

NEWSRACK ORDINANCE

ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 12.09 OF THE ALAMEDA COUNTY GENERAL ORDINANCE CODE ESTABLISHING THE REGULATION OF THE PLACEMENT OF NEWSRACKS IN THE COUNTY UNINCORPORATED AREA RIGHTS-OF-WAY

The Board of Supervisors does hereby ordain as follows:

CHAPTER 12.09 NEWSRACKS

12.09.010 Purpose.

- A. The uncontrolled placement of newsracks in and about the public rights-of-way in the County=s unincorporated area presents an inconvenience and danger to the safety, health and welfare of persons using such rights-of-way, including but not limited to pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control, and emergency services.
- B. Newsracks located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly, dirty or otherwise inadequately maintained newsracks located therein, constitute public nuisances.
- C. The uncontrolled proliferation of newsracks detracts from the appearance of streets, sidewalks, and adjacent business.
- D. The uncontrolled placement of newsracks may unreasonably inhibit entry, passage and/or departure of vehicles, public and private.
- E. The uncontrolled placement of newsracks may inhibit wheelchair access and/or interfere with the safe use of the public rights of way by disabled persons
- F. The uncontrolled placement of newsracks impairs the vision and distracts the attention of motorists and pedestrians, particularly small children, and may cause injury to the person or property of such persons.
- G. The placement of newsracks without a permit based on the detailed findings in public rights-of-way adjacent to residential areas detracts from and reduces neighborhood aesthetics and increases the exposure of residents to noise, traffic volume and hazards and congestion.
- H. The uncontrolled placement of newsracks increases the civil exposure of the County to personal injury, property damage and nuisance claims.
- I. County-controlled placement and monitoring of newsracks in the unincorporated area provides for and maintains the freedom of speech and press for newspapers and other periodicals using such dispensing devices for distribution purposes.

J. This Chapter is enacted in pursuance of and for the purpose of securing and promoting the public safety, health and general welfare of persons in the County in their use of public rights-of-way.

12.09.015 Definitions.

Whenever the following words and phrases are used in this Chapter, they shall have the meaning ascribed to them in this section:

“Director” means the Director of the Public Works Agency of the County or his or her designee.

“Distributor” means the person or entity who owns any newsrack located in the right-of-way in the County’s unincorporated area or located so as to attempt to utilize or take advantage of the right-of-way or who places or maintains or is responsible for or directs the placing or maintenance of such a newsrack.

“Impound” or “impounding” means either seizing, removing and storing at a designated storage facility or by placing a written notice on the newsrack that the newsrack is being seized and held in place.

“Newsrack” means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, sale or distribution of publications.

“Public right-of-way” means land, which by deed, conveyance, agreement, dedication, usage or process of law is used or reserved for use as a public roadway in the unincorporated area and also includes but is not limited to the sidewalk.

“Sidewalk” means the area of the public right of way which is designated or ordinarily used for pedestrian travel.

12.09.020 Prohibition.

No person shall place, install, use or maintain any newsrack which rests in whole or in part upon, in, or on any portion of the right-of-way in the County’s unincorporated area, or that projects onto, into, or over any part of the right-of-way in the County’s unincorporated area, or which attempts to utilize or take advantage of the right-of-way in the County’s unincorporated area except in compliance with the provisions of this Chapter.

This Chapter applies to the Unincorporated area of the County of Alameda. However, the provisions of this Chapter shall be superceded in any Project area by the Streetscape Master Plan or design plans of any Redevelopment agency, established pursuant to the California Health and Safety Code, providing for a specific design or model of newsrack to be utilized in a Project Area as a response to physical and/or economic blight findings.

All newsracks shall comply with federal, state and other local laws and regulations.

12.09.025 Standards for Newsracks Placed in the Right of Way .

A. No newsrack shall exceed fifty inches in height, twenty-seven inches in width, or twenty inches in thickness.

B. Newsracks shall be black, brown, gray, blue or green.

C. No advertising signs or material, other than those dealing with the name of the publication contained within the newsrack, shall be displayed on the outside of the newsrack.

D. Each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanisms shall be maintained in good working order. Newsracks dispensing free publications are exempt from this subsection.

E. Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the name and address of the distributor and the telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this chapter.

F. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that:

1. It is reasonably free of dirt and grease;
2. It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
3. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereof;
4. The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
5. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
6. The structural parts thereof are not broken or unduly misshapen; and,
7. It is free of graffiti.

G. Provided they are not determined to be a public nuisance or dangerous to the public safety, health or general welfare, newsracks lawfully in existence as of the effective date of the Ordinance codified in this Chapter shall be allowed to remain at the same location for a period of six (6) months following said effective date.

