



## Planning Services Division

3675 Mt. Diablo Boulevard, Suite 210

Lafayette, CA 94549-1968

Tel. (925) 284-1976 • Fax (925) 284-1122

<http://www.ci.lafayette.ca.us>

### REGULATION OF NEWSRACKS

#### Sections

##### General Provisions

- 8-1901 Purpose and findings.
- 8-1902 Definitions.
- 8-1903 Newsrack advisory committee.
- 8-1904 Fees.

##### Permit Procedure and Administration

- 8-1911 Permit required.
- 8-1912 Newsrack specifications govern application procedure and newsrack standards and placement.
- 8-1913 Review and issuance.

##### General Requirements Regarding Newsracks

- 8-1921 Type, number and grouping of newsracks.
- 8-1922 Allocation.
- 8-1923 Newsrack identification.
- 8-1924 Liability insurance.
- 8-1925 Indemnification.
- 8-1926 Maintenance.

##### Prohibitions and Enforcement

- 8-1931 Display of material harmful to minors.
- 8-1932 Unlawful obstructions.
- 8-1933 Nonconforming newsracks.
- 8-1934 Removal of newsracks in violation of chapter.
- 8-1935 Notice before removal.
- 8-1936 Hearing procedure.
- 8-1937 Appeal.
- 8-1938 Disposition of removed newsracks.
- 8-1939 Costs of removal.

## General Provisions

8-1901

### Purpose and findings.

(a) The city council finds that the uncontrolled placement and maintenance of moveable, individual, freestanding newsracks upon public rights-of-way poses hazards to the traveling public, interferes with the property rights of adjacent owners and with other legitimate users of the right-of-way, causes visual blight and detracts from the aesthetics of adjacent users, and results in an unnecessary degree of exposure of the city to liability claims.

(b) The public health, safety, welfare and convenience require that: interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of the public streets and grounds 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 from properties adjoining the public rights-of-way be protected.

(c) There is a substantial governmental interest in promoting the public health, safety, welfare and convenience by ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way and other public property without interference. The need for specific standards for placement of newsracks on public rights-of-way is the greatest in the downtown area due to the frequency of pedestrian and vehicular traffic and the number of newsracks located in this area.

(d) Given the limited space available, the city has a substantial interest in devising a systematic approach to newsrack placement to ensure a fair and equitable distribution of news publications. This objective may be achieved by allowing modular newsracks and prohibiting freestanding newsracks in congested areas or areas with particular public safety, aesthetic or historical concerns, and where the use of modular newsracks will promote the city's aesthetic interest in the appearance of the area, result in more news publications in less space and thereby reduce congestion.

(e) The regulation of newsracks provides the least intrusive and least burdensome means for ensuring that the purposes of this chapter are carried out while still providing ample opportunities for the distribution of news to the citizens.

(f) A reasonable accommodation of these competing interests is achieved by adoption of this chapter.

(Ord. 481 § 1 (part), 1997)

8-1902

### Definitions.

In this chapter, unless the context otherwise requires:

(1) "Abandoned newsrack" means a newsrack which remains empty or contains outdated material for 15 days; however, a newsrack remaining empty or containing outdated material due to labor strike or temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack is not considered abandoned.

(2) "Director" means the community development director or the director's designee.

(3) "Downtown newsrack district" is the area defined on the map attached to and made a part of this chapter by reference.

(4) "Engineering services manager" means the person designated by the director to issue an encroachment permit under this chapter.

(5) "Freestanding newsrack" means a newsrack which is not a modular newsrack.

(6) "Modular newsrack" means an assembly of a type, design or model which conforms with the newsrack specifications, is approved by the director, contains two (2)

or more newsracks, and is attached to the sidewalk, street or public right-of-way in accordance with this chapter.

(7) "Newsrack" means a self-service or coin operated box, container, storage unit or other dispenser (referred to as a compartment) used for the display and sale or distribution of a newspaper, news periodical or nonnewspaper publication.

(8) "Newsrack specifications" means the regulations, established by city council resolution, which contain permit procedures, design specifications and newsrack standards for design, maintenance and display, and other matters pertaining to the administration of this chapter.

