

City of Houston, Texas, Ordinance No. 2007- 225

AN ORDINANCE AMENDING CHAPTERS 22 AND 40 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO PLACEMENT AND MAINTENANCE OF NEWSRACKS ON PUBLIC RIGHTS-OF-WAY; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the uncontrolled placement and maintenance of newsracks in public rights-of-way presents a danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering or exiting vehicles and buildings, and persons performing essential utility, traffic control, and emergency services; and

WHEREAS, newsracks located so as to cause a danger to persons using public rights-of-way, and unsightly newsracks located therein, such as newsracks that are poorly maintained or that have been defaced with graffiti, constitute public nuisances; and

WHEREAS, the City Council finds and declares that regulating the placement, appearance, size and servicing of newsracks on public rights-of-way is necessary to promote the public health, general welfare, and safety of persons using public rights-of-way, and to foster the aesthetics of the City; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Item (1) of Subsection (b) of Section 22-22 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(1) A person selling frozen desserts from a sanitary vehicle in full compliance with the ordinances and statutes regulating such, or a person acting in full compliance with article XX of chapter 40 of this Code;"

Section 3. That Subsection (b) of Section 40-8 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(b) It is an affirmative defense to prosecution under subsection (a) that the person is selling newspapers in full compliance with article XX of chapter 40 of this Code, that the person is operating a sidewalk café under a permit issued pursuant to section 40-10.1 of the Code, that the person is acting in compliance with a franchise granted by the city, or that the person is conducting a transaction in a public building or on public property in which transaction the city is a party, or that the person is selling food or non-food merchandise within the 'theater/entertainment district' defined in section 40-261 of this Code pursuant to a permit issued under article XI of chapter 40 of this Code."

Section 4. That Section 40-10 of the Code of Ordinances, Houston, Texas, is hereby repealed in its entirety.

Section 5. That Part 3 of Subitem j of Item (1) of Subsection (d) of Section 40-10.1 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"3. All existing sidewalk features including but not limited to utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, newsracks, and mailboxes; and"

Section 6. That Item (8) of Subsection (b) of Section 40-362 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(8) A sidewalk café authorized under section 40-10.1 of this Code, street function authorized under section 40-27 of this Code, or newsrack placed as authorized under article XX of chapter 40 of this Code."

Section 7. That Chapter 40 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XX that reads as follows:

"ARTICLE XX. NEWSRACKS

Sec. 40-451. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

Central business district means the area beginning at the intersection of the centerline of U.S. 59 and the centerline of I.H. 45; thence in a northwesterly and northerly direction along the centerline of I.H. 45 to its intersection with the centerline of I.H. 10; thence in an easterly direction along the centerline of I.H. 10 to its intersection with the centerline of U.S. 59; thence in a southwesterly direction along the centerline of U.S. 59 to its intersection with I.H. 45, the point of beginning.

Department means the convention and entertainment facilities department.

Director means director of the department or his designee.

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 distribution without charge of newspapers, periodicals, magazines or other publications.

Parking management division means the parking management division of the department.

Vending screen means any device constructed of metal or other similar permanent material installed by or with the approval of the city designed and used to obscure from view on an adjacent roadway the existence of newsracks.

Sec. 40-452. Permit and decal required.

It shall be unlawful for any person to place, maintain, or cause to be placed, or maintained a newsrack on, or projecting on, any public right-of-way without first receiving a permit from the city for the newsrack and affixing a decal evidencing such permit on the newsrack.

Sec. 40-453. Permit.

(a) **Application.** An application for a newsrack permit for one or more newsracks shall be made to the director on a form prescribed by the director, which shall include, without limitation:

- (1) The name, street and mailing address, email address, and telephone number of the applicant, which shall be the duly authorized representative of both the publisher and, if

applicable, any independent distributor authorized to service the publisher's newsrack for which the permit is sought.

