

**ORDINANCE O-2009-10**

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO THROUGH THE ADOPTION OF A NEW ARTICLE VI ESTABLISHING A PERMIT SYSTEM FOR THE REGULATION OF THE INSTALLATION, LOCATION AND MAINTENANCE OF NEWSRACKS WITHIN THE CENTRAL BUSINESS DISTRICT OF THE CITY OF DURANGO AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes that the use of City rights-of-way is historically associated with the sale and distribution of newspapers and other publications, and that it is in the public interest to encourage the widespread distribution of such publications; and

WHEREAS, the uncontrolled placement or poor maintenance of newsracks and publication enclosures in City rights-of-way detracts from the appearance of the rights-of-way and surrounding areas and can be hazardous to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons providing essential utility, traffic control and emergency services; and

WHEREAS, the City's current permit system for encroachments on public rights-of-way does not adequately address the unique circumstances and challenges related to the regulation of newsracks and publication enclosures, or provide adequate criteria for determining when applications for such newsracks or publication enclosures should be issued by the City; and

WHEREAS, the City Council wishes to adopt a new set of regulations pertaining to newsracks, which, as defined herein, include real estate brochure enclosures and similar containers or dispensers for free publications, which regulations would include an annual permit requirement, together with administrative regulations which would attempt to assure that all such newsracks or enclosures are located in a manner which will minimize the disruption to pedestrian traffic and vehicular access, are well designed, and are well maintained during the permit period; and

WHEREAS, public hearing has heretofore been held before the City Council of the City of Durango, pursuant to notice, and the Council has determined, subsequent to said public hearing, that the adoption of a new Article VI to Chapter 21 of the Code of Ordinances of the City of Durango regulating newsracks within or adjacent to the public rights-of-way within the Central Business District would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

**Section 1:** That Chapter 21 of the Code of Ordinances of the City of Durango should be and the same is hereby amended through the addition of a new Article VI, which reads, in its entirety, as follows:

ARTICLE VI. NEWSRACKS AND PUBLICATION ENCLOSURES

**Sec. 21-92 Intent and Purpose.**

The purpose of this Article is to secure and promote the public health, safety and general welfare of persons using City rights-of-way by regulating the placement, appearance, size and servicing of newsracks, real estate brochure enclosures and other publication enclosures within such rights-of-way. Nothing within this Article is intended to discriminate against, or interfere with the publication, circulation, or distribution of any printed material that is constitutionally protected.

**Sec. 21-93. Definitions.**

The following words and phrases, when used in this Article shall have the meaning respectively ascribed to them unless the context otherwise clearly indicates:

*Bus Stop* shall mean the area immediately adjacent to any marked bus stop, consisting of a ten (10) foot wide strip parallel to the roadway measured from the curb or, where there is no curb, the edge of the pavement, and running from the bus stop sign for forty feet in the opposite direction of the flow of traffic.

*City right-of-way* shall mean an area dedicated to public use or impressed with an easement for public use, which is owned and maintained by the City and is primarily used for pedestrian or vehicular travel. City right-of-way shall include but not be limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking or parking strip and any public way.

*Newsrack* shall mean any self-service or coin operated box, container, storage unit or other dispenser installed, used or maintained for the display, distribution or sale of a newspaper, magazine, periodical, real estate brochure or other similar printed material. The term includes boxes or containers with multiple compartments designed for the distribution of both paid and free publications.

*Permittee* shall mean the person or entity responsible for placing and maintaining a newsrack in a City right-of-way.

*Person* shall mean any person or entity including, but not limited to, a corporation, limited liability company, partnership, limited partnership, unincorporated association or joint venture.

*Roadway* shall mean that portion of a street that is improved, designed or ordinarily used for vehicular travel.

*Sidewalk* shall mean any surface provided for the use of pedestrians.

*Street* shall mean all the area dedicated to public use for public street purposes and shall include, but not be limited to roadways, tree-lawns and sidewalks.

*Tree-lawn* shall mean the area between the sidewalk and the curb of any street or where there is no sidewalk, the area between the edge of the roadway and the property line adjacent thereto. *Tree-Lawn* shall also include any area within a roadway that is not open to vehicular travel.

**Sec. 21-94. Permit Required.**

It shall be unlawful for any person to erect, place, operate or maintain any newsrack on City-owned property or any City right-of-way without first obtaining a permit from the City Manager approving the location of such newsrack. A newsrack that is in place but has not been authorized by a valid permit issued by the City may be removed by the City, without notice, from and after July 1, 2009. The City Manager's decision whether to issue or deny issuance of a newsrack permit shall be made pursuant to the criteria within this Article and shall be made within fifteen (15) days following the date that a complete application has been submitted to the City.