(9) "Planter strip" means the area, whether planted or not, between the sidewalk and the curb of a street. Where the sidewalk is adjacent to the curb, it means the area between the sidewalk and the property line. Where there is no sidewalk, it means the area between the edge of the roadway and the property line adjacent to it, whether planted or not.

(10) "Public right-of-way" means land which by conveyance, agreement, dedication, usage, or process of law is reserved and dedicated to the general public for street, highway, alley, public utility, or pedestrian walkway purposes, whether or not the land is accepted for maintenance by the city. Public right-of-way includes, but is not limited to, street, roadway, planter strip and sidewalk.

(11) "Sidewalk" means that portion of a street between the curb line and the adjacent property line, intended for the use of pedestrians, excluding planter strips.

(Ord. 481 § 1 (part), 1997)

#### 8-1903 Newsrack advisory committee.

The city council shall establish a newsrack advisory committee comprised of newspaper and news periodical representatives, their designated distributors, representatives from downtown businesses and other interested parties to assist the director in the implementation and administration of this chapter, with particular attention to ongoing maintenance of the newsracks, and to minimize the cost to the city of the implementation and administration of this chapter. (Ord. 481 § 1 (part), 1997)

#### 8-1904 Fees.

The city council may adopt, by resolution, a newsrack permit fee schedule fixing fees for new and replacement newsracks, impound fees, and other fees necessary for the implementation of this chapter. (Ord. 481 § 1 (part), 1997)

### Article 2. Permit Procedure and Administration

#### 8-1911 Permit required.

No person may place, install or maintain a newsrack upon or projecting into a public right-of-way without a permit. (Ord. 481 § 1 (part), 1997)

#### 8-1912 Newsrack specifications govern application procedure and newsrack standards and placement.\*

The city council shall adopt specifications governing the form and content of an application for a permit and the standards for style, color, design, dimension, placement and maintenance of a newsrack. (Ord. 481 § 1 (part), 1997)

\* **Editor's Note:** Newsrack specifications are adopted by Resolution No. 66-97.

8-1913

Review and issuance.

- (a) Each application shall be accompanied by a permit fee if a fee is fixed by resolution of the city council.
- (b) The director shall review each application for a permit.
- (c) The director may not consider the content or viewpoint of the material to be distributed through a newsrack in administering or enforcing this chapter except as otherwise authorized in this chapter or state or federal law.
- (d) The director shall require the applicant to show that the applicant provided notice to property owners and businesses immediately adjacent to the requested location of the application to place a newsrack unless consent is given to the placement or unless notice is waived. The applicant shall give the notice at least ten days before the director may act upon the application.
- (e) The director shall act upon each application, either approving it, approving it with conditions or disapproving it within ten days after the date the application is complete and the applicant has given the notice prescribed in subsection (d) of this section.
- (f) A newsrack permit is nontransferable. The permit, other than a temporary permit, is automatically renewed annually on each anniversary date unless the director sends a notice of nonrenewal before the expiration date. Each permit shall incorporate as a condition to the placement, installation, maintenance and use of a newsrack, the requirements that the permittee comply with this chapter and the newsrack specifications.
- (g) If the director denies the application, the director shall notify the applicant promptly, explaining the reason for denial. The applicant has ten days within which to appeal the decision to the city council in accordance with Section 8-1937.

(Ord. 481 § 1 (part), 1997)

### Article 3. General Requirements Regarding Newsracks

8-1921

Type, number and grouping of newsracks.

- (a) Downtown Newsrack Area.
  - (1) Type. Only a modular newsrack is permitted in the downtown newsrack area. Each modular newsrack shall have not less than two nor more than six compartments. However, the city may issue a permit for a temporary, freestanding, single-unit newsrack as provided in subsection (a) (3) of this section.
  - (2) Number and Location. Not more than two modular units are permitted in one block on the same side of the street. If two modular units are located at a newsrack site, they must be separated by a distance of at least five feet from each other.
  - (3) Temporary Newsracks. The director may issue a permit for a freestanding, single-unit newsrack for a period of 90 days to permit an applicant to determine its suitability as a long term newsrack location. The number of permits and the grouping of freestanding, single-unit newsracks is governed by the following provisions:
    - (A) If a modular unit exists at the proposed location and has an empty compartment, a temporary permit may not be issued.
    - (B) The number of temporary permits that the director may issue for a location is determined by the maximum number of modular compartments allowable at that location, reduced by the number of modular compartments actually existing at the site.<sup>1</sup>

---

<sup>1</sup> **Editor's Note:** Example: The maximum number of modular compartments permitted at a location is 12 (two modular units with six compartments each). If one modular unit with four compartments is located at a site, up to eight temporary permits may be issued.

