

**AN ORDINANCE
OF THE
CITY OF MINNEAPOLIS**

By Remington

Amending Title 17 of the Minneapolis Code of Ordinances relating to Streets and Sidewalks, by adding a new Chapter 464 relating to *Newsracks*.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That the Minneapolis Code of Ordinances be amended by adding thereto a new Chapter 464 to read as follows:

CHAPTER 464. NEWSRACKS

464.10. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director means the Director of the Department of Regulatory Services of the City of Minneapolis, or his or her designee. It may also mean the Director of the Department of Public Works of the City of Minneapolis or his or her designee as it relates to removal and impoundment of newsracks or other issues as may be delegated to the Director of Public Works or designee by the Director of Regulatory Services or designee.

Heritage preservation district means any areas, places, or districts which have been duly designated and listed as heritage preservation districts pursuant to Minneapolis Code of Ordinances, Chapter 599.

Implementation period means the period of time elapsing after passage, approval and publication of this Chapter, but before the effective date of this Chapter, and during which time the director shall prepare and execute a plan to implement this Chapter.

Install or installed means to place, affix, erect, construct, operate or maintain a newsrack.

Newsrack means any type of unmanned device for the vending or free distribution of newspapers, news periodicals, advertising supplements, advertising periodicals, political periodicals, and similar publications.

Newsrack corral or corral means any structure designed to group newsracks in stable clusters.

Parkway means those streets and avenues that are designated as parkways and boulevards pursuant to the Minneapolis City Charter and the Minneapolis Code of Ordinances including Park Board Ordinances.

Responsible person means an individual who is listed on a master list of newsrack locations pursuant to section 464.40 and who, on behalf of an owner, may receive notice, respond to complaints, and be notified or contacted at any time concerning a Newsrack.

Owner means any person which either holds an ownership interest in or operates a newsrack that it seeks to install or has installed in the public right-of-way.

Person means any individual, person or entity, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political. Examples include a business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, proprietorship, association, cooperative, or joint venture.

Right-of-way or *public right-of-way* means the area in, on or above a public roadway, highway, street, cartway, boulevard, bicycle lane, sidewalk, parkway or alley which the city owns or over which it has an easement or interest, including other dedicated rights-of-way, for public purposes.

464.20. Purpose and criteria. The purpose of this Chapter is to promote the public health, safety and welfare through the regulation of placement, type, appearance and servicing of newsracks on public rights-of-way so as to:

(a) Provide for pedestrian and driving safety and convenience, and comply with local, state or federal handicapped accessibility regulations.

(b) Restrict unreasonable interference with the public use of the public right-of-way and with 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.

(c) Provide for the safety of people and property during periods of heavy snow, storms, and other adverse weather conditions, and for the proper functioning of the city's safety and sanitation forces.

(d) Provide reasonable access:

(1) For the use and maintenance of poles, posts, traffic signs or signals, hydrants, utility openings, delivery chutes, trash receptacles, bus or plaza benches, United States postal service mailboxes, parking meters and other public fixtures; and

(2) To locations used for public transportation purposes.

(e) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, both public and private, as well as to remove abandoned newsracks.

(f) Maintain and protect the values of surrounding properties, and protect and preserve public property.

(g) Reduce unnecessary exposure of the public to personal injury or property damage.

(h) Treat all publications equally regardless of their size, content, circulation, or frequency of publication.

(i) Maintain and preserve freedom of speech and freedom of the press.

(j) Protect and enhance the city's attraction to residents, tourists and visitors, and serve as a support and stimulus to business and industry, by enhancing the visual and aesthetic character and interest of the city.

464.30. Master list and corresponding sticker or statement required. No person shall install a newsrack on or in the public right-of-way without first submitting to the director a master list that contains the location of each newsrack and the items described in section 464.40, and without first affixing to the newsrack a sticker or statement pursuant to section 464.90(e).

464.40. Submission of master list and other items. (a) *Duties of director.* The director is responsible for fairly coordinating and administering the physical placement of newsracks as provided for in this chapter, for ensuring that the items described in this chapter are properly submitted, and for enforcing this chapter.

(b) *Submissions.* Before any newsrack may be installed, and at least every three (3) months thereafter, each newsrack owner shall submit to the director a master list, as well as any fee, hold harmless agreement, and certification required under this chapter. The master list shall specify each newsrack location in numerical order and shall contain the following information and attachments:

(1) The name, address and telephone numbers of each owner of the newsrack.

(2) The name, address and telephone number of a responsible person to whom the city may provide notice or contact at any time concerning the newsrack(s), which notice, if given, shall bind and be deemed actual notice to the owner(s) of the newsrack.

