

**NEWSRACK ORDINANCE  
CITY OF MOUNTAIN VIEW, CALIFORNIA**

This document contains the entire ordinance, including refinements adopted by the City Council on April 8, 1997. Newsracks must comply with all aspects of this ordinance by September 25, 1997.

To apply for newsrack permit, please contact the City of Mountain View Public Works Department at (415) 903-6311, fax (415) 903-6499. The Public Works Department is located in City Hall, 500 Castro Street, first floor. Applications can be mailed to: City of Mountain View, P.O. Box 7540, Mountain View, California, 94039-7540.

**"ARTICLE VI. NEWSRACKS.**

**SEC. 26.72. Findings and purpose.**

The public sidewalks and pedestrian walkways are important thoroughfares for all, including residents and visitors with physical challenges and disabilities. There is a substantial governmental interest in promoting the public health, safety and welfare by ensuring that persons may use the public streets and sidewalks without unreasonable interference. Encroachments into the sidewalk and pedestrian thoroughfares are permitted on a limited basis by permit. Newsracks historically have been placed in public areas and have been allowed to encroach subject to certain clearly defined limitations. The proliferation of newsracks can be unsightly and, if placed improperly, can unreasonably interfere with pedestrian traffic, particularly as those newsracks may conflict with the movement of disabled pedestrians. It is, therefore, important and necessary to regulate the placement of newsracks and encroachments in general to preserve free access while allowing the greatest opportunity for dissemination of printed material through these vending machines.

It is intended that the provisions of this ordinance shall be consistent with the requirements of the Americans with Disabilities Act (ADA) and related laws and that the owner of each newsrack comply with its provisions. The regulation of the sale or free distribution of newspapers and other publications dispensed from newsracks as set forth in this article provides the least intrusive and burdensome means for ensuring the purposes stated in this article are carried out while still providing ample opportunities for the distribution of news, opinion and free speech. Given the limited space available and the increasing congestion throughout the community, the city has a substantial interest in devising a systematic approach to newsrack placement to ensure a fair and equitable distribution of publications.

Except as provided in Sections 26.75 and 26.81, this article does not regulate the placement of newsracks on private property or property owned by any government jurisdiction other than the city of Mountain View.

SEC. 26.73. Definitions.

- a. "Abandoned newsrack" shall mean any newsrack which remains empty for ten (10) business days, except that a newsrack remaining empty due to a labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publications sold or distributed from that newsrack shall not be deemed abandoned.
- b. "Director" shall mean the director of public works of the city of Mountain View, or his or her designee, or such other city official as designated by the city manager.
- c. "Freestanding newsrack" is any newsrack which is not a modular newsrack.
- d. "Harmful matter" shall be as defined in Section 313 of the California Penal Code.
- e. "Modular newsrack" shall mean an assembly of two or more attached newsracks which is of a type, design or model permitted by this article and which contains self-service or coin-operated boxes, containers, storage units or other dispensers installed, used or maintained for the display and sale or the distribution without charge of newspapers, news periodicals or other news publications.
- f. "Newsrack" shall mean any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution without charge of newspapers, periodicals or other publications. "Newsrack" shall include any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine.
- g. "Parkway" shall mean the area between the edge of the roadway and the adjacent street right-of-way line, excluding that area occupied by the sidewalks. Parkway shall also include any area within a roadway which is not open to vehicular travel.
- h. "Sidewalk" shall mean any portion of a street between the curb line and the adjacent street right-of-way line intended for the use of pedestrians, excluding parkways and improved with a nonporous paving material.
- i. "Specified anatomical areas" means:
  - (i) Less than completely and opaquely covered human genitals, pubic region, buttocks, perineum, anal region, or female breast at or below the areola thereof;

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

j. "Specified sexual activities" means:

(i) Human genitals in a state of sexual stimulation or arousal;

(ii) Acts of human masturbation, sexual intercourse or sodomy; or

(iii) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

**SEC. 26.74. Permit required.**

a. A permit shall be obtained for any newsrack located on or projecting into any public right-of-way or any public property from the director on the forms provided by the department prior to placement of a newsrack on public rights-of-way or on public property.

