

Standardizing The Placement And Maintenance Of Newsracks

Be it ordained by the City Council of Cambridge, as follows:

Whereas, the proliferation of scattered newsracks in Cambridge often block crosswalks and handicap ramps, unreasonably impede access for the use and maintenance of poles, posts, traffic signs or signals, hydrants and mailboxes, unreasonably obstruct the flow of pedestrian and vehicular traffic, unreasonably obstruct access to bus stops, taxi cab stands, valet parking areas, loading zones and fire lanes, impede emergency snow removal operations, create undue nuisances and hazards to passersby in bad weather and storms and otherwise unreasonably restrict public access and create undue perils and public safety hazards; and

Whereas, newsracks often create a visual blight due to their varying shapes and colors and disarray, and are often not properly maintained and are allowed to deteriorate, and fall into states of disrepair in which newsracks collect trash and other debris, become covered with graffiti, are tipped over, moved, cause damage to curbs, sidewalks, streets, poles, traffic signals and signs, and or remain empty and abandoned; and

Whereas, reasonable standards for the appearance, placement and maintenance of newsracks in the public way will allow for unrestricted access to crosswalks and handicapped ramps and further provide for pedestrian and driving safety and convenience by alleviating unreasonable interference with the flow of pedestrian and vehicular traffic, allow for reasonable access and use of poles, posts, traffic signs and signals, hydrants and mailboxes, bus stops, taxi stands, valet parking areas, loading zones and fire lanes, provide for the safety of the public and protection of property during times of snow emergencies and other bad weather conditions, and reduce the potential for creating perils in the way of passersby, safety hazards and visual blight that often are associated with unregulated newsracks.

Now Therefore, Be It Ordained:

Section 1. Definitions.

When used in this Ordinance, unless the context otherwise requires, the following terms shall have the following meanings:

a. Commissioner shall mean the Commissioner of the Public Works Department of the City of Cambridge or such person as said Commissioner may from time to time designate.

b. Newsrack shall mean any type of self-service device for the vending or free distribution of newspapers or periodicals.

c. Certificate of Compliance shall mean the Certificate of Compliance issued by the Commissioner to the Certificate Holder in accordance with the provisions of this Ordinance.

d. Certificate Holder shall mean the holder of a Certificate of Compliance issued by the Commissioner in accordance with the provisions of this Ordinance. A certificate holder is responsible for the installation and maintenance of newsracks encompassed by any Certificate of Compliance issued pursuant to the provisions of this Ordinance and for compliance with all provisions contained herein.

e. Operator shall mean any natural person or other legal entity including, but not limited to, corporations, partnerships, joint ventures and the like who either own, operate or are otherwise in control of a newsrack.

f. Public way shall mean any public highway, private way laid out under authority of statute, way dedicated to public use, or way under the control of park commissioners or other body having like power.

Section 2. Certificate of Compliance.

a. Requirement. No person shall place, affix, erect, constitute or maintain a newsrack in or on any part of a public way without first obtaining a certificate of compliance from the Commissioner in accordance with the provisions of this Ordinance.

b. The certificate of compliance must be renewed annually by application to the Commissioner.

c. Issuing Authority. The Commissioner shall be the issuing authority and coordinator of the application process and administration of this Ordinance.

d. Approving Authority. The approving authority shall be the Commissioner. The Commissioner or his/her designee shall review and approve for compliance with Section 2, entitled Certificate of Compliance, Section 4, entitled Standards, and Section 7, entitled Installation & Maintenance.

e. Application Process. Applicants must complete a written application on a form provided by the Commissioner.

f. Application. The application shall describe in sufficient

detail, the number, location and type of newsracks for which the Certificate of Compliance is sought and shall contain the following information:

1. the name, address and telephone number of the applicant who is the owner/operator or other person who is the principal responsible person in charge of the newsrack(s); and
 2. the name, address and telephone number of a natural person (if different from the applicant) whom the City may notify and/or contact at any time concerning the applicant's newsracks. This person would be responsible for receiving complaints and notices of violations when a certificate of compliance is issued and for providing information relating to the application during the application process; and
 3. the number of newsracks and a written description specifying the proposed approximate location of each; and
 4. a certificate of insurance naming the City of Cambridge as an additional insured in an amount sufficient to indemnify the City and hold it harmless from any and all claims or judgments for personal and bodily injury, including death, or property damage and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the design, placement, installation, operation or maintenance of any of the applicant's newsracks. Reasonable evidence of self-insurance coverage may be substituted by the applicant for the certificate of insurance. Insurance under this section shall run continuously with the presence of the applicant's newsrack in City of Cambridge public ways and any termination or lapse of such insurance shall be a violation of this Ordinance, subject to appropriate remedy under section 8 of this Ordinance; and
 5. a certification from the applicant stating that the proposed location for all of the newsracks listed in the application are in compliance with the provisions of this Ordinance.
- g. Issuance of a Certificate of Compliance. Upon a finding by the Commissioner that the applicant is in compliance with the provisions of this Ordinance, the Commissioner shall issue a certificate of compliance for installation by the applicant. The Commissioner shall issue a partial certificate of compliance upon a finding that some of the proposed newerack locations are in compliance with the provisions of this Ordinance. Issuance of a certificate of compliance or a partial certificate of compliance shall designate the applicant to be the Certificate Holder. The Commissioner shall issue a certificate of compliance within ten

days of the Commissioner's receipt of the completed application.

Proposed locations shall be approved on a first come, first serve basis by the Commissioner. No preference shall be given to applicants who might have had newsracks in a particular location prior to the effective date of this ordinance.

h. Denial of Certificate of Compliance. If an application for a newsrack location is denied, the Commissioner shall notify the applicant within ten days of the Commissioner's receipt of the completed application. The Commissioner shall state the specific reasons for denial. The applicant may reapply for a substitute alternative location without having to pay an additional application fee. An applicant who has been denied a Certificate of Compliance pursuant to this Ordinance may appeal within 30 days of such denial by requesting in writing to the Commissioner an appearance before the Commissioner to review said denial. The appeal shall be heard within twenty days of receipt of the appeal. The decision on the appeal shall be sent to the applicant within five (5) days after the hearing. Any such appeal shall be subject to the Massachusetts Administrative Procedures Act, G.L. c. 30A.

i. The Commissioner reserves the right to order by written notice to the certificate holder that newsracks be removed from an approved location, either temporarily or permanently, in the interests of public safety.

Section 3. Fees.

a. There shall be a certificate of compliance fee in the amount of two hundred (\$200.00) dollars paid to the City. This fee shall be due upon initial application and upon each annual renewal.

b. Additional Certificate of Compliance. If at any time after the Commissioner has issued a certificate of compliance a certificate holder proposes to install additional newsracks, then the provisions of Section 2 are to be repeated. Additional certificate of compliance fees shall be in accordance with Section (a), except that the certificate of compliance fee is waived if previously paid.

c. In addition to the certificate of compliance fee, an annual fee of ten (\$10.00) dollars per newsrack authorized shall be paid to the City to offset the City's cost of monitoring compliance with this ordinance.

d. Where the Commissioner has required newsracks to be set in corrals, or at hitching posts pursuant to Section 4.b below, additional fees shall be imposed by the Commissioner on certificate holders to offset the City's costs for each such corral or hitching post used by such certificate holder.

- e. Upon a showing of significant financial hardship, whereby the payment of the full certificate of compliance fee will impair the ability of the publisher to distribute a publication through newsracks to members of the public, the Commissioner may reduce the fee due upon initial application or upon an annual renewal by an amount s/he determines, in her or his sole discretion, as appropriate.

Section 4. Standards.

a. Placement. Subject to the prohibitions contained in this section newsracks shall be placed parallel to and not less than eighteen inches (18") nor more than twenty four inches (24") from the edge of the curb. Newsracks so placed shall face the sidewalk, not the street. Newsracks placed near the wall of a building or other structure must be placed parallel to and not more than six inches (6") away from the wall.

No newsrack(s) shall be affixed, erected, installed, placed, used or maintained:

1. at any location in excess of eight (8) feet in width (plus the width of a newsrack) whereby the clear space for the passage of pedestrians is reduced to less than eight (8) feet in width; or, if the sidewalk location is less than eight (8) feet in width (plus the width of a newsrack), then the clear space for the passage of pedestrians shall not be reduced to less than five (5) feet in width; however, a width of four (4) to five (5) feet may be approved by the Commissioner if requested, only after the Commissioner consults with the Pedestrian Committee and the Disabilities Commission as to whether the particular location at issue necessitates the 4-5 foot width, and whether the pedestrian passage there could safely and reasonably be reduced to a width of 4-5 feet; and
2. within five (5) feet of any marked, or unmarked crosswalk or handicapped ramp; and
3. within five (5) feet of any fire hydrant, fire lane, fire call box, police call box or other emergency facility, mail box, telephone booth or stand; and
4. within five (5) feet of any part of a curb return of a curb ramp or driveway, or in the case of a curb ramp or driveway without a curb return, within five (5) feet of the point where the curb edgestone or edging begins a change in grade toward the driveway or ramp on each side thereof, or in the case of a termination of the curb, edgestone or edging

without a change in grade or a turn, within five (5) feet of the point of the same terminates on each side of the ramp or driveway; and

5. within five (5) feet of any traffic control signal or traffic sign; and

6. within five (5) feet of a bicycle rack; and

7. within five (5) feet ahead or fifteen (15) feet to the rear of any designated bus stop, taxi stand, valet parking area, loading zone or fire lane, or any disabled parking space, unless such newsrack is placed parallel against a wall that is within four feet (4') of a designated bus stop, taxi stand, valet parking area, loading zone or fire lane and the newsrack so placed does not project into or otherwise interfere with the unobstructed flow of pedestrian and vehicular traffic;

8. which in any way protrudes onto a street; or

9. on any sidewalk immediately abutting a public school.

The Commissioner may require that newsracks at locations in which more than three (3) are adjacent shall be set within an open-ended corral installed by the City; and the Commissioner may require that newsracks at a particular location be chained to each other and/or to a permanent hitching post installed by the City. The Commissioner may choose the locations for corrals and hitching posts based on the history of misaligned or knocked over newsracks at the location, the high volume of pedestrian traffic at the location, or the relatively high concentration of newsracks at the location. However, nothing in this paragraph shall be construed to limit the locations at which corrals and hitching posts may be required.

Section 5. Attachment to Property.

a. **Attachment to Trees and Other Objects Prohibited.** Except to the extent permitted by regulations promulgated by the Commissioner, no Operator shall place or cause to be placed and no Operator shall suffer to remain any newsrack chained or otherwise attached to any tree, street light post, traffic signal or sign.

b. **Attachment to Other Newsracks.** Newsracks, when placed side

by side, may be chained or otherwise attached to one another, provided that no group of newsracks shall extend for a distance of more than eight (8) feet along a curb, and a space of not less than five (5) feet shall separate each group of newsracks.

Section 6. Advertising Prohibited.

It shall be unlawful for any Operator to use a Newsrack for advertising or publicity purposes other than that dealing with the display, sale or purchase of the publications dispensed therein.

Section 7. Installation, Maintenance, and Delivery Time.

Newsracks shall be of a sturdy material and installed or otherwise placed and maintained by the certificate holder in accordance with the following provisions:

- a. Each newsrack shall prominently display the name, address and phone number of a person or entity responsible for that newsrack.
- b. Each newsrack shall be:
 1. installed or placed on the pavement in an upright, sufficiently weighted and secure position;
 2. of a type that is completely enclosed, with a self-closing door that is either self-latching or otherwise requires manual or mechanical release at each use; and
 3. maintained in a state of good repair and in a neat and clean condition; and
 4. maintained in a condition that is free of accumulations of outdated printed materials, trash, rubbish, or debris; and
 5. handicapped accessible, as defined by the state Architectural Access Board at 521 C.M.R.
- c. Each newsrack shall be regularly serviced so that:
 1. it is kept reasonably free of graffiti; and
 2. it is kept reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof; and
 3. it is kept reasonably free of rust and corrosion in the visible unpainted metal areas thereof; and
 4. the clear glass or plastic parts thereof, if any, through which the printed material is being dispensed are not broken and are kept reasonably free of tears, peeling or

fading; and

5. the structural parts of the newsrack are not broken or unduly misshapen.

