

c. Third priority shall be given to weekly publications;

d. Fourth priority shall be given to bi-weekly or less frequent publications.

4. The Executive Director, or his designee, shall impose conditions upon the permit necessary to avoid injury to persons or damage to property, to maintain and enhance the aesthetic nature of property owned or controlled by the JPB and to assure the safe and orderly use of the train station lobbies and passenger waiting areas and to maintain the safe and orderly flow of passenger or other traffic. Such conditions may include, but are not limited to, (1) limitations on the number of newsracks to be placed, installed, used or maintained in any

given area of the train stations; (2) the duration that a newsrack may remain at any given location; and (3) specifying the location(s) where the newsrack may be placed, installed, used or maintained.

5. Any newsrack which is placed, installed, used or maintained pursuant to this Section I must comply with the following standards:

a. Any installed newsrack must be no more than four feet high, including pedestal, measured from the ground to the top of the newsrack, no more than two feet deep and no more than thirty inches wide.

b. Newsracks permitted under this Ordinance shall be of singular or modular design, pedestal mounted and bolted to the ground. No newsrack shall be chained or secured in any other way to any object. No skirting will be allowed which inhibits sweeping around the pedestal. Three newsracks which meet the intent of this Ordinance are: (1) Model 49-16 or 100 style manufactured by "Sho-Rack;" (2) Model KJ50/KJ55F manufactured by "K-Jack;" and (3) Model M-30/M-33 manufactured by "National Newsvend."

c. If modular newsracks are used, the compartments of modular newsracks shall be placed in such a manner as to utilize no more than two (2) horizontal rows of six (6) compartments per row.

d. Although a specific color is not required, the JPB encourages the use of "Federal Brown" as manufactured by "Sho-Rack" or "San Jose Brown" as manufactured by "K-Jack."

e. It is intended that provisions of the Ordinance be consistent with the accessibility standards of the Americans With Disabilities Act of 1990, Public Law 101-336, as amended. It is the responsibility of the owner of each newsrack to comply with all such provisions.

f. Advertisements of any kind shall not be displayed on any newsrack, except for information regarding the sale or distribution of the publication to be sold or distributed therein.

g. Every newsrack owner who places, installs, uses or maintains a newsrack pursuant to this Section I shall have its name, contact person, if any, mailing address and telephone number affixed thereto in a place where such information can be easily seen. Such identifying information must be kept current at all times.

i. No newsrack shall be abandoned. A newsrack shall be deemed abandoned if no copies of the publication designated to be distributed or sold therefrom are located in the newsrack for a period of thirty (30) consecutive days, except that if a newsrack remains empty due to labor strike or other temporary interruption beyond the control and not the fault of the newsrack owner, it shall not be deemed abandoned.

j. All newsracks must be maintained in good working condition at all times. For example, all newsracks must be reasonably free from dirt and grease, be reasonably free from chipped, faded, peeling or cracked paint, be reasonably free from rust and corrosion, be free from graffiti, have no broken or cracked plastic or glass parts and have no broken structural parts. Each newsrack which requires the deposit of money must be equipped with an operable coin return to permit persons to receive a refund in the event they are unable to receive the publication for which they paid.

k. No publication shall be kept or maintained in any newsrack in such a manner so as to expose to the public view any statements, words, picture, illustration, cartoon or drawing describing or showing any explicit sexual acts or sexual organs.

6. The newsrack owner is responsible for the purchase, installation, maintenance and repair of its newsrack and, upon termination or cancellation of any permit issued pursuant to this Section I, the removal and disposal of its newsrack.

7. Violation of this Section I shall be sufficient cause for cancellation of any permit issued pursuant to this Section I and removal of the newsrack from the property owned or controlled by the JPB.

a. Upon cancellation of the permit, any newsrack which poses a danger to the health or safety of any person may be summarily removed by a designated representative of the JPB.

b. Upon cancellation of the permit, any newsrack which does not pose a danger to the health or safety of any person may be removed by a designated representative of the JPB after the JPB has given notice to the newsrack owner that the newsrack is in violation of this Ordinance. Notice shall be given by mailing the notice to the newsrack owner at the last known address of the owner. In addition, the JPB may post the notice on the newsrack in violation of this Ordinance. Notice shall be deemed given upon the date of mailing or date of posting, whichever is later. The JPB shall inform the newsrack owner of the violations and give the owner ten (10) days to remedy the violation or to contest the removal of the newsrack. The owner of the newsrack may contest the removal of the newsrack by filing a written request for a hearing before the JPB Property Manager within ten (10) days of the notice of violation. An informal hearing shall be held, at which time the owner of the newsrack shall have an opportunity to present oral and written evidence. The newsrack may be removed if the owner of such newsrack (1) has not requested a hearing nor remedied the violation within ten (10) days following the date of notification of the violation, or (2) has not remedied any violation within ten (10) days following a requested hearing, if there is a determination at such hearing that the newsrack is in violation of this Ordinance.

8. In the event a newsrack is removed pursuant to this Section I, the JPB shall retain the removed newsrack for a

period of thirty (30) days following the date written notice of the removal has been given to the newsrack owner. Notice shall be deemed complete upon the date of mailing. The newsrack owner may recover the newsrack during that thirty day period, provided the owner reimburses the JPB for costs and expenses incurred by the JPB for the removal, transport and storage of the newsrack. Upon the expiration of such thirty (30) day period, the JPB may dispose of the newsrack and the newsrack owner shall be responsible for all costs and expenses incurred by the JPB for the removal, transport, storage and disposal of the removed newsrack.

9. The JPB may delay, cancel or modify any permit issued pursuant to this Section I when public safety or the safe and efficient operation of the transit system so requires.

10. The requirement in Section I.B.5.a that newsracks be pedestal mounted and bolted to the ground shall be implemented on a station-by-station basis. Upon determining that this requirement is to be implemented at a specific station, the JPB shall give written notice to each newsrack owner who holds a permit for a newsrack at such station advising of the effectiveness of this requirement and providing each newsrack owner sixty (60) days in which to remove nonconforming newsracks. Upon implementation of this requirement, the newsrack owner may be required to move a conforming newsrack or install a conforming newsrack at a new location at the same train station. All other

provisions of this Section I shall become effective pursuant to Section IV of this Ordinance.

SECTION II. POSTING SIGNS ON PROPERTY OWNED OR CONTROLLED BY THE JPB.

A. POSTING GENERALLY PROHIBITED. No person shall affix any sign (including any card, banner, handbill, poster, drawing, printing, writing, painting, decoration, pictorial representation, advertisement or publicity device or notice of any kind) to any portion of any train, train station, lobby, passenger waiting area, bench or any other property or facility owned or controlled by the JPB.

B. LIMITED ADVERTISING ON TRAINS AUTHORIZED. The JPB may lease space in the trains for advertising. This advertising space is limited to predetermined and designed locations in the trains. These advertising spaces shall be leased on a first come, first served basis.

C. TRANSIT-RELATED BULLETIN BOARD. The JPB may maintain a bulletin board at any of the train stations along the PCS which shall be used exclusively by JPB staff, and the Citizens Advisory Committee in its capacity as an advisory committee to the JPB, for transit-related informational notices, such as PCS schedules, fares and information, emergency call numbers, Operation Lifesaver/Red Block, connecting transit information, connecting Amtrak train information, bus information, check acceptance and refund policy, bike program and retrofit information, capital projects/delay notices, related meeting notices, and meeting schedules for the JPB and other JPB related meetings.

D. COMMUNITY POSTING AREAS. Subject to the availability of funds and subject to their appropriation from time to time by the Board to cover costs of purchase, installation and maintenance, the JPB shall install a community bulletin board at most train stations, within which members of the public may affix signs, pursuant to rules and regulations established by the JPB.

SECTION III. REGULATION OF ASSEMBLIES, DEMONSTRATIONS, DISTRIBUTION OR SALE OF WRITTEN MATERIALS, DISPLAY OF SIGNS AND SOLICITATION OF FUNDS

A. ACTIVITIES PROHIBITED IN SPECIFIED AREAS.

1. No person shall conduct or participate in assembling, demonstrating, distributing written materials, selling written materials, displaying signs or soliciting funds in or on any train operated by or for the JPB (except the JPB staff, and other authorized representatives of the JPB, may distribute transit-related printed materials on the trains for the purpose of informing passengers of PCS-related services and other public transportation related information).

2. No person shall conduct or participate in assembling, demonstrating, selling written materials, distributing written materials, displaying signs or soliciting funds in any maintenance facility, storage yard, office or work area used by or for the JPB.

3. No person shall conduct or participate in assembling, demonstrating, selling written materials, distributing written materials, displaying signs or soliciting funds in the area between the railroad tracks and the white

"safety line" displayed on the station platform floor adjacent to the railroad tracks.

B. ACTIVITIES AUTHORIZED IN OTHER AREAS.

1. In areas where expressive activity is not prohibited in Subsection A of this Section III, persons may conduct or participate in assembling, demonstrating, distributing or selling written materials, displaying signs or soliciting funds on property owned or controlled by the JPB provided they comply with the terms and conditions of this ordinance.

2. No person, while engaging in expressive activity shall (1) interfere with access to or egress from the train station lobbies or passenger waiting areas or prevent or interfere with any person boarding or departing a train; (2) interfere with the JPB staff, its agents, operator, operator's employees or subcontractors and the conduct of their business; (3) harass, threaten or coerce any person; (4) physically obstruct, delay or interfere with the free movement of any person without their consent; (5) leave written materials unattended on property owned or controlled by the JPB or cause to discard or abandon written materials; or (6) display or distribute obscene material. Any such conduct shall be sufficient cause for the removal of persons responsible for such activity from property owned or controlled by the JPB.

3. Any person conducting or participating in expressive activity shall be responsible for the removal of all

written materials and the clean up of the area(s) where the activity has been conducted.

4. The JPB may prohibit or cease from continuing any hereinabove authorized activity when public safety or the safe and efficient operation of the transit system so requires.

SECTION IV. EFFECTIVE DATE

A. This Ordinance shall be effective thirty (30) days after it is adopted.

SECTION V. SEVERABILITY

A. If any provision of this Ordinance or application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance as severable.

Adopted this 2nd day of March, 1995, by the following vote of the Board.

AYES: Honda, Lloyd, McKenna, McCown, Teglia, Rubin

NOES:

ABSENT: Adams, Hsieh, Nevin

Michael D. Nevin
PRESIDENT

ATTEST:

Hanna Piding
Secretary of the Board