b. The provisions of this article shall be the exclusive requirements for newsrack encroachments onto public property and rights-of-way in the city and shall preempt any other conflicting provisions of this code. In implementing or enforcing this article, the director shall not consider the content or viewpoint of the material to be distributed through the newsracks.

c. There shall be no fee for the permit required by this section.

d. The newsrack permit application shall state the name, address, telephone and fax number of those responsible for installation, use and maintenance of the newsrack. It shall describe with particularity the locations proposed for installation. The application must also indicate the type of rack and if it is not a type approved in Section 26.75, describe with particularity its appearance, by photo and/or drawing if necessary.

e. Upon receipt of a complete application, a newsrack permit shall be issued within thirty (30) working days if the type of newsrack and location(s) proposed meet the standards set forth in this article. The director shall notify the applicant in writing of the decision on the application, including a decision on whether the application is complete, within fifteen (15) days. If an application is denied, in whole or in part, or is determined to be incomplete, the notice to the applicant shall state the reason(s) for the denial, or the basis for finding the application incomplete. The applicant may appeal the decision by filing a written appeal with the city manager within fifteen (15) days of receipt of the decision. Upon receipt of an appeal, the city manager's office shall, within fifteen (15) business days, notify the applicant of the date, time and place of the hearing. The city manager or designee

shall issue his/her decision in writing no later than fifteen (15) business days after the hearing. The decision of the city manager or designee shall be final.

f. An applicant securing a newsrack permit may install and maintain additional newsracks in the same location by securing an amendment to the permit originally granted to that applicant. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

g. Newsrack permits are valid for one year from the date of issuance and shall be automatically renewed for one (1) year on each anniversary date unless a notice of nonrenewal is sent to the permittee by the public works director thirty (30) days prior to the expiration date. Renewal may be affected by the priority for locations in Section 26.76. The City has the prerogative to terminate a permit earlier if the rack conflicts with a capital improvement project, changes to nearby public or private property make it necessary to relocate the rack, or the rack is no longer in compliance with this article.

#### SEC. 26.75. Design of newsracks.

a. When there are more than five freestanding newsracks in a given location, each shall be a modular-style rack, assembled and installed accordingly. No freestanding rack shall be allowed within 50 feet of a modular newsrack installation.

b. Modular-style newsracks shall be painted black and be one of the following types: K-49-16, K-100 (as manufactured by "Sho-Rack") or KJ50/KJ55F (as manufactured by "K-Jack") or M-30/M-33 (as manufactured by "National News Vend") or a similar style as may be approved by the director.

c. Freestanding newsracks may be painted any color. Freestanding newsracks may be of the same type allowed for modular installations or the HT-94 (as manufactured by "Sho-Rack"). Except in the area of the Downtown Precise Plan, freestanding racks may also be one of the following types: TK-80, TK-West, Gansat (as manufactured by "Sho-Rack") or a similar style as may be approved by the director.

d. Owners of nonmodular racks shall have sixty (60) days to replace their nonmodular racks with modular racks once more than five (5) newsracks have been installed in a particular location. The director may issue a temporary permit for the newsrack(s) triggering the modular requirement to allow adequate time for conversion of the existing newsracks to a modular installation. The compartments of modular racks shall be placed in such a manner as to provide up to two horizontal rows of up to eight compartments per row. In addition, any compartment that is unused in a modular rack installation shall be kept empty and not used for advertising purposes.

e. The city of Mountain View expects all newsrack users to work cooperatively, particularly in modular rack installations. A newsrack owner or operator that installs or maintains a modular rack is expected to share spaces with other publications, so that the public will have the maximum possible choice of news publications, and may recover a proportional share of the cost of the rack from other publications displayed in the rack. If there are more publications requesting compartments than available compartments, the director may limit each publication to only one compartment. Priorities shall be assigned pursuant to Section 26.76.

f. Newsracks shall not exceed fifty inches (50") in height, including pedestal, measured from the ground to the top of the surface of the newsrack, and not more than 2 feet deep and not more than 30 inches wide.

g. Newsracks do not require site plan and architectural review (SPAR) approval.

h. Racks may contain identification graphics covering up to twenty-five (25) percent of each side of the rack. On the door side of a newsrack, the allowable graphic is either: (1) twenty-five percent (25%) of area; or (2) a standard placard (11 inches x 16 inches or similar size) plus the name of the publication in letters 1-1/2 inches or less. Graphics and placards shall not promote or advertise any product, business or service, other than the publication dispensed from the newsrack except when that product, business or service is being specifically promoted in the publication dispensed from the newsrack.

i. Newsracks on private property that are within 10 feet of, and visible from, the public right-of-way shall comply with the design and spacing requirements of this article.

