

ORDINANCE NO. 07-348

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, REGARDING NEWSRACKS AND AMENDING THE AGOURA HILLS MUNICIPAL CODE

The City Council of the City of Agoura Hills does ordain as follows:

Section 1. **Findings and Intent.** The City Council finds and declares that:

A. The uncontrolled placement and maintenance of newsracks in the public right-of-way constitutes a threat to the public health, safety and welfare.

B. This Ordinance establishes comprehensive newsrack regulations in order to achieve substantial government interests that include:

1. Preventing interference with the flow of pedestrian or vehicular traffic including ingress into, or egress from, any place of business or from the street to the sidewalk.

2. Ensuring reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes and similar appurtenances.

3. Ensuring reasonable access to bus stops, bus benches and bus shelters.

4. Reduction of visual blight.

5. Reduction of the City's liability exposure to personal injury and property damage claims.

6. Recovery of the City's actual administrative costs associated with implementation of the newsrack regulations.

7. The California Environmental Quality Act of 1970, as amended, ("CEQA") does not apply to the adoption of this ordinance, pursuant to the general exception for projects that do not have the potential for causing a significant effect on the environment, as set forth in Section 15061 of Article 18 of chapter 3 of Title 14 of the California Code of Regulations.

Section 2. Section 4117 of Chapter 1 of Article IV of the Agoura Hills Municipal Code is hereby amended to read as follows:

"4117. Leaving merchandise or other property in public ways; when prohibited.

No person shall leave or permit to remain on any public highway, alley, sidewalk, crosswalk or other public way open for pedestrian travel any merchandise, baggage or other article of personal property. Notwithstanding the foregoing, Chapter 4 of Article VII of this Code shall exclusively regulate the placement of newsracks in public ways."

Section 3. A new Chapter 4 is hereby added to Article VII of the Agoura Hills Municipal Code to read as follows:

**“Chapter 4
NEWSRACKS**

7401. Title.

This chapter shall be known as the “Newsrack Ordinance.”

7402. Definitions.

For the purposes of this chapter, the following words and phrases shall mean:

(a) *Abandoned* shall mean a newsrack wherein no publication or the same issue of a publication has been displayed for a period of at least forty-five (45) consecutive days.

(b) *Block* shall mean public right-of-way abutting on one (1) side of a street and lying between the two (2) nearest intersecting streets or between the nearest intersecting street and the termination of such public right-of-way.

(c) *Curb* shall mean a raised edge adjacent to a roadway between the sidewalk and the roadway.

(d) *Driveway approach* shall mean a portion of a public right-of-way, including curb returns or depressed curbs, providing vehicular access to a private roadway, building or other facility.

(e) *Explicit sexual acts* shall mean depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, sadism, masochism or excretory functions in conjunction with sexual activity, masturbation or lewd exhibition of genitals, whether any of the above conduct is depicted or described as being performed alone or between members of the same or opposite sex or between humans and animals, or any other act of sexual arousal involving any physical contact with a person’s genitals, pubic region, pubic hair, perineum, anus or anal region.

(f) *Material harmful to minors* shall mean “harmful matter” as defined in California Penal Code Section 313 as currently in effect and as may hereafter be amended.

(g) *Newsrack* shall mean a self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display, sale or distribution of a publication.

(h) *Owner* shall mean a person to whom a newsrack permit is issued.

(i) *Parkway* shall mean the area between the sidewalk and the curb of a street. Where there is no sidewalk, “parkway” shall mean the area between the edge of the roadway and the adjacent property line. “Parkway” includes any roadway area that is not open to vehicular travel.

(j) *Public right-of-way* shall mean a place of any nature that is dedicated to use by the public for pedestrian or vehicular travel. “Public right-of-way” includes without limitation: street; sidewalk; curb; gutter; intersection; parkway; highway; alley; lane; mall; court; way; avenue; boulevard; road; roadway; viaduct; subway; tunnel; bridge; thoroughfare; park; square or any similar public way.

(k) *Roadway* shall mean the portion of a street improved, designed or ordinarily used for vehicular travel.

