

DATE: 5/04/99 AGENDA ITEM # 02
() APPROVED () DENIED
() CONTINUED TO _____

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR 

SUBJECT: NEWSRACK ORDINANCE

DATE: MAY 4, 1999

Needs: For the City Council to consider an ordinance regulating the placement, maintenance and operation of newsracks in the public right-of-way and on public land.

Facts:

1. The City has recently received numerous complaints about the burgeoning placement of newsracks on public streets and property, particularly in City Park. The City does not presently have an ordinance to regulate the placement of newsracks.
2. The placement of newsracks has the potential to pose hazards to pedestrians and motorists, to conflict with access to and use of utilities and public facilities (fire hydrants, bus shelters, etc.), and to hinder the City's efforts to maintain an aesthetically-pleasing downtown and streetscapes.
3. The right to distribute newspapers in newsracks is protected by the First Amendment. However the City has the right to regulate the placement of newsracks to protect the public health, safety and welfare (including aesthetics) and to regulate the display of any material defined by the State as being "harmful to minors" (adult materials).
4. A draft newsrack ordinance was prepared, using newsrack ordinances from the following 7 cities: Carmel, Carpenteria, Indio, Livermore, Santa Barbara, Simi Valley, and Thousand Oaks. Carmel and Livermore's ordinances were provided by Paso Robles Main Street; the others were obtained from the League of California Cities' library.
5. Attached is a summary of the proposed ordinance that highlights the salient points and which identifies regulatory options that the City may wish to consider. The draft ordinance proposes that newsracks be prohibited in City Park and within the park side of street rights-of-way bordering the park.
6. The following publications maintain currently newsracks in the downtown: The Tribune, Country News-Press, New Times, Home and Ranch, Country Real Estate, The Real Estate Book, and Homes Magazine. The Tribune and New Times have located and maintain newsracks within the park side of rights-of-way bordering the park. Attached is a table showing dimensions and colors of existing newsracks.

RIMC CODE	
DATE:	May 4, 1999
FILE PLAN/GEN CAT:	Newsrack Ordinance
SUBJECT:	Newsrack Ordinance
LOCATION:	Planning Division Files
RETENTION:	3 Years
OTHER:	EDICODE AMEND\NEWSRACK\CCR 050499

7. Copies of the draft ordinance and a notice of the Council meeting were mailed to all publications that maintain newsracks in the City.

Analysis and
Conclusion:

The draft ordinance proposes to regulate those newsracks placed within the public right-of-way (most notably on sidewalks) and on public land (e.g. Parks). The draft ordinance does not address newsracks placed on private property. Staff has not been made aware of any problems with the placement of newsracks on private property, which most commonly occurs in shopping centers and at mini-marts.

While there are many similarities among the 7 ordinances (most notably location standards), there are also a variety of approaches to design standards and in permit and enforcement procedures. The Draft Ordinance offers an approach with elements common to a number of the sample ordinances. However, the attached "Summary" also lists options that some cities have exercised, and which may be considered by the City Council.

It should be noted that Court decisions involving First Amendment Rights have framed much of the substance newsrack ordinances. Of particular importance, newsrack permits must be ministerial, not discretionary, in nature. That is, the design and location standards must be set by ordinance and not open to interpretation by staff or other officials (i.e. there cannot be review by the Development Review Committee, Planning Commission, City Council).

Policy

Reference: California Penal Code Section 313

Fiscal

Impact: The draft ordinance authorizes the establishment and collection of fees to recover City costs for reviewing permit applications, removal and storage of newsracks that violate the ordinance, and for appeals of decisions of the Director of Public Works to the City Council.

- Options:
- a. That the City Council introduce the attached Ordinance Establishing Chapter 11.35 of the Municipal Code to Regulate the Placement, Maintenance and Operation of Newsracks, and set May 18, 1999 for adoption.
 - b. Amend, modify or reject the foregoing option.

Prepared by:



Ed Gallagher
Housing Programs Manager

Attachments:

1. Summary of Draft Newsrack Ordinance
2. Dimensions and Colors of Existing Newsracks in Paso Robles
3. Ordinance Establishing Chapter 11.35 of the Municipal Code to Regulate the Placement, Maintenance and Operation of Newsracks

SUMMARY OF DRAFT NEWSRACK ORDINANCE

INTENT AND PURPOSE

The primary reasons listed for adopting a newsrack ordinance are:

To improve public safety by reducing hazards to pedestrians.

