

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 7 OF CHAPTER 13 OF THE FRESNO MUNICIPAL CODE RELATING TO PUBLICATION DISPENSING RACKS CITYWIDE AND IN SPECIAL DISTRICTS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 7 is added to Chapter 13 of the Fresno Municipal Code to read:

**ARTICLE 7.**

**PUBLICATION DISPENSING RACKS CITYWIDE AND IN SPECIAL DISTRICTS**

Section	13-701	Purpose - Scope.
	13-702	Definitions.
	13-703	Permit Required.
	13-704	Obtaining a Permit.
	13-705	Standards for Maintenance and Display of Newsracks.
	13-706	Size and Design Standards.
	13-707	Standards for Placement and Location of Newsracks.
	13-708	Special Newsrack Areas.
	13-709	Blinder Racks Required.
	13-710	Violation - Enforcement.
	13-711	Nuisance.
	13-712	Removal and Hearing.
	13-713	Abandoned Newsracks.

SECTION 13-701. PURPOSE – SCOPE. The purpose and scope of the regulations in this article are as follows:

(a) The provisions of this article shall apply to all Newsracks located in public places within the City of Fresno; provided, that certain

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: BC

Ordinance No.

provisions, as specified, shall apply only to Newsracks located on public property.

(b) It is in the public interest to establish regulations that balance the right to distribute information through Newsracks with the right of persons to reasonably access and use public property.

(c) The public health, safety, welfare, and convenience require that: interference with vehicular, bicycle, mobility devices, or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs be maintained and damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress to and from be maintained, and the enjoyment of store window displays on, properties adjoining public property be protected.

(d) Newsracks placed and maintained on public property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

(e) The regulations on the time, place and manner of the placement, location and maintenance of Newsracks set forth in this article are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of news to the public.

SECTION 13-702. DEFINITIONS. For the purposes of this article, the following words and phrases are defined and shall be given the meaning set out in this section unless it is apparent from the context that a different meaning is intended.

(a) "Abandoned Newsrack" means any Newsrack which remains empty for ten business days; provided, that a Newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that Newsrack shall not be deemed abandoned.

(b) "Director" means the Director of the Department of Public Works or designee.

(c) "Harmful Matter" means and is defined as in California Penal Code Section 313, as may from time to time be amended.

(d) "Minor" means any natural person under eighteen years of age.

(e) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display and sale or distribution of newspapers, periodicals or other publications.

(f) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(g) "Public Place(s)" means and includes any public property owned or controlled by the City or any other public agency, or any outdoor private property which is open to the public.

(h) "Public Property" means any public right-of-way or any property owned or controlled by the City, including, without limitation, streets, sidewalks, alleys, and rights-of-way.

(i) "Special Newsrack Area" means any area of the City so designated by the City Manager upon findings that the circumstances of the area require special design, placement and other standards for Newsracks.

(j) "Special Newsrack Container" means a specially designed permanently affixed container provided by the vendor, within which shall be the exclusive location for the placement of Newsracks in a Special Newsrack Area.

(k) "Street Furniture" means and includes street lights, traffic signals, utility poles, boxes, guy wires, signs, fire hydrants, bus stop benches, trash receptacles, parking meter or any appurtenances installed by City in the public right-of-way.

SECTION 13-703. PERMIT REQUIRED. It is unlawful to install, place, maintain or cause to be placed, installed or maintained a Newsrack on, or projecting on, any Public Property without first receiving a permit therefore from the Director and unless such Newsrack is in compliance with the provisions of this article; provided that, except for Newsracks proposed to be located within a

Special Newsrack Area, a Newsrack located on Public Property as of January 1, 2017 may continue to remain in such location, under the following conditions:

(a) The Newsrack is in compliance with the requirements for the installation and maintenance of Newsracks contained in this article; and

(b) A permit application for such Newsrack has been filed as of that date with the Director by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's Newsrack; and

~~(c) A permit pursuant to such application has not been denied with respect to any such Newsrack.~~

If no permit application has been filed by that date by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's Newsrack, or such permit is denied, such Newsrack shall be deemed to be in violation of the provisions of this article. Existing Newsracks shall be required to re-register such Newsracks with the City by January 15, 2017 and each year thereafter, on a form provided by the City.

