



CITY OF BEVERLY HILLS
DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION

MEMORANDUM

TO: Public Works Commission

FROM: Daniel E. Cartagena, Sr. Management Analyst 

DATE: December 13, 2012

SUBJECT: Discussion of Beverly Hills News rack Ordinance

ATTACHMENTS: City of Beverly Hills News rack Ordinance

Staff has invited Lolly Enriquez, Assistant City Attorney, to discuss the City's news rack ordinance and provide additional detail with respect to the principles of the ordinance.

Article 6. News Racks

4-3-601: PURPOSE AND CRITERIA FOR REGULATIONS:

The purpose of this article is to promote the public health, safety, and welfare through the regulation of the placement, appearance, servicing, and insuring of news racks on the public right of way so as to:

- A. Provide for pedestrian and driving safety and convenience.
- B. Restrict the unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into or egress from any residence or any place of business or from the street to the sidewalks by persons exiting or entering parked or standing vehicles.
- C. Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, and mail boxes and access to locations used for public transportation purposes.
- D. Eliminate news racks which may result in a visual blight on the public rights of way or which may unreasonably detract from the aesthetics of store window displays, adjacent landscaping, and other improvements.
- E. Maintain and protect the values of surrounding properties.
- F. Reduce the unnecessary exposure of the city to personal injury and property damage claims.
- G. Provide for and maintain the freedom of speech for newspapers or periodicals using news racks for distribution purposes.
- H. Preserve the unique atmosphere of the 200_400 blocks of N. Rodeo Drive and the "golden triangle".

I. Implement the city's urban design program. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-602: DEFINITIONS:

For the purpose of this article, unless otherwise apparent from the context, certain words and phrases used in this article are defined as follows:

BLOCK: One side of a street between two (2) consecutive intersecting streets.

NEWS RACK: Any type of unmanned device placed upon any public right of way for the vending of, or free distribution of, newspapers, periodicals.

NEWSSTAND: Any stand, shelter, case, cabinet, box or other structure installed, used or maintained for the display, sale or storage of newspapers or periodicals which is attended by the owner or his employee while making sales therefrom.

PREEXISTING PAPER: A newspaper or periodical that on November 1, 2003, was distributed on a particular block of the urban design program area from a lawfully installed news rack.

PUBLIC RIGHT OF WAY: Any public street, highway, sidewalk, parkway or alley.

URBAN DESIGN PROGRAM AREA: The following streets: 200_400 blocks of N. Beverly Drive; 9300 to 9700 blocks of Brighton Way; 100_400 blocks of N. Canon Drive; 9300 to 9700 blocks of Dayton Way; and 200_400 blocks of N. Rodeo Drive. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-603: PERMIT REQUIRED:

No person, whether as a principal, agent, or employee, either for itself or any other person, or as an officer of any corporation, or otherwise, shall place, affix, erect, construct, or maintain a news rack upon any public right of way unless and until a news rack permit has been obtained from the department of public works. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-604: APPLICATION:

A person seeking issuance of a permit pursuant to this article shall file with the department of public works a written application on forms supplied by the city. The application shall contain the following information:

- A. The name, address and telephone number of the applicant;
- B. The name, address and telephone number of a responsible person whom the city may notify or contact at any time concerning the applicant's news rack;
- C. The number of news racks and the exact proposed location of each; and
- D. The names of the newspapers or periodicals to be contained in each news rack. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-605: APPLICATION PROCEDURE; FEE:

- A. The applicant shall provide a nonrefundable permit application fee in an amount established by resolution of the city council.
- B. Unless a time extension is granted in writing by the director of public works, within five (5) days of approval of the permit, the permittee must file with the director of public works an insurance certificate establishing that the applicant has in force public liability and property damage insurance from a carrier admitted to do business in the state of California with a Best's insurance rating of A:VII or better in an amount to be determined by resolution of the city council to indemnify the city against any personal injury, death, loss or damage resulting from the permittee's activities. The city and its officers shall be named as additional insureds. The policy must include a statement by the insurance carrier that thirty (30) days' written notice will be given to the city before any cancellation or modification of coverage. The permittee must maintain such insurance for as long as the permittee maintains a news rack in the public right of way. The permittee shall also execute a hold harmless agreement as provided by the city prior to the issuance of any permit.

