



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, PhD, Community Development Director

DATE: December 10, 2009

SUBJECT: An ordinance amending Chapter 20, Article IV of the Urbana City Code by adding a new Section 20-48 creating a Modular News Rack District in the Courthouse Block

Introduction

The attached draft ordinance is intended to implement an existing formal agreement between the City of Urbana and Champaign County concerning newspaper vending in the Courthouse block. The primary purpose of the agreement is to help secure the considerable public investment recently made in restoring the County Courthouse. Within the limited scope of this ordinance, this would be accomplished by insuring that newspaper vending machines (“news racks”) contribute to the overall design quality of the courthouse grounds. The design requirements necessary for this project are balanced with customers’ needs to access print media conveniently and safely, and with publishers’ needs and rights to disseminate information.

Background

On May 18, 2009, the Urbana City Council approved an agreement with Champaign County (Ordinance No. 2009-05-048) for outdoor placement of a newspaper rack on Champaign County Courthouse grounds. Essentially the City agreed to purchase and install the rack, and the County agreed to provide a location and require periodicals to be vended from units in the rack. At that time the City was working to install a news rack structure with a public art component. Due to cost considerations, on September 8, 2009, the Urbana City Council directed City staff to purchase a specific commercial news rack without a public art component. The City Council on September 21, 2009 approved an amended agreement with Champaign County (Ordinance 2009-09-104) which takes into account the revised rack design. The news rack approved and agreed upon by Champaign County’s Facilities Committee, Champaign County Board, and Urbana City Council is illustrated below.



Approved news rack by Rak Systems, Inc.

Discussion

By formal agreement, Champaign County will require that any periodicals vended outdoors on their property be distributed from the City-provided rack. However, most if not all of the private news racks in the block are located on City right-of-way – specifically at the corner of Broadway and Elm Street -- rather than on County property. In order to manage the placement of news racks, a modular news rack district is proposed. In Illinois, news rack districts are now utilized by municipalities such as Chicago, Des Plaines, Downers Grove, Geneva, Normal, St. Charles, and Wheaton.

In conformance with First Amendment rights and protections, the City’s proposed program would *organize* vending without overly restricting or prohibiting distribution of periodicals. The proposed program would avoid issues raised in two U.S. Supreme Court rulings on the matter (City of Lakewood v. Plain Dealer Publishing Co. [1988] and City of Cincinnati v. Discovery Network, Inc. [1993]). In administering the program, permit applications will require no discretion for their issuance. The City will accept applications from periodicals regardless of content meaning that administration will be “content neutral.” In the rare case that an exception is taken to denial of a permit, an appeals process is provided.

The Public Works Director would be responsible for overseeing the administration of this ordinance. Publishers would apply for a Modular Space Permit on a form provided by the City. Within five working days, the City would issue a permit so long as necessary information is provided with the application and as long as unit spaces are available. Applicants will supply

information such as publisher name; business address, phone number, and e-mail address; publication name and frequency of publication; the date that the publication was first distributed in Urbana; as well as other information necessary to allocate the space in the Modular Newspaper Dispensing Devices in accordance with the ordinance.

The City will be providing twelve vending units. The draft ordinance anticipates situations where more units are requested than available, in which case a predetermined, content-neutral method for allocation of those spaces would be followed.

City staff has surveyed five of the seven publishers currently distributing periodicals in Urbana at the corner of Elm Street and Broadway Avenue and which might have an interest in using the proposed modular rack to distribute periodicals. These periodicals include: *The News-Gazette*, *The Chicago Tribune*, *USA Today*, *Accent*, *News-Gazette Homefinder*, *Daily Illini*, *The Buzz*, *Thrifty Nickel*, *Real Estate Book*, *Apartment Finder*, and *Illini Wheels and Deals*. Of these, the publishers of seven periodicals currently distributed in the Courthouse block have indicated they would like to use the rack, and two tentatively would like to use the rack. The publishers of two existing periodicals have not yet been reached by the City. Additionally, the publishers of five new periodicals would use the rack if spaced allowed. These periodicals include: *The New York Times*, *Sun Times*, *Rantoul Press*, *At Home Magazine*, and *Champaign County Business Magazine*.