In order to benefit from this subsection, a distributor must report to the Public Works Department within sixty (60) days of said effective date the number and location of each newsrack located within the County as of said effective date. Such inventory list shall be conclusive as to the location and existence of such newsracks. After said six (6) month period, newsracks governed by this Chapter shall be required to comply with the provisions of this Chapter.

12.09.030 Location of newsracks.

- A. Newsracks shall be located only in the sidewalk portion of the right of way.
- B. No newsrack shall be located in whole or in part in any roadway or driveway or otherwise located so as to interfere with vehicular traffic or street sweeping clearance.
- C. Newsracks shall be located only near the curb (or, if there is no curb, the edge of the roadway) or the wall of a building. If located near the curb or edge of the roadway, a minimum of two (2) feet of clear area shall be maintained between the newsrack and the face of the curb or, if there is no curb, the edge of the roadway and a minimum of four (4) feet of clear area shall be maintained between the newsrack and the back edge of sidewalk. Newsracks located at the wall of a building shall be located parallel to and not more than six (6) inches from the wall thereof.
- D. No newsrack shall be located directly in front of any display window of any building abutting a sidewalk or parkway, without the written consent of the person or entity legally in occupancy or otherwise in control of the premises on which the display window is located. If such consent is withdrawn, any newsrack placed in front of a display window shall be removed within fourteen (14) days of the date of written notice from the County to the distributor of such newsrack.
- E. No newsrack shall be located on the sidewalk directly opposite a newsstand or another newsrack.
- F. Newsracks shall be adequately and safely secured to the sidewalk utilizing a concrete slab to which the newsrack is affixed or other method as is approved by the Public Works Director beforehand. Newsracks shall not be chained or tied to other newsracks or to any other fixed object.
- G. In areas where there are more than one newsrack, it is encouraged that newsracks be placed next to each other. There shall be a limit of two (2) newsracks per publication at any one location.
- H. No newsrack shall be placed, installed, used or maintained:
 - 1. Within one hundred (100) feet of any other cluster of newsracks whether or not containing the same issue or edition of the same publication;
 - 2. Where placement unreasonably interferes with the use of utility poles, traffic signs or signals, mailboxes or mechanical sidewalk cleaning machinery; or
 - 3. Where placement blocks or unreasonably interferes with the public=s access or passage to and from a crosswalk or a designated public bus stop area.
- I. In order to implement the provisions of this Chapter, the Director may adopt such standard plans, standard specifications, design guidelines, permit provisions and other rules as may be necessary to maintain the public=s safety, health and general welfare and so as to otherwise preserve and protect the right-of-way. Except where the Director grants written approval otherwise, all work performed under a permit shall conform to these plans, specifications, guidelines, provisions and rules. Work standards and practices in any area not covered by the foregoing shall conform to generally recognized design and construction standards and practices.

12.09.035 Additional Newsrack Controls

The Director may identify locations within the unincorporated areas of the County, typically identified as a block or blocks of a particular street, requiring additional controls for newsracks, beyond the requirements set forth in the preceding sections of this Chapter, including but not limited to the mandated, exclusive use of fixed pedestal mounted newsracks or placing restrictions on the number of newsracks at any one location, based on but not limited to the following factors:

- a. Pedestrian and vehicular safety;
- b. Interference with the flow of pedestrian or vehicular traffic including ingress and egress from any residence, business, public facility or legally parked or stopped vehicles;
- c. Compliance with the Americans with Disabilities Act and passage for persons with disabilities;
- d. Access for the safe and efficient use and maintenance of sidewalks, poles, posts, traffic signs or ramps, hydrants, mailboxes, police or fire call boxes, sidewalk elevators, delivery areas, loading zones, transit shelters, curb ramps, parking meters, and locations used for public transportation services;
- e. Visual blight, clutter and litter problems associated with poorly maintained, improperly located or abandoned newsracks;
- f. The unique aesthetic and historical attributes of the particular area;
- g. Interests of the County=s businesses and residents, including the interests of those involved in the publication or distribution of newspapers and other periodicals through newsracks.

In adopting this section, the Board of Supervisors is mindful that regulation of newsracks implicates rights protected by the First Amendment of the United States Constitution and by Article I, Section 2, of the California Constitution. To that end, the Board directs that the Director and other appropriate County personnel to interpret and apply this section and any guidelines promulgated hereunder, and to exercise their powers and duties, in a manner consistent with those Constitutional rights.

