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APPROVED AS TO FORM AND LEGALITY


City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE No. 12821 C.M.S.

ORDINANCE REPEALING THE CITY OF OAKLAND MUNICIPAL CODE, TITLE 12, CHAPTER 12.48 “NEWSRACKS—MONTCLAIR NEWSRACK DISTRICT” AND AMENDING THE OAKLAND MUNICIPAL CODE CHAPTER 12.50 – “NEWSRACKS—CITYWIDE CONTROLS” TO INCREASE MAINTENANCE STANDARDS, DECLARE THE STORAGE AND ACCUMULATION OF INOPERABLE OR WRECKED NEWSRACKS A PUBLIC NUISANCE, MODIFY NEWSRACK ABATEMENT PROCEDURES AND ADOPT GUIDELINES FOR THE PLACEMENT OF NEWSRACKS IN THE PUBLIC RIGHT-OF-WAY ON A CITY-WIDE BASIS

WHEREAS, in 1995, the City Council adopted Ordinance No. 11800 C.M.S., adding Chapter 12.48, “Newsracks Montclair Newsrack District,” to the Oakland Municipal Code (OMC) establishing the Montclair Newsrack District and requiring permits for the placement and maintenance of newsracks within said District; and

WHEREAS, in 1997, the City Council adopted Ordinance No. 12004 C.M.S., adding Chapter 12.50, “Newsracks—City-Wide Controls,” to the Oakland Municipal Code (OMC) establishing a mechanism for city-wide newsrack controls; and

WHEREAS, it is the intent of the Oakland City Council to consider and repeal Oakland Municipal Code, Title 12, Chapter 12.48 “Newsracks—Montclair Newsrack District” in order to simplify the Code; and

WHEREAS, it is the intent of the Oakland City Council to consider and adopt more restrictive amended regulations pertaining to the placement, maintenance of newsracks in order to provide clear, consistent, and uniform guidance to entities desiring to distribute their publication(s) in newsracks within the public right-of-way regarding the siting and design of modular and single-unit newsracks that reflect the City’s siting and regulatory objectives to eliminate potential hazards to public welfare and safety and sources of visual blight, while also protecting the right to free speech; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied according to Section 15061(b)(3) of the State CEQA Guidelines; and

WHEREAS, the City of Oakland’s Community and Economic Development Agency has studied the City’s newsrack regulations, existing applicable statutory requirements, and has prepared the following amendments to the Oakland Municipal Code; and

WHEREAS, on April 24, 2007, the Oakland City Council approved staff recommendations to amend the existing newsrack regulations and develop an permit application process and necessary procedures to administer a more effective and efficient program; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 2. The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Section 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 3. Oakland Municipal Code Chapter 12.48 is repealed and Chapter 12.50 is amended to read as follows with additions shown as underline and omissions are shown as ~~strikethrough~~.

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

~~Chapter 12.48 NEWSRACKS—MONTCLAIR NEWSRACK DISTRICT~~

~~12.4850.010 Establishment of the Montclair newsrack district.~~

~~12.4850.020 Findings.~~

~~12.4850.030 Declaration of purpose.~~

~~12.4850.040 Definitions.~~

~~12.4850.050 Newsrack permit required.~~

~~12.4850.060 Newsrack permit application.~~

~~12.4850.070 Request for hearing.~~

~~12.4850.080 Permissible types of newsracks.~~

~~12.4850.090 Standards for newsrack placement.~~

~~12.4850.100 Maintenance required.~~

~~12.4850.110 Removal of newsrack assembly upon discontinuance of use.~~

~~12.4850.120 Advertising on newsracks.~~

~~12.4850.130 Newsrack identification.~~

~~12.4850.140 Abatement of violation of newsrack code.~~

~~12.4850.150 Indemnification.~~

~~12.48.010 Establishment of the Montclair newsrack district.~~

~~This section creates the Montclair newsrack district (hereinafter referred to as “district”). The district shall encompass the area corresponding to the C-27 commercial zone as described in the Oakland Planning Code on the effective date of this provision, and shall apply to the placement, maintenance and removal of newsracks within the district.~~

~~12.4850.020 Findings.~~

~~The City Council finds that there is a substantial governmental interest in ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.~~

