

## ARTICLE 10

### NEWSRACKS

Section	Subject Matter
3-10.01	FINDINGS AND PURPOSE
3-10.02	SCOPE AND DEFINITIONS
3-10.03	PERMISSIBLE TYPES OF NEWSRACKS
3-10.04	STANDARDS FOR NEWSRACK PLACEMENT
3-10.05	APPEALS
3-10.06	MAINTENANCE OF NEWSRACKS REQUIRED
3-10.07	REPAIR OR REPLACEMENT OF DAMAGED OR STOLEN NEWSRACKS - REMOVAL UPON DISCONTINUANCE
3-10.08	REMOVAL OF NEWSRACKS UPON DISCONTINUANCE
3-10.09	IDENTIFICATION
3-10.10	ABATEMENT OF VIOLATION
3-10.11	INSURANCE
3-10.12	INDEMNIFICATION

## ARTICLE 10

### NEWSRACKS

SEC. 3-10.01 FINDINGS AND PURPOSE. The City Council finds and declares that:

- a. There is a substantial governmental interest in promoting the public health, safety, welfare, and convenience by ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.
- b. Public streets and sidewalks are public forums and their reasonable use in distributing and circulating newspapers by means of newsracks is not only a constitutionally protected right but serves a significant purpose in providing access to news for citizens of the City.
- c. The reasonable use of newsracks within the public rights-of-way and other public property can be accomplished without interfering with the normal and reasonable use of these areas by the public, all while still providing ample access to the news.
- d. The public health, safety, welfare, and convenience require that:
  - (1) Unreasonable interference with motorist or pedestrian traffic be avoided;
  - (2) Obstruction of views of traffic signs and street-crossing pedestrians be eliminated;
  - (3) Damage done to sidewalks or streets be minimized and repaired;
  - (4) The good appearance of the public streets and grounds be maintained;
  - (5) Trees and other landscaping be allowed to grow without disturbance;
  - (6) Access to emergency and other public facilities be maintained; and
  - (7) Ingress and egress from properties adjoining the public rights-of-way be maintained.
- e. The need for specific standards for placement of newsracks on sidewalk and other public rights-of-way is the greatest in the Downtown Redevelopment Project Area due to the greater frequency of pedestrian and vehicular traffic and newsrack locations in such area, compared to other parts of the City. Therefore, the Council determines that it is appropriate to provide for specific location standards for newsracks in the Downtown Redevelopment Project Area and to impose more general location standards on newsracks located outside of such area. In addition, the Council also finds and declares that the adoption of standardized design requirements for newsracks located in the Downtown Redevelopment Project Area complements the revitalization objectives of the Redevelopment Plan and therefore also promotes

the public welfare and safety of such Area.

- f. The regulation of newsracks as set forth in this article provides the least intrusive and burdensome means for ensuring that the purposes stated in this article are carried out while still providing ample opportunities for the distribution of news to the citizens of the City by means of newsracks located within public rights-of-way and public property.

SEC. 3-10.02 SCOPE AND DEFINITIONS. The person or persons responsible for the installation, use or maintenance of any newsrack, including a temporary newsrack, on public property, a public right-of-way area, any public sidewalk, or other public easement adjacent to any street shall comply with this article prior to the installation or continued use of any newsrack now or hereafter located on such property. As used herein, "Person" shall have the meaning set forth in Section 1-2.05 of this code and shall include the person's agents, assigns, and representatives. The term "newsrack" as used herein shall include one or more newsracks physically connected or joined to one or more other newsracks in accordance with the regulations contained in this article (hereinafter sometimes "newsrack group").

SEC. 3-10.03 PERMISSIBLE TYPES OF NEWSRACKS.

- a. Standardized Newsracks. Newsracks in a multi-unit configuration which are permanently affixed to the ground and conform to standard specifications for newsracks established by the Director of Public Works shall be required in the Downtown Redevelopment Project Area thirty (30) days after the effective date of this ordinance and such standardized newsracks are permitted in other parts of the City.
  - (1) Temporary Newsracks. A temporary newsrack of a design which does not meet the City's standard specifications may be located within the Downtown Redevelopment Project Area for a period not to exceed sixty (60) days in order to determine the suitability of a site as a long-term newsrack location, provided, however, that any temporary newsrack complies with the height and placement standards set forth in this section and Section 3-10.04 and that the City Building Official is notified of the site and date upon which such temporary newsrack is placed.
  - (2) Arrangement. The compartments of standardized newsracks shall be placed in such a manner as to utilize no more than two (2) horizontal rows of four (4) compartments per row in any newsrack group.
- b. Other Newsracks. Any newsrack of design commonly in trade use may be used in any location outside the Downtown Redevelopment Project Area. Any such newsrack shall not be chained, bolted, or otherwise attached to any property, utility, or fixture not owned by the owner of the newsrack without the consent of the owner of the property. Single-unit newsracks shall not be chained, bolted, or otherwise attached to any tree, shrub, or other plant, nor situated upon any landscaped area.
- c. Permissible Height. The height of any newsrack shall be no greater than fifty-five (55) inches measured from the ground to the top surface of the newsrack.