As to those areas identified as requiring additional controls, the Director shall prepare a preliminary statement detailing the specific additional controls recommended and the procedures for implementing those controls. The statement shall also contain and be based on specific factual findings utilizing the above-referenced factors and such other factors considered relevant to the recommendations.

Following preparation of such a preliminary statement, the Director shall cause to be posted in those areas written public notice identifying such location or locations. That notice shall also be sent via registered mail to each known distributor or owner of any newsrack in the area or who is otherwise known to have a presence in the area. The notice shall set forth the date, time and location of a public hearing to be conducted regarding the Director=s findings and recommendations and include a summary of the Director=s findings and recommendations.

The hearing shall be conducted not less than ten (10) days but not more than sixty (60) days following the posting or mailing of the notice and shall provide to the public and to all interested persons or entities, including but not limited to any distributor or owner of any newsrack in the area, an opportunity to contest the Director=s findings and recommendations and to show good cause why the additional controls recommended by the Director should not be implemented as recommended or otherwise.

Within ten (10) days after the hearing, and after giving due consideration to the arguments, information or other matters, if any, presented at or in connection with the hearing, the Director shall issue his or her final statement detailing such additional controls required for newsracks in the identified area and outlining the procedures for implementing those additional controls.

12.09.036 Display and sale of harmful matter to minors.

Section 313.1 of the California Penal Code (CPC) shall govern the display, offer for sale or selling of harmful matter as defined in CPC Section 313(a), to minors in vending machines, selling such matter, unattended by an adult at the time of such sale, located in and upon public places.

12.09.040 Encroachment Permit Requirement;

Any person who desires to install or place a newsrack within the right-of-way must first obtain an encroachment permit. The submittal of an inventory list by the distributor or publisher per Section 12.09.025 shall accompany the application for the encroachment permit. The application for an encroachment permit shall include a plan specifying the proposed location of the newsrack, the proposed type and style of newsrack, the proposed method of affixing, attaching or securing the newrack and the proposed location or locations. No fee will be charged for the permit and annual update reports, except to recover actual costs associated with the administration of the permitting process as shown on a fee schedule approved by the Board of Supervisors.

Notwithstanding any other provision of this Chapter, newsracks shall be permitted in the right-of-way of a public street adjoining land zoned for residential use only if the street is a collector or arterial as shown in the transportation element of the General Plan. The Director shall keep a current registration of all encroachment permits, including name of permit holder, address, telephone number, date of issued permit and location of nuisance.

The applicant must submit a copy of a current business tax certificate issued by the County pursuant to County Ordinance before an encroachment permit may be issued.

12.09.045 Restoration Costs

Upon removal, withdrawal or abandonment of any newsrack, the distributor and the owner shall be jointly and severally liable for all costs and expenses, including reasonable attorney fees, associated with restoring the right of way to the condition that would have existed had the newsrack not been installed.

12.09.050 Insurance

Any person, including but not limited to any distributor, placing, installing or maintaining a newsrack in the right of way in the unincorporated area of the County shall furnish to the Director a certificate showing that such person has then in force a policy or policies of public liability insurance and property damage insurance, naming the County as an additional insured and in an amount not less than \$100,000 minimum liability combined single limit (bodily injury and property damage) per person and per occurrence.

Each such person shall keep in force such policy or policies of public liability and property damage insurance during such time as he or she continues to place or install or maintain any newsrack under the terms of this Chapter. The evidence of insurance filed with County shall also include a copy of such insurance policy or policies and a written statement by the insurance carrier that the such carrier will provide the County thirty (30) days written notice before cancelling such insurance.

12.09.055 Indemnification

Any person, including but not limited to any distributor, placing, installing, maintaining a newsrack under this Chapter shall further be required to execute a written agreement with the County that she or she agrees to indemnify, defend and hold harmless the County and its agents and representatives from all claims, demands, lawsuits, liability, damage or judgments (herein collectively referred to as claims) arising out of or in any way connected with the placement, installation or maintenance of any newsrack in the right of way. The only exception to this duty to indemnify, defend and hold harmless is for those claims caused solely by the negligence or willful misconduct of the County or its agents or representatives.

12.09.060 Impoundment of racks B Corrections or other disposal authorized.

A. The Public Works Agency:

1. May immediately correct any violation of this Chapter and shall do so without impounding if such correction can be accomplished simply, easily, quickly and with nominal or no expense;

2. May immediately take other corrective or necessary, remedial action including but not limited to the impounding of any newsrack if, at the time, the newsrack presents an imminent and substantial danger to the public health, safety or general welfare. This corrective or remedial action shall be at the distributor=s or owner=s sole expense. Any expenses, fees or costs including reasonable attorney fees incurred by the County in connection with such action shall be paid by the owner or distributor who shall be jointly and severally liable therefor.

