



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
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Staff Report
May 5, 2009

**Honorable Members of
the Law and Legislation Committee**

Title: An Ordinance Repealing and Reenacting Sacramento City Code Sections 12.44.290, 12.44.300, 12.44.310, 12.44.320 and Enacting Section 12.44.325 Relating to Newsracks on the K Street Mall.

Location/Council District: K Street from 7th to 13th/ Council District 1

Recommendation: Approve and forward to City Council for adoption adding Section 12.44.325 Relating to Newsracks on the K Street Mall.

Contact: Denise Malvetti, Senior Project Manager, 808-7064 and Leslie Fritzsche, Downtown Development Manager, 808-5450

Presenter: Denise Malvetti, Senior Project Manager
Department: Economic Development

Division: Downtown Development

Organization No: 18001021

Description/Analysis

Issue: 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. Newsracks can hamper public safety and welfare by cluttering the sidewalks and obstructing the flow of pedestrian traffic. In many cases newsracks are affixed to city-owned fences, light poles, and signal poles and can 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 can put pedestrians, wheelchair users and drivers in danger. The proliferation of newsracks contributes to the visual blight and impedes current efforts to revitalize K Street.

The first phase of the K Street Streetscape project is currently under construction and will include new paving materials, street furniture, lights, trash receptacles and

landscaping. These enhancements to K Street will not be as impactful if the varied newsracks remain on K Street.

The desire to beautify K Street and protect the public's health safety and welfare must be balanced with the publisher's First Amendment right to distribute newspapers and periodicals. The proposed ordinance reduces visual blight and meets the City's aesthetic and safety needs while continuing to allow publishers to disseminate information to their audiences along K Street. Under the proposed Ordinance, the existing individual newsracks will no longer be allowed and will be removed and replaced by consistent, City-owned modular racks (Photos, Attachment 5). City staff conducted several surveys of the publications on K Street and the proposed ordinance provides space for all of them to remain.

The proposed Ordinance requires the City Manager to recommend guidelines (Exhibit A to Attachment 6) that require adoption by City Council Resolution for the design, location and management of the newsrack program.

Policy Considerations: The proposed Newsrack Ordinance supports the Merged Downtown Implementation Plan goals of eliminating blight, insisting on quality use and design and enhancing of public rights-of-way and open space.

Environmental Considerations:

California Environmental Quality Act (CEQA): The current proposal involves the replacement of newsracks in a developed area. The proposal is not a 'project' in accordance with Section 15378 of the California Environmental Quality Act Guidelines. The proposal does not have a potential for resulting in either direct or indirect physical changes in the environment. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

Sustainability Considerations: The proposed Ordinance is consistent with the City's Sustainability Master Plan because it promotes pedestrian activity by providing a clear and safe public right of way.

Commission/Committee Action: In March 2008, City Council approved the K Street Streetscape Final Design concept which included modular newsracks as a part of the street furnishings package (Attachment 4). On April 9, 2009, staff presented the proposed Ordinance to the Downtown Sacramento Partnership Strategic Development Task Force Board. The Board voted unanimously to support the proposed Ordinance.

Rationale for Recommendation: The proposed Newsrack Ordinance contributes to the revitalization of K Street and still allows for reasonable time, place and manner for distribution of publications. The Ordinance meets the publisher's need to continue distributing their materials on K Street, but the modular newsracks will

be consistent with the streetscape improvements currently underway.

Financial Considerations: The newsracks will be purchased with Merged Downtown Tax Increment funds.

Emerging Small Business Development (ESBD): Although API #1 does not require competitive bidding because staff estimates that the cost of the racks will be less than \$25,000, staff will solicit a minimum of three bids and will seek to contact small businesses who manufacture and sell newsracks.

Respectfully Submitted by:


Leslie Fritzsche
Downtown Development Manager

Recommendation Approved:


Ray Kerridge
City Manager

Table of Contents:

Report	pg. 1-3
Attachments	
1 Background	pg. 4
2 Draft Ordinance-Redline	pg. 5
3 Draft Ordinance	pg. 9
4 Street Furnishings Package	pg. 13
5 Photos	pg. 14
6 Resolution	pg. 15
A. Newsrack Guidelines (draft)	pg. 16

Attachment 1 Background

During the K Street Streetscape project community outreach process, staff continuously received comments from the community about the abundant newsracks along K Street. Numerous stakeholders expressed concern about the high concentration of newsracks along K street and their impact on pedestrian safety, visual blight, and property values. In some instances on K Street, there are more than ten (10) newsracks on a corner all of varying shapes, sizes and colors.