- C. Upon a showing that the fees and/or insurance requirements are so financially burdensome that they would constitute an unreasonable burden on first amendment rights by virtue of the financial circumstances of the applicant, the director may waive or decrease the fees as necessary. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 00-O-2343, eff. 2-4-2000)

4-3-606: CRITERIA FOR DENIAL:

The department of public works shall issue a permit unless one or more of the following findings is made:

- A. The following criteria for denial shall apply to applications for placement of a news rack outside of the urban design program area:
1. The news rack fails to comply with the provisions of this article.
 2. The proposed location of the news rack creates a substantial obstruction or hazard to vehicular or pedestrian traffic.
 3. The proposed location of the news rack would violate subsection 4-3-609A3 of this article. In such event the applicant, upon request, may be placed on a waiting list. When the proposed location becomes available due to a reduction in the number of news racks, the applicant will be notified according to its placement on the waiting list and a new application may be submitted at that time.
- B. The following criteria for denial shall apply to applications for placement of a news rack within the urban design program area:
1. The news rack fails to comply with the provisions of this article.
 2. The proposed location of the news rack is on the 200_400 blocks of N. Rodeo Drive.
 3. The proposed location of the news rack is a news rack enclosure in which no news rack space is available due to the issuance of news rack permits to other persons pursuant to section 4-3-618 of this article. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-607: DENIAL:

If a permit is denied, the applicant shall be notified in writing of the specific basis of such denial by the department of public works. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-608: APPEAL PROCEDURE:

Any applicant who has been denied a permit pursuant to the provisions of this article may file an appeal with the city council. The applicant shall also have the right to appeal the amount of fees and/or costs imposed pursuant to section 4-3-605 of this article, or a determination by the city that the applicant's insurance policy does not comply with the requirements specified in section 4-3-605 of this article. A notice of appeal shall be filed with the city clerk within fourteen (14) days of mailing or personal delivery of a notice of denial or other notice informing the applicant of the matter being appealed. The notice of appeal shall specifically set forth the grounds for the appeal. The council shall hear the applicant or a designated representative, and receive any relevant information and documents. The decision of the council shall be final. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-609: LOCATION; PLACEMENT:

A. The specific location of news racks shall comply with the following requirements:

1. Where placement is next to a building, it shall be placed adjacent and parallel to and within six inches (6") of the wall of the building.
2. Where placement is next to a curb, it shall be situated parallel to and no less than eighteen inches (18") nor more than twenty four inches (24") from the edge of the curb.
3. No more than eight (8) news racks shall be located on any public right of way at an intersection. For the purposes of this section, a news rack shall be "at an intersection" if it is within ten feet (10') of a marked crosswalk at any of the corners comprising the intersection. In the event there are more than eight (8) news racks located on the public right of way at an intersection on the effective date of this article, all news racks at such intersection shall be permitted to remain provided that those news racks obtain the permit required by this article and comply with all other requirements of this article. No additional news racks shall be approved at such intersection until such time when there are fewer than eight (8) news racks at such intersection. The applicant, upon request, may be placed on a waiting list for such location pursuant to section 4-3-606 of this article.

4. News racks located in the urban design program area shall be placed in a news rack enclosure installed by the department of public works.
5. In the event that a location becomes available for the placement of new news racks, not more than one permit will be issued per location for any single newspaper or periodical; except that, if a news rack location is available for more than three (3) months, more than one permit may be issued to any newspaper or periodical at that location.

B. No news rack shall be placed, installed, used or maintained:

1. Within five feet (5') of any marked crosswalk.
2. Within fifteen feet (15') of the curb return of any unmarked crosswalk.
3. Within five feet (5') of any fire hydrant, fire callbox, police callbox, traffic signal controller, streetlight controller, or other emergency facility.
4. Within five feet (5') of any driveway.
5. Within five feet (5') ahead of, and twenty five feet (25') to the rear of any sign marking a designated bus stop.
6. Within six feet (6') of any bus bench.
7. At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet (6').
8. On or within three feet (3') of any area improved with lawn, ground cover, flowers, shrubs or trees.
9. Within three feet (3') of any display window of any building, abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window display purpose.
10. Facing another news rack or newsstand divided only by the width of the sidewalk or pedestrian walk.
11. At any location where the news rack unreasonably interferes with or impedes access to or the use or enjoyment of the abutting property.
12. Where the news rack will endanger persons or property.
13. Where the news rack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic on the public right of way.
14. On the 200_400 blocks of N. Rodeo Drive. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-610: NEWS RACK REQUIREMENTS:

News rack installation shall comply with the following requirements:

- A. News rack shall be the standard "K-Jack" model, standard KJ-100 Mini View model or an equivalent model approved by the director of public works which shall be securely bolted to the sidewalk. News racks that are in place as of December 24, 1994, and not in compliance with this subsection shall be replaced with conforming news racks within twelve (12) months of December 24, 1994.
- B. News racks which are required to conform to the requirements of this article shall carry no advertising, including rack cards, except that the name of the newspaper or periodical being dispensed may be displayed on the bottom one-third ($\frac{1}{3}$) of the hood on the front access side of the news rack. News racks in place prior to December 24, 1994, may carry rack cards which exclusively advertise the newspaper or periodical being dispensed.
- C. The name, address and telephone number of a responsible person or entity who may be contacted at any time concerning the news rack shall be displayed on the hood of the news rack in such a manner as to be visible and readable to a prospective customer.
- D. News racks shall at all times be maintained in good working order, and their exterior surface shall be maintained in a clean, untarnished and attractive condition free of defects, physical damage, handbills, extraneous markings and graffiti. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-611: DISPLAY OF CERTAIN MATTER PROHIBITED:

Newspapers or periodicals offered for sale from news racks placed or maintained on the public right of way shall not be displayed or exhibited in a manner which exposes to public view from the 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, perineums, anuses or anal regions of any person where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront; and
- 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.

"Explicit sexual act" as used in this section, means depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, sadism, masochism, or lewd exhibition of genitals, whether any of the above conduct is depicted or described as being performed above or between members of the same or opposite sex or between humans and animals, or other act of sexual arousal, involving any physical contact with a person's genital, pubic region, pubic hair, perineum, anus or anal region. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-612: ABANDONMENT:

In the event any news rack installed pursuant to this article does not contain the newspaper or periodical specified in the application within a period of thirty (30) days after the release of the current issue, or if no newspaper or periodical is in the news rack for a period of more than thirty (30) consecutive days, the director of the department of public works may deem the news rack abandoned and may remove the news rack from the public right of way in accordance with the procedures set out in sections 4-3-613 through 4-3-616 of this article.

In the event a permittee of a news rack, owned by the permittee, desires voluntarily to abandon a news rack location, such permittee shall notify the director of public works in writing of the date of the proposed removal thirty (30) days prior to the news rack's removal and the permittee shall completely remove the news rack and mount on the date set forth in such notice. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994; Ord. 04-O-2448, eff. 6-4-2004)

4-3-613: IMPOUNDMENT OF RACKS:

- A. The director of public works or his/her designee:

1. May immediately remove and impound any news rack in violation of this article if the violation is creating a dangerous or hazardous condition. Notice of such action and the right to request a hearing in accordance with this article shall be mailed to the permittee, or person, if known, maintaining such news rack within five (5) working days after such action;
 2. May notify the permittee, or person, if known, maintaining a news rack found in violation of this article, either in person, or by mail, or if the owner of the news rack is not known, by affixing a notice to the news rack, that unless the violation is corrected or a hearing requested within ten (10) working days after the date of the notice, the news rack will be impounded; and
 3. May impound any news rack in accordance with the decision following a hearing requested pursuant to section 4-3-615 of this article.
- B. If a hearing on the impounding of the news rack is not timely requested or if the return of the news rack is not requested by the permittee in accordance with the provisions of this article, the director of the department of public works or the director's designee may sell or otherwise dispose of the news rack, its contents and any monies contained in the news rack, and deposit the proceeds, if any, in the city treasury. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-614: RETURN OF IMPOUNDED NEWS RACKS:

- A. Unless the news rack and its contents are being held as evidence in a criminal prosecution, the permittee, or if there is no known permittee, a claimant who provides sufficient proof of ownership of an impounded news rack may, at any time up to and including the thirtieth day after the impounding, and if a hearing pursuant to this article is held concerning the news rack, may, at any time including the thirtieth day after the decision of such hearing becomes final, obtain a return of the news rack and its contents, upon paying an impound fee, to be established by resolution of the city council, plus the reasonable additional cost, if any, of impounding the news rack in excess of that fee.
- B. The director of public works or the director's designee may, after a hearing in accordance with this article, order the news rack returned without payment of any impound fee; or, if an impound fee has previously been paid, may order return of any such impound fee if no violation of this article is found.
- C. A court before whom criminal charges concerning an impounded news rack are pending, may, upon dismissal of the charges or finding of acquittal, in its discretion order an

impounded news rack returned without payment of an impound fee or the return of the impound fee paid. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-615: HEARINGS ON VIOLATIONS:

- A. Request For Hearing: Any permittee or person maintaining a news rack found in violation of this article may request in writing a hearing before the director of the department of public works according to the time limitations contained in subsection 4-3-613A2 of this article.
- B. Stay Pending Decision: A timely request for a hearing made prior to any impounding shall operate to stay any impounding until five (5) working days after a final decision is rendered unless the violation is creating a dangerous or hazardous condition.
- C. Conduct Of Hearing: A hearing shall be held before the director of the department of public works, unless continued by agreement, within five (5) working days of the request for a hearing. At the hearing, any person may present evidence or argument as to whether the news rack was in violation of this article or whether the news rack should be returned without payment of an impound fee.
- D. Decision: A decision shall be rendered within five (5) working days after the close of the hearing. The director of the department of public works shall take any one of the following actions:
1. Determine there is no violation of this article;
 2. Determine there is a violation of this article and order that the violation be corrected within a reasonable period of time and if not, order the removal or impound of the news rack found in violation of this article;
 3. Determine there was a violation of this article and order it removed. If the news rack which is found in violation of this article is not removed, it shall be impounded.
- E. Notice Of Decision: The director of the department of public works may give oral notice of the decision at the close of the hearing and shall send notice of the decision by mail. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-616: APPEAL AFTER HEARING:

- A. Appeal: Any person who requested a hearing may, within fourteen (14) days after notice of the decision therein, given pursuant to this article, appeal such decision to the city council pursuant to the appeals procedure contained in section 4-3-608 of this article.
- B. Action By City Council: Upon consideration of the appeal, the city council may affirm, modify or reverse the decision being appealed. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-617: FEES:

The city council may adopt, by resolution, a news rack permit fee schedule setting forth annual news rack fees, impound fees, and any other fees necessary for the implementation of this article. (1962 Code §§ 4-3.601 et seq., 6-7.01 et seq.; amd. Ord. 94-O-2222, eff. 12-23-1994)

4-3-618: URBAN DESIGN PROGRAM AREA:

- A. This section shall govern the placement of news racks within the urban design program area. Except when in direct conflict with this section, in which case the provisions of this section shall control, the other provisions of this article also shall apply to news racks within the urban design program area.
- B. The department of public works shall install news rack enclosures within the urban design program area. The design, materials and location of the enclosures shall be determined by the director of public works subject to approval of the city council. A minimum of twenty nine (29) news rack enclosures shall be installed, and each news rack enclosure shall accommodate three (3) news racks. The location of the news rack enclosures shall be fixed prior to the acceptance of news rack permit applications for news rack spaces within the urban design program area. If there is no news rack permit application for space within a particular news rack enclosure, then that enclosure need not be installed until such an application is received.

- C. News rack permits for news rack spaces within the urban design program area shall be issued by lottery. For each news rack enclosure location, the director of public works shall conduct an initial lottery that is limited to preexisting papers and, if necessary, a secondary lottery that is limited to other applicants. A secondary lottery shall be necessary only to fill news racks spaces for which a news rack permit is not awarded to a preexisting paper. No newspaper or periodical shall be eligible for: 1) more than one news rack permit at an intersection where there are two (2) news rack enclosure locations; or 2) more than two (2) news rack permits at an intersection where there are three (3) or four (4) news rack enclosure locations. The director of public works shall conduct the lottery by placing into a container the names of all eligible permit applicants and drawing names from the container until the number of available spaces at a location reaches zero. The director of public works shall give permit applicants advance written notice of the time and place of the lottery, and shall allow members of the public to witness the lottery.
- D. News rack permits for news rack spaces within the urban design program area shall have a three (3) year term. At the expiration of each term, the director of public works shall reallocate the permits by conducting an area wide reallocation lottery if a written reallocation request has been submitted in the period between forty five (45) days and thirty five (35) days prior to the term expiration by either an existing permittee or a new permit applicant. If no such request is filed within this period, then the director of public works may renew the permits without conducting an area wide reallocation lottery. In such event, existing permittees may file applications for renewal of their permits, along with a nonrefundable renewal application fee, commencing thirty (30) days prior to the term expiration. The director of public works shall renew the permit, within ten (10) city business days of accepting the application, if the subject news rack remains in compliance with this article.
- E. If a news rack is abandoned during the permit term, then the news rack permit for that news rack space shall be awarded for the unexpired portion of the three (3) year term by a site specific reallocation lottery. If an area wide reallocation lottery is not conducted at the term expiration and a news rack permit is not renewed by the existing permittee, then that permit shall be awarded by a site specific reallocation lottery. The permittee who abandoned the news rack or who failed to renew the news rack permit shall not be eligible to participate in the site specific reallocation lottery.
- F. Reallocation lotteries shall be conducted in accordance with the lottery process of subsection C of this section except that there shall be a single lottery and no preference shall be afforded preexisting papers.

- G. Notwithstanding section 4-3-608 of this article, the denial of a news rack permit for a news rack space within the urban design program area may not be appealed to the city council if the denial is because the proposed location is on the 200_400 blocks of N. Rodeo Drive or is based on the lottery.

- H. Newsracks within the urban design program area shall be the National Newsvend model M-30 or an equivalent approved by the director of public works and shall be white aluminum RAL #9006 in color.

- I. The director of public works may promulgate policies necessary or convenient for the administration of the lottery. (Ord. 04-O-2448, eff. 6-4-2004)

