

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 2, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE, BY AMENDING SECTIONS 62.1001, 62.1002, 62.1003, 62.1004, 62.1005, 62.1007, 62.1009, 62.1010, 62.1011, 62.1012, 62.1013, AND ADDING SECTIONS 62.1006, 62.1008, 62.1014, 62.1015, 62.1016, 62.1017, 62.1018, 62.1019, 62.1020, AND 62.1021 ALL RELATING TO REGULATING NEWSRACKS WITHIN THE PUBLIC RIGHT-OF-WAY.

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

Section 1. That Chapter 6, Article 2, Division 10, of the San Diego Municipal Code be amended by amending Sections 62.1001, 62.1002, 62.1003, 62.1004, 62.1005, 62.1007, 62.1009, 62.1010, 62.1011, 62.1012, 62.1013, and adding Sections 62.1006, 62.1008, 62.1014, 62.1015, 62.1016, 62.1017, 62.1018, 62.1019, 62.1020, 62.1021; to read as follows:

§62.1001 Statement of Findings and Intent

- (a) The Council finds the uncontrolled proliferation and placement of *newsracks* in the *public right-of-way* constitutes a threat to public health, safety, and general welfare including impeding pedestrian, wheelchair, and vehicular traffic; interfering with ingress and egress to and from buildings, vehicles, and public transportation; obstructing views of traffic signs and street-crossing pedestrians; and impeding performance of essential utility, traffic control, and emergency services. *Newsracks* that unreasonably interfere with these activities constitute a public nuisance.

- (b) The Council further finds unreasonably deteriorated or inadequately maintained *newsracks* threaten the public health and safety, and constitute a public nuisance.
- (c) The Council further finds *newsracks* not reasonably maintained in a neat and clean condition threaten the general welfare including the aesthetic appearance of the *public right-of-way*, and constitute a public nuisance.
- (d) The Council further finds regulations specific to the Gaslamp Quarter Planned District are necessary to protect public health, safety, and general welfare including the character of this nationally designated historic district where pedestrian and vehicular traffic is intensified due to the vast numbers of sidewalk cafes, restaurants, businesses, working citizens, and visitors within this compact area located between San Diego's major landmarks including the Convention Center, PETCO Park, and the Marina Planned District.
- (e) The Council further finds regulations specific to the San Diego Metropolitan Transit System are necessary to protect the public health, safety, and general welfare including the safe operation of the public transit system and security of its employees and patrons.
- (f) The intent of these provisions is to ensure the public health, safety, and general welfare is protected without unreasonably restricting the dissemination of constitutionally protected information.
- (g) It is not the intent of these provisions to regulate the placement of *newsracks* on private property. It shall remain the responsibility of the

permittee to determine the property lines and ensure *newsracks* are placed within the *public right-of-way* in compliance with this division.

§62.1002 Definitions

Each italicized word or phrase in this division is defined in accordance with San Diego Municipal Code [Code] sections 11.0210 and 113.0103, and as defined in this section. The definitions below shall prevail in their application to this division over conflicting definitions in the Code.

- (a) *Bus stop* means any location designated for passenger loading of buses owned, operated, or controlled by the San Diego Metropolitan Transit System.
- (b) *Combination dispenser* means a common structure housing two or more *newsracks*, and is subject to the same standards and regulations as a *newsrack* unless otherwise stated in this division.
- (c) *Corral* means a physically detectable boundary or structure designated by the *director* within which all *newsracks* in the Gaslamp Quarter Planned District shall be located. No *newsracks* other than those permitted to be located in *corrals* are allowed within the Gaslamp Quarter Planned District.
- (d) *Director* means the representative of the City's Neighborhood Code Compliance designated as the enforcement official for this division.
- (e) *Newsrack* means any self-service container, storage unit, or other dispenser that rests or projects, in whole or in part, in or upon any portion of the *public right-of-way*, and is installed, used, or maintained for the

display, sale, or distribution of a publication. Unless otherwise stated in this division, the term *newsrack* includes *shared newsrack* and *combination dispenser* and the same standards and regulations apply to all three.

- (f) *Operable element* means any component of a *newsrack* requiring handling or manipulation to obtain the publication therein including the door or coin mechanism.
- (g) *Permittee* means the person or entity designated on the permit as responsible for the *newsrack*.
- (h) *Roadway* means that part of a *public right-of-way* that is designated and used primarily for vehicular travel.
- (i) *Shared newsrack* means a single *newsrack* housing more than one publication, and is subject to the same standards and regulations as a *newsrack*, unless otherwise stated in this division.
- (j) *Trolley stop* means any location designated for passenger loading of trolleys or light rail vehicles owned, operated, or controlled by the San Diego Metropolitan Transit System.

§62.1003 General Prohibition

The placement, installation, use, or maintenance of any *newsrack* in violation of this division is prohibited, including all *newsracks* that endanger the safety of persons or property, or fail to comply with all permit conditions.

§62.1004 Physical Standards for Newsracks

Newsracks shall comply with the standards set forth in this section:

- (a) Any *operable element* of a *newsrack* shall not exceed 48 inches in height or be less than 15 inches above the *public right-of-way* on which it is located.
- (b) No *newsrack* or *shared newsrack* shall exceed 52 inches in height, 30 inches in width, or 24 inches in depth. No *combination dispenser* shall exceed 60 inches in height, 120 inches in width, or 30 inches in depth.
- (c) No exterior or interior component of any *newsrack* shall advertise, publicize, or promote anything other than the display, sale, or purchase of the publication(s) therein.
- (d) *Newsracks* shall only contain current editions of the publication(s) for which the permit was issued.
- (e) Coin-operated *newsracks* shall be equipped with a functional coin-return mechanism.
- (f) Each *newsrack* shall have permanently affixed in a readily visible place the current name, address, and telephone number of the *permittee*.
- (g) Each *newsrack* shall have a door, covering, and/or other appropriate device(s) preventing the publications therein from getting wet or falling out due to rain, wind, or similar environmental conditions.
- (h) Each *newsrack* shall be maintained in a reasonably neat and clean condition and in good repair including: (1) reasonably free of dirt, trash, debris, foreign objects, graffiti, stickers, dents, and grease; (2) reasonably free of chipped, faded, peeling, and cracked paint in any visible painted areas; (3) reasonably free of rust and corrosion in any visible unpainted

metal areas; (4) any clear parts through which publications are visible shall be unbroken and reasonably free of cracks, scratches, dents, blemishes, and discoloration; (5) any paper or cardboard parts or inserts shall be reasonably free of tears, peeling, or fading; and (6) no structural components shall be broken or unduly misshapen. A maintenance log documenting the *permittee's* inspection of each *newsrack* shall be maintained by the *permittee* and available for inspection upon request of the City.

- (i) Only drop-in type anchor bolts may be used to secure *newsracks* to the *public right-of-way*.
- (j) *Newsracks* shall not be chained, bolted, or otherwise attached to the private property of another, any street furniture, tree, sign, or other fixed object.
- (k) *Newsracks* shall comply with the Americans with Disabilities Act of 1990, as amended, and all regulations adopted thereunder.

§62.1005 Standards for Proper Removal of Newsracks

Upon removal of any *newsrack*, the *permittee* shall eliminate any potential hazards to the public, such as bolts, brackets, or holes, and shall restore any disturbed area of the *public right-of-way* to the same or reasonably similar condition as any adjoining *public right-of-way* by removing any protrusions, cleaning the cavity of debris, filling the cavity with high strength epoxy or grout to meet the elevation of the adjoining *public right-of-way*, and avoiding potential depressions by taking into account shrinkage and settlement of the new material.