- (3) The specific location of each newsrack, listed individually and numerically, including any identifying information for the location, such as a corresponding street address and specific corner of an intersection, where applicable.
- (4) Information that allows the director to easily determine whether each newsrack location contained in the list is:
 - a. a new location (relative to the most recent master list submitted);
 - b. an existing location (relative to the most recent master list submitted); or
 - c. that a newsrack location has been removed from the list.
- (5) The fee as established pursuant to section 464.60.
- (6) A fully executed hold harmless agreement as required by this chapter.
- (7) A certification, signed by an individual with the requisite corporate or other power and authority to bind the applicant, which states that the applicant has reviewed, understands, and will comply with all requirements of this chapter, and that all information contained in the master list is truthful, accurate, complete and up-to-date.

(c) *Issuance of certificate of compliance.* Upon a finding by the director that the applicant and all owners of the newsrack are in compliance with the provisions of this chapter for

- (1) The proposed newsrack location; and
- (2) All other existing newsrack locations,

the director shall cause to be issued a certificate of compliance. Such issuance shall be made within fifteen (15) working days of the city's receipt of the completed application.

(d) *Denial of certificate of compliance.* If a certificate of compliance for one or more newsrack locations applied for shall be denied, the applicant shall receive notice of the denial in writing within fifteen (15) working days of the city's receipt of the completed application. The applicant shall be advised of the specific cause of each such denial by the director. The applicant may amend the application and reapply for the same location, or apply for a substitute alternative location, subject to a reprocessing fee for the first reapplication in an amount determined by a resolution of the City Council. Any subsequent reapplications shall be subject to the standard application fee. A denial may be appealed pursuant to section 464.70.

(e) *Additional certificate of compliance.* If, at any time after initial application for a certificate of compliance to install a newsrack, an owner wishes to install additional newsracks at additional locations, then subsections (c) and (d) above are to be repeated in accordance with the provisions of this chapter.

(f) *Lapse of unused certificates.* Any certificate of compliance not used to install a newsrack within thirty (30) days from the date of issuance shall be void and automatically deemed revoked, and the owner's newsrack shall not be installed at that location.

464.50. Risk management requirements. Prior to installation, every newsrack owner who desires to install a newsrack on a public right-of-way shall file a written agreement to indemnify and hold the city harmless. This agreement shall be in a form prescribed from time to time by the city attorney, whereby the newsrack owner, in exchange for the ability to install its newsrack on the public right-of-way, agrees to indemnify and hold harmless the city, its officers and employees from any loss, liability or damage (including costs, disbursements and attorney fees) for bodily or personal injury, including death, and for property damage sustained by any person or entity as a result of a newsrack installed on the public right-of-way.

464.60. Newsrack Fee. A newsrack fee shall be set in an amount designed to reimburse the city for all its expenses incurred in the administration and enforcement of the terms and provisions of this chapter. The fee shall only be used for such purposes. The fee may only be imposed following the preparation of a report from the director to an appropriate Committee of the City Council reasonably describing such expenses, shall be based on the number of newsracks placed in the public right-of-way by newsrack owners, and shall be established from time-to-time by resolution of the City Council.

464.70. Appeal. (a) If a newsrack owner has reasonable grounds to claim that a notice of violation or a notice of removal has been wrongfully issued or a Certificate of Compliance has been wrongfully denied and wants to appeal that determination, the appealing owner shall, within ten (10) days of receipt of the notice of violation, notice of removal, or notice of denial of the certificate of compliance demand a review by giving written notice to the director, and including in that notice any exhibits such as photographs or maps or affidavits which support the claim. No oral presentation shall be permitted, and all grounds supporting the appeal shall be provided in writing. The director shall review the claim within fifteen (15) days of receipt of notice from the appealing owner. Within fifteen (15) days of the review, the director shall provide written notice of the decision to the appealing owner. **Except for removal pursuant to 464.110(d), any action by the City to remove a newsrack shall be stayed during the ten (10) day appeal period provided by this section and during the pendency of any subsequent appeal made pursuant to this section.**

(b) If the appealing owner believes the director's decision of the appeal under section 464.70(a) is in error and wants the decision further reviewed, the appealing

owner shall file a written request for review by an administrative hearing officer pursuant to Title 1, Chapter 2 of this Code. If the appealing owner believes the administrative hearing officer's decision is in error and wants the decision further reviewed, the appealing owner may have the decision reviewed by appropriate action in a court of competent jurisdiction. Except for removal pursuant to 464.110 (d), any action by the City to remove a newsrack shall be stayed for ten (10) days following a final decision of the administrative hearing officer and during the pendency of any subsequent judicial proceeding intended to review the decision of the administrative hearing officer.