(l) *Sidewalk* shall mean a surface improved, designed or ordinarily used for pedestrian travel.

(m) *Street* shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

7403. Newsrack Permit.

(a) Requirement. No person shall install or maintain a newsrack on any public right-of-way without first obtaining a newsrack permit for such newsrack.

(b) Application. Newsrack permit applications shall be filed with the city engineer upon a city-provided form. One application may be submitted for multiple newsracks owned by the applicant. The application shall be signed by the applicant and shall contain the following information and items:

- (1) Name, address and telephone number of the applicant.
- (2) A description of how the newsrack(s) will be installed.
- (3) A precise diagram showing the proposed location(s) for the newsrack(s).
- (4) The name of the publication(s) to be contained in the newsrack(s).

(5) A city attorney-approved written agreement obligating the applicant to indemnify, defend, and hold harmless the city and its officers, employees and agents against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies that the city shall incur or suffer as a result of the applicant's newsracks. Such obligation shall include payment of interest, penalties and legal fees.

(6) A certificate of endorsement evidencing that a comprehensive liability insurance policy has been issued for the period of the requested newsrack permit by an insurance company that both (i) is admitted and licensed to do business in the State of California; and (ii) is rated A or better according to the most recent A.M. Best Co. Rating Guide. The policy limits of such insurance shall not be less than one million dollars (\$1,000,000.00) combined single limit or equivalent. Such policy shall name the city as an additional insured; shall specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss; and shall contain a provision that no termination, cancellation or change of coverage of insured or additional insureds shall be effective until after thirty (30) days notice thereof has been given in writing to the city.

(7) Proof of receipt of a business license and/or business registration permit, or proof of application for such license or permit, if the applicant is subject to Chapters 3 or 8 of Article VI of this Code.

(c) Fee. Each newsrack permit application shall be accompanied by a nonrefundable application fee.

(d) Approval or Denial. The city engineer shall, within ten (10) city business days of the filing of a newsrack permit application, approve and issue a newsrack permit if there are no grounds for denial; otherwise the permit shall be denied in whole or in part. Notice of the approval or denial of the permit shall be given to the applicant in writing. If the application is denied in whole or in part, the city engineer shall attach to the notice a statement of the reasons for the denial and shall include a statement

indicating that the denial may be appealed by filing a written hearing request with the city clerk within ten (10) days of the notice.

(e) Grounds for Denial. The city engineer may deny a newsrack permit application, in whole or in part, for any of the following causes:

- (1) Failure to complete the application.
- (2) Knowing submission of a fraudulent statement of material fact.
- (3) Failure to comply with the standards of this chapter.

(4) Within one (1) year prior to the date of the application, the city has impounded a newsrack previously maintained by the applicant on the block listed in the application.

(f) Appeals. If the applicant timely files a written hearing request with the city clerk, then an administrative hearing regarding the propriety of the newsrack permit application denial shall be conducted. The city manager shall be hearing officer for the purpose of such procedure.

(g) Term. Newsrack permits shall expire on June 30 of each year, unless sooner nullified as a result of the impoundment of the newsrack(s) authorized by the permit. Newsrack permits issued on July 1 shall have a one (1) year term and newsracks issued after that date shall have a lesser term and will be subject to a pro-rated application fee.

7404. Design Standards.

Newsracks located on public right-of-way shall comply with the following design standards:

- (a) No newsrack shall exceed five feet (5') in height, thirty inches (30") in width or two feet (2') in thickness.
- (b) No newsrack or group of attached newsracks, including weighting devices, shall weigh in the aggregate more than one hundred thirty-five pounds (135 lbs.) when empty.
- (c) Any weighting device used to anchor a newsrack shall consist of a slab or plate composed of a uniform color solid material that is not susceptible to breaking or shattering during normal usage.

7405. Location Standards.

Newsracks located on public right-of-way shall comply with the following location standards:

- (a) Newsracks shall be placed only on the following public rights-of-way:
 - (1) 5800 block of Kanan Road, north of Thousand Oaks Boulevard, in front of 5827 Kanan Road.
 - (2) 5600 block of Kanan Road, south of Thousand Oaks Boulevard, in front of 5617 Kanan Road.

