

DATE: 6/15/99 AGENDA ITEM # _____
() APPROVED () DENIED
() CONTINUED TO _____

TO: JAMES L. APP, CITY MANAGER
FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR *BLA*
SUBJECT: NEWSRACK ORDINANCE/VOLUNTARY AGREEMENT
DATE: JUNE 15, 1999

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

- Facts:
1. At its meetings of May 4 and 18, 1999, the City Council considered a draft ordinance and a draft voluntary agreement to regulate the placement of newsracks on public streets and property.
 2. The voluntary agreement was proposed by local newspaper publishers and distributors, based on a model accord with several other cities in the County.
 3. The Council agreed to continue the draft ordinance until June 15 in order that Main Street and the Chamber of Commerce could evaluate and provide comments on the voluntary agreement.
 4. The Council also directed staff to prepare an ordinance that addresses adult material. Such an ordinance has been prepared and is scheduled for Council Review on June 15 as a separate matter.
 5. The draft voluntary agreement for Paso Robles proposes that newsracks be prohibited in City Park and within the park side of street rights-of-way bordering the park.
 6. A draft newsrack ordinance, as an option to the voluntary agreement, is also attached.
 7. 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 Paso Robles Gazette has indicated that it plans to place newsracks.
 8. Local publishers have indicated a desire that the locations of all existing newsracks be "grandfathered" and exempt from the standards set forth in the voluntary agreement. Attached is an inventory of existing newsracks in the Downtown area.
 9. Copies of this staff report with the draft voluntary agreement and draft ordinance were mailed to all publications that maintain newsracks in the City.

Analysis and
Conclusion:

The draft voluntary agreement essentially contains the same criteria for design, maintenance and placement location that are proposed in the draft ordinance. The draft voluntary agreement, however, does not include any requirements for permits or contain any provisions for impounding newsracks.

At the May 18 Council meeting, Jeff Brinley of the Tribune noted that certain places, most notably restaurants, are prime locations for placement of newsracks. He requested that groups be allowed to be 15 feet in length, and that all existing newsracks be "grandfathered". The intention of these requests was that no existing newsrack be required to be moved from an existing location.

The attached draft voluntary agreement provides that newsracks may be arranged in a single file in groups that are 8 feet long and that groups must be separated by a distance of 4 feet (to allow for pedestrians and the disabled to pass through). This standard would dictate that several existing groups of newsracks would need to be re-arranged into a single file. As noted in the attached inventory, if the eight newsracks presently placed in front of Marv's Pizza were arranged in a single file, the group of newsracks would measure 13.6 feet in length. Under the proposed agreement, the existing eight newsracks plus a ninth for the Paso Robles Gazette could be arranged in two eight foot lengths in that general location.

The newsrack standards in the draft voluntary agreement and ordinance do not propose any limitations on style or type of newsrack, or on color. All newsracks currently placed in the City meet the proposed height, width and depth standards.

Norma Moye, Executive Director of Main Street, has reported that the draft ordinance and voluntary agreement have been distributed to Main Street's Board of Directors and Design Committee for review and comment. The Board meets on June 14 and the Committee meets on June 10. An oral report summarizing the recommendations of both bodies will be given to the Council at its June 15 meeting.

Norma Moye informed staff that, preliminary conversations with a few Board and Committee members indicate the following concerns of Main Street members:

- An ordinance may be preferred to voluntary agreement, because it is more enforceable.
- Colors should be limited; the bright yellow used in some newsracks is disfavored.
- Newsracks should not be secured to City property such as trees, posts, bikeracks, etc.
- Placement of newsracks needs to be better-organized. Placement of groups of newsracks across the street from each other (e.g. at Vic's Cafe and Al E. Kat) is disfavored.

As of June 7, the Chamber of Commerce has not yet any comments on the voluntary agreement. Any comments that may be received by staff will be verbally reported to the Council on June 15.

