

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

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING CHAPTER 5.66 OF THE SANTA BARBARA MUNICIPAL CODE TO ESTABLISH NEWS RACK REGULATIONS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Amending Chapter 5.66 of the Municipal Code in its entirety at follows:

**5.66.010 Purpose and Legislative Findings**

**A. Purpose.** The purpose of this chapter is to promote the public health, safety, and welfare by establishing objective standards for locating news racks through the regulation of location, appearance, size, and maintenance of news racks on City rights-of-way in order to:

1. Protect the right to distribute information, protected by the United States and California Constitutions, through the use of news racks.
2. Provide for pedestrian and vehicular safety and convenience.
3. Minimize interference with the flow of pedestrian or vehicular traffic, including but not limited to ingress into or egress from any place of business or residence, from the street to the sidewalk or from parked vehicles to the sidewalk, by establishing objective standards for locating news racks.
4. Provide reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes, and similar appurtenances, and access to locations used for public transportation purposes.
5. Reduce visual blight on City streets, promote tourism, encourage well-designed and aesthetically compatible news racks, and protect the aesthetics and value of surrounding properties.

**B. Legislative Findings.** The City Council finds that, with the exception of those regulations governing the display of harmful matter, the time, place and manner restrictions established by this chapter are content-neutral, narrowly tailored to serve significant government interests, and leave open ample alternative channels of communication in that:

1. The news rack location, appearance, size, and maintenance regulations established in this chapter apply regardless of the content of the publication.
2. The news rack location, appearance, size, and maintenance regulations established in this chapter serve a substantial government interest by protecting the aesthetic appearance of the City, avoiding visual clutter,

assuring safe and convenient pedestrian circulation, helping to promote tourism and economic vitality, and preventing dangerous installations of news racks.

3. The number, size, construction, placement and appearance of news racks can have a significantly adverse visual impact in designated Landmarks District like El Pueblo Viejo and other aesthetically sensitive areas.
4. The Downtown Plaza has become very congested, with street furniture and other sidewalk encroachments, automobiles, and other means of travel competing with pedestrians for the public space; and that special standards for the design and location of news racks, in conjunction with a program for the furnishing and installation of uniform street furniture, and the enforcement of existing regulations for other encroachments in the downtown commercial area, will help to create a sense of order and provide a friendly environment for those who come to the area. The Downtown Plaza is both crucial and unique for the City because it is the congregating point for most tourism and establishes the basic character of the City.
5. The news rack location, appearance, size, and maintenance regulations established in this chapter for the Downtown Plaza leaves open ample alternative channels of communication in that only a small fraction of the City is subject to the required use of City owned and maintained modular news rack cabinets, and hundreds, if not thousands, of locations remain available in the City for the installation of privately owned and maintained news racks.
6. With respect to the display of harmful matter, there is a compelling government interest in protecting the welfare of minors by preventing access to materials deemed obscene as to minors, as defined in Section 313 of the Penal Code, and that the use of blinder racks is a narrowly tailored solution to serve this interest.
7. Annual permit renewal fees for news racks located in City owned modular cabinets within the Downtown Plaza will be higher than registration fees for independently owned and maintained news racks due to depreciation of the condominiums and maintenance during the useful life of the modular cabinets.

#### **5.66.020 Organization of this Chapter.**

This chapter establishes the sole regulations governing the placement and maintenance of news racks within the City on public property. This chapter establishes application and permit requirements including location, appearance, size, and maintenance standards for all news racks in the City. In addition, this chapter establishes special time, place and manner regulations for the Downtown Plaza where City owned and maintained modular news rack cabinets have been installed. In the Downtown Plaza, freestanding private news racks are not permitted. This chapter also establishes regulations governing the display of harmful matter in news racks. Finally, this chapter establishes definitions of the significant terms it uses.

