

## Chapter 13.24

### NEWSRACKS

#### Sections:

<b>13.24.010</b>	<b>Purpose.</b>
<b>13.24.015</b>	<b>Definitions.</b>
<b>13.24.020</b>	<b>Prohibition.</b>
<b>13.24.025</b>	<b>Standards for newsracks placed on sidewalks.</b>
<b>13.24.030</b>	<b>Location of newsracks.</b>
<b>13.24.035</b>	<b>Display and sale of harmful matter to minors.</b>
<b>13.24.040</b>	<b>Encroachment permit requirement.</b>
<b>13.24.045</b>	<b>Impoundment of racks--Corrections or other disposal authorized.</b>
<b>13.24.050</b>	<b>Return of impounded racks.</b>
<b>13.24.055</b>	<b>Appeal.</b>
<b>13.24.060</b>	<b>Abandonment.</b>
<b>13.24.065</b>	<b>Insurance.</b>
<b>13.24.070</b>	<b>Violations.</b>
<b>13.24.075</b>	<b>Severability.</b>

#### **Section 13.24.010 Purpose.**

A. The uncontrolled placement of newsracks in public rights-of-way presents an inconvenience and danger to the safety and welfare of persons using such right-of-way, including 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 right-of-way, and unsightly 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 inhibit safe entry and departure of vehicles, public and private.

E. 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.

F. 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.

G. The uncontrolled placement of newsracks increases the civil exposure of the City to personal injury and property damages claims.

H. City-controlled placement of newsracks provides for and maintains the freedom of speech and press for newspapers and news periodicals using dispensing devices for distribution purposes.

I. This chapter is enacted in pursuance of and for the purpose of securing and promoting the public safety and general welfare of persons in the City in their use of public rights-of-way. (Ord. 6200 § 1 (part), 1995)

#### **Section 13.24.015 Definitions.**

Whenever the following words and phrases are used in this chapter, they shall have the

meaning ascribed to them in this section:

"Distributor" means the person responsible for placing and maintaining a newsrack in a public right-of-way.

"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.

"Parkway" means the area between the sidewalk and the curb of the roadway, and where there is no sidewalk, that area between the edge of the traveled roadway and the edge of a public right-of-way. Parkway also includes any area within a roadway that is not open to vehicular travel.

"Public right-of-way" means any place of any nature which is dedicated to use by the public for pedestrian and vehicular travel, and includes, but is not limited to, a street, sidewalk, curb, gutter, crossing, intersection, parkway, highway, alley, lane, mall, court, way, avenue, boulevard, road, roadway, viaduct, subway, tunnel, bridge, thoroughfare, park square, and other similar public way.

"Roadway" means that part of a public right-of-way that is designated and used primarily for vehicular travel.

"Sidewalk" means that part of a public right-of-way that is designated and ordinarily used for pedestrian travel. (Ord. 6200 § 1 (part), 1995)

#### **Section 13.24.020 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 a public right-of-way or what projects onto, into, or over any part of a public right-of-way except in compliance with the provisions of this chapter. (Ord. 6200 § 1 (part), 1995)

#### **Section 13.24.025 Standards for newsracks placed on sidewalks.**

Any newsrack which rests in whole or in part upon, in or on any portion of a public right-of-way or which projects onto, into or over any part of a public right-of-way shall comply with the standards set forth in this section.

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

B. The newsracks shall be painted black, brown, gray, blue or white.

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 subsection B.

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; and

6. The structural parts thereof are not broken or unduly misshapen.

G. Newsracks lawfully in existence on February 6, 1995 shall be allowed to remain at the same location, provided they are not determined to be a public nuisance or dangerous to the public safety or general welfare, for a period of six months following adoption of the ordinance codified in this chapter. In order to benefit from this subsection, a distributor must report the number and location of all newsracks existing within the City as of February 6, 1995 to the Public Works Department within sixty days of the effective date of the ordinance codified in this chapter which shall compile an inventory of such existing newsracks. Such inventory list shall be conclusive as to the location and existence of such newsracks. The distributor must submit an annual update report to the Public Works Director, including all new locations of its newsracks. Thereafter, all such newsracks shall be required to comply with all provisions of this chapter. (Ord. 6200 § 1 (part), 1995)

#### **Section 13.24.030 Location of newsracks.**

Any newsrack which rests in whole or in part upon, in, or on any portion of a public right-of-way or which projects onto, into or over any part of a public right-of-way shall be located in accordance with the provisions of this section:

A. No newsrack shall be located in whole or in part in any roadway.

B. 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. Newsracks located near the curb shall be located no less than eighteen inches nor more than twenty-four inches from the roadway edge of the curb. Newsracks located adjacent to a building shall be located parallel to and not more than six inches from the wall thereof. No newsrack shall be located directly in front of any display window of any building abutting a sidewalk or parkway, except near the curb, 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 days of the date of written notice from the City to the owner of such newsrack. No newsrack shall be located on the sidewalk or parkway directly opposite a newsstand or another newsrack.