No space rental fees are being proposed at this time as the City's administrative costs would be minimal, and generally speaking the current business climate for print media is very challenging. Too, charging significant fees might be counterproductive as doing so might simply shift vending to just outside the proposed Modular News Rack District.

Fiscal Impact

On September 8, 2009, the City Council authorized spending up to \$4,000 for the purchase of the commercial modular newspaper rack. A vendor quote by Rak Systems, Inc. indicates this amount for purchase and freight. Purchase of a news rack meeting the agreed upon design and specifications will take place through established competitive purchase procedures. Upon delivery, the City would need to install (or pay for installation) of the rack on the Courthouse grounds.

Specifically in terms of the attached draft ordinance, approval of a Modular News Rack District would result in little to no ongoing costs beyond the minimal City staff time involved with administering permits for space in the rack. Neither would the program be a revenue generator as City staff, for the reasons discussed above, does not anticipate collecting rental fees from publishers.

Recommendation

City staff recommends that the Committee of the Whole forward the attached ordinance to the City Council's December 21, 2009 meeting with a recommendation for approval, as presented.

Prepared by:

Robert Myers, AICP
Planning Manager

Cc:

Anna Hochhalter, Public Arts Coordinator

Attachments:

Attachment A: Modular News Rack District

Attachment B: Draft Modular News Rack District Ordinance

Ordinance No. 2009-12-122

AN ORDINANCE AMENDING CHAPTER 20, ARTICLE IV OF THE URBANA CITY CODE BY
ADDING A NEW SECTION 20-48 CREATING A MODULAR NEWS RACK DISTRICT
IN THE COURTHOUSE BLOCK

WHEREAS, through the efforts of the County of Champaign and the City of Urbana, a totally renovated courthouse and an aesthetically pleasing "Champaign County Courthouse Square" has been recently completed; and

WHEREAS, the unregulated placement and maintenance of individual newspaper racks interfere with the free and unimpeded use of the public rights-of-way, and other public spaces, and threatens the health, safety, and welfare of persons who use the facilities located in the Champaign County Courthouse; and

WHEREAS, the unregulated placement of multicolored, broken, rusted, and abandoned news racks of various shapes and sizes in and around the Champaign County Courthouse block significantly detracts from the aesthetic character of the surrounding areas; and

WHEREAS, in Ordinance 2009-09-104 the Urbana City Council on September 21, 2009 approved an amended agreement with the County of Champaign allowing placement of a modular newspaper rack on the Champaign County Courthouse property; and

WHEREAS, the Urbana City Council finds that the matters recited above are true and thus the Urbana City Council further finds that there is need for reasonable time, place, and manner of restrictions regarding the matter of newspaper dispensing devices in and around the Champaign County Courthouse block.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1:

That the Urbana City Code, Section 20 (Streets, Sidewalks, and Other Public Places), Article IV (Obstructions), be and is hereby amended by adding the

following section thereto:

Section 20-48. Newspaper Dispensing Devices in "the Courthouse Block."

A. *Purpose.* The purpose of this Ordinance is to promote the health and safety of the users of the Courthouse block while allowing outdoor dispensing of newspapers and other publications in a way which will:

1. Provide for pedestrian and driving safety and convenience;
2. Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress and egress from the Champaign County Courthouse, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;
3. Provide for the safety of the public and property during windstorms and other inclement weather;
4. Replace, remove, or relocate individual news racks that have created visual blight on the public rights-of-way or unreasonably detracted from the aesthetics of the Champaign County Courthouse adjacent businesses, landscaping, and other improvements;
5. Maintain and protect the values of surrounding properties; and
6. Reduce unnecessary exposure of the public to personal injury and property damage.

B. *Definitions.* The following words, terms and phrases, when used in this Section shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Abandoned. Any compartment of a modular news rack, that does not contain the newspaper or other publication specified therefore for more than eight consecutive days for a daily publication, twelve consecutive days for a weekly publication, twenty consecutive days for a bi-weekly publication, 36 days for a monthly publication, or 70 days for a bi-monthly publication.

Compartment. The individual space within a modular news rack that dispenses one newspaper or other publication, including the door, coin return mechanism, and associated hardware.

Modular News Rack. A newspaper dispensing device that is designed with multiple separate enclosed compartments to accommodate at any one time the display, sale or distribution of multiple distinct and separate newspapers or other publications.