- d. Anyone disturbed by noise from the delivery of papers to any newsrack may complain to the Commissioner. The Commissioner shall forthwith notify the Certificate Holder of the complaint. The Certificate Holder shall contact the complainant and attempt to resolve the complaint. If the complaint is not resolved to the complainant's satisfaction within 10 days, the complainant may request a meeting before the Commissioner, or his/her designee, and the Certificate Holder. After such meeting, the Commissioner shall have authority to impose a reasonable resolution to the complaint, including ordering the relocation of the newsrack/s causing the noise problem.

Section 8. Enforcement Procedures.

a. Non-Conforming Newsracks. Any newsrack found not to be in compliance with this Ordinance shall be subject to the enforcement provisions contained herein.

b. Abandonment. In the event that any newsrack installed pursuant to the provisions of this Ordinance does not contain the printed material being dispensed therein for a period of seventy-two (72) hours after the release of the current issue, the Commissioner may deem the newsrack abandoned and take appropriate action under this Ordinance. A newsrack shall otherwise be deemed abandoned if no printed material is found in the newsrack for a period of more than fifteen (15) consecutive days. In the event that a certificate holder voluntarily abandons a newsrack location, the certificate holder shall so notify the Commissioner, completely remove the newsrack and restore the public way to a safe condition.

c. Enforcement.

1. Enforcement of the provisions of this Ordinance shall be carried out by the Commissioner. Upon a determination that a violation of any provision of this Ordinance exists the Commissioner shall notify the Certificate Holder of the violation in writing by first class mail. The notice shall include:

(a) the location of the newsrack; and

(b) the date of the incident or other cause giving rise to

the violation; and

(c) a brief and concise statement of the facts causing the violation.

2. The notice shall inform the certificate holder that at the expiration of ten (10) days from the receipt of the violation notice, the newsrack will be removed by the Commissioner, unless the violation is corrected.

3. Upon removal of a newsrack, the Commissioner shall send, by first-class mail, written notice of such removal to the certificate holder.

4. Notwithstanding the provisions of the foregoing paragraphs 1(a)-1(c) of this section, the Commissioner may order the immediate removal of any newsrack(s) that the Commissioner determines presents an imminent threat or peril to public safety, provided that the certificate holder, shall be notified of such removal as soon as practicable thereafter, and further provided that any newsrack so removed shall be stored a period of thirty (30) days in order to allow the certificate holder to retrieve the newsrack. If the Commissioner removes a newsrack under this section (4) which does not have a certificate of compliance, the Commissioner shall dispose of the newsrack at the end of the thirty day period.

Section 9. Fees For Removal And Storage.

a. A newsrack removed pursuant to this Ordinance may be retrieved by the certificate holder at any time within thirty (30) days of its removal upon payment of a removal fee of twenty-five (\$25.00) dollars plus a storage fee of five (\$5.00) dollars per day, to a maximum combined removal and storage fee of one hundred (\$100.00) dollars.

b. After thirty (30) days, any newsracks removed by the Commissioner pursuant to Section 8 of this Ordinance shall be deemed "abandoned property" and become the property of the City of Cambridge.

c. Failure of a certificate holder to retrieve a newsrack within the specified thirty (30) day period shall not operate to dismiss any fees owed to the City for removal and storage of such newsrack. Unpaid fees accrued pursuant to this Section 9 shall be considered a debt payable to the City.

Section 10. Regulations.

The Commissioner may, with the approval of the City Manager, promulgate such rules and regulations consistent with the provisions of this Ordinance and the laws of the Commonwealth of Massachusetts as shall carry out the purposes of this Ordinance.

Section 11. Effect On Other Laws.

Nothing in this chapter shall affect the adoption of regulations affecting newsracks by other government bodies, such as historic district commissions, to the extent such bodies are authorized to adopt such regulations.

Section 12. Severability.

The provisions of this ordinance shall be severable and if any section, part, or portion hereof shall be held invalid for any reason by any court, the decision of such court shall not affect or impair any remaining section, part or portion thereof.

Section 13. Effective Date.

This ordinance shall take effect one hundred fifty (150) days from the date of approval.