~~The City Council further finds that the proliferation of news and advertising publications intended for public distribution and the corresponding increase in the number of individual newsrack dispensers placed upon the public rights-of-way has resulted in the following:~~

- ~~A. Obstruction of traffic views;~~
- ~~B. Damage to light standards, poles, trees and sidewalks from improper placement;~~
- ~~C. Detracting from the appearance of the public streets and grounds;~~
- ~~D. Blocking access to public facilities;~~
- ~~E. Blocking access to properties adjoining public rights-of-way.~~

~~12.4850.030 Declaration of purpose.~~

~~The purpose of this chapter is to provide a means to control the unregulated placement of individual newsrack dispensers in the Montclair area.~~

~~12.4850.040 Definitions.~~

~~As used in this chapter:~~

~~Abandoned Newsrack. A newsrack or newsrack assembly is considered “abandoned” when it remains empty for more than ten business days or contains outdated issues in violation of the guidelines promulgated pursuant to this chapter, or when the permittee has failed to properly maintain or discontinue use as provided in Sections 12.48.100 and 12.48.110. Any removal notice issued on the basis of abandonment shall be withdrawn on a showing by the publication that the newsrack is not abandoned, but is empty or contains outdated issues as a result of a labor strike or a temporary or extraordinary interruption or disruption of publication by the newspaper sold or dispensed from that newsrack.~~

~~“Days” means calendar days.~~

~~“Director” means the Director of the Office of Planning and Building or his or her designee.~~

~~“Hearing Examiner” means a person appointed or designated by the Director of the Office of Planning and Building or his or her designee who is qualified by training and experience to conduct administrative hearings.~~

~~“Newsrack assembly” means a multiunit newsrack and associated components including pedestal, tray and rack.~~

~~“Temporary single unit newsrack configuration” means a freestanding single newsrack unit of the style and type typically used by newspaper publishers instead of or as an alternative to multiunit configurations.~~

~~12.4850.050 Newsracks—Permit required.~~

~~Prior to installation of any newsrack or newsrack assembly on public property within the district, within the public right of way of any street within the district, or within any public easement adjacent to any street within the district, the person or persons responsible for such installation, use and/or maintenance shall apply for and secure a permit pursuant to the requirements of this chapter. No permit shall be issued except in conformance with this chapter.~~

~~12.4850.060 Newsrack permit application.~~

~~The newsrack permit application shall state the names and addresses of those responsible for installation, use and maintenance of the newsrack or newsrack assembly subject to the permit, the name of the publication, interval of publication (i.e., weekly, daily, etc.), and shall describe with particularity the location proposed for installation. The application shall be approved and a permit issued within ten days if the type of newsrack and the location proposed meets the standards set forth in this chapter.~~

~~12.4850.070 Request for hearing.~~

~~If an application is disapproved, in whole or in part, the Director shall notify the applicant promptly, explaining fully the reasons for denial of the permit. The applicant shall have fourteen (14) days following receipt of such notice to request a hearing regarding the denial. Such request for hearing shall be made on a form prescribed by the Director and shall be filed with the Director.~~

~~The request for hearing shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director in denying the permit application. The request for hearing shall be accompanied by such information as may be required to facilitate review. Upon receipt of the request for hearing, the Director shall set a time for hearing, and at such time a Hearing Examiner appointed for such purpose shall consider the merits of the appeal. The decision of the Hearing Examiner shall be final.~~

~~12.4850.080 Permissible types of newsracks.~~

~~A. Multiunit Configurations. Except as provided in subsection (B)(1) and (2) of this section, newsracks within the district shall be in multiunit configurations standard in trade use. Multiunit configurations shall be permanently affixed to the ground in a manner conforming to standards promulgated by the Director.~~

~~B. Temporary Single Unit Configuration. Single unit newsrack configurations shall not be permitted within the District except temporarily:~~

- ~~1. On a trial basis to determine the suitability of permanent newsrack placement at a particular location within the district; or~~
- ~~2. When space is unavailable in existing multiunit configurations within the district.~~

