

**ORDINANCE NO. 18-001**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE  
AMENDING CHAPTER 11.64 OF THE PACIFIC GROVE  
MUNICIPAL CODE REGARDING NEWSRACKS**

**FINDINGS**

1. Newsracks placed on or within public rights-of-way are historically associated with sale and distribution of newspapers, periodicals, and other publications; and
2. Uncontrolled design, placement, installation, or maintenance of newsracks on and within the public rights-of-way can interfere with and obstruct use of public rights-of-way, can interfere with safe passage of pedestrians or vehicles, and can obstruct and interfere with safe and reasonable use of private property adjoining or in the vicinity of public rights-of-way; and
3. Public health, safety, welfare, and convenience require that interference with vehicular, bicycle, wheelchair, or pedestrian traffic must be avoided; obstruction of sight distance and views of traffic signs and crosswalks must be eliminated; damage done to sidewalks or streets must be minimized and repaired; good appearance of the public streets and grounds must be maintained; trees and landscaping must be allowed to grow without disturbance; access to emergency and other public facilities must be maintained; and ingress and egress from properties adjoining the public rights-of-way must be protected; and
4. Newsrack placement should promote and not interfere with protections set by the Americans with Disabilities Act ("ADA"; 11 USC 12101 et seq.); and
5. Available space for newsrack installation is limited; considerable public demand exists for space to distribute publications and other materials. This limited space is best assigned and used for newsrack placement in accord with a uniform regulatory process; and
6. The public interest is promoted when all newsracks are of uniform and coordinated construction and appearance; and
7. The City has a compelling interest in protecting the physical and psychological well-being of minors; this interest extends to shielding minors from the influence of literature that is not obscene by adult standards but which is harmful to minors; and
8. This Chapter shall encourage installation of newsracks and balance the foregoing interests through regulation of the time, place, and manner of placement, installation and maintenance of any newsrack within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Chapter 11.64, of Title 11 of the Pacific Grove Municipal Code is deleted in its entirety; in its place the following provisions of Chapter 11.64 shall be enacted:

**Chapter 11.64  
NEWSRACKS**

Sections:

- 11.64.010 Purpose**
- 11.64.020 Definitions**
- 11.64.030 Permit – Required**
- 11.64.040 Permit Application**
- 11.64.050 Permit –Issuance- Renewal**
- 11.64.060 Identification on Newsrack Required**
- 11.64.070 Liability –Indemnification**
- 11.64.080 Newsrack Requirements**
- 11.64.090 Use of Newsracks Required**
- 11.64.100 Abandonment Newsracks, Newsrack Space**
- 11.64.110 Removal - Hearing**
- 11.64.120 Nuisance/ Cumulative Remedies**
- 11.64.130 Compliance by Existing Owners**

**11.64.010 Purpose**

This chapter establishes a permitting process, and sets standards to regulate design, placement, installation, or maintenance of newsracks in the City. This chapter sets regulations to ensure enforcement of these standards, and collection and payment of appropriate fees. In its enactment of the ordinance to add this Chapter to the Municipal Code, the City Council approved specific Findings of Fact related to the need, purpose and scope of this Chapter. Those Findings adopted by the City Council are incorporated by reference as though each was set forth in fully in this Code.

**11.64.020 Definitions**

For this chapter, the following words are defined as follows:

“Abandoned newsrack or newsrack space” is any newsrack or newsrack space which remains empty for 30 calendar days or more, except that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack or newsrack space shall not be deemed abandoned.

“City Manager” means the City Manager or his or her designee.

“Highway” means all area dedicated to public use for public street purposes and includes, but is not limited to, roadways, parkways, parking lots, alleys and sidewalks.

“Newsrack(s)” means any self-service, coin-operated or credit card-activated box, container, storage unit, kiosk, or other dispenser installed, used or maintained for the sale or distribution of newspapers, news periodicals, magazines, or other news or informational publications.

“Newsrack space” means the area within a newsrack accessed by one or more publications placed by publishers or distributors, and intended for retrieval by customers or members of the public.