- (2) The name, street and mailing address, email address, and telephone number of the distributor or other responsible person whom the city may notify or contact at any time concerning the applicant's newsrack(s).
- (3) The number of proposed newsracks and a description of the exact proposed locations.
- (4) A description of each proposed newsrack, including its dimensions and signage, and whether it contains a coin-operated mechanism.
- (5) The name and frequency of the publication proposed to be contained in each newsrack.

(b) **Separate application.** A separate application shall be required for each publication.

(c) **Issuance of permit.** If the application is properly completed and the type of newsrack and location proposed for each newsrack meets the standards set forth in this article, the parking management division shall issue a permit within 10 business days from the date the applicant files the application with the director. A single permit shall be issued for all newsracks, applied for by an applicant, that meet the standards of this article. A permit shall not be transferable.

(d) **Period of permit validity.** A permit shall be valid for three years.

(e) **Permit application fee; decal fee.** The permit application fee shall be \$300, and the decal fee shall be \$5 per newsrack. All fees imposed under this article shall be paid to the director at the time the application is filed and retained in a fund administered by the department for its parking management division.

(f) **Decal replacement.** The parking management division may require a permittee to replace a decal that has become worn, faded, defaced, or missing. The decal replacement fee shall be \$1 per decal.

(g) **Renewal.** A permit may be renewed if, prior to its expiration, the permittee pays a renewal fee of \$5 per newsrack.

(h) **Issuance of decal.** Each permittee shall be issued a pre-printed decal for each permitted newsrack, which shall be affixed to the lower right or left corner inside the window opening on the front of each newsrack.

(i) **Denial of permit.** If the application is incomplete or the type of newsrack and location proposed for a newsrack does not meet the standards set forth in this article, then the director shall deny the permit application. If the newsrack permit is denied, in whole or in part, the director shall, by certified mail or by email to the address(es) provided by the applicant, notify the applicant within 10 business days from the date of filing a completed application with the city, explaining the reasons for the denial of the permit. The applicant shall have 10 business days from the receipt of notice of a denial to correct and resubmit the application or appeal the decision, in writing, to the hearing examiner designated by the director.

(j) **Suspension or termination of permit.** The director may, following 10 business days written notice to the permittee and an opportunity to be heard, suspend or terminate a permit. Grounds for suspension or termination require a proven history of continual noncompliance with the requirements of this Code, consisting of a minimum of four (4) violations in a twelve month period for which citations have been issued under section 40-459 of this ordinance and a final judgment of guilt or a plea of nolo contendere has been entered. The period of suspension shall be at the discretion of the director, depending on the severity of the violations, not to exceed six (6) months. Where the director finds that termination is appropriate, the permittee may not apply for a new permit for a period of twelve (12) months. The decision of the director may be appealed as provided in subsection (k) of this section.

(k) **Appeal of denial, suspension, or termination.** The hearing examiner shall conduct a hearing within 30 days of receipt of the applicant's written appeal request. Written notice of the time and place of the hearing shall be provided to the applicant at least 10 business days prior to the date of the hearing. The hearing shall be conducted according to procedures promulgated by the director. The hearing examiner shall render a written decision within 15 business days after the date of the hearing. The decision of the hearing examiner shall be final.

(l) **Amendment to permit.** In the event of a change in any of the information contained in the application, the permittee shall submit the change in writing to the director. A permittee may install and maintain additional newsracks by amendment to the permit. This section shall govern the review and approval of any amendment.

(m) **Processing.** The director shall have authority to promulgate forms, rules, and procedures relating to the permitting process.

Sec. 40-454. Maintenance and display.

