

ORDINANCE NO. 972

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, AMENDING CHAPTER 12.24 OF THE LANCASTER MUNICIPAL CODE RELATING TO NEWSRACKS

WHEREAS, Chapter 12.24 of the Lancaster Municipal Code (the “Newsrack Regulations”) establishes a comprehensive set of regulations applicable to newsracks on the public right-of-way and other public property in order to advance and improve safety and aesthetics by controlling the number, size, construction, placement and appearance of newsracks without restricting the free dispersal of information guaranteed by the Constitutions of the United States and/or the State of California; and

WHEREAS, because of the unique design, character and nature of the area commonly referred to as “The Boulevard” (which consists of that portion of Lancaster Boulevard that is bounded to the west by 10th Street West and to the east by Sierra Highway), it is necessary to modify and amend the current Newsrack Regulations with respect to newsracks located within or upon The Boulevard in order to achieve the objectives of the Newsrack Regulations, *i.e.*, to advance and improve safety and aesthetics; and

WHEREAS, pursuant to and based upon the foregoing, the City of Lancaster has determined that it is in the public interest and welfare to amend the Newsrack Regulations with respect to newsracks located within or upon The Boulevard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 12.24 of the Lancaster Municipal Code is hereby amended to read as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

Section 2. Any provision of the Lancaster Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Lancaster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

I, Geri K. Bryan, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the 8th day of November, 2011, and placed upon its second reading and adoption at a regular meeting of the City Council on the ____ day of _____, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

GERI K. BRYAN, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____,
City of Lancaster, CA do hereby certify that this is a true and correct copy of the original Ordinance No. 972, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____
day of _____, _____.

(seal)

EXHIBIT “A”

**CHAPTER 12.24
NEWSRACKS**

Sections:

12.24.010	Purpose and intent.
12.24.020	Definitions.
12.24.030	Permits.
12.24.040	Standards and specifications.
12.24.050	Sidewalk restoration.
12.24.060	Removal of newsracks.
12.24.070	Nonconforming newsracks.
12.24.080	Violation—Penalty.

12.24.010 Purpose and intent.

It is the purpose and intent of this chapter to establish a comprehensive set of regulations applicable to newsracks on the public right-of-way and other public property. The purpose of this chapter is to advance and improve safety and aesthetics by controlling the number, size, construction, placement and appearance of newsracks without restricting the free dispersal of information guaranteed by the Constitution of the United States and the state of California.

More specifically, the purpose of this chapter is to promote the public peace, morals, health, safety and general welfare by regulating the placement, appearance, servicing and insuring of newsracks so as to protect against the dangers of impairing or distracting the vision of motorists and pedestrians; the hazards of unreasonably interfering with or impeding the flow of pedestrian or vehicular traffic, including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles; unreasonably interfering with the use of public property for its intended purpose; unduly restricting access to the use of poles, posts, traffic signs or signals, hydrants, mailboxes or locations used for transportation purposes; unsightly structures; neglectful servicing of newsracks resulting in visual blight on public rights-of-way and other public property and detracting from the aesthetics of store window displays, adjacent landscaping and other improvements; reduction in value of surrounding property; unnecessary exposure of the city to personal injury or property damage claims or suits; and public dissemination and/or display of material harmful or offensive to minors.

The city council finds and determines that the interests of the public and of newspapers require a reasonable accommodation which can only satisfactorily be achieved through the means of this chapter, which is designed to accommodate such interests by regulating the time, place and manner of using newsracks. It is not the intent of this chapter to in any way discriminate against, regulate or interfere with the publication, circulation, distribution or dissemination of any newspapers.

12.24.020 Definitions.

For the purposes of this chapter, the words set out in this section shall have the following meanings:

“City” means the City of Lancaster

“City council” means the city council of the city.

“Newsrack” means any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or periodicals.

“Parkway” means that area between the edge of the sidewalk furthest from the street and the curb of any street, and where there is no sidewalk that area between the edge of the roadway and the property line adjacent thereto. Parkway also includes any area within a roadway which is not open to vehicular travel.

“Person” means any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, county, city and county, municipality, district or other political subdivision, or any other group or combination acting as a unit.

“Public property” means parks, squares, plazas and any and all other real property owned by the city.

“Right-of-way” or "rights-of-way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

“Roadway” means that portion of a street improved, designed or ordinarily used for vehicular travel.