~~A temporary single unit configuration shall not be approved for a period of more than sixty (60) days. A temporary single unit configuration shall not be chained, bolted or otherwise attached to any tree, shrub, or other plant nor attached to any property not owned by the newsrack owner without the consent of the property owner nor situated upon any landscaped area within the district, and provided further that the single unit is of a design commonly in trade use. At least ten days prior to placing a temporary newsrack, a completed newsrack permit application shall be submitted, including written notice of the proposed location within the district and date upon which the placement period will begin.~~

~~Within ten days after expiration of the temporary placement period, the person maintaining the temporary newsrack shall either cause it to be removed, or submit a written application to the Director for a permit to obtain the next available space in an existing multiunit configuration at or near the temporary location, or to obtain space in a multiunit configuration to be constructed at or near the temporary location. A person may be allowed to maintain the temporary newsrack at the permitted site for up to an additional sixty (60) days upon timely submission of a written application therefor if no suitable permanent newsrack is available.~~

~~C. Permissible Height and Arrangement. The height, arrangement and configuration of any newsrack placed within the district shall comply with standards promulgated by the Director. Such standards shall be consistent with the findings, intent and purpose of this chapter.~~

~~12.4850.090 Standards for newsrack placement.~~

~~No newsrack shall be installed, used or maintained in any location upon public property, within any right of way, or within public easements adjacent to streets within the district where such installation, use or maintenance endangers the safety of persons or property, or interferes with or obstructs the line of sight of pedestrians and drivers, or interferes with public utility, public transportation, or other government use, or unreasonably interferes with or impedes the flow of pedestrian, bicycle, or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of traffic signals, hydrants, mailboxes, or light standards and telephone poles.~~

~~Additional standards to more specifically delineate placement requirements of newsracks within the district shall be promulgated by the Director. Such standards shall be consistent with the findings, intent and purpose of this chapter.~~

~~12.4850.100 Maintenance required.~~

~~Each newsrack and newsrack assembly within the district shall be maintained in a neat and clean condition and in good repair at all times. Newsracks that have been damaged shall be replaced or repaired as soon as is practical. For example, without limitation, each newsrack and newsrack assembly shall be free of chipped, faded, peeling or cracked paint, dirt and grease, rust and corrosion, and shall have no broken structural parts or cracked plastic or glass parts. Failure to cause the repair, replacement and/or maintenance of newsrack(s) may result in the abatement thereof pursuant to Section 12.48.140.~~

~~12.4850.110 Removal of newsrack assembly upon discontinuance of use.~~

~~In the event the permit holder wishes to abandon the location, the permit holder shall promptly notify the city of his or her intent to remove the newsrack or newsrack assembly, as the case may be. When use of any newsrack location is permanently discontinued, the newsrack assembly which includes pedestals and trays shall be removed and the location restored to its previous condition.~~

~~12.4850.120 Advertising on newsracks.~~

~~No newsracks in the district shall be used for advertising or publicity purposes, except that logos indicating the display, sale or distribution of the publication distributed from the newsrack are permissible. The Director shall develop departmental regulations regarding the permissible color of newsracks and the size and location of logos, identifying symbols and/or decals allowed pursuant to this chapter.~~

~~12.4850.130 Newsrack identification.~~

~~Every person maintaining a newsrack in the district under the terms of this chapter shall have his or her name, address and telephone number affixed to it in a place where such information will be readily visible.~~

~~12.4850.140 Abatement of violation of newsrack code.~~

~~A. Removal Sanctioned. The Director may cause a newsrack or a newsrack assembly installed or maintained in the district in violation of this chapter to be seized and removed if it is impractical to remedy the violation otherwise. A seized newsrack or newsrack assembly shall be retained by the city and may be recovered by the responsible party within thirty (30) days from date of seizure upon payment of the costs incurred by the city for maintenance, repairs, notification, seizure, removal and storage.~~

~~B. Notification Prior to Removal. Before any newsrack or newsrack assembly within the district is seized, the person responsible for its installation and maintenance shall be notified and given five days to either remedy the violation, or request a hearing before the Director to contest the seizure pursuant to subsection C of this section. Notice shall be given in writing and sent to the address stated on the newsrack permit application or upon the 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 and no permit has been issued.~~

~~C. Hearing Upon Request. A person notified pursuant to subsection B of this section of the city's intent to remove a newsrack or newsrack assembly may request a hearing before the Director by making a written request within five days of notification to the Director.~~

