

ORDINANCE NO. 11457
(New Series)

DEC 6 1974

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 2,
OF THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 10 THERETO, RELATING TO NEWSRACKS ON
PUBLIC RIGHTS OF WAY--LOCATIONS.

BE IT ORDAINED, by the Council of The City of San Diego
as follows:

Section 1. That Chapter VI, Article 2, of the San Diego
Municipal Code be and the same is hereby amended by adding
Division 10 to read as follows:

DIVISION 10

NEWSRACKS ON PUBLIC RIGHTS OF WAY--LOCATIONS

SEC. 62.1001 PURPOSE AND INTENT

The Council of The City of San Diego finds and
declares that:

(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 rights of way, including pedestrians,
persons entering and leaving vehicles and buildings,
and persons performing essential utility, traffic
control and emergency services.

(b) Newsracks so located as to cause an
inconvenience or danger to persons using public
rights of way, and unsightly newsracks located
therein, constitute public nuisances.

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MAY 4 1978

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(c) The general welfare requires that the aesthetic appearance of public rights of way in the City of San Diego, including the appearance of newsracks, be improved.

(d) The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public safety and general welfare of persons in the City of San Diego in their use of public rights of way.

SEC. 62.1002 DEFINITIONS

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

(a) "Distributor" shall mean the person responsible for placing and maintaining a newsrack in a public right of way.

(b) "Newsrack" shall mean 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.

(c) "Parkway" shall mean the area between the sidewalk and the curb of a 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.

(d) "Public Right of Way" shall mean 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 any other similar public way.

(e) "Roadway" shall mean that part of a public right of way that is designated and used primarily for vehicular travel.

(f) "Sidewalk" shall mean that part of a public right of way that is designated and ordinarily used for pedestrian travel.

SEC. 62.1003 PROHIBITION

No person shall knowingly 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 which projects onto, into, or over any part of a public right of way except in compliance with the provisions of this division.

SEC. 62.1004 STANDARDS FOR NEWSRACKS

Any newsrack which rests in whole or in part upon, in, or on any portion of a public right of way or which

MICROFILMED

-3-

MAY 4 1978

11457

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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 sixty (60) inches in height, thirty (30) inches in width, or twenty-four (24) inches in thickness.

(b) 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 any newsrack.

(c) 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.

(d) 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 division.

(e) 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

-4-
MICROFILMED

11457

MAY 4 1978

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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.

SEC. 62.1005 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 be 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 (18) inches nor more than twenty-four (24) inches from the roadway edge

of the curb. Newsracks located adjacent to a building shall be located parallel to and not more than six (6) 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. No newsrack shall be located on the sidewalk or parkway directly opposite a newsstand or another newsrack.

(c) No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right of way, except to other newsracks.

(d) Newsracks may be placed next to each other, provided that no group of newsracks shall extend for a distance of more than eight (8) feet along a curb, and a space of not less than three (3) feet shall separate each group of newsracks.

(e) No newsrack shall be placed, installed, used or maintained:

(1) Within three (3) feet of any marked crosswalk.

(2) Within twelve (12) feet of the curb return of any unmarked crosswalk.

(3) Within three (3) feet of any fire hydrant, fire call box, police call box or other emergency facility.

(4) Within three (3) feet of any driveway.

(5) Within three (3) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop.

(6) Within three (3) feet of the outer end of any bus bench.

(7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet.

(8) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.

(9) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.

The provisions contained in subsection (e) of this section shall not apply if compliance with the provisions would prohibit the placement of newsracks for a distance of one hundred fifty (150) feet on the same side of the street in the same block.

SEC. 62.1006 UNIFORM NEWSRACKS REQUIRED AT CERTAIN LOCATIONS

(a) The clutter and congestion of numerous disparate types of newsracks at certain locations in the public rights of way is detrimental to the public safety, convenience and general welfare.

Accordingly, the public interest requires that newsrack facilities of uniform and coordinated construction and appearance be utilized at such locations.

(b) The City Manager shall implement this policy by determining, from time to time, which locations require any such facilities and by determining the standards for such facilities at each such location.

(c) The City Manager shall make such determinations for each such location only after holding a public hearing on the subject at which all persons interested shall be given a reasonable opportunity to be heard. The City Manager shall conduct a public hearing when it is brought to his attention by his own investigations, a member of the City Council, newspaper distributor, civic organization, citizens, or by any other means, that certain locations might require uniform newsrack facilities. Notice of such public hearing shall be given to each person reasonably known to him to be maintaining a newsrack or newsracks within the public right of way, and to each person who has requested, in writing, that a public hearing be held.

