

15-13-15 Newspaper or periodical Racks and Stands

A. **Intent and Purpose.** The Sandy City Council finds and declares that:

1. Findings.
 - a. The uncontrolled placement and maintenance of newsracks in public rights-of-way and private property presents an inconvenience and danger to the safety and welfare of persons using such rights-of-way and private property; including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.
 - b. Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way and private property, and unsightly newsracks located therein, constitute public nuisances.
 - c. It is a matter of public necessity that Sandy City protect children and unconsenting adults in and on its public streets, sidewalks, transportation facilities and other public rights-of-way from viewing public displays of offensive sexual material. Such displays are thrust indiscriminately upon unwilling audiences of adults and children and constitute assaults upon individual privacy.
 - d. These factors constitute an unreasonable interference with and obstruction of the use of public rights-of-way and private property, constitute an unwarranted invasion of individual privacy, are injurious to health, offensive to the senses, and constitute such an obstruction of the free use of property as to interfere in the comfortable enjoyment of life and property by the entire community.
 - e. The Council recognizes, however, that the use of such rights-of-way is so historically associated with the sale and distribution of newspapers and publications that access to those areas for such purposes should not be absolutely denied. The Council further finds that these strong and competing interests require a reasonable accommodation which can only be satisfactorily achieved through the means of this Ordinance which is designed to accommodate such interests regulating the time, place and manner of using such newsracks.
2. Purpose. The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, morals, and general welfare of persons in Sandy City in their use of public rights-of-way through the regulation of placement, appearance, number, size, and servicing of newsracks on the public rights-of-way and private property so as to:
 - a. Provide for pedestrian and driving safety and convenience;
 - b. Ensure no unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress to, or egress from, any place of business or from the street to the sidewalk;
 - c. Provide reasonable access for the use and maintenance of sidewalks, piles, posts, traffic signs and signals, hydrants, mailboxes, landscaping, and similar appurtenances, and access to locations used for public transportation purposes;
 - d. Reduce visual blight on the public rights-of-way, protect the aesthetics and value of surrounding properties, and protect the quiet of residential areas;
 - e. Protect the right to distribute information protected by the United States and the Utah State Constitutions through the use of newsracks.

3. Preservation of Constitutional Rights. It is not the intent of this Ordinance to in any way discriminate against, regulate, or interfere with the publication, circulation, distribution, or dissemination of any printed material that is constitutionally protected.

B. Definitions. As used in this Section, unless the context otherwise clearly indicates:

1. *Block* means one [1] side of a street between two [2] consecutive intersecting streets.
2. *Distributor* means the person responsible for placing and maintaining a newsrack in a public right-of-way or private property.
3. *Newsrack* means any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale or free distribution of newspapers or other news periodicals or publications.
4. *Obscene* means material which depicts or describes sexual conduct that is objectionable or offensive to accepted standards of decency which the average person, applying contemporary community standards would find, taken as a whole, appeals to prurient interests; or material which depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable State law, and taken as a whole, lacks serious literary, artistic, political, or scientific value.
5. *Parkstrip* means the area between the sidewalk and the curb of any street, and where there is no sidewalk, the area between the edge of the roadway and the property line adjacent thereto. Parkstrip shall also include any area within a roadway that is not open to vehicular travel.
6. *Roadway* means that portion of a street improved, designed, or ordinarily used for vehicular travel.
7. *Sidewalk* means any surface provided for the exclusive use of pedestrians.
8. *Street* means all the area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkstrips, alleys and sidewalks.