- To protect the appearance of the City. The General Plan calls for protection and preservation of aesthetic resources and for revitalization of the Historic Downtown. **The draft ordinance proposes to prohibit placement of newsracks in City Park and in the park side of the public right-of-way.** (Presently New Times and the Tribune have newsracks in the right-of-way around City Park.)

To promote and enhance the economic vitality of the community. That is, to avoid any undue interference with commerce and business due to newsracks placed too close to retail shop windows or entrances to commercial property, or located in such a way as to interfere with views from private property.

To protect minors from viewing harmful (adult) matter.

To reduce exposure of the City to claims and litigation.

DEFINITIONS

Several terms are defined. Among these are "Director", which means the Director of Public Works or designated representative, and "Distributor", which means newsrack owner or designated representative.

PERMIT REQUIRED

- An annual permit, including a fee and proof of liability insurance naming the City as additional insured, is required for all newsracks in public right-of-way or on public land. Each permit expires June 30 for facilitated permit tracking/administration.

Director issues permits and enforces ordinance.

- Any single permit may address any number of newsracks maintained or operated by a distributor at several locations.
- Conditions for Permit The draft ordinance includes ministerial conditions requiring distributors to maintain current information to enable the Director to contact the distributor, providing that once a permit has been issued, the location of a newsrack may not be changed without approval of a new newsrack permit.

Options:

- ☞ One-time permit of indefinite duration. (Livermore and Santa Barbara)
- ☞ Require a separate permit for each newsrack placed.

DESIGN AND MAINTENANCE OF NEWSRACKS

A. Newsrack Design

- ☞ No newsrack shall exceed 54 inches in height, 30 inches in width, or 24 inches in depth. (NOTE: See attached table with dimensions of existing newsracks in the City.)
- ☞ All opaque surfaces of a newsrack and the mounts shall be painted the same color.

- ☞ No advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper, periodical or other printed materials.

Options: (1) set higher or lower heights (some cities set 40"; others set 56"); (2) establish approved colors (Santa Barbara and Livermore). (3) require that certain brands/types of newsracks be used (Carmel and Thousand Oaks).

B. Maintenance: Newsracks shall be maintained in a neat and clean condition and in good repair.

PLACEMENT OF NEWSRACKS

- The draft ordinance sets several criteria, which are common among the 7 cities, for where newsracks can and cannot be placed.
- No newsracks shall be placed within City Park (the block bordered by Spring, Pine, 11th and 12th Streets) or within the park side of public rights-of-way bordering City Park.

DISPLAY OF CERTAIN MATTER PROHIBITED

The draft ordinance prohibits display of "material which is harmful to minors", as defined in Section 313 of the California Penal Code, unless "blinder racks" are placed in front of the material so that the lower 2/3 of the material is not exposed to public view from any public right-of-way.

VIOLATIONS & NOTICE TO CORRECT

The draft ordinance includes a process for notifying distributors when newsracks are in violation of the ordinance and the basis for impounding violating newsracks.

ABANDONMENT & VOLUNTARY REMOVAL

- If a newsrack remains empty for 30 continuous days, it will be considered abandoned, and may be treated as a violation of the ordinance.
- When the use of a newsrack is voluntarily removed, the Distributor shall restore the sidewalk to its previous condition, normal wear and tear excepted.

IMPOUNDING OF NEWSRACKS

The draft ordinance includes a process for impounding violating newsracks and for notifying distributors. Distributors will be required to pay a storage fee to reclaim their newsracks.

HEARING AND APPEAL

The draft ordinance includes a process for requesting a hearing before the Director if a newsrack is found in violation of the ordinance or if a permit application is denied. Decisions of the Director may be appealed to the City Council. A fee will be required for filing an appeal.

EFFECTIVE DATE OF ORDINANCE AND EXISTING NEWSRACKS

- The effective date of the ordinance is proposed to be July 1, 1999.
- Distributors of existing newsracks have 30 days (i.e. by July 30) to file for a permit or remove their newsracks and 90 days (i.e. by September 30) to comply with the ordinances location and design standards.
- Any newsracks maintained in City Park or in the park side of the public rights-of-way of adjacent streets shall be removed by July 30, 1999 or said newsracks will be summarily impounded.