The viability of a voluntary agreement relies upon the concerted efforts of newspaper publishers and distributors to abide by such an agreement. Such efforts would include applying "peer pressure" to encourage all publishers and distributors to so abide. In the absence of a demonstrated acceptable level of compliance, even by a single publisher or distributor, the Council could reconsider adoption of an ordinance.

Policy
Reference: California Penal Code Section 313 (adult material aspects)

Fiscal
Impact: The draft voluntary agreement calls for publishers and distributors to hold the City harmless and to provide proof of liability insurance that lists the City as additional insured. The draft ordinance also contains such provisions. 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 adopt the attached resolution approving a voluntary agreement.
 - b. 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 July 6, 1999 for adoption.
 - c. Amend, modify or reject the foregoing options.

Attachments:

1. Resolution and Draft Voluntary Agreement
2. Ordinance Establishing Chapter 11.35 of the Municipal Code to Regulate the Placement, Maintenance and Operation of Newsracks
3. Inventory of Existing Newsracks

ED\CODE AMEND\NEWSRACK\CCR 061599

RESOLUTION 99- _____

A RESOLUTION OF THE CITY OF EL PASO DE ROBLES
APPROVING A VOLUNTARY AGREEMENT WITH NEWSPAPER PUBLISHERS AND
DISTRIBUTORS REGARDING THE PLACEMENT OF NEWSRACKS IN THE PUBLIC RIGHT-OF-
WAY AND ON PUBLIC PROPERTY

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, publishers and distributors of newspapers and other publications have requested that the City consider a voluntary agreement whereby the publishers and distributors would abide by certain criteria establishing standards for the design, maintenance and placement of newsracks whose objectives are to protect the public health and safety, protect and preserve aesthetic resources, revitalize the Historic Downtown, and promote and enhance the economic vitality of the community; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of El Paso de Robles as follows:

1. To approve the voluntary agreement attached as Exhibit "A", entitled "Agreement Between The City Of El Paso De Robles and Newspaper Publishers and Distributors for Placement of Newsracks in the Public Right-Of-Way and on Public Property";
2. To direct the City Manager to cause City staff to monitor compliance with Exhibit A on a regular basis and to report to City Council should the level of compliance with the provisions of Exhibit A be such that the objectives of the voluntary agreement: to protect the public health and safety, to protect and preserve aesthetic resources, to revitalize the Historic Downtown, and to promote and enhance the economic vitality of the community, are not being adequately or properly advanced;
3. To notify publishers and distributors of newspapers and other publications that maintain newsracks in the public right-of-way or on public property that failure to comply with the provisions of Exhibit A may result in the adoption of an ordinance to regulate the placement and maintenance of newsracks.

PASSED AND ADOPTED THIS 15th day of June, 1999 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Duane J. Picanco, Mayor

ATTEST:

Dennis Fansler, City Clerk

ED:\CODE AMEND\NEWSRACKS\AGREEMENT RESO

EXHIBIT A

AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND NEWSPAPER PUBLISHERS AND DISTRIBUTORS FOR PLACEMENT OF NEWSRACKS IN THE PUBLIC RIGHT-OF-WAY AND ON PUBLIC PROPERTY

THIS AGREEMENT FOR PLACEMENT OF NEWSRACKS (the "Agreement") is entered into this _____ day of _____, 1999, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation organized and existing under the laws of the State of California ("the City") and the undersigned publishers and distributors ("the Undersigned") who agree as follows:

Recitals

A. The City is the owner of land within the rights-of-way of public streets and certain public properties such as the Library/City Hall, parks and other public properties ("Public Properties").

B. The Undersigned desires to distribute newspapers and other publications from newsracks that may be placed within the rights-of-way of public streets and Public Properties.