464.80. Placement generally. Newsracks may not be installed in any public right-of-way which is used regularly or intended to be used by motor vehicle traffic. Newsracks shall not be installed on bicycle trails. Subject to the prohibitions of this chapter, newsracks may be installed on public sidewalks and public pedestrian areas. The closest edge to the street of any newsrack shall be installed parallel to and not less than eighteen (18) inches nor more than twenty-four (24) inches from the edge of the curb. Newsracks may also be installed, subject to the prohibitions of this chapter, near the wall of a building if the closest edge to the building is placed parallel to and not more than six (6) inches from the wall. Newsracks shall not be installed on the side toward residential property. Every newsrack shall be installed so as to open toward the sidewalk and not toward the street.

464.90. Installation and maintenance. (a) Newsracks shall not exceed sixty (60) inches in height, including the height of any coin box on top, thirty (30) inches in width, or twenty-four (24) inches in depth. Multilevel newsracks shall be of uniform depth and width.

(b) No advertising signs or material, other than those advertising the name of the publication contained within the newsrack, shall be displayed on the outside of any newsrack.

(c) Each newsrack which receives coins shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he or she is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order.

(d) Each newsrack shall have stenciled or otherwise permanently affixed to it in a readily visible place a notice setting forth the name and address of the owner of or the responsible person for the newsrack and the telephone number to call the owner or the responsible person or to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notice provided for in this chapter.

(e) In order to verify compliance with the master list requirement in sections 464.30 and 464.40, each newsrack shall have stenciled or otherwise permanently affixed to it in a readily visible place a sticker or notice verifying that the newsrack has

been listed on a master list previously submitted to the director, and stating the month, year, and corresponding number of the newsrack on that list.

The director may, however, substitute a reasonable alternative to the "corresponding number" requirement in the preceding paragraph, provided that any such alternative must assist the director in verifying compliance with the master list requirement.

(f) 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, or replaced if necessary, so that:

- (1) it is reasonably free of dirt and grease;
- (2) it is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;
- (3) it is free of graffiti or other writing or pictures added without the permission of the owner;
- (4) it is reasonably free of rust and corrosion in the visible metal areas thereof;
- (5) 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;
- (6) the structural and solid parts thereof are not broken, do not contain holes (other than vent holes as part of the design of the newsrack), and are not unduly misshapen;
- (7) the dispensing portion of each box shall be fully enclosed and weatherproof so as to keep publications dry and free of snow and dirt;
- (8) all surfaces shall be of sturdy impact resistant materials; and
- (9) it shall contain no sharp corners or sharp protrusions.

(g) Newsracks for free publications may omit the coin box and may have the pull bar attached to the door to produce an "honor rack".

464.95. Newsrack corrals. (a) Newsrack corrals may be placed and maintained on the public sidewalks by the City at locations acceptable to the director subject to the provisions of this section. The director may approve any proposed location where, as determined by the director, substantial pedestrian traffic, sidewalk congestion or the presence of an excessive number of newsracks within close proximity

of one another suggests the need for certain limits on the number and placement of newsracks.

(b) Subject to the limitations set forth elsewhere in this chapter, the director shall develop equitable criteria to allocate space within a newsrack corral, where necessary, giving first priority to newsracks displaying publications that are then currently displayed within thirty (30) feet of such corral.

(c) Prior to installing corrals at particular locations, the director shall consult with and solicit the views of representatives of relevant city agencies, City Council, relevant neighborhood groups and entities which issue regular editions of publications distributed on the public right-of-way.

(d) Subject to the criteria established pursuant to section 464.95 (b) above, the director shall allow any person to place or maintain a newsrack within a newsrack corral, so long as such person maintains such newsrack in conformity with all requirements of this chapter and so long as such person is not prohibited from placing such newsrack at the location of such corral by any provision of this chapter.

(e) No person shall place or maintain a newsrack within a newsrack corral unless the newsrack is unobtrusively attached by plastic coated cables, plastic coated chains or otherwise to the corral so as to ensure stability of the newsrack.

(f) No person shall maintain a newsrack within twenty-five (25) feet of a newsrack corral unless the newsrack is lawfully placed within the corral at that location.

464.100. Specific prohibitions. No newsrack shall be installed:

(a) Within three (3) feet of any marked crosswalk.

(b) Within three (3) feet of any unmarked crosswalk as defined in Minnesota Statutes (2008), Section 169.011, Subdivision. 20 (1).