“Full Newsrack Space” means space to accommodate a full size publication such as a complete newspaper or publications at minimum 11 by 11 inches in size.

“Half Newsrack Space” means space to accommodate publications less than full size, such as a magazine or publications smaller than 11 by 11 inches in size.

“Parkway” means that area between the edge of the roadway and the adjacent property line, excluding that area occupied by the sidewalks. Parkway shall also include any area within a roadway which is not open to vehicular travel.

“Roadway” means that portion of the public right-of-way improved, designed or ordinarily used for vehicular travel.

“Sidewalk” means any surface provided for the exclusive use of pedestrians.

#### **11.64.030 Permit – Required**

No person shall place, install, maintain, or cause to be placed, installed, or maintained a newsrack on, within, or projecting into a public right-of-way or public property, without first securing a permit from the City. An application for a permit that allows placement of any material, including but not limited to publications, into a newsrack space shall be made at least ten business days prior to the placement of any material or publication in the newsrack space.

#### **11.64.040 Permit Application**

- a) Applications for permits for newsrack space shall be made to the City Manager. Each application shall be accompanied by the following:
  1. The name, business name, address, and telephone number of the applicant;
  2. The name, address and telephone number of a responsible person whom the City may notify or contact at any time concerning the applicant’s newsrack space; and
- b) There shall be an annual permit application fee set for each separate publication or other material to be placed in the newsrack in accord with the master fee schedule; a separate fee shall apply to each newsrack space, per full size space and per half-size space.

#### **11.64.050 Permit –Issuance- Renewal**

- a) Upon approval of an application, the City Manager shall issue a permit for the placement, installation, or maintenance of a publication or other material within a newsrack space. Each permit issued shall be deemed to incorporate as a condition to the placement, installation, or maintenance of a newsrack or newsrack space thereunder, the requirement of the permittee to comply with all the provisions of this Chapter.
- b) Permits shall be limited and remain valid for one year; annual renewal shall require a separate application and permit approval.
- c) Permits shall not be transferrable from one location to another; permits shall not be assignable from one person to another.

#### **11.64.060 Identification on Newsrack Required**

Each permittee shall affix to, or permanently display, in plain view, upon each newsrack or newsrack space a permit sticker provided by the City to identify the permitted use of the newsrack space. Newsracks placed, installed, or maintained without a permit sticker will be removed by the City at sole cost of the permittee's, the newsrack installer, or the owner of the newsrack.

#### **11.64.070 Liability –Indemnification**

Each person owning, installing, operating or using a newsrack or newsrack space upon or within the public property, rights-of-way or public easements adjacent to streets of this City, with or without permit, as a condition to such installation, operation or use shall indemnify and hold harmless the City, its officers and employees from any loss, liability, damage or cost sustained by any person or property, arising from the ownership, installation, operation or use of the newsrack or newsrack space.-

#### **11.64.080 Newsrack Requirements**

- a) Placement of Newsracks.
  1. Each newsrack installed, used or maintained on a public sidewalk or parkway, or portion thereof, shall be of the modular type, or its equivalent. Each newsrack at a given location shall be part of a multi-unit configuration subject to standards set forth in this chapter. Each newsrack facility shall be located so as to maximize the public convenience, health, safety and welfare, both as to accessibility to the newsracks and the use of the public right-of-way as a thoroughfare, and the aesthetic appearance of the area.
  2. No newsrack shall be installed, used or maintained in the public right-of-way in the R-1, R-2 or R-3 residential districts.
  3. Newsracks shall be placed adjacent to the wall of a building and shall be parallel to such wall and not more than six inches from the wall. Newsracks may be placed near a curb at a location as approved by the City Manager. Newsracks placed near a curb shall be placed not less than eighteen inches nor more than twenty-four inches from the edge of

the curb. The City Manager may approve an exception to these locations for public access purposes.

4. No newsrack shall be placed on a sidewalk opposite another newsrack which distributes publications.

b) Standards.