Agreements

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties agree as follows:

Section 1. Parties

a. The City is a municipal corporation. The office of the City is located at 1000 Spring Street, Paso Robles, California, 93446.

b. The Undersigned are privately-owned and operated businesses who either are publishers of newspapers and other publications or authorized distributors of newspapers and other publications. Whenever the term "the Undersigned" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided. No voluntary or involuntary successors in interest of the Undersigned shall acquire any rights or powers under this Agreement.

Section 2. Purpose of Agreement

Parties to this Agreement agree that newspapers and other publications should be available for distribution in a manner that is not detrimental to the safety of persons or property and that will preserve and enhance the visual quality and character of the City of Paso Robles. The Undersigned further believe this goal can best be realized through voluntary cooperation between the newspaper industry and the City, businesses and concerned citizens, rather than through inflexible and sometimes inappropriate regulation. The Undersigned have already begun a voluntary cooperative effort by taking

a close look at newsrack locations and correcting any problems that are apparent, such as newsracks that are located too close to fire hydrants or crosswalks and by fixing and cleaning existing racks. The Undersigned are willing to continue a cooperative effort to meet these common goals.

This Agreement is intended to protect against the dangers of:

- a. impairing or distracting the vision of motorists and pedestrians;
- b. unreasonably interfering with or impeding the flow of pedestrians or vehicular traffic, including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;
- c. unreasonably interfering with the use of public property for its intended purpose;
- d. unduly restricting access to the use of poles, posts, traffic signs or signals, hydrants, mailboxes or locations used for transportation purposes;
- e. the visual blight on public rights of way and other public property that results from neglectful maintenance and/or servicing of newsracks;
- f. unnecessary exposure of the City to personal injury or property damage claims or suits or an unsightly proliferation or concentration of newsracks;
- g. a diminishing of the visual quality and character of the City of Paso Robles.

Each of the Undersigned shall, within thirty (30) days of the date of this Agreement, provide to City a complete list of its newsracks within the City and the location thereof.

Section 3. Definitions

For the purposes of this agreement, unless otherwise apparent from the context, certain words or phrases are defined as follows:

- 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. "Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or news periodicals.
- c. "Parkway" means any strip of land lying between the property line and the curb, excluding sidewalk, or any public street, including any such area within a street which is not open to vehicular traffic.

- d. "Street" means all that area improved, designed or ordinarily used for vehicular traffic, or area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways and alleys.
- e. "Sidewalk" means any surface provided primarily for the use of pedestrians.

Section 4. Newsrack Specifications

Any newsrack installed, used or maintained in part or in whole upon any public property shall comply with the following specifications:

- a. No individual newsrack will exceed 54 inches in height, or 30 inches in width from side to side, or 24 inches in depth from front to back. Newsracks may be grouped in a single file arrangement provided that no group of newsracks will exceed eight (8) feet (96 inches) in width from side to side. Newsracks shall not be grouped in an arrangement that is not in a single file. Groups of newsracks shall be separated by a distance of at least four (4) feet (48 inches) to provide adequate access for pedestrians and the disabled.
- b. Each newsrack may display the color logo of the newspaper it offers for sale along with a color "rack card" promoting the newspaper.
- c. Each newsrack unit will have affixed in a clearly visible place the owner's name, address and telephone number.
- d. Newsrack maintenance will be the responsibility of the newsrack owner. Each newsrack will be kept in a neat, attractive, clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack will be maintained so that:
 - 1. It is reasonably free of dirt, grease, rust and graffiti.
 - 2. It is reasonably free of chipped facing, peeling and cracked paint;
 - 3. The clear plastic or glass parts thereof, if any, are unbroken and reasonably free of cracks, dent, blemishes, and discoloration;
 - 4. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or facing; and
 - 5. The structural parts thereof are not broken.
 - 6. Complaints are addressed in no more than 30 days after first contact with the publisher or distributor that owns the newsrack(s).