## 5.66.030 Definitions

For the purposes of this chapter, 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 NEWS RACK.** Any news rack which remains empty for fourteen (14) consecutive days. A news rack or news rack unit within a City owned modular cabinet without a permit or expired permit. Notwithstanding the forgoing, a news rack 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 news rack shall not be deemed abandoned.
- B. BEACHFRONT AREA.** Cabrillo Boulevard/Shoreline Drive between the easterly end of Shoreline Park and the intersection of Cabrillo Boulevard and Channel Drive.
- C. CITY INVENTORY.** The record of approved applications, permits and field inventory data that may be established and updated from time to time by the City, and which shall be available on the City's website.
- D. DOWNTOWN PLAZA.** State Street and within 200 feet of State Street between its intersection with Cabrillo Boulevard and Victoria Street, and all publicly owned or controlled paseos or walkways which connect with State Street between Cabrillo Boulevard and Victoria Street.
- E. FEES.** Annual permit fee for each news rack and the additional fee for news racks in the City modular news rack cabinets shall be established by Council resolution in an amount not to exceed the actual costs of the news rack program including permitting, inspection, and administration. This fee may be adjusted annually for inflation by the percentage change in the Consumer Price Index for Urban Consumer (CPI-U) of the Los Angeles – Riverside – Orange County, CA as published by the Bureau of Labor Statistics, commencing on July 1, 2016. Indexing shall be considered as part of the annual fee resolution update. A copy of the current fee resolution will be available on the City's website.
- F. EXISTING NEWS RACK.** Any news rack located within the City, including news racks located within City modular cabinets in the Downtown Plaza, prior to the effective date of this Ordinance, which has been verified by the City Inventory as of the effective date of this Ordinance.
- G. LANDMARKS DISTRICT.** A district established pursuant to Chapter 22.22 of the Code.
- H. NEWS RACK.** Any self-service or coin-operated box, container, storage unit or other dispenser, installed, used or maintained for the display, distribution or sale of any written or printed material, including but not limited to, newspapers, news periodicals, magazines, books, pictures, photographs, advertising circulars, and records (hereinafter collectively referred to as "news rack material").
- I. OWNER.** The person or representative of a business with a current City Business License duly responsible for news rack ownership, application submittal, application requirements, placement, maintenance, removal, payment of fees and signatory of the permit for a news rack in a right of way. Owner may also be referred to as person, applicant, distributor, publisher or vendor.

- J. PARKWAY.** The area between the sidewalk and the curb of a street and, where there is no sidewalk, the area between the edge of the roadway and the nearest right of way boundary line and any area within a roadway not used for vehicular traffic.
- K. PERSON.** An individual, corporation, business entity, or association, and their principals, officers, agents or employees.
- L. PUBLIC PROPERTY.** Public property refers to all improved or unimproved real property owned, maintained, or leased by a public agency or governmental entity.
- M. PUBLIC WORKS DIRECTOR.** The Director of the City Public Works Department or his or her designee.
- N. RIGHT OF WAY.** Any public property under the ownership and control of the City and used for public street and related purposes.
- O. ROADWAY.** The portion of a right of way designed and used for vehicular traffic.
- P. SHARED PEDESTAL.** The foundation, columns, and rack assembly used for attachment of multiple news rack units and maintained by designated owner according to the annual permit.
- Q. SIDEWALK.** Any public surface provided for the use of pedestrians.
- R. STREET.** That area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys, and sidewalks.

**5.66.040 Permit Required**

It is unlawful for any person to install, place or maintain a news rack on or projecting onto public property, roadways, streets, sidewalks, or right of way unless and until a news rack has been registered and an annual permit has been obtained from the Public Works Director. No other City permit shall be required.

**5.66.050 Application, Registration and Standards for Permit Issuance.**

- A. Submittal of Applications.** Applications for news rack permits shall be made to the Public Works Director on forms established by the City with payment of an annual permit application fee. Applications that are on file with the City that have current information may be used for permit of subsequent annual permits.
  - 1. Proposed New Installation or Relocation of News Rack.** An application shall be approved and permit granted if the application proposes a new installation or relocation of a news rack in conformance with all requirements of this chapter. An application that proposes new installation of a news rack not in conformance with all requirements of this chapter shall be denied and no permit issued.
  - 2. Existing News Rack with Current Permit.** Existing news racks with evidence of an existing permit are subject to submittal of an application and annual permit fee.
  - 3. Existing News Rack without Current Permit.** News racks located within the City prior to enactment of this Ordinance, which have been verified by the current City Inventory, without evidence of a current permit will be required to submit an application and obtain an annual permit pursuant to subparagraph B, below. Existing news racks that are affixed to a shared pedestal as of the

effective date of this ordinance, but are relocated to an adjacent area on a standalone mount during the initial application process set forth in subparagraph B below, shall be considered existing news racks for the purpose of this section.