- (a) Any newsrack requiring a permit under this article shall:
- (1) Be in a neat and clean condition and in good repair at all times, i.e., reasonably free of dirt and grease; no chipped, faded, peeling, or cracked paint; no rust and corrosion; no broken or cracked plastic or glass parts; and no broken structural parts.
 - (2) Be constructed, installed, and maintained in a safe and secure condition.
 - (3) Be made of solid material on all sides; no wire or other open form of newsrack will be permitted.
 - (4) Be kept free of graffiti.
 - (5) Be painted or covered with a protective coating, so as to keep it free from rust and graffiti, and shall be cleaned and repaired on a regular basis.
 - (6) Other than the display of the publication contained therein, not display or be affixed with any words or pictures, except for identifying information and coin return information as required herein; however, the front and back of each newsrack may be affixed with a single sign or decal, no larger than 15 inches by 17 inches, containing only the information relating to the display, sale or distribution of the publication contained in the newsrack.
 - (7) Be affixed with identifying information, which shall contain the name, address and telephone number of the newsrack owner and of the distributor of the publication contained therein. Such information shall be placed in a visible location on the front of the newsrack, and shall be legible. The size of the identifying information shall be no larger than three inches by five inches.
 - (8) Be affixed with one face plate, no larger than four inches by seven inches, on the front or top of the newsrack near the coin-operated mechanism, if applicable, containing only the information indicating the publication's price(s) and the

acceptable coin combinations or indicating that the publication is free of charge.

(b) In addition to the requirements of subsection (a) of this section, any coin-operated newsrack requiring a permit under this article shall:

- (1) Be equipped with a coin-return device that is maintained in good repair and working order.
- (2) Display information on how to secure a refund in the event of coin return malfunction. Such information shall be placed in a visible location on the front or top of the newsrack, shall be legible, and no larger than three inches by five inches.

Sec. 40-455. Size and design standards.

(a) **Size requirements.** Any newsrack requiring a permit under this article shall have a height of not less than 36 inches and not more than 54 inches (including the base); a width of not less than 15 inches and not more than 25 inches; and a depth of not less than 12 inches and not more than 21 inches.

(b) **Physical requirements.** Any newsrack requiring a permit under this article shall meet the following requirements:

- (1) A newsrack shall be manufactured from 20-gauge or thicker zinc coated steel.
- (2) All hinge rods and springs on a newsrack shall be made of steel.
- (3) Coin mechanisms, if any, shall be housed in the body of a newsrack or in armored heads made from 12-gauge or thicker steel welded or bolted to the body of a newsrack.
- (4) A coin-operated newsrack shall have a net weight of no less than 80 pounds, when empty of publications, excluding its base. A newsrack that provides free publications shall have a net weight of no less than 50 pounds, when empty of publications, excluding its base.
- (5) A newsrack shall be attached to a concrete base or concrete base and pedestal, with a net weight of not less than 95 pounds, and the concrete base shall be 23 inches measured

from front to back and no more than 1 ½ inches beyond each side of the bottom of the newsrack, with a height of 3 inches, and shall not be decorated or colored.

- (6) The door of a newsrack shall be constructed with a window opening to display clearly the front page of the current edition, and the window opening shall be covered by plastic manufactured from no less than .060" polycarbonated clear plastic material.
- (7) Newsrack door handles shall be a loop-style handle with a minimum one-inch clearance, designed to allow a person to slip his hands easily in and out of the handle.
- (8) Newsrack door springs shall meet the tension requirements of the Americans with Disabilities Act.
- (9) The color of the entire newsrack including the coin box shall be forest green (RAL # 6009).
- (10) The design of a newsrack shall not create a danger to the persons using the newsrack.

(c) Any newsrack requiring a permit under this article shall comply with federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act, Texas Accessibility Standards, and other laws and regulations relating to barrier-free design.

Sec. 40-456. Placement and location.

(a) A person may not install, use or maintain a newsrack on any public right-of-way if the newsrack:

- (1) Endangers public safety;
- (2) Interferes with public utility, public transportation, or other governmental use; or
- (3) Interferes with or impedes:
 - a. Pedestrian or vehicular traffic;
 - b. Entry or exit from a residence or business;

- c. Access to a legally parked or stopped vehicle;
- d. Use of a traffic sign or signal, emergency call box, transit shelter, bus stop, elevator, mailbox, or other public service; or
- e. Access to use of a delivery area or loading zone.