(c) Within ten (10) feet of any fire hydrant, fire call box, fire stand pipe, police call box or other emergency facility.

(d) On a public right-of-way where it is crossed by a public or private driveway or alley, or within five (5) feet of such public or private driveway or alley crossing, or within five (5) feet of the end of radius or side slope of such public or private driveway or alley crossing where the public or private driveway or alley enters any street or highway.

(e) Within five (5) feet ahead of, and twenty-five (25) feet to the rear of any official public transit bus sign marking a designated bus stop, measured along the edge of pavement.

(f) In or within five (5) feet of the curb in any marked truck zone, passenger loading zone, van pool loading zone, handicapped transfer zone, valet parking zone, or ambulance loading zone.

(g) Within three (3) feet of any bus bench, bus shelter, or plaza bench.

(h) At any location whereby the clear space for passageway of pedestrians is reduced to less than five (5) feet. Provided, however, that in those areas with maximum sidewalk widths on any block side of less than seven (7) feet six (6) inches, the clear space for passageway of pedestrians shall be the maximum amount possible while complying with the other provisions of this chapter, but in no event shall the clear space for passageway of pedestrians be less than four feet. In those areas with maximum sidewalk widths on any block side of less than seven (7) feet six (6) inches, there shall be no more than four (4) total newsracks on the same side of the same block whereby the clear space for passageway of pedestrians is reduced to less than five (5) feet.

(i) On any lawn or on or within twelve (12) inches of any area improved with a hedge, a boulevard garden, or flowers, or within three (3) feet of any tree.

(j) Within one and one-half (1 1/2) feet from any window of any building abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window for display purpose, unless permission has been obtained from the party having legal authority over the window, or within four (4) feet of a building entrance.

(k) On, attached to, or within two (2) feet of any traffic sign or signal, street light, hydrant, United States Postal Service mailbox, or parking meter.

(l) Chained or bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object if the property owner objects. Provided, however, that only attachment devices that do not damage the property, such as coated chains or cables, shall be used and that by attaching to such property the newsrack owner expressly agrees that the property owner may revoke the permission and may remove the chains or cables without notice and without cause at any time.

(m) By being chained to more than three (3) other newsracks. A maximum of four (4) newsracks may be chained or physically joined together in banks if each of them complies with the requirements of this chapter, and they are joined together in a manner that does not present a hazard to the public. Any bank of four (4) newsracks, whether chained or unchained, that are placed on the curb or street side of a sidewalk must be at least three (3) feet from any other newsrack, except when located within a newsrack corral pursuant to section 464.95.

In heritage preservation districts, no more than three (3) newsracks may be chained or physically joined together.

(n) In violation of local, state or federal handicapped accessibility regulations.

(o) That exceeds thirty-six (36) inches in height and is within a distance of twenty (20) feet from the nearest curb of any intersecting street as measured from a straight line extension of the nearest curb of the intersecting street prior to the beginning of the corner curb section. If there is no curb on the intersecting street, the measurement shall be made from the nearest improved surface of the intersecting street. For the purposes of this paragraph, the height limitation does not include the height of a coin box or other attachment that is attached to the top of the newsrack that is nine (9) inches in width or less and eight (8) inches in depth or less.

(p) That exceeds thirty-six (36) inches in height and is within a distance of ten (10) feet from any curb cut of any alley intersecting a street. In the absence of a curb, the measurement shall be made from the nearest improved surface of the intersecting alley. For the purposes of this paragraph, the height limitation does not include the height of a coin box or other attachment that is attached to the top of the newsrack that is nine (9) inches in width or less and eight (8) inches in depth or less.

(q) Over, above or on top of any public utility opening, delivery chute, areaway access or other access through the right-of-way.

(r) Upon any parkway, unless the adjacent property is primarily devoted to commercial or industrial uses.

(s) Within five (5) feet of the approved seating area of a permitted sidewalk cafe if the sidewalk cafe is set up.

(t) Within two (2) feet of any garbage or litter container or receptacle.

464.110. Enforcement procedures--Nonconforming newsracks. (a) Any newsrack found installed in violation of the provisions of this chapter may be tagged with a notice of violation stating the violation, date of tagging, and notice of intention to remove the newsrack if the violation is not corrected within ten (10) days and specifying the procedure for obtaining a hearing and opportunity to be heard regarding the violation using the procedures set out in section 464.70. The director shall also provide notice to the owner or responsible person thereof by sending a copy of the notice of violation to the person listed in the master list, if any, pursuant to section 464.40, or to the person listed on the notice affixed to the newsrack as required by section 464.90.