The *public right-of-way* shall be level and free of protrusions or depressions. The *permittee* shall match as closely as reasonably possible the color, texture, and material of any adjoining *public right-of-way* surface.

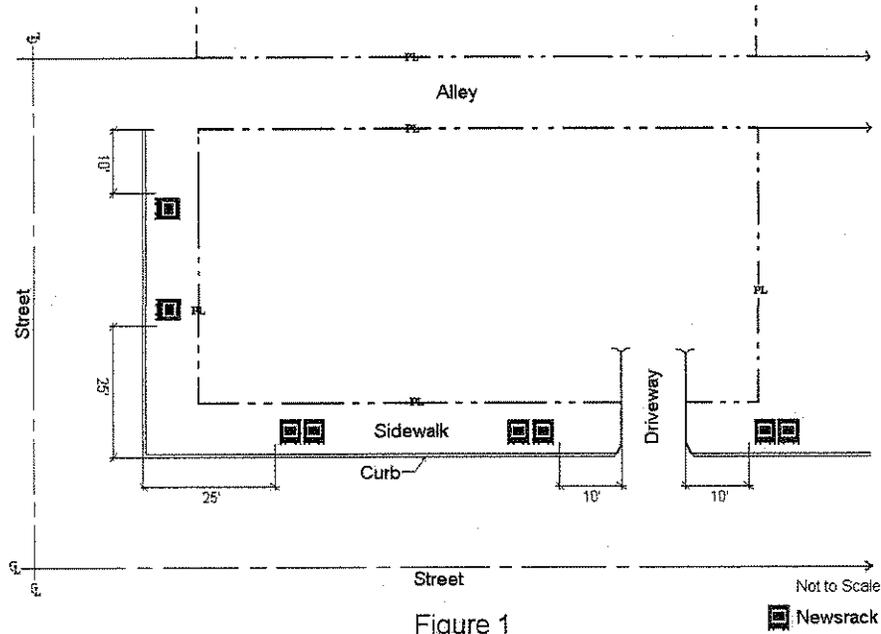
§62.1006 Location Standards for Newsracks

Newsracks shall be located in accordance with this section:

- (a) No portion of any *newsrack* shall project into or be located in any *roadway*.
- (b) *Newsracks* may be placed no closer than 6 inches of the *roadway* edge of any curb painted red.
- (c) *Newsracks* shall be located only adjacent to the curb (if there is no curb, then to the edge of the *roadway*), or the wall of a building.
- (d) Except as stated above in paragraph (b), *newsracks* located adjacent to the curb (or edge of the *roadway*) shall be located no less than 18 inches or more than 24 inches from the *roadway* edge and shall not open toward the *roadway*.
- (e) *Newsracks* located adjacent to a building shall be located parallel to and not more than 6 inches from the wall. The *director* may approve a distance of more than 6 inches if required for proper maintenance of surface behind the *newsrack*, and the safe flow of pedestrian or wheelchair traffic is not impaired.
- (f) No portion of a *newsrack* shall be located directly in front of any display window except near the curb.

- (g) No *newsrack* shall be located directly opposite another *newsrack* on the same *public right-of-way*.
- (h) *Newsracks* may be placed next to each other, provided no group of *newsracks* extends more than 10 feet along a curb and a clear paved space of at least 4 feet separates each group of *newsracks*. If the *director* determines a violation exists, priority to remain shall be given first to *newsracks* evidencing the earliest date of installation, followed by *newsracks* with the highest frequency of publication, followed by a lottery.
- (i) No *newsrack* shall be placed, installed, used, or maintained:
 - (1) Within 3 feet of a marked crosswalk.
 - (2) Within 25 feet of an intersection measured perpendicular to the curb of the cross street, as shown in Figure 1 below.
 - (3) Within 3 feet of fire hydrant, fire call box, fire lane, police call box or emergency facility.
 - (4) Within 10 feet of a driveway or *alley*, as shown in Figure 1 below.

Visibility Standards for Newsracks



- (5) At any location reducing the clear space for the passageway of pedestrians to less than 4 feet. When feasible, *newsracks* should be placed to allow the widest path of travel.
- (6) Within 3 feet of or on any public area improved with lawn, flowers, shrubs, trees, or other landscaping approved by the City.
- (7) Within 150 feet of another *newsrack* containing the same publication and located on the same side of the *public right-of-way* in the same block.
- (8) Within 5 feet of a curb painted blue, or within 3 feet of a curb painted yellow or white.

- (9) So as to unreasonably obstruct or interfere with: the flow of pedestrian, wheelchair or vehicular traffic; sites used for public utility purposes or other government use; the ingress or egress to or from any residence or building; or the use of poles, posts, traffic signs and signals, mailboxes, or other objects permitted by the City at that site.

§62.1007 Additional Location Standards for the Metropolitan Transit System

The following additional location standards apply to *bus* and *trolley stops*. No *newsrack* shall be placed, installed, used, or maintained:

- (a) Within the area 6 feet past of or 30 feet prior to any sign marking a designated *bus stop*, and no closer than 10 feet to the curb within this distance.
- (b) Along Broadway Street, between Harbor Drive and Park Boulevard, within the area 6 feet past of or 100 feet prior to any sign marking a designated *bus stop*, and no closer than 10 feet to the curb within this distance.
- (c) Within 6 feet in any direction of any transit shelter, bench, information kiosk, pole, or sign.
- (d) Within 10 feet of any edge of a *trolley stop*.

§62.1008 Additional Standards for the Gaslamp Quarter Planned District

The following additional standards apply to the Gaslamp Quarter Planned District [District] with boundaries defined in San Diego Municipal Code section 103.0401:

- (a) Only *newsracks* with permits to be located within *corrals* are allowed in the District. All *corrals* shall comply with the Americans with Disabilities Act of 1990, as amended, and all regulations adopted thereunder. The size, number, composition, and locations of these *corrals* shall be reasonably established and modified as necessary by the *director* after considering input from interested parties, which for purposes of this section includes holders of *newsrack* permits specific to the District and the Gaslamp Quarter Association. The most current size, number, composition, and location standards shall be posted on the City's Website and available in the Office of the City Clerk.
- (b) *Newsracks* installed or maintained in the District without a permit specific to the District may be summarily removed in accordance with San Diego Municipal Code section 62.1013.
- (c) Construction and maintenance of *corrals* shall be the sole and joint responsibility of the *permittees* of *newsracks* within the *corral*. Any injury to persons or property, including all claims or liability, resulting from or relating to any *corral* shall be the joint and several responsibility of the *permittees* within that *corral* at the time of the alleged incident.
- (d) Space within *corrals* shall be allocated in accordance with this section as follows:
 - (1) An interested publication, or distributor of multiple

publications to be dispensed within a *shared newsrack*, can apply for only one *newsrack* in each *corral*.