Plaza. (3) 30300 block of Canwood Street, west of Reyes Adobe Road, at Reyes Adobe

(4) 5000 block of Kanan Road at Kanan Village Center.

(5) 28700 block of Roadside Drive, at Roadside Plaza.

(6) In front of 28203 Dorothy Drive.

(b) Newsracks shall be placed adjacent and parallel to a building wall unless the city engineer has approved placement adjacent and parallel to a curb. The city engineer shall not approve placement of a newsrack adjacent and parallel to a curb unless the city engineer finds that placement of the newsrack adjacent to a building is impracticable at the location. If adjacent to a building wall, the newsrack shall be placed with the back not more than six inches (6") from the wall. If adjacent to a curb, the newsrack shall be placed between eighteen inches (18") and twenty-four inches (24") from the curb and with the back to the roadway.

(c) Newsracks shall not be placed:

(1) Within five feet (5') of any marked crosswalk.

(2) Within fifteen feet (15') of the curb return of any unmarked crosswalk.

(3) Within fifteen feet (15') of any driveway approach.

(4) Within five feet (5') of any fire hydrant, fire call box, police call box or other emergency facility.

(5) Within five feet (5') ahead of and twenty-five feet (25') to the rear of any sign marking a designated bus stop.

(6) Within five (5') of any bus bench or bus shelter.

(7) Within three feet (3') of any display 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 purposes.

(8) Within one thousand feet (1,000') of a school.

(9) At any location whereby the clear space for the passageway of pedestrians is reduced to less than four feet (4').

(d) No newsrack shall unreasonably interfere with or impede the flow of pedestrian or vehicular traffic.

(e) No newsrack shall interfere with the cleaning of any sidewalk by the use of mechanical sidewalk cleaning machinery.

(f) No newsrack shall project into a roadway.

(g) No newsrack shall interfere with or impede ingress into or egress from any residence or place of business.

7406. Concentration Standards.

Newsracks located on public right-of-way shall comply with the following concentration standards:

(a) No more than ten (10) newsracks shall be located within a space of two hundred feet (200') in any direction on a block.

(b) No more than twenty (20) newsracks shall be located on a block.

(c) In determining which newsracks shall be permitted to be located or to remain if already in place, the city engineer shall be guided solely by the following criteria:

(1) Priority will be given to completed applications for a location on a chronological basis, i.e. first come, first served.

(2) In the event of the simultaneous submission of completed applications, the number of which exceed the available newsracks allowed at that location, the city engineer shall determine priority by lot. Those not selected shall be placed on a waiting list and notified of any availability of a newsrack space at that location during the permit year. Priority shall be determined based upon the previous drawing by lot.

7407. Operation Standards.

Newsracks located on public right-of-way shall comply with the following operation standards:

(a) Each newsrack shall have conspicuously affixed thereto the owner's name, address and telephone number.

(b) Each newsrack shall have conspicuously affixed thereto the annual permit tag issued by the city.

(c) No newsrack shall be abandoned.

(d) The liability insurance required by this chapter shall not be reduced or cancelled.

(e) Signage on each newsrack shall be limited to advertising of the publication contained in the newsrack.

(f) No newsrack shall be chained, bolted or otherwise attached to any property without the express written permission of the owner of such property. No more than three (3) newsracks may be joined together, and a space of no less than eighteen inches (18") shall separate each group of three (3) newsracks so joined from any other newsrack or group of newsracks.

(g) Publications offered for sale in the newsrack shall not be displayed or exhibited in a manner that exposes to public view from public right-of-way any of the following:

(1) 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.

(2) Any picture or illustration of genitals, pubic hair, perineum, anus or anal region of any person where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront.

(3) Any picture or illustration depicting explicit sexual acts where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront.

(h) No newsrack shall display or exhibit in a public place, other than a location from which minors are excluded, any material harmful to minors unless a device commonly known as a “blinder rack” is placed in front of the materials or the material is otherwise displayed or exhibited so that the lower two-thirds (2/3) thereof is not exposed to public view.

