

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY ADMINISTRATOR
2007 APR 24 10:07:23

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Community & Economic Development Agency
DATE: April 24, 2007

RE: **Report And Recommendation for Actions On The City's Current Regulations For The Placement And Maintenance Of Newsracks And Newspaper Multi-Racks In Public Rights Of Way, Enforcement Options Currently Available To Ensure Well-Maintained Newsracks And Newspaper Multi-Racks, And Recommendations To Improve Newsrack And Newspaper Multi-Rack Maintenance**

SUMMARY

Council requested a report on the regulations and enforcement of the City's current standards for newspaper rack placement and maintenance and recommendations on measures needed to establish a more effective and efficient system. The current regulations allow for the establishment of newsrack control areas and also provide that within these areas permits are required to establish newsracks. However, no permit application and fee has been established within the Master Fee Schedule. Enforcement is currently done on a complaint only basis by personnel primarily assigned to other inspection duties. Newsracks causing a hazard may be impounded but maintenance concerns require a notification procedure for enforcement. In order to have an effective program staff recommends that an annual permit fee be established, one Full Time Equivalent (FTE) position be tasked with this and other non-construction related enforcement activities and guidelines be established for the placement and maintenance of these structures in the public right-of-way.

FISCAL IMPACT

The recommendations in this report, if acted upon, would require a cost to the Development Services Fund (2415) of one FTE combo inspector at \$143,886 for Fiscal 07-08 and \$149,760 for Fiscal 08-09. In addition this position would require the use of a one ton pick-up truck with lift gate for movement of impounded newsracks and other impounded right-of-way encroachments at a cost of approximately \$26,400 for the next two fiscal years. The Development Services Fund is self supporting so there would be no impact on the General Fund (1010). Permit fees and enforcement penalties would need to be added to the Master Fee Schedule at a level established to cover the costs outlined above.

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BACKGROUND

- In 1997, the City of Oakland enacted Ordinance No. 12004 C.M.S., adding Chapter 12.50 to the Oakland Municipal Code (OMC) establishing a mechanism for City-wide newsrack controls (Attachment A). This extended the previously established Montclair Newsrack District provision (OMC 12.48) for potential use in other parts of the City.

The City of Oakland did not establish a permit application procedure, guidelines for the placement of newsracks in the public right-of-way or fees to implement the ordinance. Maintenance and enforcement of the controls has been complaint driven and performed by personnel assigned to other duties. Follow up of maintenance notices is not effective.

KEY ISSUES AND IMPACTS

There are three key issues to effectively administering the existing ordinances regarding newsracks in the public right-of-way:

1. Legal issues surrounding the regulation of newsracks in regards to constitutional protections on free speech;
2. Administrative procedures and guidelines are needed to detail how the ordinances are to be implemented and enforced; and
3. Resources must be allocated, in terms of personnel and equipment, and fees need to be established to support those resources.

PROGRAM DESCRIPTION

Regulation of newspaper distribution must be done in conjunction with the City Attorney's Office to ensure that the City's rules do not infringe on the constitutional rights of the newspaper publishers. The City, as is the case with many encroachments, generally retains the ability to regulate the time, manner and place for such structures in the public right-of-way. The City Attorney's Office will have to review and approve the placement guidelines and application procedures prior to adoption to ensure they are defensible.

Similar to the recently completed surface mounted utility structure guidelines, staff would need to develop a set of placement guidelines for newsracks in the public right-of-way. Many of the same issues should be addressed including sidewalk clearance to meet ADA requirements, proper clearance from handicap spaces, fire hydrants, bus shelters, etc. and clearance from pedestrian street crossings and intersections. In addition, permit application forms, submittal requirements and standard conditions of approval are needed to complete the administrative rules for implementing the ordinances.

Finally, resources must be allocated to the program in order for it to function. The kind of follow up required to address maintenance and enforcement issues needs a dedicated staff person to be effective. Staff recommends that one FTE be devoted to this issue and similar items in the public

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right-of-way. The main problem with the current system is that newsracks and other encroachments, such as sandwich board advertising, merchandise displays and other items on the sidewalks in front of businesses, are non-construction related items. Construction related encroachments have permit fees and inspection routines that ensure they are properly placed and monitored. Non-construction related items are nuisance items that do not generate resources to fund staff for ongoing inspection and monitoring. Establishment of permit application fees, enforcement penalties and a collection mechanism will support staff necessary to effectively administer an ongoing program of maintenance and proper placement of newsracks.

SUSTAINABLE OPPORTUNITIES

Economic: No economic opportunities have been identified.

Environmental: There are no environmental opportunities contained in this report.

Social Equity: Ongoing enforcement of the maintenance and proposed placement guidelines will reduce blight from dilapidated or abandoned newsracks in our City's neighborhoods and increase access on City sidewalks for pedestrians and enhance ADA access by eliminating obstacles from poorly placed newsracks.

DISABILITY AND SENIOR CITIZEN ACCESS

Approval of these recommendations will lead to better disabled and senior citizen access to public sidewalks by removing obstacles from poorly placed newsracks.

RECOMMENDATIONS AND RATIONALE

Staff recommends the City Council direct staff to prepare the rules and procedures for administering the newsrack ordinances including permit applications, placement guidelines and standard conditions of approval. Further, that resources from the Development Services Fund are allocated to cover one FTE position to administer and enforce the revised ordinance along with the necessary equipment. Finally, that staff should determine and prepare amendments to the Master Fee Schedule to institute fees and penalties to support the ongoing maintenance, monitoring and enforcement of the newsrack program.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council, by motion, direct staff to prepare the rules and procedures for administering the newsrack ordinances including permit applications, placement guidelines and standard conditions of approval. Further, that resources from the Development Services Fund are allocated to cover one FTE position to administer and enforce the revised ordinance along with the necessary equipment. Finally, that staff should determine and prepare amendments to the Master Fee Schedule to institute fees and penalties to support the ongoing maintenance, monitoring and enforcement of the newsrack program and return to City Council for adoption of these items at a future meeting.

Respectfully submitted,



Claudia Cappio

Development Director

Community & Economic Development Agency

Prepared by: Eric Angstadt, Community & Economic
Development Agency

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City Administrator

Attachment A

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ATTACHMENT A

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Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.50 NEWSRACKS--CITY-WIDE CONTROLS

12.50.010 Establishment of city-wide newsrack controls.

12.50.020 Findings.

12.50.030 Declaration of purpose.

12.50.040 Definitions.

12.50.050 Areas requiring newsrack controls.

12.50.060 Newsracks--Permit required.

12.50.070 Newsrack permit application.

12.50.080 Request for hearing.

12.50.090 Permissible types of newsracks.

12.50.100 Standards for newsrack placement.

12.50.110 Maintenance required.

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

12.50.130 Advertising on newsracks.

12.50.140 Newsrack identification.

12.50.150 Abatement of violation of newsrack code.

12.50.160 Penalties.

12.50.170 Indemnification.

12.50.010 Establishment of city-wide newsrack controls.

This chapter establishes newsrack controls citywide. On the effective date of this provision, controls shall apply to the placement, maintenance and removal of newsracks within the public sidewalk area. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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 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 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. (Ord. 12004 § 2(part), 1997)

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 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. (Ord. 12004 § 2(part), 1997)

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 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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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 therefor 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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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.* (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

12.50.150 Abatement of violation of newsrack code.

- A. 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 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 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 Chief of Building Services 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 (if a permit is required) 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.
- 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 Chief of Building Services by making a written request within five days of notification.
- D. When Notification Not Required. Notwithstanding subsection 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 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.
- F. 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. (Ord. 12004 § 2(part), 1997)

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 days from the date that notification 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. (Ord. 12004 § 2(part), 1997)

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. (Ord. 12004 § 2(part), 1997)

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