Modular News Rack District. A part of the Northeast Quarter of Section 17, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, being more particularly described as follows:

All of the area bounded on the north by the existing northerly Right-of-Way line of Main Street, on the south by the existing southerly Right-of-Way line of Elm Street, on the west by the existing westerly Right-of-Way line of Broadway Avenue and on the east by the existing easterly Right-of-Way line of Vine Street.

All situated in the City of Urbana, Champaign County, Illinois, and as illustrated by a map entitled "Modular News Rack District", the latest version of which is on file with the office of the Urbana City Clerk.

Newspapers and Other Publications. Includes newspapers, periodicals, advertising circulars, and all other printed materials that may be distributed through the use of news racks.

Newspaper Dispensing Device. Any unmanned, self-service or coin-operated box, container, storage unit, or other dispenser not located within an enclosed space and other than a Modular News Rack.

Public Rights-of-Way. All rights-of-way dedicated to or owned by the City and include, but are not limited to, public streets, alleys, sidewalks, parkways, or easements.

Public Works Director, or Director. The Director of the City of Urbana's Department of Public Works or designee.

Publisher. The person or other legal entity selling, displaying or distributing newspapers or other publications in a modular newspaper dispensing device.

C. *Administration.* The Public Works Director is hereby responsible for administration of the Ordinance and shall have the following powers and duties:

1. To administer and rule upon the application for, and the issuance, renewal, suspension, denial, and revocation of Modular Space Permits as set forth in this Ordinance.
2. To conduct or provide for such inspections of modular newspaper dispensing devices as shall be necessary to determine and ensure compliance with the provisions of this Ordinance and other applicable provisions of law.
3. To take such further actions as the Director shall deem necessary to carry out the purposes and intent of this ordinance and to exercise such additional powers in furtherance thereof as are implied or incident to those powers and duties expressly set forth in this ordinance.

D. *Modular Newspaper Dispensing Devices; Generally.*

1. *Modular Space Permit Required.* Within the Modular News Rack District, a Modular Space Permit shall be required to display newspapers and other publications in a Modular Newspaper Dispensing Device.
2. *Operation in Violation of Permit Prohibited.* It shall be unlawful for any Publisher to sell, display, or distribute newspapers, etc. within the Modular News Rack District except in the manner authorized by, and in compliance with, the provisions of this Ordinance and by the Licensee's Modular Space Permit.

E. *Application and Permit for Space in a Modular News Rack.*

1. Applications for a permit under this Ordinance shall be made on forms provided by the Public Works Director. The Applications shall be

provided immediately upon request. The Application shall include information as to the name of publisher, their business address and phone number, and e-mail address, the name of the publication and the frequency of the publication, and the date that the publication was first distributed in Urbana as well as other information necessary to allocate the space in the Modular Newspaper Dispensing Devices in accordance with this ordinance.

2. Within five (5) business days of receipt of an application for a permit under this Section, the Public Works Director shall grant the application and issue the permit provided (1) that the information contained in the above Subsection, where applicable, is complied with, and (2) that compartments are available. If the terms and conditions contained in the above Subsection are not complied with, the Director shall, within five (5) business days of receipt of the application for a permit, deny the application, and state the reasons in writing for such denial.

F. *Provisions of Modular News Racks.* The City of Urbana shall provide for the placement of one or more modular news rack(s) in the Modular News Rack District. The Publisher shall be permitted to have access to the modular news rack compartment for the vending of the Publisher's publications.

1. Modular news racks shall be installed and maintained by the City.
2. After the initial installation of a modular news rack, the total number of compartments in the modular news rack in the Modular News Rack District may be increased or decreased by the Public Works Director only consistent with the purposes stated in this Section. Modular news racks shall be placed in locations determined by the Director in the district which afford easy, convenient service to pedestrians but which do not obstruct or interfere with access to abutting properties and which do not impede or endanger pedestrian, bicycle or vehicular traffic.
3. There shall be no newspaper dispensing devices of any type located within the Modular News Rack District. All newspaper dispensing

devices existing upon the enactment of this Ordinance shall be removed from the Modular News Rack District within fourteen days after placement of the modular news rack. Any newspaper dispensing device not so removed or otherwise placed in violation of this Section shall be subject to confiscation by the City.