3. Must provide notice to the distributor or other person, if actually known, maintaining a newsrack that the newsrack is in violation of this Chapter. That notice may be either in person or by telephone or by mail, in the Agency=s discretion, or by affixing a written notice to the newsrack. The notice must state that unless the violation is corrected or a hearing requested from the Agency within ten (10) working days (if the notice is in person or by telephone), within ten (10) working days from the date of mailing if the notice is by mail, or within ten (10) working days of affixing the written notice (if the notice is by affixing a notice to the newsrack), whichever is later, the newsrack will be impounded either by seizure and removal to a designated storage facility or by impoundment in place;

4. May impound any newsrack in accordance with this Chapter or the decision of any Hearing Officer following a hearing timely requested pursuant to this Chapter;

5. Shall conduct a hearing within five (5) working days of a timely request for hearing regarding the notice of violation or the impounding of a newsrack.

B. A distributor or owner of any impounded newsrack may request a hearing from the Agency regarding the impounding up to ten (10) working days after the first day of impoundment whether by seizure or by impoundment in place.

C. If a hearing regarding the notice of violation or the impounding of the newsrack is not timely requested or if the newsrack is not returned in accordance with the provisions of this Chapter, the Director may sell or otherwise dispose of the newsrack, and its contents, and deposit the proceeds, if any, from any such sale or other disposition, any moneys contained in said newsrack, in a Public Works Agency general fund.

12.09.065 Return of impounded racks.

A. Unless the newsrack and its contents are being held as evidence in a criminal prosecution, the distributor or other person maintaining the newsrack, or if there is no such known person, a claimant who provides sufficient proof of ownership of an impounded newsrack may, at any time up to and including the thirtieth day after the impounding, and if a hearing pursuant to this chapter is held concerning the newsrack, may, at any time up to and including the thirtieth day after the decision at such hearing becomes final, obtain a return of the newsrack and its contents upon paying costs of restoration, if any, and an impound fee pursuant to a fee schedule approved by the Board of Supervisors.

B. The Director may, after a hearing in accordance with this Chapter, order the newsrack returned without payment of any impound fee; or if an impound fee has previously been paid, may order return of any such impound fee.

C. A court before whom criminal charges concerning an impounded newsrack are pending, may, upon dismissal of the charges or a finding of acquittal, in its discretion, order an impounded newsrack returned without payment of an impound fee or the return of the impound fee paid.

12.09.075 Appeal.

A. Any person or entity aggrieved by a finding, determination, notice, order or action taken by the Public Works Agency under the provisions of this Chapter may appeal to the Director of Public Works. An appeal must be perfected within ten (10) working days after the receipt of the notice of any decision or action by filing with the Director a notice of appeal briefly stating therein the basis for such appeal, identifying the location of the newsrack, name, address, and telephone number of the appellant.

B. After receipt of the notice specified in subpart A above, the Director shall appoint a Hearing Officer to hear the appeal. The hearing must be held on a date within sixty (60) days after receipt of the request for hearing or notice of appeal. Appellant shall be given at least ten (10) days= notice of the time and place of the hearing. The Hearing Officer shall give the appellant and any other interested party a reasonable opportunity to be heard in order to show cause why the finding, determination, notice, order or other action taken by the Public Works Agency under this Chapter should not be upheld.

C. Within five (5) days of the hearing, the Hearing Officer shall issue a written decision, which shall be final. The Hearing Officer shall provide a copy of the written decision either by personal delivery to the appellant or by regular U.S. mail addressed to the appellant at his or her last known address or other address as may be requested by appellant at or before the hearing.

D. Fees for filing an appeal shall be set by resolution of the County Board of Supervisors.

12.09.060 Abandonment.

In the event a newsrack remains empty for a period of thirty (30) consecutive calendar days, the same shall be deemed abandoned and may be treated in the manner provided herein for newsracks in violation of the provisions of this Chapter.

12.09.070 Violations.

Any person, corporation, partnership or other entity who violates any of the provisions of this chapter is subject to criminal prosecution as set forth in Title 1 of the County Ordinance.

12.09.075 Severability.

If any section, subsection, subdivision, sentence, clause, phrase or part of this Chapter or any part thereof is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter or any part thereof. The Board of Supervisors declares that it would have adopted this Chapter and each section, subsection, subdivision, sentence, clause, phrase or part thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or parts be declared invalid or unconstitutional.

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage, and before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda on the day of 2003
by the following call vote:

AYES:

NOES:

EXCUSED:

GAIL STEELE
President of the Board of Supervisors
County of Alameda