“Sidewalk” means any surface provided for the exclusive use of pedestrians.

“Street” means all that area dedicated to public use for public street purposes and includes, but is not limited to, roadways, parkways, alleys and sidewalks.

“The Boulevard” means that portion of Lancaster Boulevard that is bounded to the west by 10th Street West and to the east by Sierra Highway.

“The Boulevard newsrack locations” means the four (4) locations within or upon The Boulevard at which newsracks may be installed, as designated by resolution of the city council.

12.24.030 Permits.

A. No person shall install or maintain any newsrack which in whole or in part rests upon, in or over any public right-of-way or other public property without first obtaining a permit therefor from the director of public works. An application for said permit shall be filed with the director of public works. The director of public works shall approve the application for a permit, provided that the applicant has satisfied all of the requirements set forth in this section and provided that the number, type, location and use of the proposed newsrack(s) complies with the requirements set forth in Section 12.24.040. An amended application for said permit shall be filed with the director of public works in the event that newsracks are removed from the city or

additional newsracks are installed in the city by the applicant subsequent to the issuing of the original permit by the city.

B. Applications for permits required by this chapter shall be filed with the director of public works upon printed forms to be prescribed and supplied by the director of public works. The application shall be signed by the applicant and shall state the following:

1. The name, address and telephone number of the applicant;
2. The number of newsracks and the proposed location of each described with sufficient specificity to allow the director of public works to evaluate the application pursuant to this chapter;
3. The nature, type and model of the newsrack(s) proposed to be installed and maintained in the city;
4. That the applicant agrees, upon expiration or revocation of the permit, to remove within seven (7) calendar days any newsrack(s) installed pursuant to such expired or revoked permit and to contemporaneously restore the public right-of-way or other public property to its condition prior to the installation or maintenance of the newsrack(s);
5. The name, address and telephone number of a responsible individual whom the city may notify or contact at any time concerning the applicant's newsrack(s);
6. Any additional information which the director of public works may deem necessary for the proper disposition of the application.

C. Prior to the issuance of a permit, the applicant shall pay an annual permit fee for each newsrack installed or maintained by the applicant. The amount of the permit fee shall cover the actual costs of processing the annual permit application and shall be established by resolution of the city council.

D. In addition to the annual permit fee payable pursuant to subsection C. of this section, each applicant shall pay an inspection fee for each newly installed, replaced or removed newsrack. The amount of the inspection fee shall cover the actual costs of inspecting the newly installed, replaced or removed newsrack and shall be established by resolution of the city council.

E. In addition to the permit application, each applicant shall also execute a document, approved as to form by the city attorney, agreeing to hold the city, its officers, employees and agents free and harmless from any claim demand or judgment in favor of any person, arising out of the location of any newsrack located upon, in or over a public right-of-way or other public property and deposit with the city clerk a certificate of insurance evidencing that a liability insurance policy in minimum amounts set by the city council has been issued, naming the city as an additional insured, and containing a provision that the policy cannot be canceled except upon twenty (20) days' written notice to the city of the fact of such cancellation. If such insurance is canceled at any time during the time the newsrack is installed or maintained on public property, said newsrack shall be removed in accordance with the provisions of this chapter.

F. Each permit shall be valid for a period of one year, and shall be renewed in the same manner set forth in this section for original applications. A permit renewal applicant must

be currently in compliance with all federal, state and local laws applicable to the use, installation and maintenance of newsracks, including but not limited to California Penal Code Section 313.1 regulating the display and sale of material which is harmful to minors, in order to be eligible for permit renewal.

G. Each permit shall be valid only as to the permittee and assignment shall be prohibited. If any permittee assigns his permit to another, the permit will be deemed revoked as of the time of the attempted assignment.

12.24.040 Standards and specifications.

A. No person shall install, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public street, or which rests, wholly or in part upon, along or over any portion of a roadway.

B. No person shall install, use or maintain any newsrack which in whole or in part rests upon, in or over any public right-of-way or other public property, when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such newsrack interferes with or impedes the flow of pedestrian, disabled persons or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location, when such newsrack interferes with the ordinary use of public property.