G. *Allocation of Modular News Rack Compartments.* The Public Works Director shall ensure that modular news rack compartments are allocated in accordance with the following procedures:

1. Each compartment in a modular news rack shall contain copies of only one newspaper or other publication and have a door that is sized to fit and display such newspaper or other publication.
2. The Director shall ensure that there are enough compartments in each modular news rack to accommodate all publishers who initially wish to distribute their newspapers and other publications at that location, up to a maximum of 12 compartments per news rack in the Modular News Rack District. If more than 12 publishers wish to distribute newspapers or other publications at that location, then the compartments shall be allocated as follows:
 - a. Priority shall be given to publishers who continuously have distributed newspapers or other publications in news racks in the County Courthouse block for more than 12 months before the effective date of this ordinance, as indicated by the publisher's affidavit provided to the City;
 - b. Among publishers who have priority under this Subsection, compartments will be allocated first to newspapers and other publications issued at least five days per week, second to newspapers and other publications issued between two and four days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently;
 - c. If there are more compartments than publishers with priority under this Section, then the Director shall allocate the remaining

compartments among publishers who do not have priority, first to newspapers and other publications issued at least five days per week, second to newspapers and other publications issued between two and four days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently.

- d. Notwithstanding the requirements of this Subsection, no newspaper or other publication may receive a second space in a modular news rack until all other interested publishers have had the opportunity to have their newspaper or other publication allocated to a compartment.
 - e. Whenever additional compartments become available, they shall be allocated in the manner described in this Subsection; and,
 - f. In the event two or more publishers have equal priority under this Subsection, then allocation shall be by lottery or other random method.
3. For initial assignment of news rack space, the City shall notify all publishers who currently distribute their newspapers and publications in the district where the City is installing a modular news rack. Such notification shall, at a minimum, consist of a copy of the City's Application for Modular News Rack Space. On the application, each publisher shall include the number of compartments and the locations it is seeking. All applications shall be returned to the Public Works Director, who shall ensure that compartments are allocated in accordance with the procedure set forth above.
4. After the initial assignment of news rack space, any publisher seeking to place its publication within the Modular News Rack District must fill out an Application for Modular News Rack Space and submit it to the Public Works Director who shall ensure that compartments are allocated in accordance with the procedure set forth above.
5. The opportunity of publishers to have their newspapers or other publications distributed from a modular news rack shall not be

affected whatsoever by their content, consistent with the First Amendment to the United States Constitution.

- H. *Appeal of Denied Permits.* The decision of the Public Works Director in refusing to grant a permit under this Section shall be appealable. The applicant shall have the right to appeal the decision to the City Council, provided that the applicant files a written notice of appeal, including a statement of the grounds of appeal, with the Public Works Director within fifteen (15) calendar days after notice of the decision of the Public Works Director. The City Council shall set a hearing on the appeal, and notice of such time and place shall be given in the same manner as specified in this Section. The City Council shall have the power to reverse, affirm or modify the decision of the Director. In making its determination, the City Council shall only consider the standards set forth in this Section. Its decision shall be rendered the same day as the hearing. The decision of the City Council shall be final.
- I. *Emergency.* Notwithstanding any other provision of this Section, however, the City may remove its Modular Newspaper Dispensing Devices at any time.
- J. *Revocation of Permits.* The Public Works Director shall revoke any permit issued under the terms of this Section after a finding of any of the following causes which shall constitute violations of this Section:
1. Fraud, misrepresentation, or any false statement contained in the application for a permit;
 2. Violation of any term of the permit granted to the permittee;
 3. Violation of any term of this Section.
- K. *Penalties.* Any person or entity who shall be guilty of a violation of any of the provisions of this Section shall be subject to a fine of not less than seventy-five dollars (\$75.00) and not more than seven hundred fifty dollars (\$750.00). A separate offense shall be deemed committed for every day a violation continues.

Section 2. "Attachment A: Modular News Rack District", depicting the area subject to this Ordinance as defined in Section 1, is attached hereto and made a part hereof.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this Section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Section.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said City Council.

PASSED by the City Council this _____ day of _____, 2009.