- (2) Limited space within the *corrals* shall be allocated by frequency of publication and each *corral* will be partitioned by the *director* as follows: five spaces will be allocated to daily publications, two to weekly publications, and one to less frequent publications. For purposes of this division, “daily” frequency means a publication of approximately five new editions per week. “Weekly” means approximately four new editions per month. “Monthly” means approximately one new edition per month. “Quarterly” means approximately four new editions per year. “Semi-annual” means approximately two new editions per year. “Annual” means approximately one new edition per year. *Shared newsracks* shall be categorized by the lowest frequency of any publication therein.
- (3) If the number of applications for a particular frequency is less than the spaces available, the *director* will allow the next highest frequency to apply for that space. If space still remains, an

interested party may apply for more than one space within a specified *corral*, not to include the same publication.

(4) If the number of applications exceeds the number of spaces available, the following will apply:

(A) The *director* will request the interested parties meet to determine if a signed agreement for allocation of the spaces can be reached. If an agreement is reached, the *director* will assign the permits based on the agreement so long as it conforms with the requirements of this division.

(B) If an agreement cannot be reached, the *director* will hold a lottery to allocate the available spaces within each frequency category.

§62.1009 Permit Requirements and Standards

It is unlawful to install or maintain any *newsrack* without first obtaining a permit from the *director*. Notwithstanding the above, an existing *permittee* may install 5 percent additional *newsracks* than approved in the permit without prior amendment of the permit or prior payment of applicable fees, which will be due at the next permit application or permit payment period.

- (a) **General Provisions.** Except for the provisions set forth in San Diego Municipal Code section 62.1009(d) specific to the Gaslamp Quarter Planned District, one permit will be issued per applicant covering all *newsracks* in each application. Each permit may be amended quarterly by submitting an Amendment of Permit Application to the *director*, provided fees are paid for additional *newsracks*. A condition of any permit issued under this division is that the *permittee* shall keep an accurate record readily identifying the locations of its *newsracks* to be made available to the *director* upon request within two *business days*. This information may be used to check the accuracy of information provided in the permit application or compliance with conditions of any existing permit or this division.
- (b) **Initial Permit Applications.** Applicants interested in installing *newsracks* shall first submit to the *director* a Newsrack Permit Application available from the City. Applicant's interested in maintaining existing *newsracks* shall submit a Newsrack Permit Application no later than _____ . All applicants shall provide all information and/or documents requested in the Newsrack Permit Application. Applications that do not include all of the requested information and/or documents shall be deemed incomplete. Incomplete applications shall not be processed and shall not automatically be deemed approved under the circumstances specified in San Diego Municipal Code section 62.1009(e).

- (c) **Permit Renewal Applications.** Existing *permittees* interested in renewing their permits shall submit to the *director* annually by January 15 a Newsrack Permit Renewal Application available from the City providing all information and/or documents requested therein. Applications that do not include all of the requested information or documents shall be deemed incomplete, shall not be processed, and shall not automatically be deemed approved under the circumstances specified in San Diego Municipal Code section 62.1009(e).
- (d) **Gaslamp Quarter Planned District Permits.** *Newsracks* within the Gaslamp Quarter Planned District [District] with boundaries defined in San Diego Municipal Code [Code] section 103.0401 require a permit specific to the District, and the requirements of Code section 62.1008 apply to this permit process. The timeframe for issuance of *newsrack* permits outside the District does not apply, and the *director* shall process applications for permits within the District within a reasonable timeframe. Permits in the District shall be in effect for three years from the date of issuance, provided the *permittee* is in compliance with this division and all conditions of the permit. Permit fees shall be paid annually.
- (e) **Review of Permits.** Once submitted, a complete permit application will be reviewed and acted upon within fifteen *business days*. If the applicant is not notified in writing within fifteen *business days* of approval, denial, or extension of the permit review period, the permit application shall be deemed approved.

- (f) **Issuance of Permits.** Upon a finding by the *director* that the application is complete, accurate, and in compliance with this division, a permit shall be issued.
- (g) **Denial of Permit.** Permits may be denied for noncompliance with this division or failure to provide accurate and complete information. If a permit is denied, the *director* shall promptly notify the applicant in writing of the specific cause of such denial.
- (h) **Permit Revocation.** A permit may be revoked if more than 5 percent of the *newsracks* designated therein are documented to be in violation of this division, or if the information in the permit application or related supporting documents is inconsistent with the number or locations of the *newsracks* by more than five percent. If a permit is revoked for any reason set forth above, the offending publication, or distributor if applicable, shall not be approved for a permit under this division for one year from and after the date of revocation. Any permit issued in error may be revoked without liability to the City.
- (i) **Sale or Transfer of Permits.** Permits shall not be sold or transferred except as a part of the sale of a majority of the related business assets of the *permittee*. The proposed new *permittee* shall notify the *director* in writing within ten *business days* that the permit has been sold or transferred. The notification shall include the name and contact information for the proposed new *permittee*. No transfer or sale shall be effective until the proposed new *permittee* executes an Indemnification

and Hold Harmless Agreement in favor of the City as required in San Diego Municipal Code [Code] section 62.1010 and obtains the requisite insurance coverage pursuant to Code section 62.1011. Until such time, the existing *permittee* shall maintain the required insurance coverage and shall remain liable for any personal injury or property damage caused by or related to the *permittee's newsrack(s)*.

§62.1010 Indemnification Requirement

The Newsrack Permit Application and any Newsrack Permit Renewal Application shall include an Indemnification and Hold Harmless Agreement in favor of the City in substantial compliance with this section, which must be executed by the *permittee* prior to the issuance of any permit under this division. Pursuant to the Indemnification and Hold Harmless Agreement, the *permittee* shall agree to defend, indemnify, protect and hold the City, and its elected officials, officers, representatives, agents, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including its own employees, agents, or officers which arise from or are connected with or are caused or claimed to be caused by any *corral* for which the *permittee* is responsible or by any *newsrack* owned by or attributable to the *permittee*; provided however, that the *permittee's* duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or sole willful misconduct of the City.

§62.1011 Insurance Requirement

As a condition of any permit under this division, the *permittee* shall within ten *business days* of the approval of the permit, but prior to the installation, use, or maintenance of any *newsrack*, obtain and maintain at all times during the term of any permit approved under this division, and at all times *permittee's newsrack(s)* remain(s) on any portion of the *public right-of-way*, the following: Commercial Liability Insurance subject to the reasonable requirements of the City's Risk Management Department and approval by the City Attorney and in substantial conformance with this section covering any liability arising from or connected with, or caused or claimed to be caused by, any *corral* for which the *permittee* is responsible and any *newsrack* owned by or attributable to *permittee* in a reasonable and sufficient amount as determined by the City's Risk Management Department to cover the risks associated with the *newsrack(s)*, including any *corrals*. No *newsrack* or, if applicable, *corral*, may be installed, used, or maintained until *permittee* provides the *director* with proof of the requisite insurance, including any endorsements.

§62.1012 Enforcement

Notwithstanding any condition upon which summary removal is available, enforcement action may be initiated upon determination by the *director* that a *newsrack* has been abandoned as set forth in San Diego Municipal Code [Code] section 62.1018 or installed, used, maintained, or removed in violation of this division or any condition of the permit. The *permittee* will be notified in writing of the alleged violation and requested to voluntarily rectify the offending

condition within five *business days* of the date of the notification. Failure to achieve timely compliance may result in the issuance of a *Notice of Violation* with a compliance date of five *business days* from the date of the notice. The *Notice of Violation* shall comply with Code section 12.0103. Failure to comply with the *Notice of Violation* may result in the use of any applicable remedy in the Code, including removal of the offending *newsrack*. All administrative and judicial remedies set forth in San Diego Municipal Code Chapter 1, Article 2, Divisions 3-10 are available to the *director* for any violation of this division.