DIMENSIONS AND COLORS OF EXISTING NEWSRACKS IN PASO ROBLES

Publication	Height	Width	Depth	Color
Tribune	43"	26"	17"	Green
Tribune	46"	24"	20"	Green
Tribune	49"	19"	17"	Green
Country News Press	43"	26"	17"	Red
New Times	36"	17"	20"	Red
Tribune Ticket & Real Estate Monthly	52"	22"	20"	Green
Homes and Land	52"	22"	20"	Green
Country Real Estate	43"	21"	18"	Yellow
The Real Estate Book	53"	16"	18"	Yellow

ORDINANCE NO. ____ N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
ESTABLISHING CHAPTER 11.35 OF THE MUNICIPAL CODE
(NEWSRACKS)

WHEREAS, the placement of newsracks within public rights-of-way and on other public property (e.g. parks) has the potential to pose hazards to pedestrians and motorists, to conflict with access to and use of utilities and public facilities (fire hydrants, bus shelters, etc.), and to hinder the City's efforts, as set forth in General Plan policy, to protect and preserve aesthetic resources, to revitalize the Historic Downtown, and to promote and enhance the economic vitality of the community; and

WHEREAS, it is necessary to protect minors from viewing harmful matter that may be located in the City's public right-of-way, sidewalks or other public property; and

WHEREAS, in order to protect rights established by the First Amendment of the Constitution of the United States, it is necessary to establish objective criteria by which newsracks may be placed, maintained and operated within public rights-of-way and on other public property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 11.35 of the Municipal Code, attached hereto as Exhibit "A", is hereby established to regulate the placement, maintenance and operation of newsracks in public rights-of-way and on public property.

SECTION 2. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 4. Inconsistency. To the extent that the terms of provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. 1st day of July, 1999.

Introduced at a regular meeting of the City Council held on May 18, 1999, and passed and adopted by the City Council of the City of El Paso de Robles on the 1st day of June, 1999, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Duane J. Picanco, Mayor

ATTEST:

Madelyn Paasch, City Clerk

ED\CODE AMEND\NEWSRACKS\ORD

EXHIBIT A TO ORDINANCE ____ N.S.

11.35.010 Intent and Purpose.

The City Council finds and declares that it is necessary to establish a comprehensive set of regulations applicable to newsracks within the public right-of-way and on other public property to accomplish the following important public purposes.

- A. Improve public safety. Since newsracks are usually located within the public right-of-way, they pose a potential hazard to pedestrians and other users of public sidewalks. If they are located too close to driveways or intersections, they can block the view of oncoming traffic. If they are located too close to the curb, they can unreasonably hinder ingress and egress from parked vehicles. If located too close to fire hydrants, mailboxes, traffic control devices, public bus benches and other public conveniences, they can unreasonably hinder access to and use of those facilities.
- B. Protect the appearance of El Paso de Robles. The General Plan for the City of El Paso de Robles contains policies and programs that call for protection and preservation of aesthetic resources and for revitalization of the Historic Downtown. The City Council finds that the number, size, construction, placement and appearance of newsracks can have a significantly adverse visual impact on the City, particularly in the Historic Downtown and other aesthetically sensitive areas. Further, the City Council finds that the City Park is the centerpiece of the Historic Downtown and declares that no newsracks shall be placed within City Park or within the park side of public rights-of-way bordering City Park.
- C. Promote and enhance the economic vitality of the community. It is necessary to avoid any undue interference with commerce and business which may be posed by newsracks located too close to retail shop windows or entrances to commercial property, or located in such a way as to interfere with views from private property.
- D. Protect Minors. It is necessary to protect minors from viewing harmful matter that may be located in the City's public right-of-way, sidewalks or other public property.
- E. Reduce Exposure of the City. It is necessary to reduce the City's exposure to personal injury or property damage claims and litigation related to the placement of newsracks.
- F. The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety, morals and general welfare of persons in the City in their use of public rights-of-way and other public property.
- G. It is not the intent of this chapter to in any way discriminate against, regulate to interfere with the publication, circulation, distribution or dissemination of a material protected by the First Amendment on the basis of the content of that material.

