

ORDINANCE NO. 2009-027

Adopted by the Sacramento City Council

May 19, 2009

AN ORDINANCE REPEALING AND REENACTING ARTICLE V OF CHAPTER 12.44 OF THE SACRAMENTO CITY CODE RELATING TO NEWSRACKS ON THE K STREET MALL

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

BACKGROUND

Section 1 Article V of Chapter 12.44 of the Sacramento City Code is repealed and re-enacted to read as follows:

Article V. Newspaper Kiosk and Newspaper Dispensing Equipment Regulations

12.44.290 Legislative Intent.

The City Council finds and determines:

- A. K Street from 7th Street to 13th Street has nearly thirty (30) publications that are housed in roughly sixty (60) racks of varying shapes, sizes, colors and materials.
- B. Newsracks can hamper public safety and welfare by cluttering the sidewalks and obstructing the flow of pedestrian traffic. Newsracks affixed to city-owned fences, light poles, and signal poles impede maintenance to such structures. Newsracks that are not securely affixed can obstruct both pedestrian and vehicular flows when blown over or knocked down and put pedestrians, wheelchair users and drivers in danger.
- C. The proliferation of newsracks contributes to the visual blight and impedes current efforts to revitalize K Street.
- D. The ability of publishers of periodicals to distribute their publications is protected by the First Amendment to the United States Constitution.
- E. The publishers' constitutional right to distribute their publications must be balanced against the City's desire to protect the health, safety, and welfare of the public, as well as the City's efforts to eliminate blight and enhance the aesthetics of the K Street Mall.

12.44.295 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions apply in this Article V:

"Mall" shall mean the area from the western right of way line of 7th Street to the

eastern right of way line of 13th Street and from the centerline of J-K alley to the centerline of K-L alley.

"Newsrack" shall mean any newspaper kiosk, newspaper storage stand, or newspaper vending machine.

12.44.300 Prohibition of newsracks on the mall.

No newsrack shall be located or maintained upon the mall, unless the newsrack is owned by the City of Sacramento.

12.44.310 Design and location standards.

The city manager shall recommend to the City Council, and the City Council shall adopt by resolution regulations for the design, location, and management of City of Sacramento-owned newsracks installed upon the mall. The city may enter into an agreement with an outside person, agency, or organization for the maintenance and operation of the City-owned newsracks. These regulations shall, at a minimum, address: 1) The establishment of a fair and neutral lottery system to initially fill the newsracks, and an annual lottery to fill vacancies, and 2) criteria for the number and placement of newsracks upon the mall.

12.44.320 Violation.

Any newsrack placed, installed, located, or maintained in violation of the provisions of this Article is declared a public nuisance, and the city attorney is authorized to file and prosecute an action in a court of competent jurisdiction to enjoin such person from continuing such violation. Any person violating the provisions of this chapter is guilty of an infraction.

12.44.325 Removal of illegal newsracks; appeal.

- A. Removal of Newsrack by City. In addition to any enforcement remedies available to the City as set forth elsewhere in this Code, any newsrack placed, installed, located, or maintained in violation of this Article may be removed by the City subject to the notice and hearing procedures set forth in this Section.
- B. Notice of Violation. If at any time it is determined by the City Manager that any newsrack is in violation of the requirements of this Article, a "Notice of Violation" shall be issued in writing to the owner of the newsrack and posted on the newsrack or, if no identification is displayed on the newsrack, merely posted on the newsrack. The Notice shall state: (1) the violation or violations which constitute the basis of the Notice, (2) the City's intent to remove the newsrack if,

within fifteen (15) days, the owner does not remove it and an appeal has not been filed, and (3) the procedure for filing an appeal.