§62.1013 Summary Removal of Newsracks

- (a) **Conditions for Summary Removal.** If the *director* determines: (1) the condition or placement of a *newsrack* poses a threat to the safety of pedestrians or wheelchair users, or the safe flow of vehicles; (2) a *newsrack* is located within the *public right-of-way* without a permit; or (3) the *director* is unable to readily contact the *permittee* or otherwise responsible party for a *newsrack* based exclusively on information provided in a current permit, related permit application, or affixed to the offending *newsrack*, the *director* may cause the *newsrack* to be summarily removed without prior notice.
- (b) **Procedure Upon Summary Removal.** Upon summary removal of a *newsrack*, the following post-removal procedures shall apply:
- (1) **Newsracks with Readily Identifiable Responsible Party:**
The following post-removal procedure applies to any summarily removed *newsrack* with a readily identifiable *permittee* or

otherwise responsible party based exclusively on information provided in a current permit, related permit application, or affixed to the offending *newsrack*. If a current telephone number is provided, the *director* shall promptly call the responsible party to advise of the removal. Unless the offending *newsrack* is reclaimed beforehand and all reasonably incurred removal and storage fees are paid in full, a Notice of Summary Removal & Hearing shall be served in accordance with San Diego Municipal Code section 62.1013(c), except when such notice and hearing is waived by the responsible party.

(2) Newsracks Without Readily Identifiable Responsible Party:

If the *permittee* or otherwise responsible party can not be readily contacted based exclusively on information provided in a current permit, related permit application, or information affixed to the *newsrack*, no further action on behalf of the City is required. If the responsible party thereafter notifies the *director* to reclaim the offending *newsrack*, and the *newsrack* has not been deemed abandoned and disposed of in accordance with San Diego Municipal Code [Code] section 62.1018, a Notice of Summary Removal & Hearing shall be served in accordance with Code section 62.1013(c), unless waived by the responsible party.

(c) **Post Summary Removal Hearing and Notice Procedures.** If the *permittee* or otherwise responsible party does not dispute the merits of the removal, they may waive their rights to a post-removal notice and hearing and may reclaim the offending *newsrack* upon payment of all reasonably incurred removal and storage fees. In all other cases, the following procedure shall apply:

- (1) Within ten business days of summary removal or notification by a previously identifiable responsible party, the director shall serve by certified mail, postage prepaid, return receipt requested a Notice of Summary Removal & Hearing providing the following information: a reasonable identification of the offending newsrack and its proximate location upon removal; a specific description of the alleged violation(s); and including a notice of a post-removal hearing in compliance with San Diego Municipal Code section 62.1013(c)(2).
- (2) Any post-removal hearing and notice thereof shall comply with San Diego Municipal Code, Chapter 1, Article 2, Division 4, and shall be heard as soon as reasonably feasible upon at least ten calendar days notice.

§62.1014 Permit Fees

All *newsracks* require timely payment of an annual permit fee established by the *director* and on file in the Office of the City Clerk. No refunds are provided for *newsracks* taken out of service. Permit fees are due and payable annually on

January 15, and shall be prorated for any partial year. Annual permit fees shall be delinquent after fifteen days past due. A late payment fee of 10 percent shall be assessed on all delinquent amounts.

(a) **Citywide Permit Fee Excluding the Gaslamp Quarter Planned**

District. Except for the Gaslamp Quarter Planned District, the citywide fee is based on the total number of *newsracks* in service in the *public right-of-way*. This fee shall be sufficient to recover the costs of processing the permit application and enforcing permit requirements.

- (b) **Permit Fee in the Gaslamp Quarter Planned District.** A separate permit fee applies to *newsracks* located in the Gaslamp Quarter Planned District with boundaries defined in San Diego Municipal Code [Code] section 103.0401. This fee shall be sufficient to recover costs associated with processing the permit application, enforcing permit requirements, and administering the lottery described in Code section 62.1008(d)(4).

§62.1015 Recovery of Costs, Fees and Penalties

Recovery of costs, fees, and penalties shall be in accordance with San Diego Municipal Code, Chapter 1, Article 3. The *director* may set fees on an annual basis to recover all reasonable costs of reinspection and removal of *newsracks*. Any time a *newsrack* is caused to be removed, summarily or otherwise, due to violations of this division, the City may recover all reasonable costs to include:

- (a) Cost of the investigative and administrative staff to process the case.

- (b) Cost of newsrack removal including the costs of any necessary sidewalk repair or storage of the newsrack.

§62.1016 Correction of Minor Violations

Unless expressly denied by the *permittee* in the permit application, the City is authorized at its sole discretion to correct minor *newsrack* violations it deems to be easily curable on the spot.

§62.1017 Public Nuisance

Any *newsrack* in violation of this division shall constitute a public nuisance, as defined in San Diego Municipal Code section 11.0210, and may be abated in accordance with applicable provisions of law. No minor violation that is easily curable on the spot without the use of tools or moving the *newsrack* shall alone constitute a public nuisance under this division or in itself be grounds for permit revocation.

§62.1018 Abandonment

A *newsrack* shall be deemed abandoned if it: (1) is summarily removed pursuant to San Diego Municipal Code section 62.1013 and unclaimed for thirty continuous calendar days from the date of removal, or (2) remains empty or without a permitted publication for thirty continuous calendar days. Newsracks deemed abandoned may be treated in the manner provided in San Diego Municipal Code section 62.1012 for *newsracks* in violation of this division. The City may dispose of and shall not be responsible for any *newsrack*, including its contents, deemed abandoned for sixty continuous calendar days.

§62.1019 Appeal

Any person or entity aggrieved by a finding, determination, notice, or action taken by the *director* under this division may appeal the same by filing an appeal in accordance with San Diego Municipal Code section 12.0501. San Diego Municipal Code, Chapter 1, Article 2, Division 5 shall apply to any appeal under this division.

§62.1020 Conflict

In the event of conflict between this division and any other provision in the San Diego Municipal Code applicable to *newsracks*, the more restrictive provision shall apply.

§62.1021 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 City 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.

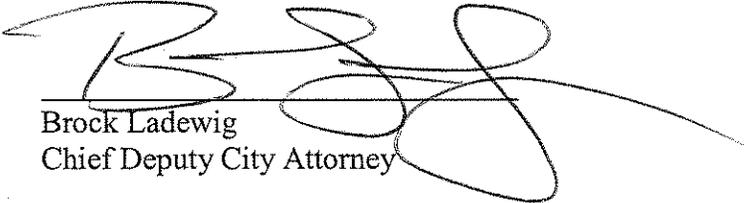
Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. The City Clerk is instructed to insert the date that is 90 days from the effective date of this ordinance, once known, in the blank space provided in San Diego Municipal Code section 62.1009(b).

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Brock Ladewig
Chief Deputy City Attorney

BL:als
01/25/07
Or.Dept:NCCD
O-2007-24
MMS#906

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Underlined

(O-2007-24)

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 2, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE, BY AMENDING SECTIONS 62.1001, 62.1002, 62.1003, 62.1004, 62.1005, 62.1007, 62.1009, 62.1010, 62.1011, 62.1012, 62.1013, AND ADDING SECTIONS 62.1006, 62.1008, 62.1014, 62.1015, 62.1016, 62.1017, 62.1018, 62.1019, 62.1020, AND 62.1021 ALL RELATING TO REGULATING NEWSRACKS WITHIN THE PUBLIC RIGHT-OF-WAY.