(b) Except as otherwise provided in subsections (c), (d), and (e) of this section, a newsrack requiring a permit under this article shall be placed or maintained on any public right-of-way in compliance with the following standards:

- (1) Every newsrack shall be placed so as to open toward the sidewalk.
- (2) If multiple newsracks are permitted at the same location, all such newsracks must be placed together in a straight line and abutting adjoining newsracks; however, no group of newsracks shall extend for a distance of more than 10 feet; no group of newsracks shall be closer than four feet to another group of newsracks; and no group of newsracks shall contain more than one newsrack of the same publication.
- (3) No newsrack shall be chained or otherwise attached to another newsrack. Newsracks shall not be chained or otherwise attached to any parking meter, kiosk, trash receptacle, street light, utility pole or device, sign pole, stand pipe, transit shelter, bus bench, bus stop, or to any tree, shrub or other plant, or other structure other than the newsrack base.
- (4) No newsrack shall be placed, installed or maintained:
 - a. Within three feet of any fire hydrant, emergency call box, or other emergency facility.
 - b. Within three feet of any parking meter, bench, kiosk, trash receptacle, tree well, utility pole, signal pole, sign pole, stand pipe, or control cabinet.
 - c. Within five feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the

edge of any bus bench, or the pole sign for any designated bus stop.

- d. Within five feet of any alley, loading zone, disabled ramp or curb cut.
- e. At any location where the clear space for the passage of pedestrians after placement or installation is less than three feet, or as required by ADA Accessibility Guidelines, whichever is greater.
- f. Within three feet of or on any area of flowers or shrubs or similar landscaping, or in such a manner where ordinary use of the newsrack will cause damage to such landscaping.
- g. Within three feet of any commercial window display.
- h. Within three feet of or in such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.
- i. In such a manner as to be permanently affixed to any sidewalk, street or other city property.
- j. Within 20 feet of any crosswalk.

(c) Within the central business district:

- (1) No newsrack shall be placed or maintained:
 - a. Within ten feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the edge of any bus bench, or the pole sign for any designated bus stop.
 - b. At any location where the clear space for the passage of pedestrians is less than five feet; and
- (2) Newsracks shall be placed only on a sidewalk, near a curb, in which case, the back of the newsrack shall be placed parallel to such curb and not less than 18 inches nor more than 24

inches from the face of the curb in no parking zones, otherwise, not less than 36 inches and no more than 42 inches from the face of the curb. A newsrack placed behind a vending screen shall be exempt from this provision; however, in such instance, a newsrack may not be placed between a vending screen and the curb.

(d) Along a major thoroughfare, no newsrack shall be placed or maintained within ten feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the edge of any bus bench, or the pole sign for any designated bus stop.

(e) A newsrack requiring a permit under this article may be placed on the grassed area in the public right-of-way adjacent to a sidewalk when placement of the newsrack on the sidewalk would reduce clear passage for pedestrians in violation of subsections (b)(4)e or (c)(2) of this section.

(f) In the event the city must expand or otherwise reconfigure public right-of-way or make improvements thereto to improve the adjacent street, sidewalk, or for other public purpose, any and all newsracks displaced by such improvements shall be removed by the permittee at the permittee's sole cost and expense and in accordance with the instructions of the city. Wherever possible, and only in accordance with the requirements of this ordinance, the city shall attempt to allow the relocation of any newsracks displaced as provided herein to the newly reconfigured right-of-way without additional permit fee; provided, however, where such right-of-way will no longer accommodate newsracks in accordance with the requirements of this ordinance, the city shall not be obligated to provide alternative or other sites for such displaced newsracks.

Sec. 40-457. Abandoned newsracks.

In the event any newsrack (a) is severely damaged, or (b) remains empty for more than 31 days, the newsrack shall be deemed abandoned, and may be seized and removed in the manner as provided in section 40-458 of this Code.

Sec. 40-458. Seizure and removal of newsracks.