~~D. When Notification Not Required. Notwithstanding subsections B and C of this section, prior notice of seizure is not required where the newsrack or newsrack assembly poses an immediate danger to pedestrians or vehicles, provided notice of the seizure and an opportunity to contest is given to the person responsible for the seized newsrack within five days after the seizure.~~

~~E. Removal of Abandoned Newsracks. The Director may cause the removal and/or disposal of an abandoned newsrack as defined in Section 12.48.040 if it is not claimed by the responsible party within thirty (30) days.~~

~~F. Revocation of Permit. A permit for placement of a newsrack or newsrack assembly within the district may be revoked by the Director for failure to adequately secure, identify, maintain, refurbish, paint, remove a newsrack or newsrack assembly as required by this chapter if any provision of this chapter is violated. Notice of revocation and an opportunity to contest the determination shall be provided pursuant to subsections B, C and D of this section.~~

12.4850.150 Indemnification.

~~Every person operating or maintaining a newsrack or newsrack assembly upon or within the public property, right of way or public easements within the district shall agree, prior to the granting of a permit, to indemnify and hold harmless the City, its officers and employees, from any loss, liability, damage, or cost sustained by any person or property, arising from the installation, operation or use of such newsrack.~~

Chapter 12.50 NEWSRACKS--CITY-WIDE CONTROLS

12.50.010 Establishment of city-wide newrack controls.

12.50.020 Findings.

12.50.030 Declaration of purpose.

12.50.040 Definitions.

12.50.050 Areas requiring newrack controls.

12.50.060 Newsracks--Permit required.

12.50.070 Newrack permit application.

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12.50.090 Permissible types of newsracks.

12.50.100 Standards for newrack placement.

12.50.110 Maintenance required.

12.50.120 Removal of newrack assembly upon discontinuance of use (for permitted newrack locations).

12.50.130 Advertising on newsracks.

12.50.140 Newrack identification.

12.50.145 Public Nuisance.

12.50.150 Abatement of violation of newrack code.

12.50.160 Penalties.

12.50.170 Indemnification.

12.50.180 Promulgation of Guidelines.

12.50.010 Establishment of city-wide newsrack controls.

This chapter establishes newsrack controls city-wide. On the effective date of this provision, controls shall apply to the placement, maintenance and removal of newsracks within the public sidewalk area.

12.50.020 Findings.

The City Council finds that there is a substantial governmental interest in ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.

The City Council further finds that the proliferation of news and advertising publications intended for public distribution, and the corresponding increase in the number of individual newsrack dispensers placed upon the public rights-of-way in certain locations throughout the city has resulted in the following:

- A. Obstruction of traffic views;
- B. Damage to light standards, poles, trees and sidewalks from improper placement;
- C. Detracting from the appearance of the public streets and grounds;
- D. Blocking access to public facilities;
- E. Blocking access to properties adjoining public rights-of-way.

However, the City Council acknowledges that the streets, sidewalks and public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and that access to and use of these areas for such purposes is not to be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or where such use presents a hazard to persons or property.

Given the limited space available and the increasing congestion throughout the community, the City has a substantial interest in devising a systematic approach to newsrack placement to ensure a fair and equitable distribution of news publications, and that persons may reasonably use the public streets, sidewalks, rights-of-way and other public property without interference of use. This objective may be achieved by allowing modular newsracks and prohibiting all freestanding newsracks in highly congested areas or areas with particular public safety or aesthetic concerns, where the sole use of modular newsracks will promote the City's aesthetic interest in the appearance of the area, result in more news publications in less space and thereby reduce congestion.

12.50.030 Declaration of purpose.

The purpose of this chapter is to provide a means to control the unregulated placement of newsrack dispensers in the public sidewalk area.

12.50.040 Definitions.

As used in this chapter:

Abandoned Newsrack. A newsrack or newsrack assembly is considered “abandoned” when it remains empty for more than ten business days or contains outdated issues in violation of the “guidelines” promulgated pursuant to this chapter, or when the permittee has failed to properly maintain or discontinue use as provided in the guidelines promulgated pursuant to this Chapter in Sections 6-11, 11 and 12. Any removal notice issued on the basis of abandonment shall be withdrawn on a showing by the publication that the newsrack is not abandoned, but is empty or contains outdated issues as a result of a labor strike or a temporary or extraordinary interruption or disruption of publication by the newspaper sold or dispensed from that newsrack.

Days. Use of the term “days” for the purposes of this chapter means calendar days.

Director. As used in this chapter, “Director” refers to the Director of the Community and Economic Development Agency or his or her designee.

“Hearing Examiner” means a person appointed or designated by the Director or his or her designee who is qualified by training and experience to conduct administrative hearings.

“Newsrack” means a freestanding container or an individual unit that is part of a modular newsrack assembly that is commonly used to distribute publications to the general public. A newsrack may be coin operated or may contain free printed materials.

“Newsrack assembly” means a multi-unit newsrack and associated components including pedestal, tray and newsrack boxes.

“Single-unit newsrack configuration” means a freestanding single newsrack unit of the style and type typically used by newspaper publishers instead of, or as an alternative to, multi-unit configurations. (Ord. 12004 § 2(part), 1997)

12.50.050 Areas requiring newsrack controls.

The Chief of Building Services will identify locations city-wide (typically identified as a block or blocks of a particular street) where immediate newsrack controls shall be implemented. Declaration of need for newsrack controls at those locations identified by the Chief of Building Services shall be based on findings outlined in Section 12.50.020. At those locations, newsrack permits shall be issued and consolidated modular units (as deemed to be necessary) shall be installed. Those areas shall be posted with a public notice identifying the locations in which controls will be required. Notice shall be sent to each publisher and distributor identified as having a presence in the area. The notice will provide for a period of one hundred twenty (120) days for full compliance (to allow for coordination, the ordering of materials, and installation of equipment.) Conditions that are found to be an imminent hazard shall be corrected immediately.

Notwithstanding the requirements listed above, all newsracks, city-wide, (individual racks as well as modular units) shall comply with clearance standards and obstruction criteria established in the guidelines promulgated pursuant to this chapter.

12.50.060 Newsracks--Permit required.

In areas that have been declared as requiring newsrack controls by the Chief of Building Services, the person or persons responsible for such installation, use and/or maintenance of newsracks shall apply for and secure a nontransferable permit pursuant to the requirements of this chapter prior to the installation of any newsrack or newsrack assembly on public property, within the public right-of-way of any street, or within any public easement adjacent to any street. Existing newsracks, located in areas designated as requiring newsrack controls that are in conformance with the requirements of this chapter and are allowed to remain in place shall also require a permit. No permit shall be issued except in conformance with this chapter.

The provisions of this chapter shall be the exclusive requirements for newsrack encroachments onto public property in the City of Oakland and preempt any other provisions in this Code.

The Chief of Building Services shall not consider the content or viewpoint of the material to be distributed through newsracks in administering or enforcing this section, except as may otherwise be authorized in this section or pursuant to State or Federal law.

12.50.070 Newsrack permit application.

The newsrack permit application shall state the names and addresses of those responsible for installation, use and maintenance of the newsrack or newsrack assembly subject to the permit, the name of the publication, interval of publication (i.e., weekly, daily, etc.), and shall describe with particularity the location proposed for installation. The application shall be approved and a nontransferable permit issued within ten days if the type of newsrack and the proposed location meets the standards set forth in this chapter and the guidelines promulgated pursuant to this chapter.

The newsrack permit application shall be completed in accordance with City newsrack specifications. The application shall be completed by a duly authorized representative of both the publication and, if applicable, any independent distributor authorized to service that publication's newsrack. A nontransferable newsrack permit may be issued within ten (10) working days if the type of newsrack and location(s) proposed meet the standards set forth in this section and the City's newsrack specifications.

Prior to obtaining a newsrack permit, the applicant shall provide notice to property owners and businesses immediately adjacent to the requested location of his/her intent to place a newsrack. Any objections conveyed to the Chief of Building Services by a member of the public shall be considered prior to the approval of a newsrack permit.

The applicant shall provide a nonrefundable encroachment permit application fee in an amount established by ordinance of the City Council. Such permits shall be valid for, and renewable every year and be listed in the City of Oakland Master Fee Schedule.

For modular newsracks, a separate newsrack permit must be obtained for each newsrack within the assembly. A person securing a newsrack permit may install and maintain additional newsracks by obtaining an encroachment permit for each newsrack. The rules and procedures of this chapter shall apply to each location.