SEC. 3-10.04 STANDARDS FOR NEWSRACK PLACEMENT.

- a. City-wide Location Standards. No newsrack shall be installed, used, or maintained in any location upon public property or within public easements adjacent to streets where such installation, use, or maintenance endangers the safety of persons or property or interferes with public utility, public transportation, or other government use or unreasonably interferes with or impedes the pedestrian traffic, the sight distance of bicycle or vehicle riders, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of traffic signs or signals, hydrants, or mailboxes.
  
- b. Additional Location Standards Applicable in the Downtown Redevelopment Project Area. The following additional location standards shall apply in the Downtown Redevelopment Project Area, provided, however, that a modification of any of such placement guidelines may be approved pursuant to subsection c.
  - (1) When a sidewalk is contiguous to a street curb, newsracks shall be placed on the side of the sidewalk away from the curb so that the back edge of the newsrack is not farther than six (6) inches from the back edge of the sidewalk adjoining a building or property line.
  - (2) When a sidewalk is separated from a street by a planter strip, newsracks may be placed on either side of the sidewalk so that the back edge of the newsrack is no farther than six (6) inches from the edge of the sidewalk.
  - (3) When a newsrack is placed adjacent to the wall of any building, the newsrack shall be placed with its long axis parallel to the building and with the back edge of the newsrack six (6) inches away from the building; provided, however, that no newsrack may be placed in a manner which impedes or blocks a window.
  - (4) Notwithstanding subsection (1), (2), or (3), a newsrack shall be placed so that clear space for pedestrian and bicycle passage shall be maintained as provided by the following two standards:
    - (i) There shall be at least five (5) feet clear space on the width of the sidewalk;
    - (ii) There shall be at least eight (8) feet clear space for bicycle and pedestrian paths.
  - (5) No newsrack shall be installed, used, or maintained within the following distances, measured from the street unless otherwise indicated, from the following:
    - (i) Within three (3) feet of any marked crosswalk;
    - (ii) Within three (3) feet of the area adjacent to the curb return of any intersection with unmarked crosswalks;
    - (iii) Within three (3) feet of any unmarked crosswalk at a "T" intersection;
    - (iv) Within a five (5) foot radius of any fire hydrant, fire call box, or other emergency facility;

- (v) Within three (3) feet of any driveway, entrance to a building, or sidewalk leading to the entrance of a building;
  - (vi) In front of, or so situated so as to impede access to, any bus bench, shelter, or curb marked to designate a no-parking area; and
  - (vii) Within three (3) feet of any no-parking or no-stopping zone, unless the newsrack is located on the side of the sidewalk farthest from the street.
- c. Modification of Specific Placement Standards. The City Building Official may waive or modify the standards for newsrack placement contained in subsection b. upon a showing of good cause and the City Building Official's determination that placing a newsrack at the location requiring the modification would not endanger the public health or safety. Any modification denied or approved by the City Building Official shall be appealable to the Director of Public Works. The appeal shall be subject to the procedures set forth in Section 3-10.05.

SEC. 3-10.05 APPEALS. The City Building Official's decision on a modification application may be appealed by the applicant or by any other aggrieved person to the Director of Public Works by filing a written notice of appeal with the Director no later than fifteen (15) days after the mailing of the City Building Official's notice of decision. The appellant shall also file a copy of the notice of appeal with the City Attorney. The Director of Public Works shall hold an informal hearing no later than twenty-one (21) days after the filing of the notice of appeal. A decision on such appeal shall be mailed within five (5) days after the close of the hearing. Any hearing may be continued upon the concurrence of the Director, the appellant, and the person owning or responsible for the newsrack. The Director's decision shall be final.

SEC. 3-10.06 MAINTENANCE OF NEWSRACKS REQUIRED. Each newsrack shall be maintained by the owner, or other person responsible for such newsrack, in a neat and clean condition and in good repair at all times.