- C. Appeal and Hearing. The form of an appeal of a Notice of Violation and the procedures for conducting the hearing shall be governed by sections 8.04.170 through 8.04.270, inclusive, of this Code. If the hearing examiner finds that the newsrack is in violation of this Article and the owner does not remove the newsrack within ten (10) days after the written decision is served on the owner of the newsrack, the newsrack shall be removed and stored pursuant to subsections D, E, and F, below.
- D. Removal. The City shall remove and store any newsrack for which a Notice of Violation has been issued when the owner has failed to correct the violation: (1) within fifteen (15) days of issuance of the Notice, or (2) if a timely appeal has been filed, then within ten (10) days of service of a decision ordering correction of the violation under subsection C, above.
- E. Notification of Removal. The City shall notify the owner of the removal by mailing a "Notice of Removal" to the last known address of the owner. Such notice shall be mailed within five (5) days after removal of the newsrack and shall state: (1) the date the newsrack was removed; (2) the reasons for the removal; and (3) the locations of and procedure for claiming the newsrack. Notice pursuant to this section is not required if there is no record of the owner's last address or contact information.
- F. Release. Any newsrack removed and stored pursuant to these provisions shall be released to the owner upon satisfactory proof of ownership and payment of an impoundment fee in an amount established by resolution of the City Council to recover the cost to the City of removing and storing the newsrack. If such newsrack remains unclaimed after six (6) months, it may be disposed of by the City.
- G. Removal in Exigent Circumstances. If any newsrack in violation of the provisions of this Article creates an immediate danger to the health, safety, or welfare of the public, such newsrack may be summarily removed and stored by the City so as to eliminate the danger to the health, safety and welfare of the public. The City shall notify the owner of the removal by mailing a "Notice of Removal" to the last known address of the owner. Such notice shall be mailed within five (5) days after the removal of the newsrack and shall contain the same information as set forth in subsection B, above. The owner of the newsrack may request a hearing pursuant to the procedures of subsection C, above, for a determination of whether the newsrack was legally placed, and, therefore, improperly seized. If the hearing examiner determines that the seizure was improper, the City shall release the newsrack to the owner. Notice pursuant to this section is not required if there is no record of the owner's last address or contact information.
- H. Notices. Unless otherwise stated, notices required pursuant to the provisions of this section shall be given in writing by United States certified mail, return

receipt requested, addressed to the person to be notified at his or her last known address. The giving of notice under this Article shall be deemed to have occurred as of the date of deposit in the United States mail.

Section 2 Severability Clause

If any section, phrase, sentence, or other portion of Article V of Chapter 12.44 of the Sacramento City Code as enacted by the Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of Article V.

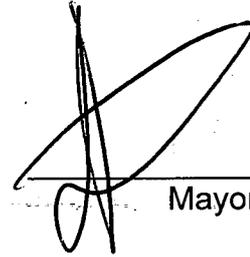
Adopted by the City of Sacramento City Council on May 19, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

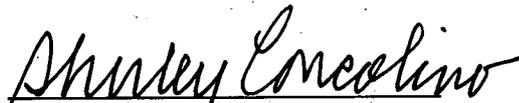
Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

Passed for Publication: May 12, 2009

Published: May 15, 2009

Effective: June 18, 2009

ORDINANCE NO. 2009-xxx

Adopted by the Sacramento City Council

(Date Adopted)

**AN ORDINANCE REPEALING AND REENACTING ARTICLE V OF
CHAPTER 12.44 OF THE SACRAMENTO CITY CODE RELATING TO
NEWSRACKS ON THE K STREET MALL**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1 Article V of Chapter 12.44 of the Sacramento City Code is repealed and re-enacted to read as follows:

Article V. Newspaper Kiosk, and Newspaper Dispensing Equipment and Light Rail Vending Device Regulations

12.44.290 Permit required Legislative Intent.

The City Council finds and determines:

- A. K Street from 7th Street to 13th Street has nearly thirty (30) publications that are housed in roughly sixty (60) racks of varying shapes, sizes, colors and materials.
- B. Newsracks can hamper public safety and welfare by cluttering the sidewalks and obstructing the flow of pedestrian traffic. Newsracks affixed to city-owned fences, light poles, and signal poles impede maintenance to such structures. Newsracks that are not securely affixed can obstruct both pedestrian and vehicular flows when blown over or knocked down and put pedestrians, wheelchair users and drivers in danger.
- C. The proliferation of newsracks contributes to the visual blight and impedes current efforts to revitalize K Street.
- D. The ability of publishers of periodicals to distribute their publications is protected by the First Amendment to the United States Constitution.
- E. The publishers' constitutional right to distribute their publications must be balanced against the City's desire to protect the health, safety, and welfare of the public, as well as the City's efforts to eliminate blight and enhance the aesthetics of the K Street Mall.

~~No newspaper kiosk, newspaper storage stand, newspaper vending machine or light rail vending device shall be located or maintained upon a mall or upon a sidewalk area within one hundred sixty (60) feet of a mall unless a permit authorizing its location at such point has been issued by the city manager.~~

12.44.295 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions apply in this Article V:

"Mall" shall mean the area from the western right of way line of 7th Street to the eastern right of way line of 13th Street and from the centerline of J-K alley to the centerline of K-L alley.

"Newsrack" shall mean any newspaper kiosk, newspaper storage stand, or newspaper vending machine.

12.44.300 Prohibition of newsracks on the mall Design and location standards.

No newsrack shall be located or maintained upon the mall, unless the newsrack is owned by the City of Sacramento. The city manager shall have the authority to establish standards for the design and location of newspaper kiosks, newspaper storage stands, newspaper vending machines and light rail vending devices which are subject to permit requirements of this chapter.