§62.1001 Statement of Findings and Purpose and Intent

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

- (a) The Council finds ~~The~~ uncontrolled proliferation and placement of newsracks newsracks in the public rights-of-way public right-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. constitutes a threat to public health, safety, and general welfare including impeding pedestrian, wheelchair, and vehicular traffic; interfering with ingress and egress to and from buildings, vehicles, and public transportation; obstructing views of traffic signs and street-crossing pedestrians; and impeding performance

of essential utility, traffic control, and emergency services. Newsracks that unreasonably obstruct or interfere with these activities constitute a public nuisance.

- (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.~~ The Council further finds unreasonably deteriorated or inadequately maintained newsracks threaten the public health and safety, and constitute a public nuisance.
- (c) The Council further finds newsracks not reasonably maintained in a neat and clean condition threaten the general welfare including the aesthetic appearance of the public right-of-way, and constitute a public nuisance.
- (e) ~~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.~~
- (e)(d) The "Centre City" area is a unique area of the City accommodating Council further finds regulations specific to the Gaslamp Quarter Planned District are necessary to protect public health, safety, and general welfare including the character of this nationally designated historic district where pedestrian and vehicular traffic is intensified due to the vast numbers of sidewalk cafes, restaurants, businesses, working citizens, and visitors within this compact area to

~~San Diego on a daily basis located between San Diego's major landmarks including the Convention Center, PETCO Park, and the Marina Planned District. Because of the numerous intersections and painted curbs, as well as other attributes which would otherwise prohibit the placement of newsracks consistent with this division, it is intended that these provisions provide relief in Centre City to help ensure that dissemination of information is not unreasonably restricted.~~

- (e) The Council further finds regulations specific to the San Diego Metropolitan Transit System are necessary to protect the public health, safety, and general welfare including the safe operation of the public transit system and security of its employees and patrons.
- (f) The intent of these provisions is to ensure the public health, safety, and general welfare is protected without unreasonably restricting the dissemination of constitutionally protected information.
- (g) It is not the intent of these provisions to regulate the placement of *newsracks* on private property. It shall remain the responsibility of the *permittee* to determine the property lines and ensure *newsracks* are placed within the *public right-of-way* in compliance with this division.

§62.1002 Definitions

~~The following definitions apply in this division:~~ Each italicized word or phrase in this division is defined in accordance with San Diego Municipal Code [Code] sections 11.0210 and 113.0103, and as defined in this section. The definitions below shall prevail in their application to this division over conflicting definitions in the Code.

- (a) "Centre City" means that portion of the downtown area of San Diego shown in Figure 1 of Chapter 6, Article 2, Division 10, except for lands within the jurisdiction of the San Diego Unified Port District which are subject to the provisions of the San Diego Port District Act of 1976 and the Navy Broadway Complex.
- (a) Bus stop means any location designated for passenger loading of buses owned, operated, or controlled by the San Diego Metropolitan Transit System.
- (b) "Distributor" means the person responsible for placing and maintaining a newsrack in a public right of way.
- (b) Combination dispenser means a common structure housing two or more newsracks, and is subject to the same standards and regulations as a newsrack unless otherwise stated in this division.
- (c) Corral means a physically detectable boundary or structure designated by the director within which all newsracks in the Gaslamp Quarter Planned District shall be located. No newsracks other than those permitted to be located in a corral are allowed within the Gaslamp Quarter Planned District.
- (d) Director means the representative of the City's Neighborhood Code Compliance designated as the enforcement official for this division.
- (e) Newsrack means any self-service container, storage unit, or other dispenser that rests or projects, in whole or in part, in or upon any portion of the public right-of-way, and is installed, used, or maintained for the display, sale, or distribution of a publication. Unless otherwise stated in

this division, the term *newsrack* includes *shared newsrack* and *combination dispenser* and the same standards and regulations apply to all three.

- (f) *Operable element* means any component of a *newsrack* requiring handling or manipulation to obtain the publication therein including the door or coin mechanism.
- (d) ~~"Parkway" means 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.~~
- (g) *Permittee* means the person or entity designated on the permit as responsible for the *newsrack*.
- (e) ~~"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 any other similar public way.~~
- (f)(h) "Roadway" *Roadway* means that part of a ~~public right of way~~ *public right-of-way* that is designated and used primarily for vehicular travel.
- (i) *Shared newsrack* means a single *newsrack* housing more than one publication, and is subject to the same standards and regulations as a *newsrack*, unless otherwise stated in this division.

(g) ~~Sidewalk means that part of a public right of way that is designated and ordinarily used for pedestrian travel.~~

(j) Trolley stop means any location designated for passenger loading of trolleys or light rail vehicles owned, operated, or controlled by the San Diego Metropolitan Transit System.

§62.1003 General Prohibition

~~No person shall knowingly The placement, installation, use, or maintain maintenance of any newsrack 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 in violation of provisions of this division is prohibited, including all newsracks that endanger the safety of persons or property, or fail to comply with all permit conditions.~~

§62.1004 Physical Standards for Newsracks

~~Any newsrack Newsracks 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) Any operable element of a newsrack shall not exceed 48 inches in height or be less than 15 inches above the public right-of-way on which it is located.

(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.~~

(b) No newsrack ~~newsrack or shared newsrack~~ shall exceed sixty (60) 52 inches in height, thirty (30) inches in width, or twenty four (24) inches in

~~thickness~~ depth. No combination dispenser shall exceed 60 inches in height, 120 inches in width, or 30 inches in depth.

- (c) No exterior or interior component of any newsrack shall advertise, publicize, or promote anything other than the display, sale, or purchase of the publication(s) therein.
- (d) Newsracks shall only contain current editions of the publication(s) for which the permit was issued.
- (e) ~~Each newsrack~~ Coin-operated newsracks shall be equipped with a functional 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) ~~(f)~~ Each newsrack newsrack shall have stenciled or otherwise permanently affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the current 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 notice provided for in this division the permittee.
- (g) Each newsrack shall have a door, covering, and/or other appropriate device(s) preventing the publications therein from getting wet or falling out due to rain, wind, or similar environmental conditions.
- (e) ~~(h)~~ Each newsrack newsrack shall be maintained in a reasonably neat and clean condition and in good repair including: 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, trash, debris, foreign objects, graffiti, stickers, dents, and grease; (2) it is reasonably free of chipped, faded, peeling, and cracked paint in the any visible painted areas thereof; (3) it is reasonably free of rust and corrosion in the any visible unpainted metal areas thereof; (4) any the clear plastic or glass parts thereof, if any, through which the publications therein are viewed visible are shall be unbroken and reasonably free of cracks, scratches, dents, blemishes, and discoloration; (5) the any paper or cardboard parts or inserts thereof are shall be reasonably free of tears, peeling, or fading; and (6) the no structural parts thereof components are not shall be broken or unduly misshapen. A maintenance log documenting the permittee's inspection of each newsrack shall be maintained by the permittee and available for inspection upon request of the City.~~

- (i) Only drop-in type anchor bolts may be used to secure newsracks to the public right-of-way.
- (j) Newsracks shall not be chained, bolted, or otherwise attached to the private property of another, any street furniture, tree, sign, or other fixed object.
- (k) Newsracks shall comply with the Americans with Disabilities Act of 1990, as amended, and all regulations adopted thereunder.