**Sec. 21-95. Application for Permit; Form and Content.**

The owner of a newsrack for which a permit is sought shall submit to the City Manager a signed application in writing upon a form provided by the City, together with a certificate of insurance with a limit of not less than six hundred thousand dollars (\$600,000) per occurrence, showing the City as an additional insured, and providing coverage for any liability arising out of the operation and maintenance of the newsrack. The insurance carrier must be reasonably acceptable to the City, as determined by the City Manager. The application shall contain:

- (a) the name and address of the applicant;
- (b) the proposed location of the newsrack;
- (c) a description of the newsrack reflecting overall dimensions, the number of compartments within the newsrack, and an indication of the number of compartments designed for paid publications (*i.e.*, number that are coin operated).
- (d) the signature of the applicant; and
- (e) proof of insurance as required by this section...

**Sec. 21-96. Conditions for Issuance of Permit.**

(a) Permits shall be issued for each separate newsrack within the Central Business District, and shall not be transferrable to another person or entity, or to another location; provided however, a permittee may change the publications that are distributed through a newsrack for which a permit has been issued during the term of the permit, if the City Manager is first notified in writing of the intended change of publication, or a scheduled change of publications is set forth within the permit application. Permits will be valid for a period of twelve (12) months from their date of issuance, unless earlier revoked.

(b) No permit shall be issued unless the applicant for such permit has filed a written statement with the City Manager, in a form satisfactory to the City Attorney, agreeing to indemnify and hold harmless the City, its officers and employees, from any claim, loss, liability or damage, including expenses, costs and attorneys fees, for bodily or personal injury, including death, or property damage sustained by any person as a result of the installation, use or maintenance of any permitted newsrack within the City. The permittee's obligation to so indemnify the City and its officers and employees shall be contingent upon the City promptly notifying the permittee in writing of any such claim and delegating to the permittee all authority to control or compromise the defense of any such claim. Nothing herein shall be construed as a waiver by the City of the immunities, protections, and monetary limits of liability as provided by the provisions of the Colorado Governmental Immunity Act, 24-10-101, et seq., C.R.S., as now enacted or hereafter amended.

Upon approval of the permit application, each permittee shall pay an annual fee of thirty (\$30) for the newsrack permit. Newsracks with multiple compartments shall be considered as a single newsrack requiring only one permit, provided that the exterior dimensions of the newsrack do not exceed the limitations set forth in §21-99(c)(1). Newsracks with a footprint in excess of 5 square feet shall only be allowed upon special approval by the City Manager after consideration of the proposed location and will require multiple permits. The number of permits required shall be determined by dividing the total square footage of the newsrack footprint by 5, and rounding up to the next full number.

**Sec. 21-97. Placements of Newsracks.**

The following regulations shall apply to all newsracks placed, in whole or in part, upon, in or over any portion of City-owned property or City right-of-way:

- (a) No newsrack may be placed, installed, used or maintained:
- (1) within two (2) feet of the curb face of or pavement edge of any roadway;
  - (2) within three (3) feet of any marked pedestrian crosswalk or entrance to any public transit shelter;
  - (3) within five (5) feet of any fire hydrant, fire call box, police call box or any other emergency facility;
  - (4) on any portion of a pedestrian access ramp for disabled persons;
  - (5) within three (3) feet of any of the following:
    - a. Parking meter posts;
    - b. Traffic control cabinets;
    - c. Bicycle parking racks;
    - d. Public telephone enclosures;
    - e. Kiosks;
    - f. Public works of art;
    - g. entrances to any sidewalk café enclosure or any portion of a driveway;
  - (6) on any portion of a tree grate, utility cover, meter and/or valve box cover, vent cover for underground utilities or on any granite or other decorative sidewalk without special approval by the City Manager;
  - (7) in such a manner that the effective clear width provided for the passage of pedestrians within the sidewalk portion of the City right-of-way is less than six (6) feet;
  - (8) within the passenger boarding area of a designated bus stop;
  - (9) on landscaped areas or other pervious surface unless a concrete pad has been installed on such surface, pursuant to a permit issue by the City Manager;
  - (10) when such installation, use or maintenance endangers the safety of persons or property;
  - (11) when such site or location is used for public utility purposes, public transportation purposes or other public or governmental use incompatible with newsracks;
  - (12) when such newsrack unreasonably interferes with or impedes:
    - a. the flow of pedestrian or vehicular traffic, including parked or stopped vehicles, the ingress to or egress from any residence or place of business; or
    - b. the use or maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near said location.
- (b) The securing or attachment of newsracks to sidewalks or other public property shall only be allowed when necessary for public safety and in such event, the manner of attachment shall be approved by the City Engineer prior to any such attachment.
- (c) It shall be unlawful for any person, other than an employee or contractor of the City who is taking action pursuant to this Article, to move a newsrack without the authorization of the owner of the newsrack.

- (d) It shall be unlawful for any person to deface a newsrack.