**4. Existing New Racks in City Modular Cabinets in the Downtown Plaza.**

News Racks in the City Modular Cabinets in the Downtown Plaza prior to enactment of this Ordinance, which have been verified by the City Inventory upon the effective date of this Ordinance may continue to remain in use in the same location by the same owner and publication if an application is submitted and approved.

**5. Existing City Modular Cabinets that Become Available in the Downtown Plaza After the Effective Date of the Ordinance.**

With respect to permits for news racks located in City owned modular cabinets that become available due to abandonment, applications submitted shall be approved for that specific location on a first-come, first-served basis.

**6. New City Modular Cabinet Spaces for News Racks Located within the City Downtown Plaza.**

With respect to permits for news racks that are newly installed by the City in the Downtown Plaza, an initial implementation period shall take place, at which time the City shall accept permit applications for the new spaces for a period of sixty (60) calendar days from the rack being installed. Permits shall be issued within twenty (20) days of the last day of the initial implementation period in accordance with subparagraphs a) and b) of this section.

- a) **Initial Implementation Period for Permit Applications Fewer than the Number of Available Cabinets.** Where fewer permit applications are received during the initial implementation period than the number of available cabinets, applications will be approved on a first come, first-served basis. If there is more than one application for a specific geographic location pending, then the priority for granting the applications shall be set forth in subparagraph b) of this section.
- b) **Initial Implementation Period for Permit Applications Greater than the Number of Available Cabinets.** If permit applications exceed the number of potential locations that are then available, priority shall be given based on frequency of publication, with the higher priority given to publications for which new editions or issues were published on a daily or weekly basis in the full calendar month preceding the date of application. If no applications are submitted by publications issued on a daily or weekly basis, then priority shall next be given based on frequency of publication based on the number of new editions or issues published most frequently in the full calendar month preceding the date of application. Within groups of applicants with the same priority, permits shall be granted to the maximum allowable in a block by the drawing of lots in a process established by the Public Works Director. It shall be a condition of any permit granted according to a priority set forth in this

section to maintain editions in the news rack according to the frequency for which the priority was given.

**B. Registration and Application for Existing News Rack.** Any Owner of existing news racks, including existing news racks located within City modular cabinets in the Downtown Plaza, shall within thirty (30) days of the effective date of this Chapter, provide the City with Owner's news rack registration numbers and location consistent with the City Inventory. The registration of the existing news rack shall be the basis for accepting applications for the initial annual permit of existing news racks. Any Owner of an existing news rack shall then within ninety (90) days of registration, submit an application for an annual permit and pay fees to obtain a City annual permit pursuant to Section 5.66.050C., and shall from the date of permitting be subject to the provisions of this Chapter. The Public Works Director may approve alternative compliance and permitting schedules, which shall not extend beyond the fiscal year of the effective date of this Ordinance for owners of thirty (30) or more registered existing news racks. Failure to obtain an approved annual permit within ninety (90) days or the date specified by the Public Works Director in the approved alternate schedule shall subject the existing news rack to enforcement and removal pursuant to Section 5.66.100. The initial permit is valid for the remainder of the fiscal year and shall be renewed pursuant to section 5.66.060. Permit fees shall not be reduced or prorated based upon the remaining months in the fiscal year for which the permit issues.

**C. Contents of Application.** Application forms will be provided by the Public Works Director and shall include all of the following information:

1. The applicant's name, street and mailing address, email address, and telephone number for the purposes of receiving copies of notices of violations and other official communications. The name, street and mailing address, email address and telephone number of the owner of each publication subject to the permit(s). For news racks not in the City Inventory, the application will include a description of the exact proposed location, including a map or site plan, drawn to scale, with adequate location information to verify conformance with this chapter.
2. For news racks not in the City Inventory, the application will include a description of each proposed news rack, including its dimensions, brand and model type, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism.
3. The name and frequency of publication of each publication to be contained in each news rack.
4. A statement signed by the news rack owner that the owner 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, location, use or maintenance of any news rack 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.
5. A statement signed by the applicant that the applicant agrees, upon removal of a news rack, to repair at applicant's cost, any damage to the public property caused by the news rack or its removal.

**6.** An acknowledgement that prior to the issuance of the Permit, the owner shall deposit with the Public Works Director a certificate of insurance evidencing that a liability insurance policy in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the general aggregate, naming the City as an additional insured under the same terms and conditions as the primary insured, and containing a provision that the policy cannot be cancelled except upon ten (10) days' advance written notice to the City of the fact of such cancellation; and that if such insurance is cancelled at any time during the terms of such permit, same shall be grounds for revocation of the said permit.

**D. Review of Application.** A permit shall be granted or denied within twenty (20) business days after a completed application is filed in conformance with this ordinance. The Public Works Director shall issue a permit under an application that complies with the provisions of this chapter. If a permit is denied, the City shall, within ten (10) business days, mail to the owner a notice of denial that identifies the reasons for denial. Applicant may resubmit an updated application that has been denied, one time, within ten (10) business days from the date of denial without payment of a new application fee. Failure to complete the application review and obtain permit within ninety (90) business days shall void the application.

**E. Issuance of Permit.** Upon approval of a news rack application the City shall issue a Public Works Permit that applies to the news rack at the approved location for the remainder of the fiscal year. If an annual permit is obtained after the beginning of a fiscal year, the permit shall expire at the end of the fiscal year without a reduction in fees. The Public Works Permit shall be signed by the applicant as the agreement to conform to the requirements of this ordinance. Permits shall be renewed per Section 5.66.060. Upon issuance of a permit for a new or replaced news rack the City will provide a registration sticker and update the City Inventory. Each registration sticker provided shall be affixed to the top front metal door frame of each corresponding permitted news rack.

#### **5.66.060 Renewal Term.**

A news rack permit shall be valid for a period of one fiscal year or the remainder of the fiscal year during which the permit is obtained, and shall be renewed each successive fiscal year period by timely payment of a renewal fee established by resolution of the City Council.

#### **5.66.070 General Standards.**

**A. Each new, replaced, or relocated news rack shall conform to the following general standards.** No news rack permit application for a new, replaced, or relocated news rack shall be approved unless it is demonstrated that the proposed news rack or news racks will conform to each of the following general standards. It is unlawful for any person to install, place or maintain a news rack in violation of any of the provisions of this section.

**1.** No news rack shall project onto, or rest upon, along or over, any part of the roadway of any public street.

2. No news rack shall, in whole or in part, rest upon, in or over any sidewalk or parkway when such site or location is used for public utility purposes, public transportation purposes, or other government use, or the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location, or when such news rack interferes with the cleaning of any sidewalk or street by the use of mechanical sidewalk cleaning machinery.

3. Any news rack which in whole or in part, rests upon, in or over any sidewalk or parkway shall comply with the following conditions:

- a) No news rack shall exceed fifty one inches in height, thirty (30) inches in width, or two (2) feet in depth, except that news racks located in the Beachfront Area shall not exceed forty-eight (48) inches in height measured from the sidewalk to the top of the news rack, unless approved and permitted by the Public Works Director.
- b) Name, address and telephone number, and email address of the owner of the news rack shall be displayed on the front of the news rack in such a manner as to be readily visible to and readable by a prospective customer. A sticker shall be affixed to each news rack stating, "For graffiti and maintenance reporting please email or call the Owner at (insert email address) or (insert phone number) with registration number." The owner shall keep this contact information up to date and shall maintain a written record of reporting for a period of one year to be provided to the City upon request.
- c) News racks located in the Landmarks District will not have an adverse impact on access to, or views of designated landmarks, structures of merit, or structures of interest. News racks in the Landmarks District shall carry no advertising except the name of the newspaper or periodical being dispensed on the bottom one third (1/3) of the plastic hood or, if there is no plastic hood on the news rack, the name shown in not more than two locations on the news rack.
- d) News racks shall be painted Malaga Green (also identified as RAL 6005). Any shared pedestals supporting news racks shall be painted black, except in the Landmarks District, the pedestals shall be painted Malaga Green.
- e) News racks shall only be placed near a curb or adjacent to the wall of a building. The City shall determine the final locations. News racks placed near the curb shall be placed such that the back of the news rack shall be no fewer than eighteen (18) inches nor greater than twenty-four (24) inches from the face of the curb. News racks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall. No news rack shall be placed or maintained on a sidewalk or parkway opposite a news stand or another news rack.