§62.1005 Standards for Proper Removal of Newsracks

Upon removal of any newsrack, the permittee shall eliminate any potential hazards to the public, such as bolts, brackets, or holes, and shall restore any

disturbed area of the public right-of-way to the same or reasonably similar condition as any adjoining public right-of-way by removing any protrusions, cleaning the cavity of debris, filling the cavity with high strength epoxy or grout to meet the elevation of the adjoining public right-of-way, and avoiding potential depressions by taking into account shrinkage and settlement of the new material. The public right-of-way shall be level and free of protrusions or depressions. The permittee shall match as closely as reasonably possible the color, texture, and material of any adjoining public right-of-way surface.

§62.10056 Location Standards of for Newsracks

~~Any newsrack~~ Newsracks ~~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:~~

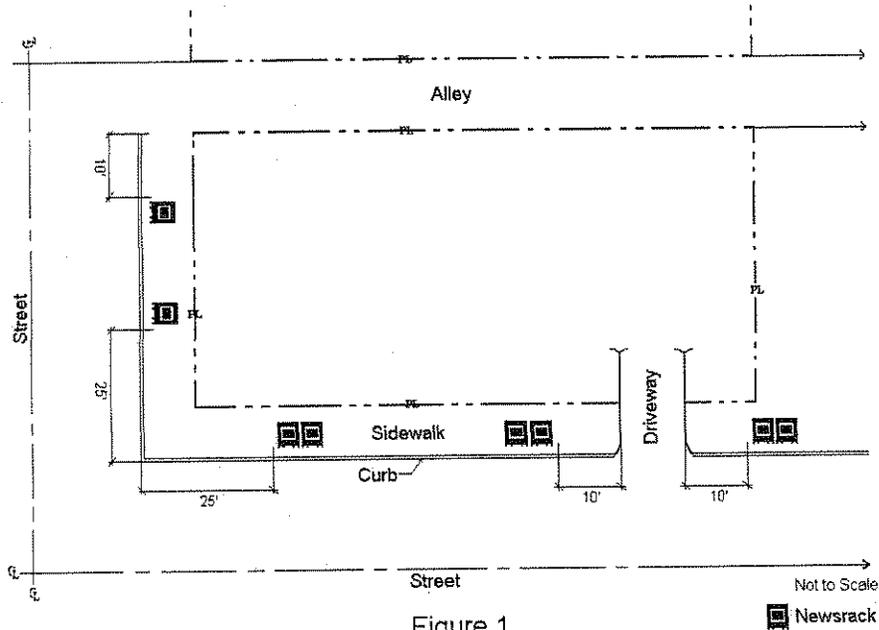
- (a) ~~No portion of any newsrack~~ newsrack shall project into or be located in any ~~roadway~~ roadway.
- (b) Newsracks may be placed no closer than 6 inches of the roadway edge of any curb painted red.
- ~~(b)(c)~~ Newsracks ~~Newsracks~~ shall be located only ~~near~~ adjacent to the curb (or, if there be is no curb, then adjacent to the edge of the roadway roadway), or the wall of a building.
- (d) Except as stated above in paragraph (b), newsracks ~~Newsracks~~ located ~~near~~ adjacent to the curb (or edge of the roadway) shall be located no less than ~~eighteen~~ (18) inches nor more than ~~twenty four~~ (24) inches from the roadway roadway edge of the curb and shall not open toward the roadway

roadway. ~~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.~~

- (e) Newsracks located adjacent to a building shall be located parallel to and not more than 6 inches from the wall. The *director* may approve a distance of more than 6 inches if required for proper maintenance of surface behind the *newsrack*, and the safe flow of pedestrian or wheelchair traffic is not impaired.
- (f) No portion of a *newsrack* shall be located directly in front of any display window except near the curb.
- (g) No *newsrack* shall be located directly opposite another *newsrack* on the same *public right-of-way*.
- (d) (h) Newsracks *Newsracks* may be placed next to each other, provided that no group of *newsracks* *newsracks* shall extend for a distance of more than ten (10) feet along a curb, and a clear paved space of not less than at least six (6) 4 feet shall separate each group of *newsracks*. If the *director* determines a violation exists, priority to remain shall be given first to *newsracks* evidencing the earliest date of installation, followed by *newsracks* with the highest frequency of publication, followed by a lottery.
- (e) (i) No ~~newsrack~~ *newsrack* shall be placed, installed, used, or maintained:
 - (1) Within three (3) feet of a any marked crosswalk.

- (2) ~~Within twelve (12) feet of the curb return of any unmarked crosswalk.~~ Within 25 feet of an intersection measured perpendicular to the curb of the cross street, as shown in Figure 1 below.
- (3) ~~Within three (3) feet of any fire hydrant, fire call box, fire lane, police call box or other emergency facility.~~
- (4) ~~Within three (3) 10 feet of a any driveway or alley,~~ as shown in Figure 1 below.
- (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.~~

Visibility Standards for Newsracks



- (7) (5) At any location reducing whereby the clear space for the passageway of pedestrians is reduced to less than ~~six (6)~~ 4 feet. When feasible, newsracks should be placed to allow the widest path of travel.
- (8) (6) Within ~~three (3)~~ feet of or on any public area improved with lawn, flowers, shrubs, trees, or other landscaping approved by the City.
- (9) (7) Within ~~one hundred fifty (100)~~ 150 feet of any another newsrack newsrack containing the same publication and located on the same side of the street public right-of-way in the same block. ~~containing the same issue or edition of the same publication.~~

~~(10)-(8)~~ Within ~~five (5)~~ feet of a curb painted blue, or within ~~three (3)~~ feet of a curb painted red, yellow or white pursuant to the provisions of California Vehicle Code section 21458.

(9) So as to unreasonably obstruct or interfere with: the flow of pedestrian, wheelchair or vehicular traffic; sites used for public utility purposes or other government use; the ingress or egress to or from any residence or building; or the use of poles, posts, traffic signs and signals, mailboxes, or other objects permitted by the City at that site.

~~The provisions contained in subsection (e) of this section shall not apply in Centre City 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.~~

§62.1007 Additional Location Standards for the Metropolitan Transit System

The following additional location standards apply to *bus* and *trolley stops*. No *newsrack* shall be placed, installed, used, or maintained:

- (a) Within the area 6 feet past of or 30 feet prior to any sign marking a designated *bus stop*, and no closer than 10 feet to the curb within this distance.
- (b) Along Broadway Street, between Harbor Drive and Park Boulevard, within the area 6 feet past of or 100 feet prior to any sign marking a designated *bus stop*, and no closer than 10 feet to the curb within this distance.

- (c) Within 6 feet in any direction of any transit shelter, bench, information kiosk, pole, or sign.
- (d) Within 10 feet of any edge of a trolley stop.

§62.1008

Additional Standards for the Gaslamp Quarter Planned District

The following additional standards apply to the Gaslamp Quarter Planned District

[District] with boundaries defined in San Diego Municipal Code section

103.0401:

- (a) Only newsracks with permits to be located within corrals are allowed in the District. All corrals shall comply with the Americans with Disabilities Act of 1990, as amended, and all regulations adopted thereunder. The size, number, composition, and locations of these corrals shall be reasonably established and modified as necessary by the director after considering input from interested parties, which for purposes of this section includes holders of newsrack permits specific to the District and the Gaslamp Quarter Association. The most current size, number, composition, and location standards shall be posted on the City's Website and available in the Office of the City Clerk.
- (b) Newsracks installed or maintained in the District without a permit specific to the District may be summarily removed in accordance with San Diego Municipal Code section 62.1013.
- (c) Construction and maintenance of corrals shall be the sole and joint responsibility of the permittees of newsracks within the corral. Any injury to persons or property, including all claims or liability, resulting

from or relating to any *corral* shall be the joint and several responsibility of the *permittees* within that *corral* at the time of the alleged incident.