(b) The director may, as an alternative to tagging, have such newsrack(s) realigned or otherwise repositioned in order to restore them to a legal condition.

(c) Any newsrack which has been tagged and remains in violation of the provisions stated on the tag past the ten-day correction period, and for which no appeal has been requested pursuant to section 464.70 during that ten-day correction period, shall be removed and stored in a secure location.

- (1) The director shall provide notice to the owner or responsible person thereof by sending a notice of removal to the person listed in the master list, if any, pursuant to section 464.40 or to the person listed on the notice affixed to the newsrack as required by section 464.90. Such notice shall state the date the newsrack was removed, the reasons therefore, and the procedure for obtaining a post-removal hearing and opportunity to be heard regarding the removal using the appeal procedures set out in section 464.70.
- (2) Any such newsrack removed and stored pursuant to these provisions shall be released to the owner or responsible person thereof if claimed within sixty (60) days after such removal and upon the payment of reasonable charges of removal and storage. Upon failure of the owner or responsible person to claim such newsrack and pay the reasonable charges within sixty (60) days after the mailing of written notice of removal, such newsrack shall be deemed to be unclaimed or abandoned property and may be disposed of pursuant to provisions outlined in section 427.100 of the Minneapolis Code of Ordinances relating to disposition of property found in streets or as otherwise provided for unclaimed or abandoned property but without the requirement of further hearings or notices.

(d) Any newsrack in violation of the provisions of this chapter, which violation creates an immediate and substantial danger to the health, safety or welfare of the public, which violation cannot be quickly and easily corrected by moving or otherwise repositioning the newsrack, may be summarily removed and stored in a secure location so as to eliminate the danger to the health, safety and welfare of the public. The director shall promptly provide notice to the owner or responsible person as otherwise outlined in this section and allow for a post-deprivation hearing.

464.120. Abandoned newsracks. (a) A newsrack shall be deemed abandoned when no publication provided by a registered newsrack owner is in the newsrack for a period of more than thirty (30) consecutive days or when the newsrack and location have not been included on a master list as required under this chapter.

(b) In the event a newsrack owner desires to voluntarily abandon a newsrack location, the owner shall provide notice to the director, including the month and the year that the newsrack was first placed on a master list, and the corresponding master list number, and completely remove the newsrack and restore the public right-of-way to a safe condition, leaving no trace.

(c) When the director shall find an abandoned newsrack on the public right-of-way within the city, the director shall cause a notice of violation to be placed upon it pursuant to the procedures established in section 464.110.

464.130. Severability. If any section, subdivision, sentence, clause or other part of this chapter should be adjudged void or of no effect, such decision shall not affect the validity of any other portions of this chapter.

464.140. Rights of underlying fee title owner. This chapter shall not in any way limit, lessen, or derogate the rights of ownership or control, if any, of any owner of the underlying fee title of any city right-of-way covered by this chapter.

464.150. Application to other governmental units. This chapter shall not apply to other governmental units or in any way derogate their power to regulate their property or rights-of-way. All registrations under this chapter are subject to the authority of any other governmental unit.

464.160. Change of surroundings. Permission to install a newsrack on a public right-of-way is at the sufferance of the city. No property right of any kind is intended or created. The city may at any time, either pursuant to the provisions of this chapter or by ordinance amendment, withdraw or modify its permission. All permission is subject to continual compliance with the provisions of this chapter. If the physical surroundings of a newsrack, which was legally located when originally installed, change so that the newsrack can no longer comply with sections 464.80, 464.100 or any other sections of this chapter, then it shall promptly be removed by its owner and its continuing presence shall be a violation subject to remedy under section 464.110.

464.170. Implementation. The director shall implement and administer this chapter. The director shall prepare and execute a plan to implement this chapter during the implementation period consistent with the expressed purposes and provisions of this chapter and consistent with the City of Minneapolis Charter and Code of Ordinances. This plan shall be guided by the following:

(a) All determinations regarding newsracks shall be content neutral.

(b) No preference shall be given to any particular type of publication.

(c) The director may authorize the placement of warning notices on newsracks at any time during the implementation period which state that all newsracks are subject to removal on the specified effective date of this chapter unless they are in compliance with the requirements of this chapter. Each such warning notice shall contain information regarding inquiries about compliance.

464.180. Notice. Unless otherwise specifically provided for in this chapter, any notice which may be required to be or is given shall be in writing and shall be deemed received when it is either:

(a) Personally delivered, or

(b) Placed in the Certified U.S. Mail, return receipt requested.

464.190. Effective Date. This chapter shall be effective as of October 1, 2009.