Ordinance No. 87-024 established Sacramento City Code Sections 12.44.290, 12.44.300, 12.44.310, 12.44.320 in 1987. The emergency Ordinance stated that no newsracks were allowed without a permit on the K Street Pedestrian Mall including a 160 foot buffer, however, a process was never established for publishers to obtain permits. Without a permitting process, the Code could never be enforced and the newsracks remained and proliferated. A new Ordinance is necessary to establish a process and limit the racks to modular racks.

The City Attorney's Office and Economic Development staff have done extensive research on other cities that have successfully approved and implemented newsrack ordinances and programs. A few of the cities that were looked at as models in developing the Ordinance are San Francisco, Los Angeles, Honolulu, Calistoga, Sunnyvale and Palo Alto.

Economic Development Department has met with various departments including the City Attorney's Office, Department of Transportation, Police and Code Enforcement to receive input on the proposed Ordinance. All departments have been supportive. City staff also met with numerous publishers and distributors who supply publications to the K Street Pedestrian Mall. They expressed their concerns about limiting distribution of publications on K Street. Staff believes that the proposed Ordinance meets the needs of both the City and Publishers by providing space for existing publications. The ordinance and subsequent guidelines establish a process for the initial implementation of a newsrack program as well as future placement and potential expansion of the program.

**Attachment 2
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.

**Attachment 3
ORDINANCE NO. 2009-xxx**

Adopted by the Sacramento City Council

(Date Adopted)

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- 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.

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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.

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12.44.310 Design and location standards.

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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.

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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

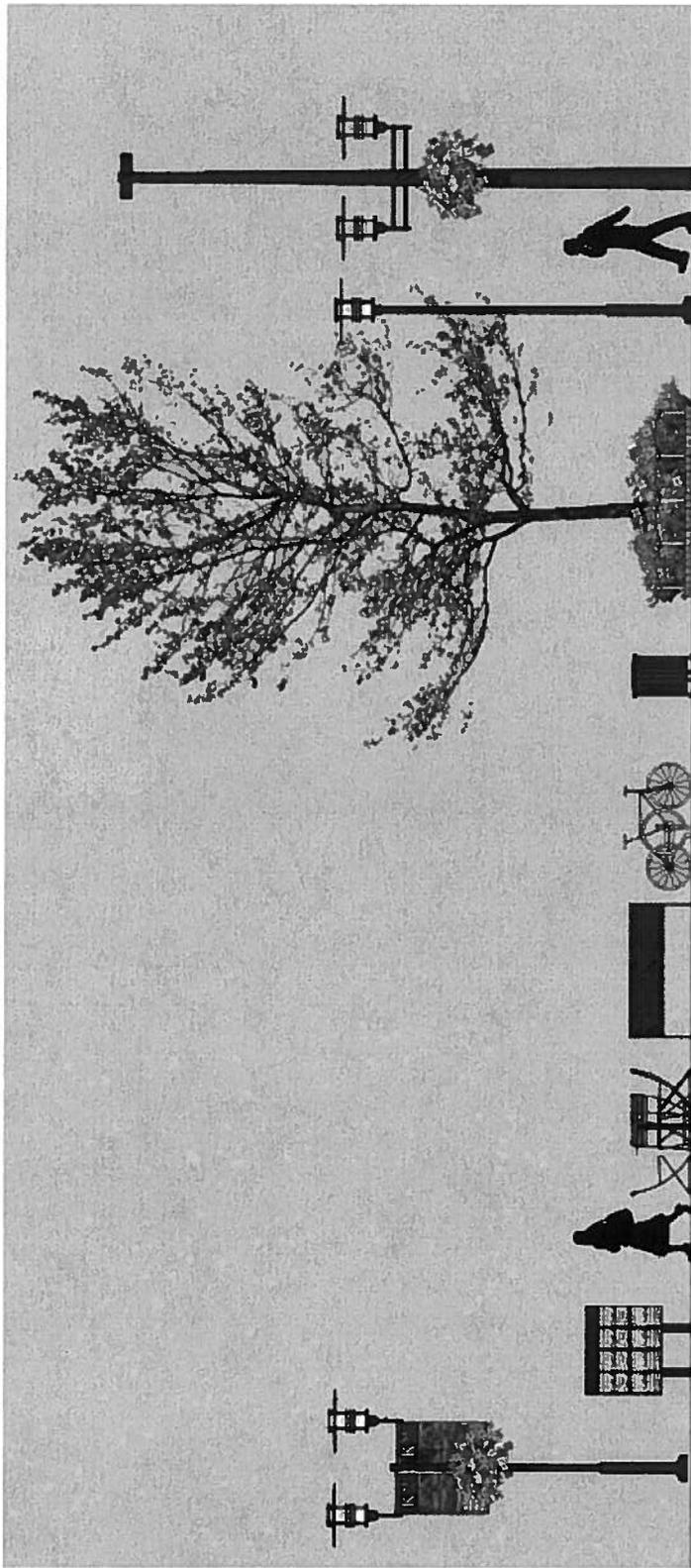
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**ATTACHMENT 4
K Street Site Furnishings**