Section 5. Placement Specifications

- a. Newsracks will only be placed near a curb or adjacent to the wall of a building as follows:

1. Newsracks placed adjacent to the wall of a building will be parallel to the wall, with the back of the newsrack no more than 6 inches from the property line within the city right-of-way and shall open toward the street
 2. Newsracks placed near a curb will be parallel to the curb, no less than 12 inches or more than 18 inches from the face of the curb and shall open toward the sidewalk and away from the street.
- b. Newspaper publishers will avoid placing a newsrack in a way that impedes or interferes with the reasonable use of a merchant's display window for display purposes.
 - c. At the time that a newsrack is removed from a location, the publisher shall restore the sidewalk to a safe condition and repair any damage caused by such removal.
 - d. No newsrack will be attached or joined to any City property, including the sidewalk, unless agreed to in advance by the Director of Public Works, and no newsrack will be attached to private property without the consent of the owner.
 - e. No newsrack will be placed within City Park, which is bordered by Spring, Pine, 11th and 12th Streets, or within the park side sidewalks or parkways of those streets.

Section 6. Location Standards

No newsrack will be placed, installed, used or maintained in a manner which will violate any of the following standards:

- a. Project onto, into or over the vehicle travel lanes, bicycle lanes or parking lane of any public street.
- b. Rest within fifteen (15) feet of any fire hydrant.
- c. Rest within twenty-five (25) feet of the extension of the near curb line of an intersecting street, as shown in the attached Exhibit "A".
- d. Rest within five (5) feet of any driveway, manhole, water meter, utility box, police or fire call box or other emergency facility.
- e. Unreasonably interfere with or obstruct the flow of pedestrian or vehicular traffic or create or constitute a traffic hazard, as determined by the Director of Public Works.
- f. Endanger persons or property, as determined by the Director of Public Works.
- g. Reduce clear passage for pedestrians and the disabled to less than 4 feet (48 inches).

Notwithstanding the requirement to maintain clear passage for pedestrians and the disabled to less than 4 feet (48 inches), the Director of Public Works may allow for minor exceptions, not exceeding ten (10) percent of any of the foregoing distance standards, where a combination of physical factors unique to a particular location dictate that strict adherence with the foregoing distance standards

is not practical, and providing that it is clear that any such exception will not adversely affect the public health and safety.

The Undersigned agree to work on a voluntary basis with the City to resolve concerns the City may have regarding the foregoing.

Section 7. Adult Material

The Undersigned agree that material which is harmful to minors shall not be displayed in newsracks 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.

The Undersigned acknowledge that "harmful" material means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

The Undersigned agree that materials to be displayed shall not violate Section 11.34.030 of the City's Municipal Code, and if there exists such a violation, the City has the right to terminate the Agreement with respect to the party in breach, and the City may enforce its remedies under Section 11.34.040 of its Municipal Code.

Section 8. Abandonment

The Undersigned agree that no publisher or distributor will leave a newsrack unserviced or unattended for more than thirty (30) days. If such neglect does occur, the Undersigned agree to contact the responsible publisher or distributor to arrange for removal or regular servicing of such newsrack.

Section 9. Liability Insurance And Indemnification

The Undersigned, the undersigned newspaper publishers and/or newspaper distributors, do each hereby agree to the following:

- a. To indemnify and save harmless the City, its officers, agents and employees of and from any and all claims and demands which may be made against the City of Paso Robles, its officers, agents, or employees by reason of any injury to or death of or damage to any person or corporation caused by any negligent act or omission of newspaper publishers and/or newspaper distributors as a result of placement of a newsrack in the public right-of-way or on public property.
- b. To maintain a general liability insurance policy, naming the City as additionally insured and in an amount as established by the City, but not less than one million dollars (\$1,000,000.00), during the period of the placement of the newsrack(s). The insurance

policy shall state that the carrier shall notify the city thirty days prior to canceling the policy for any reason. Proof of insurance shall be provided to the City of Paso Robles, to the attention of the Director of Administrative Services.

Section 10. Default

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and the other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement.