C. Any newsrack which in whole or in part rests upon, in, or over any public right-of-way or other public property, shall comply with the following standards:

1. Newsracks shall not exceed fifty-one (51) inches in width by twenty-four (24) inches in thickness by fifty-eight (58) inches in height and subject to the provisions of this subsection C, each newsrack shall be located with its back against a building or wall adjacent to the sidewalk, or in an area of the sidewalk or parkway no closer than eight inches or farther than three feet from the curblines. Notwithstanding the foregoing, newsracks located within or upon The Boulevard shall not exceed twenty-four (24) inches in width by sixteen (16) inches in thickness by forty-four (44) inches in height and shall not have a flat top.

2. Each newsrack, including mounts, shall be colored white, black, dark blue or green and shall be substantially made of metal, except for miscellaneous parts such as operating buttons, card inserts and view windows; provided, however, that each newsrack located within or upon The Boulevard shall be colored black gray (RAL 7021). Each newsrack shall have an affirmative mechanical closing mechanism to provide for the closing of the door through which the publication may be accessed. Such affirmative mechanical closing mechanism shall consist of either a spring, gas-powered or other similar device that will close the door by itself and without assistance.

3. Mounts shall be bolted in place in accordance with specifications provided by the public works department and only at such locations designated by the director of public works.

4. No newsrack shall be used for commercial advertising, signs or publicity purposes other than to state the name of the newspaper or periodical or advertising related to the newspaper or periodical.

5. Each newsrack shall be maintained by the permittee in clean, neat and attractive condition and in good repair so as not to become mechanically inoperable or have cracked or broken coverings or casings. All costs and expenses of installation, maintenance, replacement, removal or relocation of newspaper dispensing devices shall be borne by the permittee.

6. No person shall install, use or maintain any newsrack which shall:

a. Project onto, into or over any part of the roadway of any public street or alley open to vehicular traffic, or rest wholly or in part upon, along or over any portion of the roadway of any public street or alley open to vehicular traffic; or

b. Be attached to any parking meter, traffic signal, fire hydrant, streetlight, power pole, sign post, tree or refuse container; or

c. Be placed within four feet of any marked crosswalk; or

d. Be within fifteen (15) feet of the curb return of any unmarked crosswalk; or

e. Rest within ten (10) feet of any hydrant, fire call box, police call box, or other emergency facility; or

f. Rest within four feet of any driveway; or

g. Rest within five feet ahead of, and fifteen (15) feet to the rear of any sign marking a designated bus stop; or

h. Rest within four feet of any bus bench; or

i. Restrict the clear space for the passageway of pedestrians to less than three feet; or

j. Rest within four feet of any designated loading or unloading area; or

k. Be placed within three feet of any area improved with lawn, flowers, shrubs or trees; or within three feet of any display window or 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; or

l. At any location where the newsrack causes, creates or constitutes a traffic hazard; or

m. At any location where the newsrack unreasonably obstructs or interferes with access to or the use and enjoyment of abutting property; or

n. Where the newsrack will endanger persons or property.

7. The placement of all newsracks in the city shall comply with all local, state and federal handicapped accessibility regulations.

D. The number of newsracks at a particular corner, intersection or other location shall not exceed five; provided, however that the number of newsracks located within or upon The Boulevard shall not exceed eight, which shall consist of a maximum of two newsracks located at each of The Boulevard newsrack locations. In determining which newsracks shall be permitted, the director of public works shall be guided solely by the following criteria:

1. First priority shall be given to newsracks used for the sale of publications which have been adjudicated to be newspapers of general circulation for Los Angeles County pursuant to the procedures set forth in the Government Code Section 6020, et seq.

2. Second priority shall be given to newsracks used for the sale of daily publications published at least five or more days in a calendar week which have not been adjudicated to be newspapers of general circulation for Los Angeles County.

3. Third priority shall be given to newsracks used for the sale of weekly publications, at least one publication having been published in a calendar week which have not been adjudicated to be newspapers of general circulation for Los Angeles County.

4. Subject to the priorities listed, any publication not deemed to fall under the definitions of the above classes shall constitute a miscellaneous category and shall be eligible on a first-come, first-served basis to secure remaining available newsrack space pursuant to this chapter.

5. In the event that there is a conflict between publications within the same priority seeking the same location, and there are insufficient newsrack spaces remaining to accommodate the competing publications, after first filling as many spaces as possible by utilizing the criteria set forth above, then the director of public works or his/her designated representative shall assign the space or spaces at random by placing the names of all applicants for the remaining spaces at a location into a container from which the names shall be drawn, one at a time, until the particular locations remaining number of unfilled news-racks has been filled. Such drawing shall be open to the public at a time and date designated by the director of public works or his/her designated representative.