11.35.020 Definitions.

- A. "Blinder Racks" shall mean any opaque sheets or covers placed in front of the newsrack or the publications contained therein to prevent exposure of all or a part of the publication to public view.

- B. "Director" shall mean the Director of Public Works and his or her designated representative.
- C. "Distributor" shall mean the person, firm or corporation responsible for placing, operating and maintaining a newsrack in a public right-of-way. Distributors shall include owners or persons entitled to possession of newsracks and their designated representatives.
- D. "Newsrack" shall mean any type of unmanned device placed upon any public right-of-way or public land for the vending of, or the free distribution of, newspapers or news periodicals, advertising fliers, or other written or printed publications.
- E. "Parkway" means that portion of a street outside of the roadway, but not including the sidewalk.
- F. "Public right-of-way" and "Public land" shall mean any building, park, property, street, highway, sidewalk, surface easement, plaza, walkway, parkway or alley which is owned or held (whether in fee, easement, leasehold or other interest) by the City of El Paso De Robles.
- G. "Roadway" means that portion of the street improved, designed or ordinarily used for vehicular travel.
- H. "Sidewalk" means any surface provided for the exclusive use of pedestrians.

11.35.030 Permit Required

- A. It shall be unlawful for any person, firm or corporation to place, maintain or operate on any public right-of-way or public land, any newsrack without first having obtained an annual permit from the Director specifying the exact location of the newsrack(s).
- B. Each permit shall be valid until the thirtieth (30th) day of June each year and may then be renewed for a period of one year unless sooner terminated as provided for in this chapter.
- C. Any single permit may address any number of newsracks maintained or operated by a distributor at several locations. Each permit shall designate the number and location or locations of newsracks for which the permit has been issued.
- D. A written application for a newsrack permit shall be filed with the Director on the City's form and shall include at least the following information.
 - 1. The name, address and telephone number of the Distributor.
 - 2. The name, address and telephone number of the Distributor's representative or other responsible person whom the City may notify or contact at any time concerning the Distributor's newsrack(s).
 - 3. A written description of the location of each newsrack to be placed, maintained and/or operated.
 - 4. A clear and legible drawing of the location of each newsrack. This drawing shall include the newsrack, sidewalk, streets, and other adjacent improvements, which shall include: (a) the nearest buildings and driveways; (b) the nearest bus stops, benches, street trees, and fire hydrants; and (c) each existing newsrack (including the name of the newsrack material).

contained therein and the type or brand of newsrack) within one hundred (100) feet of the proposed location. The drawing shall show distances between the newsrack and the other features required to be shown.

5. Names of newspapers or other written material to be contained in each newsrack.
 6. Type or brand of newsrack, including a photograph or scaled drawing of the newsrack and mount.
 7. A written statement whereby the distributor agrees to indemnify, defend and hold harmless the City, its officers, officials and employees, from any loss or liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the placement, maintenance or operation of the newsrack in the City.
- E. Fee. Each application for a newsrack(s) shall be accompanied by a non-refundable processing fee, in an amount set by resolution of the City Council, which shall not exceed the actual cost of investigating the facts contained in the application and processing of the application.
- F. Insurance. Each distributor filing an application for a newsrack permit shall provide the City with a certificate of insurance showing that the distributor has then in force public liability and property damage insurance, endorsing the City as additional insured, in an amount not less than one million dollars (\$1,000,000). The distributor shall provide and keep in force that policy of public liability and property damage insurance during such time as it continues to locate any newsrack under the terms of this Chapter. The evidence of insurance filed with the City shall include a statement by the insurance carrier that thirty (30) days unconditional notice will be given to the City before any cancellation.
- G. Conditions for Permit.
1. In issuing the permit or rejecting any site, the Director shall be guided solely by the standards and criteria set forth in this Chapter. In any case where Director disapproves of a particular location, such disapproval shall be without prejudice to the applicant who may designate a different location or locations.
 2. Permits shall be issued for the placement of a newsrack or newsracks only after City inspection of a proposed site, or sites, and the placement, maintenance or operation thereof shall be conditioned upon compliance with the provisions of this Chapter.
 3. Permits shall be issued within ten (10) working days after a completed application has been filed and the Director has approved the design and placement thereof, and upon a finding that the application complies with the provisions of this Chapter.
 4. If an application or a proposed site is denied at any stage of the process, the Director shall immediately notify the applicant in writing of the specific reason for such denial and the right of a hearing in accordance with Section 11.35.100.
 5. The distributor shall have a continuing duty to maintain current information establish the Director to contact the distributor and any representative or other responsible person during the term of the permit. Any failure by the distributor to maintain current the information set forth in subsections D1 and D2, above, shall constitute grounds for termination of the permit. Upon termination of any permit because of such failure to maintain current contact