12.50.080 Request for hearing.

If an application for a newsrack permit is disapproved, in whole or in part, the Chief of Building Services shall notify the applicant promptly, explaining fully the reasons for denial of the permit. The applicant shall have fourteen (14) days following receipt of such notice to request a hearing regarding the denial. Such request for hearing shall be made on a form prescribed by the Director of the Community and Economic Development Agency and shall be filed with the Chief of Building Services.

The request for hearing shall state specifically wherein it is claimed there was an error or abuse of discretion by the Chief of Building Services in denying the permit application. The request for hearing shall be accompanied by such information as may be required to facilitate review. Upon receipt of the request for hearing, the Chief of Building Services shall set a time for hearing, and at such time, a Hearing Examiner appointed for such purpose shall consider the merits of the appeal. The decision of the Hearing Examiner shall be final. If a person is found to be in violation of any provisions of this Chapter, they are entitled to a hearing as specified in this section.

12.50.090 Permissible types of newsracks.

A. Multi-unit Configurations. Except as provided in subsections (B)(1) and (2) of this section, newsracks within areas requiring controls shall be installed in multi-unit configuration newsrack assemblies standard in trade use. Multi-unit configurations shall be permanently affixed to the ground in a manner conforming to standards included in guidelines promulgated by the Chief of Building Services.

B. Single-Unit Configurations. Single-unit newsrack configurations shall not be permitted within areas requiring controls except:

1. Temporarily on a trial basis to determine the suitability of permanent newsrack placement at a particular location; or
2. Temporarily when space is unavailable in existing multi-unit configurations within the area requiring controls; or
3. When the number of newsracks at a location identified as requiring controls does not exceed five and placement of the individual newsracks conforms to the requirements of the guidelines promulgated pursuant to the chapter.

A single-unit configuration shall not be chained, bolted or otherwise attached to any tree, shrub, or other plant, nor attached to any property not owned by the newsrack owner without the consent of the property owner, nor situated upon any landscaped area, and provided further, that the single unit is of a design commonly in trade use.

In areas requiring newsrack controls, a temporary single-unit configuration shall not be approved for a period of more than sixty (60) days. At least ten days prior to placing a temporary newsrack, a completed newsrack permit application shall be submitted, including written notice of the proposed location and date upon which the placement period will begin.

Within ten days after expiration of the temporary placement period, the person maintaining the temporary newsrack shall either cause it to be removed, or submit a written application to the Chief of Building Services for a permit to obtain the next available space in an existing multi-unit configuration at or near the temporary location, or to obtain space in a multi-unit configuration to be newly installed at or near the temporary location. A person may be allowed to maintain the temporary newsrack at the permitted site for up to an additional sixty (60) days upon timely submission of a written application therefore if no suitable permanent newsrack space is available.

C. Permissible Height and Arrangement. The height, arrangement and configuration of any newsrack placed within an area determined to require controls shall comply with standards included in guidelines promulgated by the Chief of Building Services. Such standards shall be consistent with the findings, intent and purpose of this chapter.

12.50.100 Standards for newsrack placement.

No newsrack (including in areas where newsrack controls and modular newsrack units are not determined to be necessary) shall be installed, used or maintained in any location upon public property, within any right-of-way, or within public easements adjacent to streets where such installation, use or maintenance endangers the safety of persons or property, or interferes with or obstructs the line of sight of pedestrians and drivers, or interferes with public utility, public transportation, or other government use, or unreasonably interferes with or impedes the flow of pedestrian, bicycle, or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of traffic signals, hydrants, mailboxes, or light standards and telephone poles or parking meters.

Additional standards to more specifically delineate placement requirements of newsracks within the public sidewalk area shall be included in guidelines promulgated by the Chief of Building Services. Such standards shall be consistent with the findings, intent and purpose of this chapter.