SEC. 3-10.07 REPAIR OR REPLACEMENT OF DAMAGED OR STOLEN NEWSRACKS - REMOVAL UPON DISCONTINUANCE. Newsracks that have been damaged or stolen shall be repaired or replaced as soon as is practical, unless the person responsible for such newsrack wishes to abandon the location, in which event such person shall promptly remove the newsrack or compartment, as the case may be.

SEC. 3-10.08 REMOVAL OF NEWSRACKS UPON DISCONTINUANCE. When use of any newsrack is permanently discontinued, it shall be removed and the location restored to its previous condition, normal wear and tear excepted.

SEC. 3-10.09 IDENTIFICATION. The owner or person responsible for maintaining a newsrack shall have his or her name, address, and telephone number affixed to it in a place where such information will be readily visible on the front of the newsrack.

SEC. 3-10.10 ABATEMENT OF VIOLATION.

- a. Removal Sanctioned. A newsrack installed, maintained, or abandoned in violation of this article may be seized and removed by the City Building Official only in accordance with the following standards.

- b. Notification Prior to Removal. Before any newsrack is seized, the person responsible for its installation and maintenance shall be notified by mail of the proposed seizure and given fifteen (15) days from the mailing date of such notice to remedy the violation or request a hearing before the Director of Public Works to contest seizure unless immediate seizure is deemed necessary pursuant to subsection (e). Notice shall be sent to the address of the newsrack owner or to any other person believed to be responsible for such newsrack and an additional notice tag shall be affixed to the newsrack on the date of notice. The latter notice shall be sufficient when no identification is shown on the newsrack or the responsible person's address is unknown.
- c. Hearing May Be Required. A person notified under subsection (b) of this section may request a hearing before the Director of Public Works by making a written request to the Director. The hearing shall be informal, but oral and written evidence may be given by both sides. Such hearing shall be subject to the time periods contained in Section 3-10.05. Any action by the City with respect to the alleged violation shall be stayed pending the Director's decision, if a hearing is requested in a timely manner.
- d. Seizure and Retention of Newsracks. When the time period for filing of an appeal or remedy of a violation has run or any appeal results in a decision sustaining the proposed seizure action, the City Building Official may seize and remove the newsrack in violation of this article. The responsible party shall be notified of the seizure. Seized newsracks shall be retained by the City and may be recovered by the responsible party within thirty (30) days from their seizure upon payment of the costs incurred by the City for seizure and removal.
- e. Seizure Without Notice if Imminent Danger. Notwithstanding the provisions of subsection (b) of this section, prior notice of seizure is not required where the newsrack poses an immediate danger to pedestrians or vehicles, provided notice of the seizure and an opportunity to request a hearing to contest seizure is mailed to any person believed to be responsible for the seized newsrack within five (5) days after the seizure.
- f. Removal of Abandoned Newsracks. Abandoned newsracks may be removed by the City Building Official or the City Building Official's designee and may be disposed of if they are not claimed by the responsible party within thirty (30) days. Newsracks remaining empty for thirty (30) days or not claimed within thirty (30) days of seizure shall be deemed abandoned, except that a newsrack remaining empty due to labor strike or any temporary interruption of distribution or publication by the newspaper sold from that newsrack shall not be deemed abandoned.
- g. Costs of Seizure or Removal. The cost of seizure or removal of a newsrack incurred by the City shall be repaid by the newsrack owner or other responsible party and any such amounts remaining unpaid shall constitute a debt to the City.

SEC. 3-10.11 INSURANCE. Each publisher or distributor using newsracks regulated by this article shall furnish to the City evidence of insurance showing that such person has then in force general liability and property damage insurance, naming the City, its officers, and employees as additional insureds, in an amount not less than Two Hundred Fifty Thousand (\$250,000) minimum liability combined single limit (bodily injury and property damage) per person

and per occurrence. The person shall provide and keep in force that policy of general liability insurance during such time as it continues to locate any newsrack under the terms of this article. The evidence of insurance filed with the City Building Official shall include a statement by the insurance carrier that at least thirty (30) days' notice will be given to the City Building Official before any cancellation of or material change in the policy.

**SEC. 3-10.12 INDEMNIFICATION.** Every person operating or maintaining a newsrack upon or within the public property, rights-of-way, or public easements adjacent to streets of the City shall enter into an agreement to indemnify, pay on behalf of, hold harmless, and defend the City and its officers, employees, and agents from any and all claims for injury or damage of whatever type, nature, and description, judgments, legal costs, adjuster fees, and attorney fees to the extent but only to the extent related to the installation, operation, or use of such newsrack(s); provided, however, that such obligation to indemnify and hold harmless shall not extend to any loss, liability damage, or cost resulting from the acts or property of another person.