- f) If eight (8) or more news racks are placed at a single location, whether placed on a single pedestal or shared pedestal mounts, they shall be placed next to each other and a space of no fewer than three (3) feet shall separate each such group, except as permitted at the direction of the Public Works Director.
- g) News racks shall not be affixed or bolted to a sidewalk improved with decorative tile or other distinctive surface, except as permitted at the direction of the Public Works Director.
- h) Each news rack installed on the public sidewalk shall be bolted to the City sidewalk in accordance with City standards and specifications.
- i) News racks may not be chained or otherwise attached to one another; nor to any street sign, street light pole, traffic signal equipment, power pole, bike rack, public bench, bus shelter, or other public street furniture.
- j) No news rack shall weigh in excess of 250 pounds when empty.
- k) New news racks shall be "K-Jack" model KJ-50E, KJ-100, or KJ-125T, or equivalent, unless otherwise approved by the Public Works Director.
- l) No news rack shall be placed, installed, used or maintained:
  - i. Within ten (10) feet of any marked or unmarked crosswalk;
  - ii. Within five (5) feet of any fire hydrant, fire call box, police call box, traffic signal controller, or traffic signal;
  - iii. Within three (3) feet of any utility meter, manhole, service box, parking meter, street light pole or other public works facility;
  - iv. Within ten (10) feet of any driveway or alley approach;
  - v. Within five (5) feet of a bike rack;
  - vi. Within four (4) feet of any bus boarding and a lighting area consisting of the bench and/or shelter, sign and clear zones for boarding and alighting of busses as required by the Americans with Disabilities Act;
  - vii. Within three (3) feet of any bus bench or public bench;
  - viii. At any location whereby the clear space for the passage of pedestrians is reduced to less than four (4) feet;
  - ix. Within four (4) feet of any permitted sidewalk dining area;
  - x. Within the boundary of a marked valet parking area or loading zone, or as otherwise restricted by the Americans with Disabilities Act.

**B. Condition and Maintenance of News Racks.** Each news rack shall be maintained in a clean and neat condition and in good repair at all times. Without limiting this general obligation, the following maintenance criteria shall apply to all new and existing news racks:

- 1. Each news rack shall be routinely maintained and serviced so that it is reasonably free of:
  - a) Dirt and grease;

- b) Chipped, faded, peeling, and cracked paint or graffiti on any visible painted areas;
  - c) Rust and corrosion on any visible unpainted metal areas;
  - d) Cracks, dents, blemishes, and discoloration in the clear plastic and glass parts, if any, through which publications are viewed;
  - e) Tears, peeling, or fading in the paper or cardboard parts and inserts;
  - f) Broken and misshapen structural parts; and
  - g) Unauthorized stickers on any surface of the rack.
2. Each news rack, including any coin-return mechanism, shall be mechanically operable at all times.
  3. News racks shall contain current editions of the publication for which the permit was issued and new editions placed in the news rack at no less than the frequency for which any priority was given for a permit in that location. Owner shall inform the Public Works Director of all changes to frequency of publication within five (5) business working days of said changes.
  4. No news rack or news rack card shall be used for off-premises advertising signs other than that directly related to the display, sale or purchase of the publication sold therein.
  5. No news rack shall remain empty for a period of fourteen (14) consecutive days or longer.
  6. No news rack may contain a publication other than those for which the permit was issued.
  7. Each news rack shall have the name, address, and telephone number of the Owner, as described in subsection A.3.b) above, as well as the City registration number, affixed to the front of the news rack in a place where it may be easily seen by anyone viewing the news rack.
  8. Shared pedestals shall be registered to a single owner of a permitted news rack which is affixed to the shared pedestal. Any shared pedestal that has not been permitted to a single news rack owner within one hundred twenty (120) days of the effective date of this Ordinance will be deemed abandoned and will result in the City posting and removing the shared pedestal and news racks in accordance with Section 5.66.100.
  9. Shared pedestals shall be fully occupied by the maximum number of news racks designed to be affixed to the shared pedestal. The owner shall notify the City in writing prior to the removal of units from a shared pedestal. Failure to maintain the shared pedestal with the maximum number of new racks for fourteen (14) consecutive days will result in its removal pursuant to section 5.66.100. Shared pedestals may be modified to fit remaining news racks with City approval and revisions to the annual permit. Where a shared pedestal is not maintained in a fully occupied condition it shall be removed and the location restored to its previous condition by the owner of the shared pedestal, including, but not limited to, repair of any portion of the sidewalk or parkway damaged by the pedestal or its removal, and according to specifications provided by the Public Works Director. An