Criteria to be used by the city in determining the allocation of space available in modular newsrack units, when necessary, shall also be included in guidelines promulgated by the Chief of Building Services. ~~Any change to the allocation provisions will require the consensus of the Newspaper and Newsrack Advisory Group.~~

12.50.110 Maintenance required.

Each newsrack and newsrack assembly within the public sidewalk area shall be maintained in a neat and clean condition and in good repair at all times. Newsracks that have been damaged shall be replaced or repaired as soon as is practical. For example, without limitation, each newsrack and newsrack assembly shall be free of chipped, faded, peeling or cracked paint, dirt and grease, rust and corrosion, posters, decals, or handbills, and shall have no broken structural parts or cracked plastic or glass parts. Failure to cause the repair, replacement and/or maintenance of newsrack(s) may result in the finding of required abatement thereof pursuant to Section 12.50.150.

Maintenance of newsrack boxes shall be the responsibility of the publisher or distributor using the newsrack. Pedestals and trays for modular newsrack units shall be the joint responsibility of those individuals with newsracks on the trays.

12.50.120 Removal of newsrack assembly upon discontinuance of use (for permitted newsrack locations).

In the event the permit holder wishes to abandon a location, (for locations where newsrack controls are determined to be necessary) the permit holder shall promptly notify the city of his or her intent to remove the newsrack or newsrack assembly, as the case may be. When use of any newsrack location is permanently discontinued, the newsrack assembly, which includes pedestals and trays, shall be removed and the location restored to its previous condition. At locations where a number of newsrack boxes have been removed, a consolidation of remaining newsrack boxes shall be effected. Where necessary, trays shall be reduced in size to accommodate the number of remaining newsrack boxes. No newsrack assembly shall be left with gaps as the result of the removal of newsracks. Cost of consolidation shall be borne by the remaining publications.

12.50.130 Advertising on newsracks.

No modular newsrack units in the public sidewalk area shall be used for advertising or publicity purposes, except that logos indicating the display, sale or distribution of the publication distributed from the newsrack are permissible. At locations determined to require specific newsrack controls, the Chief of Building Services shall develop departmental regulations included in the guidelines regarding the permissible color of newsracks and the size and location of logos, identifying symbols and/or decals allowed pursuant to this chapter. Those regulations are to assure a uniform appearance of modular newsrack units with regard to height, color, and logo style and placement on the newsrack boxes.

12.50.140 Newsrack identification.

Every person maintaining a newsrack within the public sidewalk area shall have his or her name, address and telephone number affixed to it in a place where such information will be readily visible.

12.50.145 Public Nuisance.

The accumulation and storage of abandoned, wrecked, dismantled or inoperative newsracks or parts thereof on sidewalks or in the public rights-of-way is hereby found to promote blight and deterioration and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative newsrack on the sidewalk or other public right-of-way is hereby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter.

12.50.150 Abatement of violation of newsrack code.

A. Order to Abate. When the Chief of Building Services, or his or her designee, finds that a newsrack has contributed substantially to any of the conditions outlined in sections 12.50.020 or 12.50.110, in violation of this chapter, he or she, or his or her designee, may declare and deem the violation of a public nuisance and issue an order to abate. A notice of abatement shall be given in writing and sent to the address stated on the newsrack permit application (if a permit has been issued) or shown upon the newsrack itself. An additional notice tag shall be affixed to the newsrack on the date of notice. The latter method of notification shall be sufficient when no identification is shown on the newsrack and no permit has been issued. The person responsible for its installation and maintenance shall be notified and given seven (7) days to remedy the violation. Service of said notice may be made by enclosing the same in a sealed envelope, addressed to the permittee or publication if the newsrack is unpermitted, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of deposit in the United States mail.

If the cited condition(s) are not abated within seven (7) days, the Chief of Building Services, or a designee, may assess penalties as stated in 12.50.150 below and at his/her discretion seize the newsrack or newsracks in violation of this chapter.

The notice of abatement shall contain the following:

1. The street address of location and a legal description of the property sufficient for identification of the location upon which the nuisance location(s) is located;
2. A statement that the enforcement official has determined pursuant to this chapter that the permit holder and/or publication of the subject newsrack(s) are in violation of this chapter;
3. A statement specifying the condition that has been deemed a public nuisance;
4. A statement ordering the permittee and/or publication that uses the subject newsrack(s) to abate the condition(s), specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.
5. A statement specifying that if the cited condition(s) are not abated within seven (7) days, the Chief of Building Services, or a designee, may assess penalties as stated in 12.50.150 below and at his/her discretion seize the newsrack or newsracks in violation of this chapter.