information, all newsracks for which the permit had been issued shall be deemed abandoned and may be impounded in accordance with Section 11.35.090.

6. Once a permit has been issued, the location of a newsrack may not be changed without the distributor first obtaining approval of a new newsrack permit. Any newsrack that is relocated without a new permit may be impounded in accordance with Section 11.35.090.
7. Permit Sticker. Upon permit approval, the Director shall issue the distributor a sticker or stickers evidencing the permit, which shall be affixed to each newsrack on the permit, in the manner specified by the Director, within ten (10) working days of permit approval.

11.35.040 Design and Maintenance of Newsracks.

A. Newsrack Design

1. No newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width, or twenty-four (24) inches in thickness.
2. All opaque surfaces of a newsrack and the mounts shall be the same color.
3. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper, periodical or other printed materials dispensed therefrom.
4. Each newsrack from which newspapers, periodicals or other printed materials are sold shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanisms shall be maintained in good working order.
5. Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the name and address of the Distributor and the telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this division.

B. Maintenance

1. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Each newsrack shall be serviced and maintained so that it is reasonably free of:
 - (a) General dirt and grease.
 - (b) Chipped, faded, peeling and cracked paint, or graffiti on all visible painted areas.
 - (c) Rust and corrosion on all visible unpainted metal areas.
 - (d) Cracks, dents, blemishes and discoloration in the clear plastic or glass parts, if any, through which the publications are viewed.
 - (e) Tears, peeling or fading in the paper or cardboard parts and inserts.

- (f) Broken or unduly misshapen structural parts.
- 2. Newsracks that are damaged or defective shall be replaced or repaired as soon as practical. When a newsrack is replaced, the distributor shall notify the Director, who shall issue a replacement permit sticker.
- 3. When the use of a newsrack is permanently discontinued, it shall be removed and the location restored to its previous condition, normal wear and tear excepted. A newsrack that is unused for thirty (30) consecutive days shall be presumed to be abandoned.

11.35.050 Placement of Newsracks.

- A. Newsracks shall be attached to or removed from the sidewalk or other improvement in accordance with specifications provided by the Director.
- B. Newsracks may be placed or joined together, provided that no group of newsracks shall extend for a distance of more than eight (8) feet. A space of not less than three (3) feet shall separate each group of newsracks.
- C. Newsracks shall be placed parallel to the curb or to the wall of a building. Newsracks placed near the curb shall be placed no less than 18 inches nor more than 24 inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to the wall and not less than six inches nor more than 18 inches from the wall..
- D. Newsracks shall not be chained, bolted or otherwise attached to public property, or to any shrub, tree, tree stake, or other plant, street furniture, utility pole, street or traffic sign, mailbox, nor situated upon any landscaped area, unless approved by the Director.
- E. No newsrack shall be placed:
 - 1. In such a manner that it projects onto, into or over any part of the roadway of any public street, or rest, wholly or in part on a sidewalk vault, meter cover, manhole or access cover.
 - 2. In such a manner that it rests upon, in or over any public sidewalk or parkway, when such placement endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrians or vehicular traffic including any legally marked or stopped vehicle, the ingress into or egress from any residence or place of business or the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near the location.
 - 3. Within five (5) feet of the curb return of any marked crosswalk;
 - 4. Within fifteen (15) feet of the curb return of any unmarked crosswalk;
 - 5. Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility;
 - 6. Within five (5) feet of any driveway, traffic signal controller or utility pole;