(C) At least 15 days before placing a temporary newsrack, an application shall be submitted, including notice of the location and the date upon which the 90 day trial period will begin.

(D) Within ten business days after expiration of the 90-day trial period, the person maintaining the newsrack shall either have it removed or submit a written request to the director for a permit for a permanent newsrack location.

(b) Areas Outside the Downtown Newsrack Area.

(1) Type. Either a modular newsrack or a stand-alone, freestanding, single-unit newsrack, or both, are permitted in an area outside the downtown newsrack area.

(2) Number and Location. The number and location of modular newsracks is governed by subsection (a) (2) of this section. The number and location of permanent, stand-alone, freestanding, single-unit newsracks permitted in an area outside the downtown newsrack area is governed by the following provisions:

(A) The location for a freestanding newsrack is limited to a single site in a block on either or both sides of the street.

(B) If a modular newsrack does not exist at the proposed site, or if one exists but already has six compartments, the director may issue a permit for up to three freestanding, single-unit newsracks for that site.

(3) Temporary Newsracks. Temporary newsracks outside the downtown newsrack area are governed by subsection (a)(3) of this section.

(Ord. 477 § 1 (part), 1997)

8-1922 Allocation.

If sufficient space does not exist to accommodate all newsracks sought to be placed at one location, the director shall give location priority, on a first come first served basis, to publications as follows:

(a) First priority shall be given to publications that are published at least one (1) day a week.

(b) Second priority shall be given to publications published less than once per week but more than once per month.

(c) Third priority shall be given to monthly or less frequent publications.

(Ord. 481 § 1 (part), 1997)

8-1923 Newsrack identification.

The permittee shall permanently display upon each newsrack the permittee's name, street address, telephone number, fax number and instructions on how to receive a refund in the event of coin return malfunction. (Ord. 481 § 1 (part), 1997)

8-1924 Liability insurance.

Before the city may issue a newsrack permit, an applicant shall furnish the city a certificate showing that the applicant has then in force public liability and property damage insurance naming the city as an additional insured in an amount not less than \$1,000,000.00 per person and per occurrence, combined single limit. The permittee shall keep the insurance in force during all times it maintains a newsrack under the permit. The certificate of insurance filed with the city shall include a statement by the insurance carrier that 30 days notice will be given to the city before cancellation. (Ord. 481 § 1 (part), 1997)

8-1925 Indemnification.

Every person operating or maintaining a newsrack upon or within the public right-of-way shall agree to indemnify and hold harmless the city, its officers and employees from any loss, liability, damage or cost sustained by a person or property, to the extent the loss, liability, damage or cost arises from the installation, operation or use of the newsrack. The obligation to indemnify and hold harmless the city, its officers and employees shall not extend to loss, liability, damage or cost resulting from the act, failure to act, or property of another. (Ord. 481 § 1 (part), 1997)

8-1926 Maintenance.

(a) Each newsrack shall be maintained in a neat, graffiti free, clean condition and in good repair at all times and shall be painted on a regular basis.

(b) A newsrack that is damaged or defective shall be replaced or repaired as soon as is practical or upon notice from the director. If the owner wishes to abandon the location, the owner shall promptly remove the newsrack. The owner shall repair all damage to the sidewalk or modular newsrack resulting from placement and removal of a newsrack. When a newsrack is abandoned, it shall be removed and the location restored to its previous condition, normal wear and tear excepted. A newsrack is considered abandoned when it meets the definition of abandoned newsrack in Section 8-1902(1).