AYES:

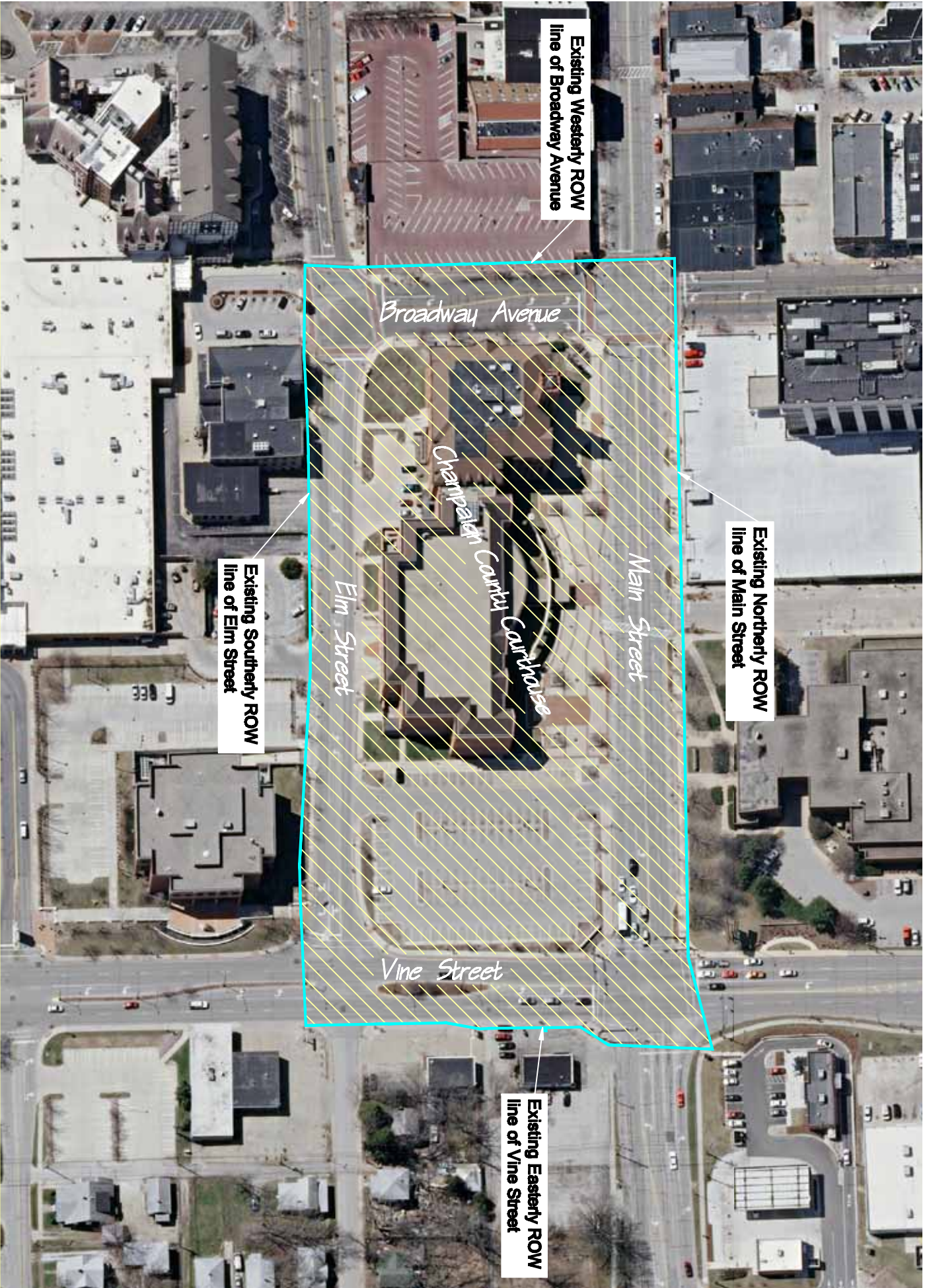
NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2009.

Laurel Lunt Prussing, Mayor



Existing Westerny ROW
line of Broadway Avenue

Broadway Avenue

Existing Northerny ROW
line of Main Street

Main Street

Champaign County
Courthouse

Existing Southerny ROW
line of Elm Street

Elm Street

Existing Easterny ROW
line of Vine Street

Vine Street

Attachment A
Modular News Rack District



City of Urbana
Public Works Department
Engineering Division
Date: 11/13/2009
Drawn by: BWF