#### SECTION 13-704. OBTAINING A PERMIT.

(a) Application. Application for a Newsrack permit for each location sought shall be submitted to the Director on a form prescribed by the Director, which shall include, without limitation:

(1) The name, street and mailing address, and telephone number of the applicant, which shall be the duly authorized

representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's Newsrack for which the permit is sought;

(2) The name, street and mailing address and telephone number of the distributor or other responsible Person whom the City may notify or contact at any time concerning the applicant's Newsrack(s);

(3) A description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this article) and the proposed means of affixing the proposed Newsrack;

(4) A description of the proposed Newsrack, including its dimensions, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;

(5) The name and frequency of publication of each publication proposed to be contained in the Newsrack;

(6) A statement signed by the applicant that the applicant agrees to add the City as an additional insured on applicant's insurance policy and agrees to indemnify, defend and hold harmless, the City and its representatives from all claims, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any Newsrack on Public Property by or on behalf of any such Person, except such injury or

harm as may be caused solely and exclusively by the negligence of the City or its authorized representatives; and

(7) A statement signed by the applicant that the applicant agrees, upon removal of a Newsrack, to repair any damage to the Public Property caused by the Newsrack or its removal.

(b) Issuance of Permit. A permit shall be issued within fifteen working days from the date of filing the application with the Director if the application is properly completed and the type of Newsrack and location proposed for each Newsrack meet the standards set forth in this article. A single permit shall be issued for each Newsrack location applied for by an applicant who meets the standards of this article. An applicant may submit more than one application, in order to apply for additional locations. A permit shall not be transferable.

(c) Period of Permit Validity. Permits shall remain valid if re-registered with the City by June 30th of each year, on a form provided by the Director. Failing to re-register or explicit cancellation by a permit holder will void the permit and it will be ineffective thereafter. Unregistered Newsracks may be treated as abandoned under Section 13-713 or other applicable enforcement mechanism.

(d) Issuance of Permit Sticker. Each permittee shall be issued a pre-printed sticker for each permitted Newsrack, which shall be affixed to the lower right corner of the front of each Newsrack.

(e) Denial of Permit. If a Newsrack permit is disapproved, in whole or in part, the Director shall notify the applicant within fifteen working days from the date of filing a complete application with the Director, explaining the reasons for the denial of the permit. Applicant shall have the right to appeal the denial to the Administrative Hearing Officer in accordance with Article 4, Chapter 1 of the Fresno Municipal Code.

(f) Amendment to Permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the Director. A permittee may install and maintain additional Newsracks at that location by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

#### SECTION 13-705. STANDARDS FOR MAINTENANCE AND DISPLAY OF NEWSRACKS.

(a) Every Person placing or maintaining a Newsrack on Public Property shall comply with the following requirements:

(1) Every Newsrack shall be maintained in a neat and clean condition, and in good repair at all times. For example, without limitation, every 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.



(2) Every Newsrack shall be constructed, installed and maintained in a safe and secure condition.

(3) Every Newsrack shall be made of solid material on all sides, so as to contain the material inside the Newsrack in a manner as to prevent it from blowing away or otherwise becoming litter. No wire or other open form of Newsrack shall be permitted.

(4) Every Newsrack shall be kept free of graffiti.

(5) Every Newsrack that sits on legs shall be kept free of dirt and litter under the Newsrack.

(6) Every Newsrack shall be painted or covered with a protective coating, so as to keep it free from rust, and shall be cleaned and repainted on a regular basis.

(7) Every coin-operated Newsrack shall be equipped with a coin-return device that is maintained in good repair and working order.

(8) Every coin-operated Newsrack shall display information on how to secure a refund in the event of coin return malfunction. Such information shall be placed in a visible location on the front or top of the Newsrack, and shall be legible.