7408. Maintenance Standards.

Newsracks located on public right-of-way shall comply with the following maintenance standards:

(a) Each newsrack shall be maintained in a clean and neat condition and in good repair at all times.

(b) Occurrence of any of the following conditions on a newsrack shall constitute evidence that the newsrack is not being maintained in a clean and neat condition or in good repair:

(1) Graffiti.

(2) Broken or unreasonably misshapen structural components.

(3) Cracks, dents or discoloration of the display window.

(4) Substantial accumulation of dirt, grease rust or corrosion.

(5) Substantial amount of chipped, faded, peeling, or cracked paint.

(6) Substantial amount of tearing, peeling or fading of any paper or cardboard parts or inserts of the newsrack.

7409. Summary Impoundment.

The city engineer may summarily impound any newsrack that poses an imminent danger to pedestrians or vehicles. On the day of such impoundment, the city engineer shall send the owner identified on the newsrack written notice of the seizure and the opportunity for an administrative hearing. If the owner files a written hearing request with the city clerk within ten (10) days of such notice, then an administrative hearing regarding the propriety of the summary impoundment shall be conducted. The city manager shall be the hearing officer for the purpose of such procedure.

7410. Non-Summary Impoundment.

Whenever any newsrack is found to be in violation of this chapter, but the violation does not present an imminent danger to pedestrians or vehicles, the city engineer shall affix a notice of violation tag upon such newsrack and shall send a written notice of violation to the owner identified on the newsrack. The notice shall state the nature of the violation and shall indicate that failure to correct the violation or to file a written hearing request with the city clerk within ten (10) days may result in impoundment of the newsrack. The city engineer may impound such newsrack if the owner has not corrected the violation or filed a written hearing request within the allotted period. If the owner timely files a written hearing request with the city clerk, then an administrative hearing regarding the existence of the violation shall be conducted. The city manager shall be the hearing officer for the purpose of such procedure. The newsrack may be impounded following such hearing if the city manager determines that the newsrack is in violation of this chapter.

7411. Administrative Hearing.

(a) Administrative hearings shall be conducted in accordance with procedures established by the city manager. All parties involved shall have a right to: (i) offer testimonial, documentary and tangible evidence bearing on the issues; (ii) be represented by counsel; and (iii) confront and cross-examine witnesses. The city manager shall not be bound by formal rules of evidence and may receive, under penalty of perjury, any relevant evidence that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing may be continued for a reasonable time for the convenience of a party or a witness. Unless otherwise specifically provided by law, the burden is on the city to prove that the determination that is being appealed is reasonable and not an abuse of discretion.

(b) The city manager may uphold, overturn or modify the decision being appealed. The city manager shall, within thirty (30) city business days of the appeal filing date, render a written decision supported by findings. The city manager's decision shall be final and shall not be subject to council review. Notice of the decision and a copy thereof shall be mailed to the appellant. Such notice shall contain the substance of the following statement: "You are hereby notified that the time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure Section 1094.8."

7412. Return of Impounded Newsracks.

(a) Newsracks that have been summarily impounded shall be returned to the owner without charge if a timely hearing request was filed and the city manager determined that the seizure was improper. Otherwise such newsracks shall be returned upon filing of a written request and payment of the impound fee within thirty (30) days of the date of the seizure or, if applicable, the date of the city manager's administrative hearing decision upholding the impoundment.

(b) Newsracks that have been non-summarily impounded shall be returned to the owner upon filing of a written request and payment of the impound fee within thirty (30) days of the date of the impoundment.

(c) The amount of the impound fee shall be set by city council resolution.

7413. Disposal of Impounded Newsracks.

The city engineer may sell or otherwise dispose of any impounded newsrack provided that both (i) thirty (30) days have elapsed since the impoundment or city manager decision affirming the impoundment; and (ii) the owner of the newsrack has failed to pay the impound fee. The proceeds of such disposal shall be deposited in the city's general fund.

7414. Fees.

The fees provided for in this chapter shall be established by city council resolution and shall not exceed the city's actual administrative costs.

Section 4. Severability Clause. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that this Ordinance, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED, this ____ day of _____, 2007.

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

Dan Kuperberg, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk