

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
NEWSRACKS 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

NEWSRACKS CITYWIDE AND IN SPECIAL DISTRICTS

Section	13-701	Purpose - Scope.
	13-702	Definitions.
	13-703	Street Work Permit Required.
	13-704	Standards for Maintenance and Display of Newsracks in Special Newsrack Areas.
	13-705	Standards for Placement and Location of Newsracks in Special Newsrack Areas.
	13-706	Special Newsrack Areas.
	13-707	Violation - Enforcement.
	13-708	Nuisance.
	13-709	Removal and Hearing.
	13-710	Abandoned Newsracks.
	13-711	Indemnification.

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 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 thirty 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) "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.

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

(e) "Public Place(s)" means and includes any Public Property owned or controlled by the City or any other public agency.

(f) "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.

(g) "Special Newsrack Area" means any area of the City so designated by City Council resolution upon findings that the circumstances

of the area require special design, placement, and other standards for Newsracks.

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

(i) "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. STREET WORK PERMIT REQUIRED.

(a) It is unlawful to install, place, maintain or cause to be placed, installed or maintained a Newsrack in a Special Newsrack Area on, or projecting on, any Public Property without first receiving a street work permit therefore from the Director and unless such Newsrack is in compliance with the provisions of this article.

(b) 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 street work permit therefore from the Director and unless such Newsrack is in compliance with the provisions of this article.

If no street work permit 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 comply with this article within thirty calendar days following the effective date of this ordinance. The street work permit shall be on a form provided by the City.

SECTION 13-704. STANDARDS FOR MAINTENANCE AND DISPLAY OF NEWSRACKS IN SPECIAL NEWSRACK AREAS.

(a) Every Person placing or maintaining a Newsrack in a Special Newsrack Area 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) 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.

(8) 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.

(b) Every Newsrack located in a Special Newsrack Area 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 13-705. STANDARDS FOR PLACEMENT AND LOCATION OF NEWSRACKS IN SPECIAL NEWSRACK AREAS.

(a) Except as otherwise set forth in Section 13-706, no Newsrack shall be placed, installed or maintained in any Special Newsrack Area when such installation, use or maintenance endangers the safety of Persons or property. No Newsrack shall be placed, installed or maintained in any Special Newsrack Area 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.

The provisions of this section shall apply as of the effective date of the ordinance codified in this article to new installations. These provisions shall not require removal or modification of permitted, existing Newsracks until sixty calendar days have passed from the effective date of this ordinance. By this date, 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 13-706. 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 within sixty calendar days following the effective date of this ordinance. 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 Subsection (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 (10) 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 street work permit has been obtained in accordance with this section and with Section 13-705.

(c) The City Council by resolution may designate an area as a Special Newsrack Area upon findings that the circumstances of the area require special design, placement and other standards for Newsracks.

SECTION 13-707. 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 13-708. 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 13-709. 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 13-707 and 13-708 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 ninety calendar days following the removal, and may be recovered by the permittee within the ninety calendar day time period. 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 13-710. ABANDONED NEWSRACKS. Any Newsracks in Special Newsrack Areas or on Public Property without the applicable permit may be treated as abandoned under this section. An Abandoned Newsrack may be removed by the City and impounded, pursuant to the notice and hearing procedures set forth in Section 13-709. The City may dispose of the Newsrack if the permittee does not claim the Newsrack within ninety calendar days of its removal.

SECTION 13-711. INDEMNIFICATION. Any Person placing or maintaining a Newsrack on Public Property shall, to the furthest extent allowed by law, agree to indemnify, hold harmless, and defend the City and each of its

officers, officials, employees, agents, and volunteers for all loss, liability, costs and damages arising out of, pertaining to or relating to the placement or maintenance of a Newsrack on Public Property. Such indemnification shall include all litigation expenses, costs, and attorneys' fees incurred by the City, its agents and employees.

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

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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 _____, 2017.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

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] 05-12-17