(9) Other than the display of the publication contained therein, no Newsrack shall display or be affixed with any words or pictures except for the identifying information, and the coin return information, if applicable, required by Subsection (d) of

Section 13-704 and Subsections (a)(8) and (b), respectively, of this section; provided that, except as provided in Section 13-708 (Special Newsrack Areas), each side of a Newsrack may display, in characters no more than four inches high, the name and/or logo of the publication contained in the Newsrack, and the front of each Newsrack may be affixed with a single sign or decal, no larger than three inches by ten inches, containing only information relating to the display, sale or distribution of the publication contained in the Newsrack. ~~If the Newsrack contains a built-in sign holder, the Newsrack may be affixed with a sign that fits within that holder, not to exceed eleven inches by seventeen inches.~~

(10) Old or out-of-date material removed from any Newsrack by any Person who owns, maintains, or stocks the Newsrack shall be recycled or disposed of in a lawful manner. Such material shall not be disposed of in any trash receptacle owned or rented by others, without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

(b) Every Newsrack located in a Public Place shall be affixed with identifying information, which shall contain the name, address and telephone number of the Newsrack owner and of the distributor of the publication(s) contained therein. Such information shall be placed in a visible location on the front or top of the Newsrack, and shall be legible.

The size of the identifying information shall be no larger than three inches by five inches.

SECTION 13-706. SIZE AND DESIGN STANDARDS. Except as provided in Section 13-708, no Newsrack shall be placed, installed or maintained on any Public Property except in compliance with the following standards:

(a) No Newsrack shall be more than fifty inches high (including the pedestal in the case of modular Newsracks) measured from the ground to the top surface of the Newsrack, nor more than twenty-four inches deep, nor more than twenty-four inches wide.

(b) The highest operable part of the coin slot, if provided, and all controls, dispensers and other operable components of a Newsrack shall be no higher than forty-eight inches above the ground, and no lower than fifteen inches above the ground.

(c) The design of a Newsrack shall not create a danger to the Persons using the Newsrack in a reasonably foreseeable manner. All Newsracks shall comply with all applicable federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

SECTION 13-707. STANDARDS FOR PLACEMENT AND LOCATION OF NEWSRACKS.

(a) Except as otherwise set forth in Section 13-708, no Newsrack shall be placed, installed or maintained on any Public Property

when such installation, use or maintenance endangers the safety of Persons or property. No Newsrack shall be placed, installed or maintained on any Public Property except in compliance with the following standards:

(1) Newsracks shall be placed only on a sidewalk, in one of the following locations:

(i) Near a curb, in which case, the back of the Newsrack shall be placed no less than eighteen inches; nor more than twenty-four inches from the face of the curb; or

(ii) Adjacent to the wall of a building, in which case, the back of the Newsrack shall be placed parallel to such wall and not more than six inches from the wall.

(2) Every Newsrack shall be placed so as to open toward the sidewalk.

(3) Every Newsrack shall be affixed to the sidewalk or to another Newsrack, in a manner approved by the permit therefor; provided, no Newsrack shall be chained to another Newsrack. Newsracks shall not be chained or otherwise attached to any bus shelter, bench, street light, parking meter utility pole or device or sign pole, or to any tree, shrub or other plant, nor situated upon any landscaped area.

(4) No Newsrack shall be placed, installed or maintained:

(i) Within thirty feet of any marked or unmarked crosswalk as measured from the curb return;

(ii) Within three feet of any fire hydrant, call box, or other emergency facility; Street Furniture; or utility pole or box;

(iii) At any location where the clear space for the passage of pedestrians is reduced to less than six feet;

(iv) Within ten feet of any driveway;

(v) Within thirty feet of a street intersection;

(vi) Within five feet of any red curb of a bus stop zone;

(vii) Within thirty feet of the curb return of any curb ramp not in a marked crosswalk;

(viii) In such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building;

(ix) In such a manner as to impede or interfere with the reasonable use of any bicycle rack or parking meter; and

(x) In such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

(xi) In the sidewalk adjacent to accessible parallel parking spaces.