(a) The city may seize and remove a newsrack if the person responsible for the newsrack has failed:

- (1) To obtain a permit as required by this article;

- (2) To remedy a violation within 10 business days following the date of notice or a written decision by the hearing examiner that the newsrack was installed or maintained in violation of this article; or
- (3) To request a hearing within 10 business days following the date of notice of a violation.

(b) Other than in the instance of failing to obtain a permit as provided in (a)(1) above, before any newsrack is seized, the person responsible for its installation and maintenance shall be notified and provided 10 business days in which to remedy the violation or to request a hearing to contest the seizure.

(c) A person notified under this section may request, in writing, a hearing before a hearing examiner designated by the director.

(d) The hearing examiner shall conduct a hearing within 30 days of receipt of the applicant's written request. Written notice of the time and place of the hearing shall be provided to the applicant.

(e) The hearing shall be conducted according to procedures promulgated by the director.

(f) The hearing examiner shall render a written decision within 15 days after the date of the hearing. The decision of the hearing examiner shall be final.

Sec. 40-459. Issuance of citations.

Upon completion of appropriate training, employees designated by the police department and the parking management division are authorized to issue citations charging the violation of any provision of this article.

Sec. 40-460. Violations.

(a) Any failure to comply with any applicable provision of this article shall be an offense punishable as provided in section 1-6 of this Code.

(b) It shall be unlawful for a person, other than the permittee, to remove a decal from a newsrack.

(c) It shall be unlawful for any person to remove, take, or appropriate more than one copy of a publication from any newsrack for the purpose of

(i) selling such publication to any recycler; (ii) selling, trading or bartering such publication to anyone for payment of any kind; or (iii) depriving others of the opportunity to read or enjoy such publication. This prohibition shall not apply to an authorized representative of the owner or operator of any newsrack, or any publisher or authorized distributor of a publication."

Section 8. That, for purposes of this **Section**, the term *central business district* has the meaning ascribed in Section 40-451 of the Code of Ordinances, Houston, Texas, as established in **Section 7** of this Ordinance. The provisions of this Ordinance shall be applicable and take effect as follows:

(a) Sections 40-454 and 40-455 of the Code of Ordinances, Houston, Texas, as established in **Section 7** of this Ordinance shall take effect immediately for newsracks placed or installed in the public right-of-way anywhere within the City following passage and approval of this Ordinance; provided, such newsracks shall comply with all other provisions of Article XX of Chapter 40 of the Code of Ordinances, Houston, Texas, as adopted in **Section 7** of this Ordinance based upon their locations, as follows:

Central business district (CBD)	December 31, 2007
Outside the CBD, but within Interstate Highway 610 Loop	December 31, 2008
Outside Interstate Highway 610 Loop	December 31, 2009

(b) For newsracks located within the central business district as of the date of passage of this Ordinance, the effective date of this Ordinance shall be December 31, 2007; provided, however, that Items (6), (7), and (8) of Subsection (a) of Section 40-454, Item (2) of Subsection (b) of Section 40-454, and Item (9) of Subsection (b) of Section 40-455 of the Code of Ordinances, Houston, Texas, as established in **Section 7** of this Ordinance, shall become effective on December 31, 2008.

(c) For newsracks located outside the central business district as of the date of passage of this Ordinance, the effective date of this Ordinance shall be December 31, 2008.

(d) *Reserved.*

(e) Each owner of a newsrack shall timely apply for any permit required by Article XX of Chapter 40 of the Code of Ordinances, Houston, Texas, as adopted by this Ordinance to ensure that such newsrack is permitted and the required decal displayed on or before the effective date applicable to the newsrack.

Section 9. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, vainness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 10. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect as provided in **Section 8**, above.

PASSED AND APPROVED this 14th day of February, 2007.

Bill White
Mayor of the City of Houston

Prepared by Legal Dept. Dore Chestnam SA
 KO:asw 01/12/2007
 Requested by City Council Committee on Quality of Life
 L.D. File No. 0190400002002

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		GREEN
	✓	BERRY
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: FEB 20 2007