**SEC. 26.76. Number of newsracks permitted.**

a. Newsracks may be placed next to each other. However, no group of newsracks placed along a curb shall extend for a distance of more than 16 feet and shall be no closer than 4 feet to another group of newsracks along a curb. If sufficient space does not accommodate all newsracks sought to be placed at one location without violating the standards set forth in this article, the director shall give priority on an historical basis until the amortization date in Section 26.82. After that date, the director shall give priority, to permit applicants as follows:

1. First priority, on a first-come, first-served basis, shall be given to daily publications (inclusive of their Saturday, Sunday or weekend editions whether or not published jointly with another newspaper) published at least five times per week.

2. Second priority, on a first-come, first-served basis, shall be given to publications published more than once but less than five days per week.

3. Third priority, on a first-come, first-served basis, shall be given to weekly publications.

4. Fourth priority, on a first-come, first-served basis, shall be given to biweekly publications (published less than once per week but more than once per month).

5. Fifth priority, on a first-come, first-served basis, shall be given to monthly or less frequent publications.

**SEC. 26.77. Standards for installation of newsracks.**

a. Any newsrack which, in whole or in part, rests upon, on or over any sidewalk, parkway or city property or right-of-way shall comply with the following standards:

1. Newsracks shall only be placed near a curb or adjacent to the wall of a building, or at the edge of sidewalk furthest from the curb. The back of newsracks placed near the curb shall be placed parallel to the curb and no less than 18 inches, no more than twenty-four inches (24") from the edge of the curb, except on El Camino Real, where newsracks placed near the curb shall be placed no less than twenty-four inches (24") and no more than thirty inches (30") from the edge of the curb. The back of newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six inches (6") from the wall or edge of sidewalk. The backs of newsracks placed at the edge of sidewalk furthest from the curb shall be placed parallel to, and within six inches (6") of, the edge of such sidewalk. No newsrack shall be placed or maintained on a sidewalk or parkway opposite another newsrack or kiosk which distributes newspapers, periodicals or other publications.

2. Newsracks shall not be chained or otherwise attached to any structure, including, but not limited to, bus shelters, benches, streetlights, utility poles or sign poles, or to any tree, shrub or other plant.

3. Newsracks may be affixed to the sidewalk, except on Castro Street or the Castro Street breezeways, where no newsracks shall be attached to the sidewalk. If attachment to the sidewalk is requested, the director shall impose conditions on the permit requiring the restoration of the sidewalk upon removal of the rack(s). Applicants who have not adequately repaired or replaced sidewalks after the removal of a newsrack shall not be issued additional permits until the previously damaged sidewalk has been satisfactorily restored.

4. Newsracks located in the public right-of-way shall only be placed upon the sidewalk or, in commercial areas, upon another surface approved by the director. No newsrack may be placed on a parkway, planter strip or similar area designated for landscaping in a public right-of-way.

**SEC. 26.78. Restricted newsrack locations.**

a. No person shall install, stock, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public right-of-way, street, or which rests, wholly or in part, upon, along or over any portion of a roadway.

b. No person shall install, stock, use or maintain any newsrack which, in whole or in part, rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property or when such site or location is used for public facilities purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicle traffic, including access for the disabled, bicycle access, the ingress into or egress from any residence, place of business or the use of poles, posts, traffic signs or signals, hydrants, postal service collection boxes or other objects permitted at or near said location.

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

1. Within 5 feet of any marked crosswalk or within 15 feet of any unmarked crosswalk as measured from the curb return, or within 5 feet of any wheelchair curb ramp not in a marked crosswalk.