(d) Space within *corrals* shall be allocated in accordance with this section as follows:

(1) An interested publication, or distributor of multiple publications to be dispensed within a *shared newsrack*, can apply for only one *newsrack* in each *corral*.

(2) Limited space within the *corrals* shall be allocated by frequency of publication and each *corral* will be partitioned by the *director* as follows: five spaces will be allocated to daily publications, two to weekly publications, and one to less frequent publications. For purposes of this division, “daily” frequency means a publication of approximately five new editions per week. “Weekly” means approximately four new editions per month. “Monthly” means approximately one new edition per month. “Quarterly” means approximately four new editions per year. “Semi-annual” means approximately two new editions per year. “Annual” means approximately one new edition per year. *Shared newsracks* shall be categorized by the lowest frequency of any publication therein.

(3) If the number of applications for a particular frequency is less than the spaces available, the *director* will allow the next highest frequency to apply for that space. If space still remains, an interested party may apply for more than one space within a specified *corral*, not to include the same publication.

- (4) If the number of applications exceeds the number of spaces available, the following will apply:
- (A) The *director* will request the interested parties meet to determine if a signed agreement for allocation of the spaces can be reached. If an agreement is reached, the *director* will assign the permits based on the agreement so long as it conforms with the requirements of this division.
- (B) If an agreement cannot be reached, the *director* will hold a lottery to allocate the available spaces within each frequency category.

§62.1009 **Permit Requirements and Standards**

It is unlawful to install or maintain any *newsrack* without first obtaining a permit from the *director*. Notwithstanding the above, an existing *permittee* may install 5 percent additional *newsracks* than approved in the permit without prior amendment of the permit or prior payment of applicable fees, which will be due at the next permit application or permit payment period.

- (a) **General Provisions.** Except for the provisions set forth in San Diego Municipal Code section 62.1009(d) specific to the Gaslamp Quarter Planned District, one permit will be issued per applicant covering all *newsracks* in each application. Each permit may be amended quarterly by submitting an Amendment of Permit Application to the director, provided fees are paid for additional *newsracks*. A condition of any permit issued under this division is that the *permittee* shall keep an accurate record readily identifying the locations of its *newsracks* to be made available to

the director upon request within two business days. This information may be used to check the accuracy of information provided in the permit application or compliance with conditions of any existing permit or this division.

- (b) **Initial Permit Applications.** Applicants interested in installing newsracks shall first submit to the director a Newsrack Permit Application available from the City. Applicants interested in maintaining existing newsracks shall submit a Newsrack Permit Application no later than _____ . All applicants shall provide all information and/or documents requested in the Newsrack Permit Application. Applications that do not include all of the requested information and/or documents shall be deemed incomplete. Incomplete applications shall not be processed and shall not automatically be deemed approved under the circumstances specified in San Diego Municipal Code section 62.1009(e).
- (c) **Permit Renewal Applications.** Existing permittees interested in renewing their permits shall submit to the director annually by January 15 a Newsrack Permit Renewal Application available from the City providing all information and/or documents requested therein. Applications that fail to provide all of the information and/or documents shall be deemed incomplete. Incomplete applications shall not be processed and shall not automatically be deemed approved under this section.
- (d) **Gaslamp Quarter Planned District Permits.** Newsracks within the Gaslamp Quarter Planned District [District] with boundaries defined in the

San Diego Municipal Code [Code] section 103.0401 require a permit specific to this District, and the requirements of Code section 62.1008 apply to this permit process. The timeframe for issuance of *newsrack* permits outside this district does not apply, and the *director* shall process applications for permits within this district within a reasonable timeframe. Permits in this district shall be in effect for three years from the date of issuance, provided the *permittee* is in compliance with this division and all conditions of the permit. Permit fees shall be paid annually.

- (e) **Review of Permits.** Once submitted, a complete permit application will be reviewed and acted upon within fifteen *business days*. If the applicant is not notified in writing within fifteen *business days* of approval, denial, or extension of the permit review period, the permit application shall be deemed approved.
- (f) **Issuance of Permits.** Upon a finding by the *director* that the application is complete, accurate, and in compliance with this division, a permit shall be issued.
- (g) **Denial of Permit.** Permits may be denied for noncompliance with this division or failure to provide accurate and complete information. If a permit is denied, the *director* shall promptly notify the applicant in writing of the specific cause of such denial.
- (h) **Permit Revocation.** A permit may be revoked if more than 5 percent of the *newsracks* designated therein are documented to be in violation of this division, or if the information in the permit application or related supporting documents is inconsistent with the number or locations of the

newsracks by more than five percent. If a permit is revoked for any reason set forth above, the offending publication, or distributor if applicable, shall not be approved for a permit under this division for one year from the date of revocation. Any permit issued in error may be revoked without liability to the City.

- (i) **Sale or Transfer of Permits.** Permits shall not be sold or transferred except as a part of the sale of a majority of the related business assets of the permittee. The proposed new permittee shall notify the director in writing within ten business days that the permit has been sold or transferred. The notification shall include the name and contact information for the proposed new permittee. No transfer or sale shall be effective until the proposed new permittee executes an Indemnification and Hold Harmless Agreement in favor of the City as required in San Diego Municipal Code [Code] section 62.1010 and obtains the requisite insurance coverage pursuant to Code section 62.1011. Until such time, the existing permittee shall maintain the required insurance coverage and shall remain liable for any personal injury or property damage caused by or related to the permittee's newsrack(s).

§62.1010 Indemnification Requirement

The Newsrack Permit Application and any Newsrack Permit Renewal Application shall include an Indemnification and Hold Harmless Agreement in favor of the City in substantial compliance with this section, which must be executed by the permittee prior to the issuance of any permit under this division. The permittee shall agree to defend, indemnify, protect and hold the City, and its elected

officials, officers, representatives, agents, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including its own employees, agents, or officers which arise from or are connected with or are caused or claimed to be caused by any newsrack owned by or attributable to permittee; provided however, that permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or sole willful misconduct of the City.

§62.1011 Insurance Requirement

As a condition of any permit under this division, permittee shall within ten business days of the approval of the permit, but prior to the installation, use, or maintenance of any newsrack, obtain and maintain at all times during the term of any permit approved under this division, and at all times permittee's newsrack(s) remain(s) on any portion of the public right-of-way, the following: Commercial Liability Insurance subject to approval by the City Attorney and in substantial conformance with this section covering any liability arising from or connected with, or caused or claimed to be caused by, any newsrack owned by or attributable to permittee in a reasonable and sufficient amount as determined by the City's Risk Management Department to cover the risks associated with the newsrack(s), including any corrals. No newsrack or, if applicable, corral, may be installed, used, or maintained until permittee provides the director with proof of the requisite insurance, including any endorsements.