12.44.310 Design and location standards Procedures for issuance of permits.

The city manager shall recommend to the City Council, and the City Council shall adopt by resolution regulations for the design, location, and management of City of Sacramento-owned newsracks installed upon the mall. The city may enter into an agreement with an outside person, agency, or organization for the maintenance and operation of the City-owned newsracks. These regulations shall, at a minimum, address: 1) The establishment of a fair and neutral lottery system to initially fill the newsracks, and an annual lottery to fill vacancies, and 2) criteria for the number and placement of newsracks upon the mall. The procedures for the processing of permits under this article shall be substantially the same as those prescribed in Article III of this chapter for the granting of a permit for a special event.

12.44.320 Violation Permits revocable.

Any newsrack placed, installed, located, or maintained in violation of the provisions of this Article is declared a public nuisance, and the city attorney is authorized to file and prosecute an action in a court of competent jurisdiction to enjoin such person from continuing such violation. Any person violating the provisions of this chapter is guilty of an infraction. All permits issued under this article shall be revocable by the city council at any time and for any reason upon five days' written notice to the permittee.

12.44.325 Removal of illegal newsracks; appeal

A. Removal of Newsrack by City. In addition to any enforcement remedies available to the City as set forth elsewhere in this Code, any newsrack placed, installed, located, or maintained in violation of this Article may be removed by the City subject to the notice and hearing procedures set forth in this Section.

B. Notice of Violation. If at any time it is determined by the City Manager that any newsrack is in violation of the requirements of this Article, a "Notice of Violation" shall be issued in writing to the owner of the newsrack and posted on the newsrack or, if no identification is displayed on the newsrack, merely posted on the newsrack. The Notice shall state: (1) the violation or violations which constitute the basis of the Notice, (2) the City's intent to remove the newsrack if, within fifteen (15) days, the owner does not remove it and an appeal has not been filed, and (3) the procedure for filing an appeal.

C. Appeal and Hearing. The form of an appeal of a Notice of Violation and the procedures for conducting the hearing shall be governed by sections 8.04.170 through 8.04.270, inclusive, of this Code. If the hearing examiner finds that the newsrack is in violation of this Article and the owner does not remove the newsrack within ten (10) days after the written decision is served on the owner of the newsrack, the newsrack shall be removed and stored pursuant to subsections D, E, and F, below.

D. Removal. The City shall remove and store any newsrack for which a Notice of Violation has been issued when the owner has failed to correct the violation: (1) within fifteen (15) days of issuance of the Notice, or (2) if a timely appeal has been filed, then within ten (10) days of service of a decision ordering correction of the violation under subsection C, above.

E. Notification of Removal. The City shall notify the owner of the removal by mailing a "Notice of Removal" to the last known address of the owner. Such notice shall be mailed within five (5) days after removal of the newsrack and shall state: (1) the date the newsrack was removed; (2) the reasons for the removal; and (3) the locations of and procedure for claiming the newsrack. Notice pursuant to this section is not required if there is no record of the owner's last address or contact information.

F. Release. Any newsrack removed and stored pursuant to these provisions shall be released to the owner upon satisfactory proof of ownership and payment of an impoundment fee in an amount established by resolution of the City Council to recover the cost to the City of removing and storing the newsrack. If such newsrack remains unclaimed after six (6) months, it may be disposed of by the City.

G. Removal in Exigent Circumstances. If any newsrack in violation of the provisions of this Article creates an immediate danger to the health, safety, or welfare of the public, such newsrack may be summarily removed and stored by the City so as to eliminate the danger to the health, safety and welfare of the public. The City shall notify the owner of the removal by mailing a "Notice of Removal" to the last known address of the owner. Such notice shall be mailed within five (5) days after the removal of the newsrack and shall contain the same information as set forth in subsection B, above. The owner of the newsrack may request a hearing pursuant to the procedures of subsection C, above, for a determination of whether the newsrack was legally placed, and, therefore, improperly seized. If the hearing examiner determines that the seizure was improper, the City shall release the newsrack to

the owner. Notice pursuant to this section is not required if there is no record of the owner's last address or contact information.

H. Notices. Unless otherwise stated, notices required pursuant to the provisions of this section shall be given in writing by United States certified mail, return receipt requested, addressed to the person to be notified at his or her last known address. The giving of notice under this Article shall be deemed to have occurred as of the date of deposit in the United States mail.

SECTION 2 Severability Clause

If any section, phrase, sentence, or other portion of Article V of Chapter 12.44 of the Sacramento City Code as enacted by the Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of Article V.