AB. Removal Sanctioned. The Chief of Building Services may cause a newsrack or a newsrack assembly installed or maintained in the public sidewalk area in violation of this chapter to be seized and removed if it is impractical to remedy the violation otherwise. A seized newsrack or newsrack assembly shall be retained by the city and may be recovered by the responsible

party(ies) within thirty (30) days from date of seizure upon payment of the costs incurred by the city City for maintenance, repairs, notification, seizure, removal and storage as specified in section 12.50.160.

~~BC~~. Notification Prior to Removal. Before any newsrack or newsrack assembly is seized, the person responsible for its installation and maintenance shall be notified and given ~~five~~ seven (7) days to either remedy the violation, or request a hearing before the Chief of Building Services to contest the seizure pursuant to subsection ~~C~~ D of this section. Notice shall be given in writing and sent to the address stated on the newsrack permit application (if a permit ~~is required~~ has been issued) or shown upon the newsrack itself. An additional notice tag shall be affixed to the newsrack on the date of notice. The latter method of notification shall be sufficient when no identification is shown on the newsrack and no permit has been issued.

~~CD~~. Hearing Upon Request. A person notified pursuant to subsection B of this section of the city's intent to remove a newsrack or newsrack assembly may request a hearing before the Chief of Building Services by making a written request within ~~five~~ fourteen (14) days of notification of removal. The hearing shall be provided as specified in section 12.50.080 of this Chapter.

~~DE~~. When Notification Not Required. Notwithstanding subsections A, B, C and ~~C~~ D of this section, prior notice of seizure is not required where the newsrack or newsrack assembly poses an immediate danger to pedestrians or vehicles, provided notice of the seizure and an opportunity to contest is given to the person responsible for the seized newsrack within ~~five~~ seven (7) days after the seizure.

~~EF~~. Removal of Abandoned Newsracks. The Chief of Building Services may cause the removal and/or disposal of an abandoned newsrack as defined in Section 12.50.040 if it is not claimed by the responsible party within thirty (30) days.

G. Restoration of Right-of-Way After Removal. Upon the removal of a newsrack, the public right-of-way shall be returned to its original condition by the permittee, or publication if a permit has not been issued, including but not limited to the refilling of holes installed for purposes of securing newsracks.

~~FH~~. Revocation of Permit. A permit for placement of a newsrack or newsrack assembly in areas designated by the Chief of Building Services to require modular newsracks may be revoked by the Chief of Building Services for failure to adequately secure, identify, maintain, refurbish, paint, remove a newsrack or newsrack assembly as required by this Article if any provision of this Article is violated. Notice of revocation and an opportunity to contest the determination shall be provided pursuant to subsections B, C and D of this section.

12.50.160 Penalties.

Any permittee, or the owner of an unpermitted newsrack found to be in violation of any provision of this chapter shall receive a notice of violation in accordance with Section 12.50.150. If the same newsrack is found to be in violation ~~five~~ seven (7) days from the date that a notification for abatement and/or for removal was mailed, the owner of the newsrack shall be

subject to civil penalties in accordance with the provisions of Chapters 1.08, ~~1.12 and 1.16~~ of the Oakland Municipal Code. This chapter may be enforced by the Chief of Building Services or his or her authorized representatives. Each newsrack found to be in violation is considered to be a separate offense. A person found in violation of this Chapter shall be entitled to hearing by making a written hearing request within fourteen (14) days of the notice to abate. The hearing shall be provided as specified in section 12.50.080 of this Chapter.

12.50.170 Indemnification.

Prior to the issuance of a newsrack permit in areas designated by the Chief of Building Services to require newsrack controls, every person operating or maintaining a newsrack or newsrack assembly upon or within the public property, right-of-way or public easements shall agree, prior to the granting of a permit, to indemnify and hold harmless the city, its officers and employees, from any loss, liability, damage, or cost sustained by any person or property, arising from the installation, operation or use of such newsrack, as is stated on the face of said permit.

Section 4. No conflict With Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State law.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall no affect the validity of the remaining portions which shall remain in full effect.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 17 2007, 20


PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, ~~KERNIGHAN~~, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- Kernighan - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date: JUL - 3 2007