C. Newsracks Prohibited.

1. No person shall install, use, or maintain any newsrack which projects onto, into, or which rests, wholly or in part, upon the roadway of any public street.
2. No person shall install, use, or maintain any newsrack which projects onto, into, or which rests, wholly or in part, upon the parkstrip of any public street.
3. No person shall install, use, or maintain any newsrack which in whole or in part rests upon, in, or over any public sidewalk:
 - a. When such installation, use, or maintenance endangers the safety of persons or property;
 - b. When such site or location is used for public utility purposes, public transportation purposes, or other governmental use;
 - c. When such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including parked or stopped vehicles; the ingress in or egress from any residence or place of business; the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location;

- d. When such newsrack interferes with the cleaning of any sidewalk by the use of mechanical sidewalk cleaning machinery;
 - e. When such newsrack does not provide a minimum sidewalk clearance of six [6] feet in width or depth;
 - f. In any other manner inconsistent with or in violation of the provisions of this Ordinance.
4. No newsrack shall be chained, cabled, mounted, or otherwise attached to any post, pole, or other device used for the direction, control, identification of vehicular traffic or the conveyance of a public utility. Such devices include, but are not limited to: stop signs, street identification signs, semaphore poles, semaphore control boxes, state highway identification signs, public utility poles.
 5. No newsrack shall be located within thirty [30] feet of any street intersection.
- D. **Permit Required.** It shall be unlawful for any person, firm or corporation to erect, place, maintain or operate, on any public street or sidewalk, or in any other public way or place in Sandy City any newsrack without first having obtained a permit from the Community Development Department specifying the exact location and construction and appearance details of such newsrack.
- E. **Application for Permit.** Application for such permit shall be made, in writing, to the Community Development Department upon such form as shall be provided, and shall contain the name and address of the applicant, the proposed specific location of said newsrack, including plot plan, the structural design and color of the newsrack, listing of other joint distributors within the newsrack, a hold harmless agreement, proof of insurance, and shall be signed by the applicant. All applications shall be accompanied by payment of the newsrack fee, as set by the City Council. The fee is per location, not per application.
- F. **Condition for Permit.** Such permits shall be valid for three [3] years and shall be renewable pursuant to the procedure for original applications and upon payment of the application fee.
- G. **Hold Harmless.** Every owner of a newsrack who places or maintains a newsrack on a public sidewalk or other public property in Sandy City shall file a written statement with the Community Development Department in a form satisfactory to the City Attorney, whereby such owner agrees to indemnify and hold harmless the City, its officers, and employees, from any loss, liability, or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use and/or maintenance of a newsrack within Sandy City.
- H. **Newsrack Identification Required.** Every person or other entity which places or maintains a newsrack on a public sidewalk or other public property of the city shall have his/her or its name, address, and telephone number affixed thereto in a place where such information may be easily seen. However such information shall not take up space on the rack in excess of six square inches.
- I. **Location and Placement.** Any newsrack which rests in whole or in part upon, or on any portion of a public right-of-way or which projects onto, into, or over any part of a public right-of-way shall be located in accordance with the following provisions of this Section:
1. No newsrack shall be used or maintained which projects onto, into, or over any part of the roadway or any public street, or which rests, wholly or in part upon, along, or over any portion of the roadway or parkstrip of any public street.

2. No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, or any post, pole, semaphore, or governmental sign which may be adjacent to the right-of-way. Such prohibition includes all public utility poles, all street light poles, and other facilities placed and maintained by local, state, or federal governmental authorities.
 - a. No newsrack shall be placed, installed, used, or maintained:
 1. Within five [5] feet of any marked crosswalk.
 2. Within fifteen [15] feet of the curb return of any unmarked crosswalk.
 3. Within five [5] feet of any fire hydrant, or other emergency facility.
 4. Within five [5] feet of any driveway.
 5. Within three [3] feet ahead or twenty-five [25] feet to the rear of any sign marking a designated bus stop.
 6. Within five [5] feet of the outer end of any bus bench enclosure.
 7. At any location whereby the clear space for the passageway of pedestrians is reduced to less than six [6] feet.
 8. Within three [3] feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping, or within three [3] feet of any display window of any building abutting the sidewalk or parkstrip or in such a manner as to impeded or interfere with the reasonable use of such window for display purposes.
 9. Within one hundred [100] feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.
 10. Within fifty [50] feet of all street corners, as measured from the direction change of the inside of sidewalk at the intersection in either direction.
 11. On any access ramp for disabled persons.
 3. For locations upon private property, the newsrack shall be placed adjacent to the building, and be located near or at the main entrance to the facility. They shall not be placed in such a manner act as a billboard or similar off-premise advertising sign.
- J. **Newsrack and Stand Design.** No newsrack shall extend above 56" in height. All newsracks shall use dark brown or dark green coloring. Should the placement of more than one newspaper or periodical be desired, they will all be contained in one unit holding up to six newspapers or periodicals. Should more than six newspapers or periodical be desired, another rack or stand may be used. Individual periodical dispensers/racks may not be placed next to one another. (See paragraph L for adjacent placement requirements.)
- L. **Adjacent placement.** Newsracks may be placed next to each other provided there are more than six newspapers or periodicals that cannot be placed in one unit, with not more than six inches separating each newsrack. No more than two six unit newsracks shall be located on any public right-of-way within a space of two hundred feet in any direction within the same block.
- M. **Advertising Cards.** No news rack shall be used for advertising or display purposes except that news rack cards may be used to advertise the publication sold therein and the name of the publication may appear on the displav window.