C. Existing newsracks shall be bolted or safely secured to the sidewalk or concrete slab or other alternate technique approved by the Public Works Director. After one year from the date of adoption of the ordinance codified in this chapter, all newsracks must be bolted to the sidewalk or concrete slab.

D. Newsracks may be placed next to each other, provided that no cluster of newsracks shall exceed a distance of more than ten feet. A cluster shall include no more than six newsracks. There shall be a limit of two newsracks per publication at any given location per cluster.

E. No newsrack shall be placed, installed, used or maintained:

1. Within one hundred 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, mechanical sidewalk cleaning machinery. (Ord. 6200 § 1 (part), 1995)

#### **Section 13.24.035 Display and sale of harmful matter to minors.**

Section 313.1 of the California Penal Code 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. (Ord. 6393 § 37, 1997; Ord. 6200 § 1 (part), 1995)

**Section 13.24.040 Encroachment permit requirement.**

Any person who desires to install or place a newsrack within the public right-of-way must first obtain an encroachment permit. The submittal of the list by the distributor or publisher shall constitute the application for the encroachment permit. No fee will be charged for the permit and annual update reports.

Notwithstanding any other provision of this chapter, newsracks shall be permitted in the public right-of-way of a public street adjoining land zoned for residential use only if the street is a major arterial as shown in the transportation element of the general plan. The Public Works Director or his authorized representative 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 City pursuant to Section 5.04.040 of this code before an encroachment permit may be issued. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.045 Impoundment of racks--Corrections or other disposal authorized.**

A. The Public Works Director or his designee:

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 without expense;

2. May notify the person, if known, maintaining a newsrack found in violation of this chapter, either in person, by telephone or by mail, in their discretion, and/or by affixing a notice to the newsrack, that unless the violation is corrected or a hearing requested, within ten working days if the notice is in person or by telephone, within ten working days if the notice is by mail, or within ten working days if the notice is by affixing a notice to the newsrack, of the date of the notice, the newsrack will be impounded;

3. May impound any newsrack in accordance with the decision of any hearing requested pursuant to this chapter.

B. If a hearing on 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 City Manager or his designees 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 the City general fund. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.050 Return of impounded racks.**

A. Unless the newsrack and its contents are being held as evidence in a criminal prosecution, the 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 an impound fee of twenty-five dollars plus the reasonable additional cost, if any, of impounding the newsrack in excess of twenty-five dollars.

B. The City Manager or his designee 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. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.055 Appeal.**

Any person or entity aggrieved by a finding, determination, notice, order or action taken under the provisions of this chapter may appeal to the City Manager. An appeal must be perfected within ten working days after receipt of the notice of any decision or action by filing with the City Manager 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. The City Manager shall then appoint a Hearing Officer to hear the appeal. The hearing must be held on a date within sixty days after receipt of the notice of appeal. Appellant shall be given at least ten days' notice of the time and place of the hearing. The hearing officer shall give the appellant and any other interested party the reasonable opportunity to be heard, in order to show cause why the determination of the City Manager or his designee should not be upheld. Within five days of the hearing, the City Officer shall make a written decision. His decision is final, with no appeal to the City Council. Fees for filing an appeal shall be set by resolution of the City Council. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.060 Abandonment.**

In the event a newsrack remains empty for a period of thirty continuous days, the same shall be deemed abandoned and may be treated in the manner provided in Section 13.24.045 for newsracks in violation of the provisions of this Chapter. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.065 Insurance.**

The City requires every person, corporation, partnership or other entity which places or maintains a newsrack on a public sidewalk or other public place in the City to provide insurance as required by current City policy, rule and/or regulations. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.070 Violations.**

Any person, corporation, partnership or other entity who violates any of the provisions of this chapter is subject to criminal prosecution as permitted in Section 1.01.110. (Ord. 6200 § 1 (part), 1995)

**Section 13.24.075 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 City Council 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. (Ord. 6200 § 1 (part), 1995)