Site Furnishings



- Corner Gate
- Marke
- Newspaper
- wedding rack
- Movable table and chair
- Bench
- Bicycle rack
- Trash and recycle receptacle
- Tree and strut planter with decorative surround
- Pedestrian light fixture
- Street and pedestrian light fixture

Walker Macy
 Interior Consulting Engineers | SWEI | Arcane Engineering | STD Design Group | Sara Wood Group | Cairn Architecture
K Street Mall Streetscape Project
 The City of Sacramento | November 2008, 2007

Attachment 5
Sample Photos - Modular Newsracks



Attachment 6

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING GUIDELINES RELATED TO NEWSRACKS ON THE K STREET MALL

BACKGROUND

- A. On _____, 2009, City Council adopted ordinance no. _____, enacting City Code sections 12.44.295 through 12.44.325 relating to newsracks on the K Street Mall. This Ordinance became effective on _____.
- B. The Ordinance requires the City Manager to recommend, and the City Council to adopt by resolution regulations for the design, location, and management of City of Sacramento-owned newsracks installed upon the Mall.
- C. The City Manager has recommended the attached guidelines that regulate the design, location and management of newsracks on the Mall.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The Guidelines recommended by the City Manager and attached hereto as Exhibit A, are adopted.

Section 2. This Resolution shall become effective upon the effective date of Ordinance _____.

Exhibit A to Attachment 6

Newsrack Program Guidelines

Definitions

All words as used in these regulations shall have the same meaning as defined in City Code sections 12.44.290, et seq.

Initial Placement

In the initial issuance of rack space, publications will be separated into three groups. The first group shall consist of all publishers who publish new and different editions of their publications two or more days a week. The second group of publications shall consist of publications who publish new and different editions of their publication one day per week. The third group will consist of all other publications published less than one day per week.

Once the publications have been divided into the three groups, publications will be selected by lottery and based on that selection process, each one according to its position after the lottery, shall select a location in the City-owned modular newsracks. The first lottery will be for the twice or more per week publications, once they have been placed, a lottery will be held for the weekly publications, and the third lottery shall consist of all remaining publications.

The initial placement will include all publications with historical presence on K Street as determined by the City survey. The City will notify publishers regarding the date of the initial lottery. Should a publisher not appear at the initial lottery, the City will assign the publication a newsrack space after the lottery and will notify the publisher of their assignment. The initial placement will be coordinated through the City's Economic Development Department.

Waiting List

Any publications that are not assigned a location during the initial placement phase, who wish to be included in the City-owned racks, shall be placed on a waiting list at request of the publisher. The City will hold an annual lottery to fill vacancies. The City will conduct an annual review of the newsrack program prior to the annual lottery to evaluate the vacancies, wait list and adequacy of space. The lottery shall be held in June of each year at City Hall, and managed by the Economic Development Department. All publishers must request placement on the waiting list prior to April 30 of each year. Late requests for the waiting list will be saved for the following year's lottery.

The first priority lottery shall be for new publications (must provide documentation that they were established since the previous lottery). Should vacant racks remain available

after the first lottery, all remaining publications on the list shall be placed in a second lottery. The "waiting list" lottery shall be governed by the same regulations as was the initial lottery.