7. Within five (5) feet ahead or twenty-five (25) feet to the rear of any sign marking a designated bus stop;
8. Within five (5) feet of any bus bench;
9. At any location which create less than a four (4) foot wide path of travel as required by Title 24 of California Code of Regulations and the Americans with Disabilities Act;
10. On any access ramp or curb cut for disabled persons;
11. At any location where the newsrack causes, creates, or constitutes a line of sight problem or a traffic hazard;
12. On or within three (3) feet of any display window of any building abutting the sidewalk or parkway in such a manner as to impede or interfere with the reasonable use of such window for display purposes;
13. Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping;
14. Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication;
15. Facing another newsrack across the width of a public sidewalk or pedestrian way.
16. No newsracks shall be placed within City Park (the block bordered by Spring, Pine, 11th and 12th Streets) or within the park side of public rights-of-way bordering City Park.

11.35.060 Display of Certain Matter Prohibited.

Material which is harmful to minors, as defined in Part 1, Title 9, Chapter 7.6 of the California Penal Code (commencing at Section 313), shall not be displayed in a public place other than a public place where minors are excluded, unless blinder racks are placed in front of the material in such a manner that the lower two-thirds (2/3) of the material is not exposed to public view from any public right-of-way any of the following:

- A. Any statements or words describing explicit sexual acts, sexual organs or excrement where such statements or words have as their purpose or effect sexual arousal, gratification or affront.
- B. Any picture or illustration of genitals, pubic hair, perinea, anuses or anal regions of any person where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront.
- C. Any picture or illustration depicting explicit sexual acts where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront.

11.35.070 Violations of Chapter; Notice to Correct.

- A. Any violation of the provisions of this Chapter is a violation of the Municipal Code of the City of El Paso de Robles and shall be subject to the provisions of Section 1.02.010 of this Code.
- B. Whenever the Director has determined that a newsrack has been placed, maintained and/or operated in violation of the provisions of this Chapter, a Notice to Correct shall be issued which shall specify the manner in which this Chapter is violated and request compliance. Such notice shall state the nature of the violation, the intention to impound the newsrack if the violation shall not be corrected or if a hearing is not requested, and the procedure for requesting such a hearing.
- C. A Notice to Correct shall be telephoned to the Distributor or other responsible party designated to receive such order, and confirmed by mailing a copy of the order by first class mail.
- D. Failure to properly correct the violation or to file a request for a hearing, as provided in Section 11.35.100, within ten (10) calendar days after the mailing date of the Notice to Correct shall result in the offending newsrack being summarily removed and impounded pursuant to Section 11.35.090.
- E. If the offending newsrack is not properly identified as to Distributor under provisions of Section 11.35.030, it shall be summarily removed and impounded pursuant to Section 11.35.090.
- F. Notwithstanding the above, in the case of any violation of this Chapter which creates an immediate danger to the public health, safety or welfare, which violation cannot be corrected by moving or otherwise repositioning an unanchored newsrack, the newsrack may be summarily removed and impounded by the City.

11.35.080 Abandonment and Voluntary Removal.

- A. Abandonment: In the event any newsrack remains empty for a period of thirty (30) continuous calendar days, the newsrack shall be considered abandoned, and may be treated in the manner of Section 11.35.070 for newsracks in violation of the provisions of this Chapter.
- B. Voluntary Removal: In the event a Distributor desires to voluntarily remove a newsrack location, such Distributor shall notify the Director in writing of the date of the proposed removal. Upon removal of a newsrack, the Distributor, at his or her sole expense, shall restore the sidewalk, or public property and any improvements thereon, to a good and safe condition, leaving no hole or projection in the sidewalk and using the same type and quality of construction material as that which exists at the surface of the abutting sidewalk.

If removal of a newsrack causes any damage to City property, the Distributor or other responsible party shall be liable for all costs incurred by the City to repair the damage. If those repairs are not made in a timely manner, the City may undertake that repair work and collect from the distributor the costs thereof, including reasonable attorneys fees and related costs of collection.

11.35.090 Impounding of Newsracks

- A. As provided for in Sections 11.35. 070 and 11.35.080, newsracks may be impounded by the City if they are found to be placed, maintained or operated in violation of the provisions of this Chapter or abandoned.
- B. Whenever a newsrack is impounded, the Director shall immediately send a Notice of Impoundment to the Distributor. Such notice shall state that date the newsrack was removed and impounded, the reasons thereof, and the procedure for claiming the newsrack. If the newsrack was summarily impounded, such notice shall also state the procedure for requesting an appeal hearing.
- C. The Distributor who provides satisfactory proof of the ownership of the impounded newsrack may, at any time within thirty (30) days of the Notice of Impoundment obtain the return of the newsrack and its contents upon paying or removal costs, storage and other cost.
- D. The costs of removal and storage of any newsrack shall be born be the Distributor and may be collected by the City in the same manner as it collects any other civil debt or obligation. No newsrack which has been removed and stored by the City shall be released to the Distributor unless the costs of removal, storage and any necessary repair to the sidewalk or other public property on which the newsrack was placed have been paid. If a newsrack has been removed and stored remains unclaimed for a period of 30 days after the notice of impoundment is sent, it shall be deemed to be unclaimed personal property and disposed of in accordance with the law.
- E. If, after a hearing, the impounded newsrack is found not to have been in violation of this Chapter, the newsrack shall be returned to the Distributor without payment of any impound fee or, if an impound fee has previously been paid, the impound fee is refunded.

11.35.100 Hearing and Appeal

- A. Any Distributor maintaining a newsrack found in violation of this Chapter, or any applicant for a newsrack permit that was denied by the Director, may request a hearing before the Director within ten (10) calendar days after the giving of a Notice of Correction, a Notice of Impoundment or notice that a newsrack permit application was denied. The request shall be in writing, shall state the basis thereof, and shall be filed with the Public Works Department.
- B. The hearing shall be held within ten (10) calendar days of the filing of the request. At the hearing the Distributor may present evidence or argument as to whether the newsrack has been placed, maintained or operated in violation of this Chapter. Within five (5) working days after the close of the hearing, the Director shall render a decision in writing and shall give such written decision to the Distributor.
- C. Any Distributor, within ten (10) calendar days after the Director's hearing decision was given, appeal such decision to the City Council. The appeal shall be in writing, shall state the basis upon which the appeal is made, shall be accompanied by an appeal fee, to be established by the City Council, and shall be filed with the City Manager. The City Council shall attempt to hear the appeal within thirty (30) calendar days of the filing of the appeal request. At the appeal hearing, the Distributor or any person may present evidence or argument as to whether the newsrack has been placed, maintained or operated in violation of this Chapter. Within thirty (30) calendar days after the City Council's decision is rendered, the City Manager shall give notice of the decision of

the City Council on the appeal to the Distributor. The decision of the City Council on the appeal shall be final.

11.35.110 Effective Date and Existing Newsracks

- A. The effective date of this Chapter shall be July 1, 1999.
- B. Initial Filing and Processing: Any Distributor of any newsrack located within the City as of the effective date of this Chapter shall:
1. Within thirty (30) days of the effective date of this Chapter, i.e., by July 30, 1999, remove the newsrack, or file for a permit or permits required by this Chapter for all sites.
 2. For the initial processing of these new permits on existing racks, the City shall have up to thirty (30) days to issue permits upon the receipt of a completed permit application. The initial permits shall expire on June 30, 2000.
 3. Any newsracks maintained in City Park or in the park side of the public rights-of-way of adjacent streets shall be removed by July 30, 1999 or said newsracks will be summarily impounded.
- C. Compliance/Abatement: Any Distributor of any newsrack located in the City as of the effective date of this Chapter shall:
1. Relocation of Newsracks: Within 90 days of the effective date of this Chapter, i.e., by September 30, 1999, move the newsracks, pursuant to Section 11.35.050, to the City-approved location consistent with this Chapter.
 2. Size and Style: Within 90 days of the effective date of this Chapter, i.e., by September 30, 1999, conform to all other requirements of this Chapter, such as Section 11.35.040, including, but not limited to, the size and style of the newsrack.
- D. If any existing newsrack is not approved by the City under this Chapter within the time limits specified in this section, the Director may send a Notice to Correct to the Distributor, and if the newsrack is not approved within ten (10) days of affixing the Notice to Correct or if an appeal hearing is not requested, the newsrack may be impounded pursuant to Section 11.35.090.

11.35.120 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.