(b) Newsracks may be placed or joined together; however, no group of Newsracks placed along a curb shall extend for a distance of

more than ten feet (i.e., the combined width of five Newsracks); and no group of Newsracks shall be closer than four feet to another group of Newsracks along a curb.

(c) The Director may allow a permittee to place a Newsrack in a location in variance of the standards otherwise required by this section if the Director finds that such variance will not be detrimental to public safety and that, due to the existing physical constraints at that location, imposition of the standards would make placement impossible and would ~~cause a hardship to the permittee and its patrons.~~ The written findings and the variance shall be made part of the permit. Prior to considering whether or not to grant a variance, the Director shall provide written notice of the requested variance to the owner(s) of the real property adjacent to or abutting the proposed Newsrack location.

(d) If sufficient space does not exist to accommodate all Newsracks sought to be placed at one location without violating the standards set forth in this article, the Director shall give priority as to that location to publications on a “first come first served” basis.

In the event the Director is required to utilize the priority system described in Subsection (d), he or she shall permit only one rack per publication or distributor in a single location.

(e) The provisions of this section shall apply as of the effective date of the ordinance codified in this article to new installations or applications. These provisions shall not require removal or modification of

existing Newsracks until January 15, 2017. By March 15, 2017, any pre-existing Newsracks or publication placements within them must be brought into compliance with this section in order to continue as a valid, permitted Newsrack within the City.

SECTION 13-708. SPECIAL NEWSRACK AREAS.

(a) The Council hereby finds that special circumstances require special design, placement and other standards for Newsracks located in certain areas of the City and such areas are hereby designated as "Special Newsrack Areas." Newsracks and publication placements therein existing as of the effective date of this article are allowed to remain in their current configuration. When a publication or distributor controlling such existing Newsracks seeks to substantially change or modify such Newsracks or submit a new application in connection with them, the existing Newsracks must be brought into compliance with this section. Regardless of the preceding, all existing Newsracks within the designated Special Newsrack Areas must be brought into compliance with the requirements of this section by January 15, 2017. The following areas are hereby designated as Special Newsrack Areas:

(1) Downtown Fresno.

(i) The Council hereby designates the "Downtown District" bounded by State route 99, State route 41, and State route 180, more commonly known as the Downtown

Triangle, and including both sides of all streets within the Downtown Triangle, as a Special Newsrack Area.

(ii) The Council finds that the Downtown District has become very congested with street furniture and other sidewalk encroachments, and other means of travel competing with pedestrians for the public space; and that special standards for the design and location of Newsracks and the enforcement of existing regulations for other encroachments in these commercial areas will help to create a sense of order out of chaos and provide a friendly environment for those who come to the area.

(b) Notwithstanding any contrary provisions in this article, the following special standards shall apply to Newsracks and the placement of publications in Newsracks within any Special Newsrack Area so designated pursuant to Subsection (a) of this section:

(1) No Newsrack shall be located in a Special Newsrack Area except within a Special Newsrack Container. All Newsracks in a Special Newsrack Container shall meet the requirements set forth in the City of Fresno Public Works Standard Drawing for "Newsracks in Special Districts" and the following specifications:

(i) All Newsracks installed in a designated Special Newsrack Area shall be black unless the Director specifies otherwise.



(ii) The name and/or logo otherwise permitted pursuant to Section 13-705(a)(9) may be placed only on the front face of the box, inclusive of the window area, and shall be limited to the dimension of three (3) inches vertically by ten inches horizontally.

(iii) Permittees of double high racks may be required to provide devices commonly known as “spacers” for the Newsracks adjacent to each double high rack, to ensure that all Newsracks in a single location group of racks are the same height. Permittees who use Newsracks of a brand other than specified in the City of Fresno Public Works Standard Drawing for “Newsracks in Special Districts”, or equivalent, may be required to furnish spacers to achieve height uniformity.

(2) Placement of Newsracks Within a Special Newsrack Area. No Newsrack shall be located in a Special Newsrack Area unless a permit has been obtained in accordance with this section and with Sections 13-704 and 13-707.

c) The City Manager may designate an area as Special Newsrack Area by resolution.