(c) A newsrack abandoned or removed for violation of this chapter and impounded may not be restored to the owner or person entitled to possession until the city's reasonable cost of removal and storage of the newsrack is paid to the city. However, if after a hearing before the director, the director determines that the newsrack was improperly removed by the city, there is no charge for restoration of the newsrack.

(d) A newsrack may not be used for advertising or publicity purposes other than the one concerned with display, sale or distribution of the publication distributed from it.

(Ord. 481 § 1 (part), 1997)

Article 4. Prohibitions and Enforcement

8-1931 Display of material harmful to minors.

No person may display or exhibit in a public newsrack or other display device any material which is defined by Penal Code Section 313(a) as harmful to minors unless the material is displayed in an area from which minors are excluded or is covered by a device commonly known as a "blinder rack," so that the lower two-thirds of the material is not exposed to view. (Ord. 481 § 1 (part), 1997)

8-1932 Unlawful obstructions.

Placement standards for all newsracks are governed by Section 4.1 of the newsrack specifications. A newsrack placed in violation of the specifications is an unlawful obstruction and is subject to removal as provided in Sections 8-1934 through 8-1939. (Ord. 481 § 1 (part), 1998)

8-1933 Nonconforming newsracks.

(a) The owner of a newsrack which does not conform to this chapter but which lawfully existed and was maintained before December 24, 1997, shall remove it or conform to this chapter within 180 days of December 24, 1997.

(b) A newsrack not brought into compliance as provided in subsection (a) of this section is in violation of this chapter.

(Ord. 481 § 1 (part), 1997)

8-1934 Removal of newsracks in violation of chapter.

The city may remove, retain and dispose of a newsrack installed, maintained or abandoned in violation of this chapter or in violation of the newsrack specifications, in accordance with Sections 8-1935 through 8-1939. (Ord. 481 § 1 (part), 1997)

8-1935 Notice before removal.

(a) Before the city may remove a newsrack, it shall give the permittee notice to either remedy the violation or request a hearing before the director. Written notice shall be sent to the address stated on the newsrack permit or on the newsrack. The city may attach an additional copy of the notice to the newsrack. Notice attached to the newsrack is sufficient when no identification is shown on the newsrack and no permit for the newsrack exists.

(b) The notice shall give the permittee ten days from the date of mailing or the date of attachment to remedy the violation or request a hearing before the director.

(c) Notwithstanding subsection (a) of this section, a notice before removal is not required where the newsrack poses an immediate danger to pedestrians or vehicles. However, the city shall mail notice to the permittee within five days after removal that the newsrack has been removed and stating that the permittee may contest the removal.

(Ord. 481 § 1 (part), 1997)

8-1936 Hearing procedure.

A person notified under Section 8-1935 may request a hearing before the director by making a written request within ten days after notice of removal is mailed. The hearing shall be informal, but oral and written evidence may be given by both sides. Action by the city with respect to the alleged violation shall be stayed pending the director's decision following the hearing. The director shall give written notice of the decision within ten days of the conclusion of the hearing. (Ord. 481 § 1 (part), 1997)

8-1937 Appeal.

A permittee or applicant for a permit aggrieved by a decision of the director may appeal that decision to the city council by filing a written notice within ten days of the decision. On appeal, the city council may reverse, affirm or modify the director's decision. The city council shall make its decision in writing within ten days of the conclusion of the appeal hearing. The decision of the city council is final. (Ord. 481 § 1 (part), 1997)

8-1938 Disposition of removed newsracks.

(a) A newsrack that is removed pursuant to this chapter may be disposed of after removal if the responsible party does not, within 30 days, claim the newsrack and pay the fee established for the cost of removal.

(b) The city shall hold money it finds in a newsrack which is destroyed or otherwise disposed of under this section for a period of one year and then dispose of it under the law governing abandoned property.

(Ord. 481 § 1 (part), 1997)

8-1939 Costs of removal.

The cost to the city for removal of a newsrack is a debt to the city and is the obligation of the permittee and the owner of the newsrack. The amount due accrues interest at the rate of ten percent annually from the date the city incurs the cost. (Ord. 481 § 1 (part), 1997)