**Sec. 21-98. Allocation of Newsrack Permits; Selection Method**

(a) The number of permits issued for newsracks within a particular block may be limited by the City Manager for purposes of preventing overcrowding or proliferation which would impede the use of such sidewalk space for pedestrian traffic, retail deliveries and other traditional uses, or which would result in the proposed placement of such newsracks in violation of the provisions of §21-97. In determining the placement of newsracks within the Central Business District, the City Manager shall, prior to the designation of placement of any newsrack, confer with adjacent business owner or owners in an effort to assure that any concerns or objections relative to newsrack location are adequately addressed.

In the event there are permit applications for a particular block within the Central Business District in excess of the number of newsrack locations available, as determined by the City Manager utilizing the criteria set forth in §21-97 and §21-98(a), permits shall be issued in the priority determined by the dates of applications submitted for that particular block. Applications that are not initially permitted due to an excessive number of applications will be granted permits as space becomes available within the block for which the application has been filed, on a first come first served basis.

(b) Multiple permit applications for the same publication within a given block within the Central Business District may be limited by the City Manager, if the result of granting such permits would be to deny a permit to an applicant for a differing publication which has no newsrack locations within that block.

(c) If the number of newsracks within a given block or area must be reduced for any reason, the last permitted newsrack shall be the first to be removed, and so on, with the first permitted to be the last removed. Any newsrack so removed shall be permitted at the nearest available location meeting the criteria of this section, which is acceptable to the permittee, without the imposition of a new permit fee.

(d) The City Manager shall have the right to require relocation of any newsrack permitted under this Article VI if the permitted location subsequently becomes a threat to the public health, safety or welfare of the community. In such event, an alternative location acceptable to the permittee shall be selected by the City Manager or, in the event such a location cannot be mutually agreed upon, the permit fee shall be refunded.

**Sec. 21-99. Construction, Size, Appearance and Maintenance of Newsracks.**

(a) Newsracks shall be constructed in such a manner as to withstand normal wear and tear and extreme weather conditions and must be finished in such a way as to provide easy and safe access by pedestrians using the public streets and sidewalks.

(b) Newsracks shall be constructed and painted or colored in a manner that allows them to be maintained free of rust, graffiti or other signs of outdoor wear and tear or abuse.

(c) Newsracks that rest upon, in or over any City right-of-way, in whole or in part, shall comply with the following standards:

- (1) Newsracks shall not exceed fifty-six (56) inches in height, twenty-four (24) inches in depth, or thirty (30) inches in width.
- (2) No newsrack may be of such size as to visually obstruct the safe movement of traffic, pedestrians or bicyclists.
- (3) No newsrack may be used to advertise anything other than the newspaper or periodical sold therein or distributed therefrom..

- (4) Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained no less than once per week so that:
  - a. it is reasonably free of dirt and grease;
  - b. it is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas;
  - c. it is reasonably free of rust and corrosion;
  - d. any clear plastic or glass parts thereof, through which the publications contained within the newsrack are viewed, are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
  - e. any paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
  - f. it is free from trash, graffiti; and
  - g. all structural parts thereof are intact.
- (5) Maintenance obligations of the newsrack permittee shall include, but not be limited to, cleaning of the newsrack, removal of any dirt, debris, snow or ice from the area surrounding the newsrack, and the clean up of any spillage of the contents of the newsrack on to the public sidewalk.
- (6) Each newsrack shall have affixed to it, in a uniform and visible location as determined by the City Manager, so as to be seen by anyone using the newsrack, a notice containing the name and address of the permittee and telephone number of a working telephone service for reporting a malfunction, securing a refund or giving notices provided for in this Article. Permittees of newsracks dispensing paid publications shall have the sole and exclusive responsibility of refunding funds paid by customers when the permitted newsrack does not function properly.

**Sec. 21-100. Handicapped Accessibility Requirements.**

All newsracks shall comply with the requirements of the Americans with Disabilities Act (ADA) and the regulations adopted thereunder and all regulations adopted by the City regulating handicapped accessibility.

**Sec. 21-101. Violations.**

(a) Upon determination by the City Manager that a newsrack has been installed, used or maintained in violation of the provisions of the Article, the City Manager may order the permittee to correct the offending condition through notification to the permittee. Any such order to correct an offending condition may be issued by telephone, sent by facsimile transmission, or sent by certified mail, return receipt requested, to the permittee. The order shall describe the offending condition, suggest actions necessary to correct the condition, and establish a date for compliance that is not less than five (5) working days from the date that the order is sent or telephoned to the permittee. The order shall inform the permittee of the right to appeal. The City Manager is authorized and empowered to remove the offending newsrack and revoke the newsrack permit if the permittee does not remove the newsrack or if the offending condition is not cured by the date set for compliance in the order. The City Manager shall cause an inspection to be made of any corrected condition of a newsrack or of a newsrack that is reinstated after removal under this section.

(b) Whenever the City Manager finds a newsrack that does not have affixed to it the name and telephone number of the permittee, the City Manager shall make reasonable efforts to ascertain who the permittee is and notify the permittee of the violation. The procedures and remedies set forth in subsection (a) of this section shall be applicable to such notification.