E. No person shall display in any public newsrack or other display device, any material which is defined by California Penal Code Section 313 as harmful to minors, unless such material is:

1. Displayed in an area from which minors are excluded; or
2. Is covered by a device, commonly known as a "blinder rack," such that the lower two-thirds of the material is not exposed to view.

F. No person shall install, use or maintain any newsrack in violation of any other provision of federal, state or local law, including but not limited to California Penal Code Section 313.1 regulating the display and sale of material which is harmful to minors.

12.24.050 Sidewalk restoration.

A. Sidewalk restoration shall be accomplished as follows:

1. The breaking of existing sidewalk structures, including drilling or setting of anchors, for the purpose of installing newsracks shall be done in such a manner as to do the

least amount of damage to the remaining sidewalk structure and shall be done with approved equipment designed for that purpose. Flush cutting anchors after the removal of a newsrack is prohibited.

2. Portland concrete cement sidewalks shall be replaced with the thickness of that removed; but in no case less than four inches and shall be of the same color and texture as the adjoining sidewalk.

3. All sidewalk reconstruction work required as a result of the installation of newsracks by the permittee shall conform to the latest edition of the Standard Specifications for Public Works Construction as amended Section 303-5, adopted by the city.

4. The permittee is responsible for the installation of newsracks. All work undertaken shall be the sole responsibility of the permit holder. Damage resulting from the installation of said newsracks shall be repaired immediately by and at the expense of the permittee. Failure to make required repairs shall result in city forces undertaking to make such repairs. The cost of repairs shall be chargeable as a civil debt to the permit holder and may be collected by the city in the same manner as it collects any other civil debt or obligation.

12.24.060 Removal of newsracks.

A. Any newsrack installed, used or maintained in violation of the provisions of this chapter may be subject to removal and storage by the director of public works. Such officer shall take steps to notify the permittee/owner thereof and request compliance within thirty (30) calendar days prior to removal. At any time within said thirty-day period an administrative hearing to challenge the existence of a violation may be requested by the permittee. Failure to request the hearing shall result in removal and storage of the newsrack(s) by the director of public works at any time after the expiration of the thirty-day period.

B. If the permittee requests a hearing as provided in subsection A of this section, said hearing shall be scheduled within five days of the request and shall be administered by the director of public works or his designee. The permittee shall have thirty (30) days from the date of any adverse ruling which may result from the hearing to comply with the provisions specified in the ruling. If after thirty (30) days from the date of decision the permittee has failed to comply with the provisions(s) of this chapter cited in the decision, the subject newsrack(s) shall be removed and stored by the director of public works.

C. The cost of removal and/or storage by the director of public works of any newsrack subject to this chapter shall be chargeable as a civil debt to the permittee thereof and may be collected by the city in the same manner as it collects any other civil debt or obligation. In addition, the newsrack(s) in question shall be deemed to be unclaimed property and may be disposed of in accordance with law.

D. The director of public works or his designee may summarily remove any newsrack where its installation, use or maintenance poses a serious and imminent danger to pedestrians or motorists, or otherwise unreasonably interferes with the safe use of the right-of-way or other public property. After removal of a newsrack as provided for herein, the city shall notify the permittee. Upon failure of the permittee to claim such newsrack(s) and to reimburse the city for the costs of removal and storage within thirty (30) calendar days of such notice, the

newsrack(s) shall be deemed unclaimed property and may be disposed of in accordance with law.

12.24.070 Nonconforming newsracks.

A. The provisions of this chapter shall apply to all newsracks whether installed and maintained prior to or after the effective date of any of the provisions herein. Those newsracks installed prior to the effective date of any provision enacted herein shall be brought into compliance with said provisions within thirty (30) days of the effective date thereof.

B. Any newsrack not brought into compliance within the aforementioned time period shall be deemed to be in violation of this Chapter.

12.24.080 Violation—Penalty.

Any person violating any of the provisions of this chapter shall be guilty of an infraction, and upon conviction thereof, shall be subject to a fine not to exceed fifty dollars (\$50.00) for a first violation; a fine not exceeding one hundred dollars (\$100.00) for a second violation of the same section within one year; a fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation of the same section within one year. Each day that such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.