2. Within 5 feet of any fire hydrant, fire call box, police call box or other emergency facility.

3. Within 5 feet of any driveway.

4. Within 5 feet of any bus bench.

5. Within 15 feet ahead of, and 5 feet to the rear of any sign marking a designated bus stop, relative to the direction of bus travel. Newsracks 7 feet from the curb, measured perpendicular to the roadway, are exempt from this limitation.

6. At any location where the clear space or sidewalk space for the passage of pedestrians is reduced to less than 4 feet.

7. In such a manner as to impede or interfere with the reasonable use of any building, the activity of any business or residence or the use of any commercial window display or sidewalk café.

d. **Downtown Precise Plan area.** Due to the unique nature of the downtown area, as defined in the Downtown Precise Plan, the city council finds and declares that additional criteria shall be applied with respect to newsrack locations in the downtown. This criteria is necessary to preserve and enhance both the appearance and the function of Castro Street and other public improvements in the downtown, as well as ensure the ability of businesses to operate without unreasonable impacts from newsracks. Therefore, in addition to the standards prescribed elsewhere in this ordinance:

1. In the 100 through 300 blocks of Castro Street, newsracks may only be located in the breezeways connecting Castro Street to the parking lots. No newsrack may be located in the flexible zone or the primary sidewalk in these blocks.

2. In the 400 through 900 blocks of Castro Street, newsracks are allowed only if the back of the newsrack is within 6 inches of where the edge of the sidewalk meets a building facade. No newsrack may be located in the flexible zone or near the curb in these blocks.

3. On other streets within the Downtown Precise Plan area, newsracks are allowed to locate in the same manner as any other street in the City, except with respect to approved sidewalk café and vending operations.

4. To encourage sidewalk café and vending operations in downtown while minimizing the potential to block pedestrian areas, café and vending operations shall be given priority over the placement of newsracks. No newsrack shall be located within 15 feet of an approved sidewalk café or vending operation.

5. In the public parking lots operated by the Downtown Parking District, the director has the discretion to approve an increased height for newsracks and a greater number of modular newsracks than otherwise allowed by this article, in appropriate locations.

e. **Park areas.** Newsracks in the public right-of-way shall not be located on the sidewalk abutting a city park.

f. **Residential areas.** Newsracks have traditionally not been placed in residential areas. The city council finds and determines that placement of newsracks in residential areas is particularly sensitive because the sidewalks in residential areas are generally narrower than in commercial or industrial areas and are used extensively by residents of the area for child play areas, including riding bikes, roller-skating and similar activities. It is, therefore, appropriate to have special regulations in residential areas and, because ample opportunities typically exist at nearby commercial and industrial venues, greater restrictions in residential areas will not infringe upon the distribution of newsrack items.



i. Except as herein provided, newsracks shall not be located in the public right-of-way adjacent to property developed for residential use. The director shall permit the placement of newsracks adjacent to property developed for residential uses if the director finds, based upon information provided in the application by the owner of the newsrack, that the newsrack cannot be alternatively placed in a commercial or industrial area within 2,000 feet of the proposed residential location and it meets the other requirements of this article.

**SEC. 26.79. Maintenance of newsracks.**

a. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. For example, without limitation, the newsrack shall be reasonably free of dirt and grease; be reasonably free of chipped, faded, peeling or cracked paint; be reasonably free of rust and corrosion; have no broken or cracked plastic or glass parts; and have no broken structural parts.

b. Each newsrack which requires a deposit of money to obtain the publication shall be equipped with a coin-return mechanism to permit persons using the machine to secure a refund in the event they are unable to receive the publication. The coin-return mechanism shall be maintained in good working order.

c. Each person maintaining a newsrack under the terms of this article shall have his or her name, current address and telephone number (updated within fifteen (15) days of any changes) affixed to it in a place where such information will be readily visible and shall include such identification instructions on how to receive a refund in the event of a coin-return malfunction. The city-issued permit sticker shall be affixed to the rack near the door handle.

d. Upon the removal of any newsrack, the public right-of-way shall be returned to its original condition, including, but not limited to, the repair of any damage that may have been caused by the installation or use of the newsrack.

e. Abandoned newsracks may be removed from the public right-of-way or public property by a city employee and may be disposed of if not claimed by the permit holder within thirty (30) days after the city has notified the owner in writing. Such notice shall state the code section violations, the length of time within which the violation must be cured, and the forum within which the owner may request a hearing to resolve the situation.