#### SECTION 13-709. BLINDER RACKS REQUIRED.

(a) Newsracks located in Public Places, other than Public Places from which Minors are excluded, and which display to the public

view Harmful Matter, 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 which display to the public view material depicting or describing Specified Sexual Activities, as defined in subdivision (1) of this subsection, or which contain material depicting or describing Specified Anatomical Areas, as defined in subdivision (2) of this subsection, where such picture, or illustration, or statement has as its purpose or effect sexual arousal, gratification or 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.

(1) "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.

(2) "Specified Anatomical Areas" means:

(i) Less than completely and opaquely covered human genitals, pubic hair, buttocks, perineum, anal region, or female breast at or below the areola thereof; or

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

**SECTION 13-710. VIOLATION—ENFORCEMENT.**

(a) It shall be illegal to place, install, or maintain any Newsrack or any material in a Newsrack in a manner contrary to any provision of this article.

(b) Any Person who violates any provision of this article shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Section 1-304 of this code.

(c) The provisions contained in this article shall be subject to the general enforcement authority of the City Manager, enforcement officers or designees as provided in Section 1-302.

**SECTION 13-711. NUISANCE.** Any Newsrack or any material in a Newsrack placed, installed or maintained in violation of this article shall constitute a public nuisance and may be abated in accordance with Chapter 10, Article 6 and applicable provisions of law.

**SECTION 13-712. REMOVAL AND HEARING.** In addition to the enforcement remedies available to the City, which are set forth in Chapter 1, Article 3 and in Sections 13-710 and 13-711 of this article, any Newsrack placed, installed or maintained in violation of this article may be removed by the City, subject to the notice and hearing procedures set forth in this section.

(a) **Notice of Violation.** Before removal of any Newsrack, the City shall notify the owner or distributor of the violation. Written notification

by first class mail to the address or addresses shown on the offending Newsrack shall constitute adequate notice. The City may, but need not, affix an additional notice tag onto the offending Newsrack. If no identification is shown on the Newsrack, posting of the notice on the Newsrack alone shall be sufficient. The notice shall state the nature of the violation, shall specify actions necessary to correct the violation, and shall give the owner or distributor fifteen business days from the date appearing on the notice to remedy the violation or to request an appeal. The date on ~~the notice shall be no earlier than the date on which the notice is mailed or~~ affixed to the Newsrack, as the case may be.

(b) Appeal. Any owner or distributor notified under Subsection (a) may appeal from any notice and order of the Director pursuant to Chapter 1, Article 4 of this Code. If no appeal is filed with the time prescribed, the action of the Director shall be final. Any Action by the City to remove the Newsrack shall be stayed pending the written decision of the hearing officer or designee.

(c) Removal and Impoundment. The City may remove and impound a Newsrack or Newsracks in accordance with this section if the owner or distributor has neither requested an appeal nor remedied the violation within fifteen business days from the date on the notice, or if an appeal is requested, following the written decision of the hearing officer or designee upholding the determination of a violation. An impounded Newsrack shall be retained by the City for a period of at least ninety

calendar days following the removal, and may be recovered by the permittee upon payment of a fee as set forth in the master fee schedule. An impounded Newsrack and its contents may be disposed of by the City after ninety calendar days.

(1) If the owner of an unpermitted rack cannot be determined and the rack does not contain the required identification, no notice of the removal shall be required.

SECTION 13-713. ABANDONED NEWSRACKS. An Abandoned Newsrack may be removed by the City and impounded, pursuant to the notice and hearing procedures set forth in Section 13-712. The City may dispose of the Newsrack if the permittee does not claim the Newsrack and pay any required fees within ninety days of its removal.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2016  
Mayor Approval/No Return: \_\_\_\_\_, 2016  
Mayor Veto: \_\_\_\_\_, 2016  
Council Override Vote: \_\_\_\_\_, 2016

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Brandon M. Collet      Date  
Deputy

BMC:prn [65135prn/ord] 08-04-16