(d) In determining which locations, if any, require uniform newsrack facilities, the City Manager shall make the following findings: (1) the location

contains four or more newsracks within a space of fifty (50) feet; (2) the location is an area extensively used by the general public and carries a heavy volume of pedestrian traffic; and (3) such uniform newsrack facilities are feasible at that location.

(e) In determining the types of uniform newsrack facilities to be required at each such location, the City Manager shall apply the following guidelines:

(1) The newsrack facilities shall be located so as to maximize the public convenience and safety, both as to accessibility to the newsracks and the use of the public right of way as a thoroughfare, and the aesthetic appearance of the area.

(2) The type and appearance, including colors, of the newsrack facilities shall blend with the surroundings of the particular location to the extent practicable.

(3) The most economical types of newsrack facilities shall be selected, consistent with the ends to be achieved.

(4) Absolute uniformity in size and configuration shall not necessarily be required. For example, larger or multiple newsracks may be permitted for bulky or frequently issued

publications and smaller units may be permitted for smaller publications or publications with greater intervals of issuance.

(5) Standards shall be specified so as to permit a reasonably wide selection of newsrack facilities available on the market. Manufacturers shall not be specified by name unless equivalents are also permitted, nor shall the standards be so narrowly drawn as to restrict the selection to only one proprietary brand.

(f) The City Manager shall reduce his findings to writing and shall give written notice thereof to the persons referred to in subsection (c) of this section prior to their implementation.

(g) The City shall, at its expense, furnish, install and maintain the common supporting structures, if any, for such newsracks. The distributors of each publication shall, at their expense, furnish, install and maintain the individual newsrack units. Except as applied by the City Manager, the provisions of Section 62.1005 shall not apply to newsracks installed and maintained pursuant to this section. Subject to the foregoing, and except as otherwise determined by the City Manager, the provisions of this division shall apply fully to newsrack facilities installed pursuant to this section.

(h) After the City Manager has made said determinations, and after the City has installed the supporting structures or the location is otherwise ready for the individual newsrack units to be installed, no person shall place, install, use or maintain any newsrack at that location except in conformance with the standards prescribed therefor by the City Manager. "Location" as used in the foregoing sentence shall mean any place within one hundred fifty (150) feet of the place designated for the installation of said uniform newsracks unless it is separated therefrom by a street or a sidewalk corner. Nothing herein contained shall be construed to prevent a distributor from using a nonconforming newsrack during the period that (1) an adequate supporting structure is not available; or (2) he cannot obtain a conforming newsrack unit because one is not available; or (3) his unit is undergoing needed maintenance or repairs and a replacement is not reasonably available; or (4) he is diligently proceeding to replace a unit; or (5) an emergency exists during which he would otherwise be prevented from distributing his publications by means of a newsrack at that location, provided that he acts diligently to correct the situation.

-11-

MICROFILMED

11457

MAY 4 1978

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(i) The relative location of individual newsrack units shall be determined and may be rotated from time to time by agreement among the distributors. Should they be unable to agree, the City Manager shall annually determine the relative location by lot.

SEC. 62.1007 ENFORCEMENT

Upon a determination by the City Manager that a newsrack has been installed, used or maintained in violation of any of the provisions of this division, he shall cause an order to be issued to the distributor to correct the offending condition. The order shall be telephoned to the distributor and confirmed by mailing a copy of the order by certified mail, return receipt requested, to the distributor at the address shown on the notice required by Section 62.1004(d). The order shall specifically describe the offending condition and suggest actions necessary to correct it. If the distributor fails to correct properly the offending condition within three (3) days (excluding Saturdays, Sundays and legal holidays) after receipt of the order, the City Manager shall cause the offending newsrack to be summarily removed and processed as unclaimed property under applicable provisions of law relating thereto. If the distributor of the offending newsrack cannot be identified, the newsrack shall be removed immediately and processed as unclaimed property under

applicable provisions of law. The foregoing provisions are not exclusive, and are in addition to any other penalty or remedy provided by law.

SEC. 62.1008 APPEAL

Within ten (10) days after receipt of the decision of the City Manager pursuant to the provisions of Section 62.1006(f), any party affected by the decision may file with the City Clerk a written request for a public hearing before the City Council. Upon the filing of such a request, the City Clerk shall set a time and place for the hearing and shall notify the party thereof at least five (5) days before the hearing date. The hearing shall be held within thirty (30) days after the request is filed. The decision of the City Council shall be final in the absence of fraud or collusion.