**SEC. 26.80. Abatement of violations.**

a. A newsrack on public property or in the public right-of-way in violation of this title may be removed by a designated city employee of the city of Mountain View if a violation of this article exists and is not corrected after the city has notified the permit holder pursuant to this section.

b. Before any newsrack is removed by a city employee from public property or the public right-of-way, the owner shall be notified by a posting and mailing, where feasible, to the address for such party stated on the newsrack permit and given fifteen (15) days to remedy the violation and/or contest removal. If no identification is shown on the newsrack and no newsrack permit has been obtained, posting of the notice on the newsrack alone shall be sufficient. Both forms of notice shall state the place to request a hearing to contest removal of the newsrack. The notice shall also indicate that if removed by the city, the newsrack will be stored at the city's corporation yard for thirty (30) days and then disposed of if left unclaimed, without further notice.

c. Any person notified under this section may submit a written request for a hearing before the director, which hearing shall be held not less than fifteen (15) business days after the request was made. The hearing shall be informal, but oral and written evidence may be offered by the owner, permittee and/or any interested party. Any action by the city with respect to the alleged violation shall be stayed pending the director's decision following the hearing, which decision shall be rendered no later than fifteen (15) business days after the hearing. The director may give oral notice of the decision at the close of the hearing, but shall give written notice as well of all decisions. The applicant may file a written appeal of the decision to the city manager within fifteen (15) days. Upon receipt of an appeal, the city manager's office shall, within fifteen (15) business days, notify the applicant of the date, time and place of the hearing. The city manager or designee shall issue his/her decision in writing no later than fifteen (15) business days after the hearing. The decision of the city manager or designee shall be final.

d. The city may remove a newsrack from public property or the public right-of-way if:

1. The person responsible for such newsrack has neither requested a hearing before the director nor remedied the violation within fifteen (15) business days following the date of notice, or

2. The person responsible for such newsrack has failed to remedy the violation within fifteen (15) business days after receiving a copy of the written decision of the director that the newsrack was installed or maintained in violation of this article following a hearing conducted pursuant to this section.

3. The newsrack has been abandoned.

e. Newsracks removed or impounded by the city of Mountain View shall be stored in the city's corporation yard. Newsracks which are not claimed within thirty (30) days shall be deemed permanently abandoned and may be disposed of by city, so long as city has given notice to the permit holder as specified in Section 26.79(b).

f. The person responsible for such newsracks shall pay an impound fee covering the actual costs to the city of transporting, storing and disposing of such newsracks, as established by council resolution. Abatement hereunder is a nonexclusive remedy. The city may employ other remedies in law or equity to effect compliance.

**SEC. 26.81. Blinder racks required for newsracks displaying adult material.**

a. Newsracks located in public places, other than public places from which minors are excluded, and public property and city rights-of-way, and which display harmful matter to the public view, shall be equipped with devices commonly known as blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

b. Newsracks located in public places, other than public places from which minors are excluded, and public property and city rights-of-way, and which display to the public view material depicting or describing specified sexual activities, as defined in this article, or which contain material depicting or describing specified anatomical areas, as defined in this article, where such picture, or illustration, or statement has as its purpose or effect sexual arousal, gratification of affront, shall be equipped with blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

**SEC. 26.82. Amortization requirements.**

a. Every newsrack located on public property, in the public right-of-way, and in public places, other than public places from which minors are excluded, shall comply with the requirements contained in Section 26.81 by May 11, 1997.

b. Every newsrack located on public property or in the public right-of-way shall comply with the requirements contained in Sections 26.74 through 26.80, inclusive, by September 25, 1997.

c. Every newsrack located on private property within ten feet (10') of, and visible from, the public right-of-way shall comply with the design and spacing requirements of this article by September 25, 1997."

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or

more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption and three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

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