N. **Standards for Maintenance and Installation.** Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway, shall comply with the following standards:

1. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper or news periodical sold or distributed therein.
2. Each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event the person is unable to receive the paid for publication. The coin-return mechanism shall be maintained in good working order.
3. Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack, a notice setting forth the name and address of the distributor and the telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this Ordinance.
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 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 thereof;
 - c. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon;



- d. The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
- e. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading; and
- f. The structural parts thereof are not broken or unduly misshapen.

O. **Display of Certain Matter Prohibited.** Publications offered for sale or free distribution from newsracks placed or maintained on or projecting over the street or sidewalk shall not be displayed or exhibited in a manner which exposes to public view from the street or sidewalk any of the following:

1. Any publication or material which exposes to public view any pictorial material that is obscene;
2. Any statements or words describing explicit sexual acts, sexual organs, or excrement where such statements or words have as their purpose or effect sexual arousal, gratification, or affront;
3. Any picture or illustration of a person's genitals, pubic hair, perineum, anus, or anal region where such picture or illustration has as its purpose or effect sexual arousal, gratification, or affront; or

4. Any picture or illustration depicting explicit sexual acts as defined in this Ordinance where such picture or illustration has as its purpose or effect sexual arousal, gratification, or affront.

P. **Violations.** Upon determination by the Community Development Department Director that a newsrack has been installed, used or maintained in violation of the provisions of this Ordinance, an order to correct the offending condition shall be issued to the distributor of the newsrack.

Such order shall be telephoned or made in person to the distributor and confirmed by mailing a copy of the order by certified mail return receipt requested. The order shall specifically describe the offending condition, suggest actions necessary to correct the condition, and inform the newsrack distributor of the right to appeal. Failure to properly correct the offending condition within five (5) days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the order or to appeal the order within three (3) days after its receipt shall result in the offending newsrack being summarily removed and processed as unclaimed property. If the offending newsrack is not properly identified as to owner under the provisions of Paragraph N hereof, it shall be removed immediately and processed as unclaimed property. An impound fee, which shall be measured by the City's cost and expense of impounding, shall be assessed against each newsrack summarily removed. The Community Development Department Director shall cause inspection to be made of the corrected condition or of a newsrack reinstalled after removal under this Section.

Q. **Appeals.** Any person or entity aggrieved by a finding, determination, notice, order or action taken under the provisions of this Ordinance may appeal and shall be apprised of his right to appeal to the City's Board of Adjustment. An appeal must be perfected within ten (10) days after receipt of notice of any protested decision or action by filing with the Board of Adjustment Office an application appealing the decision of the Community Development Department. Applications for such appeals are available in the Office of the Board of Adjustment, located in the Community Development Department in City Hall. The application should include a letter of appeal stating therein the basis for such appeal. The Board of Adjustment shall review and decide the appeal at a public meeting. This decision shall be immediately appealable to a court of competent jurisdiction, provided such appeal is filed within thirty [30] days after the date of decision, as specified in this Title for District Court Review of a Board of Adjustment Decision.

R. **Abandonment.** In the event that a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in this ordinance for newsracks in violation of the provisions of this Ordinance.

S. **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held 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.