SEC. 62.1009 OTHER VIOLATIONS

In the case of minor violations of this division that can be corrected on the spot, any City employee, as an alternative to removal of the newsrack, is authorized to correct the violation summarily.

SEC. 62.1010 PUBLIC NUISANCE

Any newsrack, or any publication offered for sale or distribution, in violation of this division shall constitute a public nuisance, and may be abated in accordance with applicable provisions of law.

SEC. 62.1011 ABANDONMENT

In the event a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 62.1007 for newsracks in violation of the provisions of this division.

SEC. 62.1012 CITY MANAGER'S DESIGNATED REPRESENTATIVE

"City Manager" as used in this division shall include his designated representative.

SEC. 62.1013 CONSTITUTIONALITY

If any section, subsection, sentence, clause, phrase or part of this division 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 parts of this division. The Council hereby declares that it would have adopted this division and each section, subsection, sentence, clause, phrase or part thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases, or parts be declared invalid or unconstitutional.

Section 2. The City Clerk is hereby directed to mail a copy of this ordinance to each person reasonably known to him to be maintaining a newsrack or newsracks within a public right of way, at the last known address of such person, or, if none is known, to such person in care of General Delivery, San Diego, California.

-14- MICROFILMED
MAY 4 1978

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Section 3. The provisions of Section 62.1004 of this division shall take effect and be in force on the sixtieth day from and after the passage of this ordinance.

Section 4. Except as otherwise herein expressly provided, this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Eugene P. Gordon
Eugene P. Gordon
Deputy City Attorney

DEC 6 1974

Passed and adopted by the Council of The City of San Diego on _____, by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Martinet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Bates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON
Mayor of The City of San Diego, California.

EDWARD NIELSEN
City Clerk of The City of San Diego, California.

(Seal)

By *Patricia Polen*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

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DEC 6 1974

, and on _____

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN
City Clerk of The City of San Diego, California.

(Seal)

By *Patricia Polen*, Deputy.

RECEIVED
CITY CLERK'S OFFICE
1974 NOV -6 PM 4:54
SAN DIEGO, CALIF.

MICROFILMED MAY 4 1978

Office of the City Clerk, San Diego, California

Ordinance Number **11457** Adopted **DEC 6 1974**

1974 DEC 20 AM 10:20 *eg*

ATTORNEY(S)

San Diego, City of
12th Floor City Admin. Center
San Diego, Ca. 92101

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

Newsracks on Public Rights of Way

DEC 20 1974 *eg*

I, **PATRICIA M. APPELSTILL** hereby certify that San Diego Daily Transcript is a daily newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the City of San Diego, County of San Diego, State of California; that I am the principal clerk of said newspaper; that the

ORDINANCE NO. 11457

is a true and correct copy of which this certificate is annexed and was published in said newspaper on

December 13, 1974

I certify under penalty of perjury that the foregoing is true and correct, at San Diego, California, on

December 16, 1974

Patricia M. Appelstill
(Signature)

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ORDINANCE NO. 11487
(New Series)

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 10 THERETO, RELATING TO NEWSRACKS ON PUBLIC RIGHTS OF WAY—LOCATIONS. BE IT ORDAINED, by the Council of The City of San Diego as follows:

Section 1. That Chapter VI, Article 2, of the San Diego Municipal Code be and the same is hereby amended by adding Division 10 to read as follows:

DIVISION 10

NEWSRACKS ON PUBLIC RIGHTS OF WAY—LOCATIONS

SEC. 62.1001 PURPOSE AND INTENT

The Council of The City of San Diego finds and declares that:

(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 rights of way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

(b) Newsracks so located as to cause an inconvenience or danger to persons using public rights of way, and unsightly newsracks located therein, constitute public nuisances.

(c) The general welfare requires that the aesthetic appearance of public rights of way in the City of San Diego, including the appearance of newsracks, be improved.

(d) The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public safety and general welfare of persons in the City of San Diego in their use of public rights of way.

SEC. 62.1002 DEFINITIONS

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

(a) "Distributor" shall mean the person responsible for placing and maintaining a newsrack in a public right of way.

(b) "Newsrack" shall mean 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.

(c) "Parkway" shall mean the area between the sidewalk and the curb of a 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.

(d) "Public Right of Way" shall mean 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 any other similar public way.

(e) "Roadway" shall mean that part of a public right of way that is designated and used primarily for vehicular travel.

(f) "Sidewalk" shall mean that part of a public right of way that is designated and ordinarily used for pedestrian travel.

SEC. 62.1003 PROHIBITION

No person shall knowingly 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 which projects onto, into, or over any part of a public right of way except in compliance with the provisions of this division.

SEC. 62.1004 STANDARDS FOR 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 comply with the standards set forth in this section:

(a) No newsrack shall exceed sixty (60) inches in height, thirty (30) inches in width, or twenty-four (24) inches in thickness.

(b) 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 any newsrack.

(c) 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.

(d) 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 division.

(e) 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 thereon; (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.

SEC. 62.1005 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 be 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 (18) inches nor more than twenty-four (24) inches from the roadway edge of the curb. Newsracks located adjacent to a building shall be located parallel to and not more than six (6) 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. No newsrack shall be located on the sidewalk or parkway directly opposite a newsstand or another newsrack.

(c) No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right of way, except to other newsracks.

No newsracks shall be placed next to each other, provided that the space between them shall be at least six (6) inches. Newsracks shall be spaced at least six (6) inches from the curb or wall of a building. Newsracks shall be spaced at least six (6) inches from the edge of a roadway. Newsracks shall be spaced at least six (6) inches from the edge of a sidewalk or parkway.

(1) The newsrack shall be placed, installed, used or maintained:

- (1) Within three (3) feet of any marked crosswalk.
- (2) Within twelve (12) feet of the curb return of any unmarked crosswalk.
- (3) Within three (3) feet of any fire hydrant, fire call box, police call box or other emergency facility.
- (4) Within three (3) feet of any driveway.
- (5) Within three (3) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop.
- (6) Within three (3) feet of the outer end of any bus bench.
- (7) At any location whereby the clear space for the passage-way of pedestrians is reduced to less than six (6) feet.
- (8) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.
- (9) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.

The provisions contained in subsection (e) of this section shall not apply if compliance with the provisions would prohibit the placement of newsracks for a distance of one hundred fifty (150) feet on the same side of the street in the same block.

SEC. 62.1006 UNIFORM NEWSRACKS REQUIRED AT CERTAIN LOCATIONS

(a) The clutter and congestion of numerous disparate types of newsracks at certain locations in the public rights of way is detrimental to the public safety, convenience and general welfare. Accordingly, the public interest requires that newsrack facilities of uniform and coordinated construction and appearance be utilized at such locations.

(b) The City Manager shall implement this policy by determining, from time to time, which locations require any such facilities and by determining the standards for such facilities at each such location.

(c) The City Manager shall make such determinations for each such location only after holding a public hearing on the subject at which all persons interested shall be given a reasonable opportunity to be heard. The City Manager shall conduct a public hearing when it is brought to his attention by his own investigations, a member of the City Council, newspaper distributor, civic organization, citizens, or by any other means, that certain locations might require uniform newsrack facilities. Notice of such public hearing shall be given to each person reasonably known to him to be maintaining a newsrack or newsracks within the public right of way, and to each person who has requested, in writing, that a public hearing be held.

(d) In determining which locations, if any, require uniform newsrack facilities, the City Manager shall make the following findings: (1) the location contains four or more newsracks within a space of fifty (50) feet; (2) the location is an area extensively used by the general public and carries a heavy volume of pedestrian traffic; and (3) such uniform newsrack facilities are feasible at that location.

(e) In determining the types of uniform newsrack facilities to be required at each such location, the City Manager shall apply the following guidelines:

(1) The newsrack facilities shall be located so as to maximize the public convenience and safety, both as to accessibility to the newsracks and the use of the public right of way as a thoroughfare, and the aesthetic appearance of the area.

(2) The type and appearance, including colors, of the newsrack facilities shall blend with the surroundings of the particular location to the extent practicable.

(3) The most economical types of newsrack facilities shall be selected, consistent with the ends to be achieved.

(4) Absolute uniformity in size and configuration shall not necessarily be required. For example, larger or multiple newsracks may be permitted for bulky or frequently issued publications and smaller units may be permitted for smaller publications or publications with greater intervals of issuance.

(5) Standards shall be specified so as to permit a reasonably wide selection of newsrack facilities available on the market. Manufacturers shall not be specified by name unless equivalents are also permitted, nor shall the standards be so narrowly drawn as to restrict the selection to only one proprietary brand.

(f) The City Manager shall reduce his findings to writing and shall give written notice thereof to the persons referred to in subsection (c) of this section prior to their implementation.

(g) The City shall, at its expense, furnish, install and maintain the common supporting structures, if any, for such newsracks. The distributors of each publication shall, at their expense, furnish, install and maintain the individual newsrack units. Except as applied by the City Manager, the provisions of Section 62.1006 shall not apply to newsracks installed and maintained pursuant to this section. Subject to the foregoing, and except as otherwise determined by the City Manager, the provisions of this division shall apply fully to newsrack facilities installed pursuant to this section.

(h) After the City Manager has made said determinations, and after the City has installed the supporting structures or the location is otherwise ready for the individual newsrack units to be installed, no person shall place, install, use or maintain any newsrack at that location except in conformance with the standards prescribed therefor by the City Manager. "Location" as used in the foregoing sentence shall mean any place within one hundred fifty (150) feet of the place designated for the installation of said uniform newsracks unless it is separated therefrom by a street or a sidewalk corner. Nothing herein contained shall be construed to prevent a distributor from using a nonconforming newsrack during the period that (1) an adequate supporting structure is not available; or (2) he cannot obtain a conforming newsrack unit, because one is not available; or (3) his unit is undergoing needed maintenance or repairs and a replacement is not reasonably available; or (4) he is diligently proceeding to replace a unit; or (5) an emergency exists during which he would otherwise be prevented from distributing his publications by means of a newsrack at that location, provided that he acts diligently to correct the situation.

(i) The relative location of individual newsrack units shall be determined and may be rotated from time to time by agreement among the distributors. Should they be unable to agree, the City Manager shall annually determine the relative location by lot.

SEC. 62.1007 ENFORCEMENT

Upon a determination by the City Manager that a newsrack has been

...shall be deemed to be in violation of the provisions of this ordinance...
...by mailing a copy of the order by certified mail, return receipt requested, to the distributor at the address shown on the notice issued by Section 62.1004(d). The order shall specifically describe the offending condition and suggest actions necessary to correct it. If the distributor fails to correct properly the offending condition within three (3) days (excluding Saturdays, Sundays and legal holidays) after receipt of the order, the City Manager shall cause the offending newrack to be summarily removed and processed as unclaimed property under applicable provisions of law relating thereto. If the distributor of the offending newrack cannot be identified, the newrack shall be removed immediately and processed as unclaimed property under applicable provisions of law. The foregoing provisions are not exclusive, and are in addition to any other penalty or remedy provided by law.

SEC. 62.1008 APPEAL.
Within ten (10) days after receipt of the decision of the City Manager pursuant to the provisions of Section 62.1006(f), any party affected by the decision may file with the City Clerk a written request for a public hearing before the City Council. Upon the filing of such a request, the City Clerk shall set a time and place for the hearing and shall notify the party thereof at least five (5) days before the hearing date. The hearing shall be held within thirty (30) days after the request is filed. The decision of the City Council shall be final in the absence of fraud or collusion.

SEC. 62.1009 OTHER VIOLATIONS
In the case of minor violations of this division that can be corrected on the spot, any City employee, as an alternative to removal of the newrack, is authorized to correct the violation summarily.

SEC. 62.1010 PUBLIC NUISANCE.
Any newrack, or any publication offered for sale or distribution, in violation of this division shall constitute a public nuisance, and may be abated in accordance with applicable provisions of law.

SEC. 62.1011 ABANDONMENT
In the event a newrack remains empty for a period of thirty (30) consecutive days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 62.1007 for newracks in violation of the provisions of this division.

SEC. 62.1012 CITY MANAGER'S DESIGNATED REPRESENTATIVE.
"City Manager" as used in this division shall include his designated representative.

SEC. 62.1013 CONSTITUTIONALITY
If any section, subsection, sentence, clause, phrase or part of this division 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 parts of this division. The Council hereby declares that it would have adopted this division and each section, subsection, sentence, clause, phrase or part thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases, or parts be declared invalid or unconstitutional.

Section 2. The City Clerk is hereby directed to mail a copy of this ordinance to each person reasonably known to him to be maintaining a newrack or newracks within a public right of way, at the last known address of such person, or, if none is known, to such person in care of General Delivery, San Diego, California.

Section 3. The provisions of Section 62.1004 of this division shall take effect and be in force on the sixtieth day from and after the passage of this ordinance.

Section 4. Except as otherwise herein expressly provided, this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on November 21, 1974.
Passed and adopted by the Council of The City of San Diego on December 6, 1974.

AUTHENTICATED BY:
PETE WILSON,
Mayor of The City of San Diego, California.
EDWARD NIELSEN,
City Clerk of The City of San Diego, California.
By PATRICIA ROBERTS, Deputy

Approved December 12, 1974