§62.100712 **Enforcement**

Notwithstanding any condition upon which summary removal is available, enforcement action may be initiated Upon a determination by the City Manager director that a newsrack newsrack has been abandoned as set forth in San Diego Municipal Code [Code] section 62.1018 or installed, used, maintained, or removed in violation of any provisions of this division or any condition of the permit. he shall cause an order to be issued to the distributor to correct the offending condition. The permittee will be notified in writing of the alleged violation and requested to voluntarily rectify the offending condition within five business days of the date of the notification . Failure to achieve timely compliance may result in the issuance of a Notice of Violation with a compliance date of five business days from the date of the notice. The order shall specifically describe the offending condition and suggest actions necessary to correct it. The Notice of Violation shall comply with Code section 12.0103. Failure to comply with the Notice of Violation may result in the use of any applicable remedy in the Code, including removal of the offending newsrack. If the distributor fails to correct properly the offending condition within ten (10) days 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. If the distributor of the offending newsrack cannot be identified, or the certified letter cannot be delivered, the newsrack shall be removed immediately. All administrative and judicial remedies set forth in San Diego Municipal Code Chapter 1, Article 2, Divisions 3-10 are available to the director for any violation of this division.

§62.1013

Summary Removal of Newsracks

(a) Conditions for Summary Removal. If the *director* determines: (1) the condition or placement of a *newsrack* poses a danger to the safety of pedestrians or wheelchair users, or the safe flow of vehicles; (2) a *newsrack* is located within the *public right-of-way* without a permit; or (3) the *director* is unable to readily identify the *permittee* or otherwise responsible party for a *newsrack* based exclusively on information provided in a current permit, related permit application, or affixed to the offending *newsrack*, the *director* may cause the *newsrack* to be summarily removed without prior notice.

(b) Procedure Upon Summary Removal. Upon summary removal of a *newsrack*, the following post-removal procedures shall apply:

(1) Newsracks with Readily Identifiable Responsible Party. The following post-removal procedure applies to any summarily removed *newsrack* with a readily identifiable *permittee* or otherwise responsible party based exclusively on information provided in a current permit, related permit application, or affixed to the offending *newsrack*. If a current telephone number is provided, the *director* shall promptly call the responsible party to advise of the removal. Unless the offending *newsrack* is reclaimed beforehand and all reasonably incurred removal and storage fees are paid in full, a Notice of Summary Removal & Hearing shall be served in accordance with San Diego Municipal Code section

62.1013(c), except when such notice and hearing is waived by the responsible party.

(2) Newsracks Without Readily Identifiable Responsible Party:

If the permittee or otherwise responsible party can not readily contacted based exclusively on information provided in a current permit, related permit application, or information affixed to the newsrack, no further action on behalf of the City is required. If the responsible party thereafter notifies the director to reclaim the offending newsrack, and the newsrack has not been deemed abandoned and disposed of in accordance with San Diego Municipal Code [Code] section 62.1018, a Notice of Summary Removal & Hearing shall be served in accordance with Code section 62.1013(c), unless waived by the responsible party.

(c) Post Summary Removal Hearing and Notice Procedures. If the permittee or otherwise responsible party does not dispute the merits of the removal, they may waive their rights to a post-removal notice and hearing and may reclaim the offending newsrack upon payment of all reasonably incurred removal and storage fees. In all other cases, the following procedure shall apply:

(1) Within ten business days of summary removal or notification by a previously unidentifiable responsible party, the director shall serve by certified mail, postage prepaid, return receipt requested a Notice of Summary Removal & Hearing providing the following information: a

reasonable identification of the offending *newsrack* and its proximate location upon removal; a specific description of the alleged violation(s); and including a notice of a post removal hearing in compliance with San Diego Municipal Code section 62.1013(c)(2).

- (2) Any post removal hearing and notice thereof shall comply with San Diego Municipal Code, Chapter 1, Article 2, Division 4, and shall be heard as soon as reasonably feasible upon at least ten calendar days notice.

§62.1014 **Permit Fees**

All *newsracks* require timely payment of an annual permit fee established by the director and on file in the Office of the City Clerk. No refunds are provided for *newsracks* taken out of service. Permit fees are due and payable annually on January 15, and shall be prorated for any partial year. Annual permit fees shall be delinquent after fifteen days past due. A late fee of 10 percent shall be assessed on all delinquent amounts.

- (a) **Citywide Permit Fee Excluding the Gaslamp Quarter Planned District.** Except for the Gaslamp Quarter Planned District, the citywide fee is based on the total number of *newsracks* in service in the *public right-of-way*. This fee shall be sufficient to recover the costs of processing the permit application and enforcing permit requirements.
- (b) **Permit Fee in the Gaslamp Quarter Planned District.** A separate permit fee applies to *newsracks* located in the Gaslamp Quarter Planned District with boundaries defined in San Diego Municipal Code [Code]

section 103.0401. This fee shall be sufficient to recover costs associated with processing the permit application, enforcing permit requirements, and administering the lottery described in Code section 62.1008(d)(4).

§62.1015 **Recovery of Costs, Fees and Penalties**

Recovery of costs, fees, and penalties shall be in accordance with San Diego Municipal Code, Chapter 1, Article 3. The *director* may set fees on an annual basis to recover all reasonable costs of reinspection and removal of *newsracks*. Any time a *newsrack* is caused to be removed, summarily or otherwise, due to violations of this division, the City may recover all reasonable costs to include:

- (a) Cost of the investigative and administrative staff to process the case.
- (b) Cost of *newsrack* removal including the costs of any necessary *sidewalk* repair or storage of the *newsrack*.

§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.

§62.1016 **Correction of Minor Violations**

Unless expressly denied by the *permittee* in the permit application, the City is authorized at its sole discretion to correct minor *newsrack* violations it deems to be easily curable on the spot.

§62.1010 **Public Nuisance**

§62.1017 **Public Nuisance**

Any ~~newsrack~~ newsrack, or any publication offered for sale or distribution, in violation of this division shall constitute a public nuisance, as defined in San Diego Municipal Code section 11.0210, and may be abated in accordance with applicable provisions of law. No minor violation that is easily curable on the spot without the use of tools or moving the newsrack shall alone constitute a public nuisance under this division or in itself be grounds for permit revocation.

~~§62.10118~~ **Abandonment**

~~In the event a newsrack~~ A newsrack shall be deemed abandoned if it: (1) is summarily removed pursuant to San Diego Municipal Code section 62.1013 and unclaimed for thirty continuous calendar days from the date of removal, or (2) remains empty or without a permitted publication for a period of thirty (30) continuous calendar days, the same shall be deemed abandoned. Newsracks deemed abandoned and may be treated in the manner as provided in San Diego Municipal Code Section 62.1007 62.1012 for newsracks ~~newsracks~~ in violation of the provisions of this division. The City may dispose of and shall not be responsible for any newsrack, including its contents, deemed abandoned for sixty continuous calendar days.

~~§62.1012~~ **City Manager's Designated Representative**

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

~~("City Manager's Designated Representative" added 12-6-1974 by O-11457 N.S.)~~

§62.1019 **Appeal**

Any person or entity aggrieved by a finding, determination, notice, or action taken by the *director* under this division may appeal the same by filing an appeal in accordance with San Diego Municipal Code section 12.0501. San Diego Municipal Code, Chapter 1, Article 2, Division 5 shall apply to any appeal under this division.

§62.1020 **Conflict**

In the event of conflict between this division and any other provision in the San Diego Municipal Code applicable to *newsracks*, the more restrictive provision shall apply.

§62.101321 **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 City 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.

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