acceptable repair is typically filling in the holes required for securing the news rack to the concrete. Failure to remove the shared pedestal will result in the City posting and removing the shared pedestal and affixed news racks in accordance with Section 5.66.100.

10. When use of a news rack is discontinued for a period of fourteen (14) consecutive days or longer, it shall be removed, along with its shared pedestal if applicable, and the location restored to its previous condition by the news rack owner, including, but not limited to, repair of any portion of the sidewalk or parkway damaged by the news rack or its removal, and according to specifications provided by the Public Works Director. Failure to remove the news rack will result in the City posting and removing the news rack in accordance with Section 5.66.100
11. Existing news racks that require painting shall be painted Malaga Green unless otherwise approved by the Public Works Director. When painting is required, the pedestal and base shall be painted black, except that pedestals and bases in the Landmarks District shall be painted Malaga Green.
12. News Racks with a current annual permit that are removed for maintenance and substituted in kind, and in compliance with this section, will not be required to obtain a new permit due to the substitution. The owner shall notify City Public Works of the in kind substitution in writing prior to the substitution.

**C. Costs.** The costs of installation, maintenance, replacement, removal and relocation of news racks or shared pedestals shall be at the sole expense of the news rack owner. Upon removal of a news rack, the owner shall, at his or her sole expense, cause the public right of way and any improvements thereon to be promptly restored to the satisfaction of the Public Works Director in a condition which would have existed had the news rack not been placed at that location. If those repairs are not made within seven (7) days of removal of the news rack, the City may undertake that repair work and collect from the owner the costs thereof, including reasonable attorneys' fees and related costs of collection.

#### **5.66.080 Downtown Plaza Requirements.**

**A. Finding of Special Circumstances.** The City Council hereby finds that special circumstances require special design, placement and other standards for news racks located in the Downtown Plaza, and any other area which may be designated by City Council upon findings that the special circumstances of the area require special design, placement and other standards for news racks.

**B. Special Standards and Placement.** Notwithstanding any contrary provisions in this chapter, no news rack shall be located in the Downtown Plaza except within a City modular news rack cabinet (hereinafter referred to as a "City news rack cabinet") owned and provided by the City. All news racks to be inserted into a City news rack cabinet shall be provided by the applicant at its sole expense.

#### **5.66.090 Prohibition on the Display of Harmful Matter.**

No material which is harmful to minors, as defined in Section 313 of the Penal Code of the State, shall be displayed in a public place, other than a public place from which minors are excluded, unless blinder racks are placed in front of the material so that the lower two-thirds (2/3) of the material is not exposed to view.

**5.66.100 Removal of News Racks; Required Hearing.**

**A. Removal by the City.** Any news rack or shared pedestal, installed or maintained in violation of this chapter may be removed by the City for violation of the ordinance, subject to the notice and hearing procedures set forth in this section.

**B. Notice of Violation.** Before removal of any news rack, the City shall notify the Owner or distributor of the violation by written notification via first class mail to the address or addresses shown on the offending news rack and the permit, which shall constitute adequate notice. If available the City will also send the written notice of violation by email. Before removal of any shared pedestal, written notification will be sent via first class mail to all owners of the news racks affixed to the offending pedestal. The City may, but need not, affix an additional notice tag onto the offending news rack or shared pedestal. If no identification is shown on the news rack, posting of the notice on the news rack alone shall be sufficient. The written notice shall state the nature of the violation and the location, shall specify actions necessary to correct the violation, and shall give the owner or distributor ten (10) business days from the date appearing on the notice to either remedy the violation or to request a meeting before the Public Works Director. The date on the notice shall be no earlier than the date on which the notice is mailed or affixed to the news rack, as the case may be.