Section 11. Termination of this Agreement

This Agreement and the obligations of the Undersigned and City hereunder may terminate in the event of breach of any of the provisions of this Agreement. The Agreement may also terminate by the written approval of both the City and the Undersigned.

Section 12. Miscellaneous Provisions

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

b. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

c. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by written notice:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

The Tribune
P.O. Box 112
San Luis Obispo, CA 93406
ATTN: Jeff Brinley

Country News-Press
P.O. Box 427
Paso Robles, CA 93447
ATTN: Dick Reddick, Publisher

Paso Robles Gazette
P.O. Box 4430
Paso Robles, CA 93447
ATTN: Bob Chute

New Times
197 Santa Rosa Street
San Luis Obispo, CA 93405
ATTN: Steve Moss and Bev Johnson, Publishers

Homes and Land
P.O. Box 870
Pismo Beach, CA 93448
ATTN: Denise Fisher

Homes Magazine
P.O. Box 657
Atascadero, CA 93423
ATTN: Mike Raike

Country Real Estate
640 - 14th Street
Paso Robles, CA 93446
ATTN: Tom Erskine

The Real Estate Book

San Francisco Chronicle

USA Today

Los Angeles Times

d. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a

continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

f. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

h. Entire Agreement. This Agreement and Exhibit A, which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

IN WITNESS WHEREOF, the City and the Undersigned have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures. The effective date of this Agreement shall be the date it is signed by the City.

CITY:

CITY OF EL PASO DE ROBLES

By: _____
Mayor Duane J. Picanco

Attest:

By: _____
Dennis Fansler, City Clerk

THE UNDERSIGNED:

The Tribune

By: _____
Title: _____

Country News-Press

By: _____
Title: _____

Paso Robles Gazette

By: _____
Title: _____

New Times

By: _____
Title: _____

Homes and Land

By: _____
Title: _____

Homes Magazine

By: _____
Title: _____

The Real Estate Book

By: _____
Title: _____

Country Real Estate

By: _____
Title: _____

San Francisco Chronicle

By: _____
Title: _____

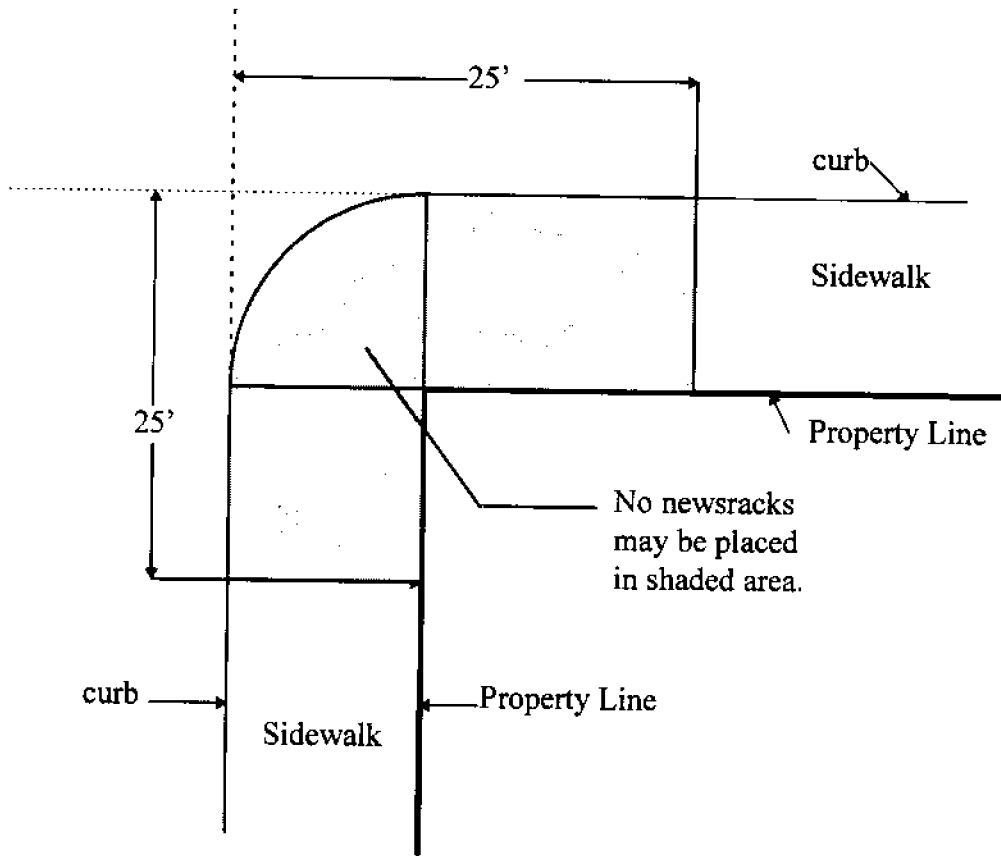
USA Today

By: _____
Title: _____

Los Angeles Times

By: _____
Title: _____

EXHIBIT A



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. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on June 15, 1999, and passed and adopted by the City Council of the City of El Paso de Robles on the 6th day of July, 1999, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Duane J. Picanco, Mayor

ATTEST:

Dennis Fansler, 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 under the procedures set forth in this Chapter.
- 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. One permit may be issued for newsracks maintained or operated by a Distributor at several different 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, and if the Distributor is a subsidiary, the name, address and telephone number of the parent company.
 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, operation, or removal 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 from time to time, 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 comprehensive general liability and property damage insurance, endorsing the City as an additional insured, in an amount not less than one million dollars (\$1,000,000). This policy shall be subject to approval by the City Attorney for completeness. The Distributor shall provide and keep in force that policy of comprehensive general 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 a permit for a particular 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 site, such disapproval shall be without prejudice to the applicant who may designate a different location or locations and resubmit an application.
 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 the following have occurred: (a) an application has been deemed complete; and (b) the Director made a finding that the application complies with all of the provisions of this Chapter.
 4. If an application or a proposed site is denied at any stage of the process, the Director shall promptly 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 an ongoing duty to provide the City with current information in order to allow 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 provide the City with the current information set forth in subsections D.1 and D.2, above, shall constitute grounds for termination of the permit. Upon termination of any permit because of such failure to provide the City with current contact information, all newsracks covered by the permit 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 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 or renewal, the Director shall issue the Distributor a sticker or stickers evidencing the permit or renewal, which sticker shall be affixed to each newsrack, in the manner specified by the Director, within ten (10) working days of permit or renewal 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, and 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. A newsrack that is left empty 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 four (4) feet shall separate each group of newsracks to provide adequate access for pedestrians and the disabled.
- 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. In such a manner that it rests within twenty-five (25) feet of the extension of the near curb line of an intersecting street, as shown on Figure 11.35.050.

4. Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility;
5. Within five (5) feet of any driveway, traffic signal controller or utility pole;
6. Within five (5) feet in front of or twenty-five (25) feet behind any sign marking a designated bus stop;
7. Within five (5) feet of any bus bench;
8. 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;
9. On any access ramp or curb cut for disabled persons;
10. At any location where the newsrack impairs or interferes with visibility of or for pedestrians or drivers or causes a traffic hazard;
11. 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;
12. Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping, art or monument;
13. 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;
14. Facing another newsrack across the width of a public sidewalk or pedestrian way.
15. 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.

Notwithstanding the requirement to maintain clear passage for pedestrians and the disabled to less than 4 feet (48 inches), the Director of Public Works may allow for minor exceptions, not exceeding ten (10) percent of any of the foregoing distance standards, where a combination of physical factors unique to a particular location dictate that strict adherence with the foregoing distance standards is not practical, and providing that it is clear that any such exception will not adversely affect the public health and safety.

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.

"Harmful" material means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a

whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

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. The Director shall telephone the Distributor or other responsible party designated to receive such Notice to Correct, and shall confirm such notification by mailing a copy of the Notice to Correct 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 Distributor fails to provide the City with current information as defined under the provisions of Section 11.35.030.G.5, its newsracks may 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, 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. A Distributor who provides satisfactory proof of the ownership of the impounded newsrack may, at any time within thirty (30) days of the mailing of the Notice of Impoundment obtain the return of the newsrack and its contents upon paying any removal costs, storage, repair and any other costs incurred by the City.
- 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 has been 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 shall be 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 date of the Director's written decision may 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 from time to time, and shall be filed with the City Manager. The City Council shall attempt to hear the appeal at the next regularly-scheduled City Council meeting for which proper notice can be given. At the appeal hearing, the Distributor or any person may present evidence or

argument as to whether the newsrack was placed, maintained or operated in violation of this Chapter. Within five (5) calendar days after the City Council's decision is rendered, the City Manager shall give written 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.

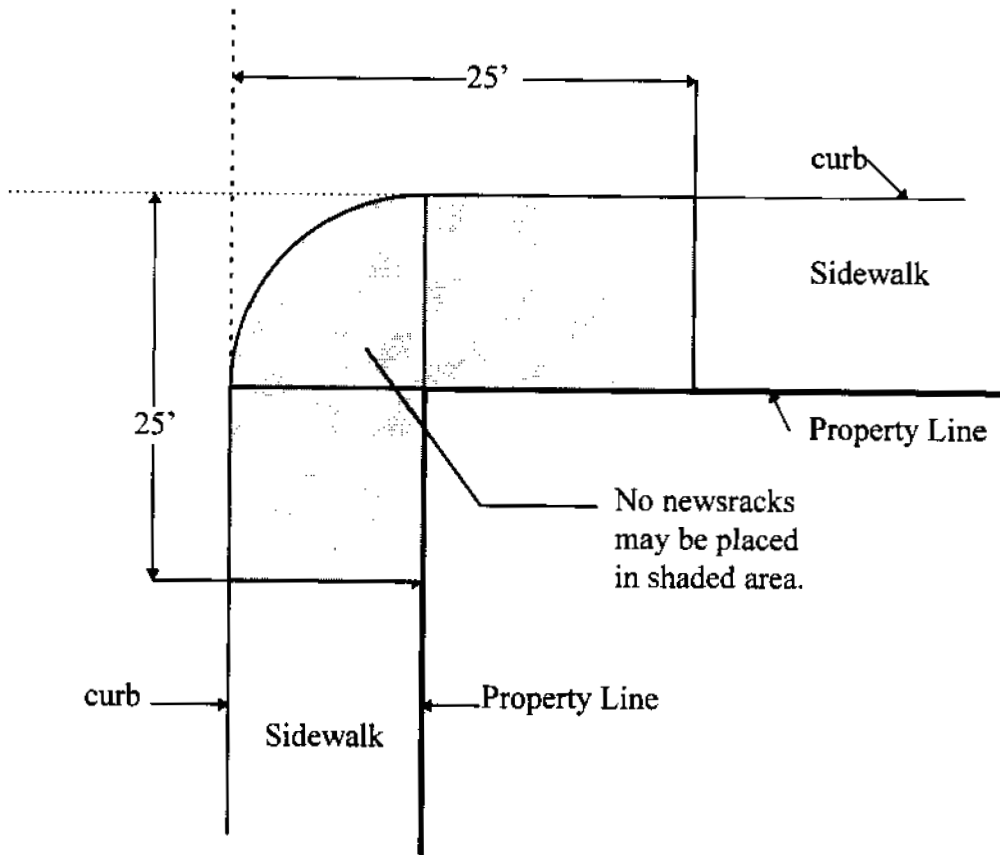
11.35.110 Effective Date and Existing Newsracks

- A. Notice to Distributors: Within thirty (30) days of the effective date of this Chapter, the Director shall make an inventory of all existing newsracks and give written notice to Distributors of the adoption of this ordinance.
- B. Removal or Initial Filing:
1. Within thirty (30) days of the date of the written notice described in Subsection A, any Distributor of any existing newsrack located within City Park or within the park side of rights-of way bordering City Park, shall remove said newsrack(s) or said newsrack(s) shall be summarily impounded.
 2. For any newsrack(s) existing in the City as of the effective date of this Chapter, and not included within paragraph B.1, above, within thirty (30) days of the date of the written notice described in Subsection A, the Distributor of such newsrack shall either remove the newsrack, or file an application for a permit or permits required by this Chapter for all sites at which the Distributor maintains a newsrack.
- C. Initial Permit Processing: For the initial processing of permit applications on existing newsracks, the City shall have up to thirty (30) days to issue permits upon the receipt of a completed permit application that complies with the requirements of this Chapter. The initial permits shall expire on June 30, 2000.
- D. Initial Compliance/Abatement: In the event the Director receives a permit application for an existing newsrack that does not comply with the requirements of this Chapter, the Director shall so notify the Distributor in writing within thirty (30) days of Distributor's submission of a permit application. Such notice shall specify the manner in which the newsrack does not comply with this Chapter. The Distributor shall have thirty (30) days from the date of the Director's notice of noncompliance to (a) take such steps necessary to bring its newsrack(s) into compliance and (b) resubmit a completed permit application for such newsrack(s). If the Distributor fails to complete both of the actions described in the preceding sentence within such thirty (30) day period, the nonconforming newsrack(s) shall be impounded pursuant to the provisions of Section 11.35.080.

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.

FIGURE 11.35.050



INVENTORY OF NEWSRACKS IN THE DOWNTOWN

(6/2/99)

| Location | # of racks | Publications | Secured? |
|---|------------|---|--|
| City Hall north entrance, at curb | 3 | Tribune, CNP, NT | chained to tree |
| SEC 11th & Park (11th side of Prudential Realty, against building) | 1 | H&L | No |
| NEC 11th & Pine, at curb | 2 | NT, Tribune | chained to tree |
| SEC 12th & Pine (@ front door to Villa Creek Cafe), at curb | 1 | NT | chained to stop sign |
| N/S 12th, in front of Bistro Laurent | 1 | Tribune | chained to post |
| N/S 12th, in front of Marv's Pizza, at curb | 8 | Tribune, CNP, NT, H&L, Homes, TT&RE, REB, CRE | No |
| W/S Park, in front of Chamber of Commerce, at curb | 3 | Tribune, CNP, NT | chained to each other |
| SWC 13th & Park, at curb | 1 | CRE | No |
| SWC 13th & Pine, at curb | 5 | CNP, H&L, Homes, TT&RE, REB | chained to bike rack |
| N/S 13th, in front of Vic's Cafe | 4 | H&L, Homes, TT&RE, REB | racks at curb are chained to each other |
| NEC 14th & Pine, in front of Touch of Paso, in dirt parking lot near curb (probably on private property) | 2 | Tribune and CNP | chained to parking sign post (on private property) |
| E/S Spring in front of Caribbean Cafe, 1 at curb, 4 against building, facing driveway to rear of building | 5 | Tribune, CNP, H&L, Homes, TT&RE | rack at curb is chained to post |
| W/S Spring in front of 76 Station, at curb | 1 | Tribune | chained to post |

NOTES:

1. "Chains" include wire cables as well as chains.
2. If all 8 newsracks in front of Marv's Pizza were arranged in a single file, the total width would be 13.6 feet (163")

PUBLICATION ABBREVIATIONS:

CNP = Country News Press
 CRE = Country Real Estate
 H&L = Homes and Land
 NT = New Times
 REB = The Real Estate Book
 TT& RE = Tribune's Ticket and Real Estate

OTHER ABBREVIATIONS:

NEC = Northeast corner (etc.)
 W/S = West side (etc.)