If a new publication is on the waiting list for two lottery cycles and no vacancy becomes available, the City may seek to add a rack with approval of the Economic Development Department, the Department of Transportation and the Police Department.

The waiting list will be kept by the City's Economic Development Department. To be placed on the waiting list, please contact (916) 808-7223.

Vacancy

A newsrack shall be deemed vacant and abandoned when no printed material is contained therein for a period of more than ten (10) consecutive days. If the City Manager or designee determines that a newsrack has been abandoned the publisher shall be subject to the removal process outlined in City Code Section 12.44.325.

Maintenance

Every newsrack shall be maintained in clean and neat condition free of dents, rust, graffiti, and similar conditions that detract from the aesthetic quality of the K Street Pedestrian Mall. The City will be responsible for maintaining the newsracks upon the mall. Maintenance requests for any City-owned newsrack upon the mall should be reported to (916) 808-

Publishers are expected to do minor maintenance on their individual newsrack inserts, including the door (ie. remove graffiti, stickers, etc.). Paid publications are responsible for maintaining their locks and coin-operated devices. Publishers are responsible for insuring that only their materials are placed in their assigned newsrack insert. Publications must provide the City with a primary contact for the publisher and distributor (if applicable) so that City may contact them regarding maintenance issues. Failure to update contact information within 10 days shall be considered abandonment for the purposes of declaring a vacancy according to these guidelines.

Design

The newsrack design was selected in order to meet the City's aesthetic, public safety, health and welfare goals. Newsracks shall be primarily constructed of durable metal and must be double-stacked pedestal style to ensure that minimal space is used in the public right of way ensuring no unreasonable interference for pedestrians and wheelchairs. Each insert shall be approximately 24 inches wide, 17 ¼ inches deep, and 17 ½ inches tall. Pedestal height shall be approximately 16 inches. The total height and width occupied by each pedestal rack shall not exceed approximately 52 inches and 120 inches, respectively (no more than two (2) units high and four (4) units wide). The newsrack size requirements maximize public safety by not obstructing

pedestrian, vehicular and public safety official view corridors. To ensure that the modular units are permanently anchored to their specified locations, the racks must be mounted on fixed pedestals and bolted to the sidewalk. Permanently mounted fixtures will minimize hazards resulting from racks being blown over or knocked down in the end obstructing sidewalks and roadways. Newsracks shall not be affixed to light poles, fences, bus shelters, traffic signs, utility boxes, or any other publicly owned property. Modular racks must contain black graffiti-resistant paint to achieve the City's beautification goals and complement the new furniture and fixtures that will be installed as a part of the K Street Streetscape project. The name of each publication may only be printed on the front of the rack, either on the face plate or the door, and may not exceed the size of the publication's masthead.

Newsrack inserts may contain a single rack or a split rack that can hold up to two publications. Coin-operated inserts may only be occupied by a single paid publication. Unpaid publications, depending on size, will be placed into single or double occupancy rack.

Location

Traditionally, publishers place newsracks near intersections with high pedestrian volumes to capture the broadest audience for circulation. The City conducted numerous surveys of existing newsrack clusters on K Street and has identified nine locations for the modular racks that best meet the publishers' objectives of high pedestrian volumes and the City's goal of consolidating locations. The locations were selected based on concentration of existing publications with the goal of keeping the modular newsracks in close proximity to the existing freestanding racks. The City shall in its sole discretion select the newsrack locations. City staff shall consult with the City's Department of Transportation staff to determine that newsrack locations are placed in locations that do not obstruct pedestrian, bicycle or vehicular travel. The following locations have been identified:

7 th and K	Northeast Corner: Two, Eight (8) Rack Pedestals Southwest Corner: Six (6) Rack Pedestal
8 th and K	Northeast Corner: Four (4) Rack Pedestal
9 th and K	Northwest Corner: Eight (8) Rack Pedestal Southeast Corner: Six (6) Rack Pedestal
10 th and K	Northwest Corner: Six (6) Rack Pedestal
12 th and K	Northeast Corner: Four (4) Rack Pedestal Southwest Corner: Six (6) Rack Pedestal
13 th and K	Northwest Corner: Four (4) Rack Pedestal