**C. Meeting and Decision.** Any owner or distributor notified under Subsection B may request a meeting with the Public Works Director by making a written request within ten (10) business days from the date appearing on the notice. The meeting shall be informal, but oral and written evidence may be given by both sides. The Public Works Director shall give his or her written decision within ten (10) business days after the date of the meeting. Any action by the City to remove the news rack shall be stayed pending the written decision of the Public Works Director following the meeting. If the Public Works Director is unable to conduct the hearing due to bias or legal disability, the City Administrator or mutually agreed upon third party shall conduct the hearing.

**D. Removal and Impoundment.** The City may remove and impound a news rack or shared pedestal in accordance with this section following the written decision of the Public Works Director upholding the determination of a violation, or if the owner or distributor has neither requested a meeting nor remedied the violation within ten (10) business days from the date on the notice. An impounded news rack shall be retained by the City for a period of at least thirty (30) calendar days following the removal, and may be recovered by the owner upon payment of a fee as may be established by resolution. An impounded news rack and its contents may be disposed of by the City after thirty (30) calendar days.

**E. Summary Abatement.** Notwithstanding the provisions of Subsections B and C, prior notice and an opportunity to be heard shall not be required before removal of any news rack or shared pedestal that is installed or maintained in such a place or manner as to pose an immediate or clear and present danger to persons, vehicles or

property or any news rack that is placed in any location without a permit. In such case, the City shall proceed in the following manner:

1. Within one (1) working day following removal, the City shall notify the Owner by telephone of the removal. In the case of an unpermitted news rack or shared pedestal, where possible, the City shall notify the Owner of the news rack or a person whose name is shown on the news rack, by telephone of the removal. Within three (3) business days, the Public Works Director or designee shall send written confirmation of the telephoned notice. The written confirmation shall contain the reasons for the removal and information supporting the removal, and shall inform the recipient of the right to request, in writing or in person, a post-removal meeting within four (4) business days of the date of such written notice.
2. Upon timely request, the Public Works Director shall provide a meeting within two working days of the request, unless the requesting party agrees to a later date. The proceeding shall be informal, but oral and written evidence may be given by both sides. The Public Works Director shall give his or her decision in writing to the requesting party within two working days after such meeting. If the Public Works Director finds that the removal was in accordance with this chapter and City regulations, he or she shall notify the requesting party to pay any applicable penalties and costs and recover the news rack. If the Public Works Director finds that the removal was improper and that placement of the news rack was in accordance with City regulations and lawful, the Public Works Director shall order that the news rack be released and reinstalled without charge.
3. If the owner of an unpermitted news rack cannot be determined and the news rack does not contain the required identification, no notice of the removal shall be required.

#### **5.66.110 Abandoned News Racks.**

An abandoned news rack or shared pedestal may be removed by the City and impounded, pursuant to the notice and hearing procedures set forth in Section 5.66.100. The City may dispose of the news rack or shared pedestal if the owner does not claim the news rack and pay any required fees within thirty (30) days of its removal.

#### **5.66.120 Public Nuisance.**

The operation or maintenance of any news rack or shared pedestal contrary to the provisions of this chapter shall constitute a public nuisance, which in addition to or in lieu of criminal proceedings, may be abated, removed or enjoined by appropriate legal action brought by the City Attorney.

#### **5.66.130 Severability.**

If any section, sentence, clause, phrase or provision of this chapter, or the application thereof to any person or circumstances, is for any reason held to be invalid,

such invalidity shall not affect the validity of the remaining portions or provisions of this chapter or their applicability to distinguishable situations or circumstances. In enacting this chapter, it is the desire of the City Council to regulate validly to the full measure of its legal authority in the public interest. To that end, the City Council would have adopted this chapter and each section, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions thereof might be invalid, in whole or in part, as applied to any particular situation or circumstance, and, to this end, the provisions of this chapter are intended to be severable.

## SECTION 2. CEQA.

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment, and Section 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.