Each newsrack which in whole or in part rests upon, in or over any sidewalk or parkway shall comply with the following standards:

1. No newsrack shall exceed five feet in height, three feet in width, three feet in depth.
2. No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.
3. Newsracks may be chained or otherwise attached to one another; however, no more than three newsracks may be joined together in this manner, and a space of no more than 1 inch shall separate each group of three newsracks so attached.
4. No newsrack, or groups of attached newsracks allowed under subsection (c) of this section, shall weigh, in the aggregate, in excess of 500 pounds when empty.
5. No newsrack shall be placed, installed, used or maintained:
  - A. Within five feet of any marked or unmarked crosswalk;
  - B. Within five feet of any fire hydrant or other emergency facility;
  - C. Within five feet of any driveway;
  - D. Within five feet of any bus bench or sign marking a designated bus stop;
  - E. At any location whereby the clear space for the passage of pedestrians is reduced to less than five feet;
  - F. Within two feet of any area improved with lawn, flowers, shrubs or trees or within two feet of any display window of any building abutting the sidewalk or parkway or in such manner as to impede or interfere with the reasonable use of such window for display purposes.
  - G. At any location where the newsrack causes, creates or constitutes a traffic hazard;
  - H. At any location where the newsrack unreasonably obstructs or interferes with access to or the use and enjoyment of abutting property;
  - I. Where the newsrack will endanger persons or property;
  - J. Where the newsrack will unreasonably interfere or obstruct the flow of pedestrian or vehicular traffic or access to parked vehicles on a highway; or
  - K. Within 200 feet of any other newsrack facility in the public right-of-way.
6. 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 therein. No exterior signs, stickers, or advertising shall be permitted, other than the available front clear portion of the newsrack space.
7. Each newsrack shall at all times be maintained in a clean, neat and attractive condition and in good repair.
8. Each newsrack shall be designed and constructed so that wind action will not cause papers to be blown from the rack.

c) Installation and Maintenance.

1. Stands for newsracks shall be either a supporting structure, constructed by the City, or a multi-unit pedestal. Such pedestal shall not exceed 19 inches in height.
2. Newsrack mounts shall be painted a color designated by the City Manager.
3. No newsrack shall be used for commercial advertising, signs, or publicity purposes, other than the available front clear portion of the newsrack space.
4. Each newsrack and newsrack space shall be maintained by the permittee in a clean and neat condition, free of graffiti, dirt, stickers, grease, and corrosion, and in good repair at all times. No newsrack shall be allowed to be chipped, faded, or cracked or shall contain broken or cracked plastic, glass, or structural parts. Adhesive labels, other than City-issued markers, or adhesive labels related to publications in the newsrack or newsrack space, shall not be displayed on newsracks.
5. Each permittee is responsible for placement of publications or other materials within newsracks. All work undertaken shall be the sole responsibility of the permit holder. Damage resulting from the installation of the material into the newsrack shall be reported to the city immediately and repaired immediately per city approval, at the expense of the permittee. Failure to make required repairs may result in City staff undertaking efforts to make such repairs. Cost of repairs shall be chargeable as a civil debt to the permit holder, owner or operator of the newsrack, and may be collected by the City in the same manner as it collects any other civil debt or obligation.

d) Newsrack Location Limits.

In general the number of newsracks at a particular corner, intersection or other location shall not exceed ten full size spaces. Any exception to this limit resulting in an increase in the number of authorized newsrack space at any particular location shall be determined by the City Manager subject to the following standards:

1. Whether sufficient clear space for the safe passage of pedestrians requiring amendment of the preceding limitation of five feet;
2. Whether the width of the sidewalk prohibits the installation of newsracks;
3. Whether density of pedestrian traffic necessitates fewer newsracks than the authorized number indicated. It is the purpose of this section to provide maximum public access to all publications of general interest and circulation.

#### **11.64.090 Use of Newsracks Required**

No person shall leave on public property for distribution or sale any newspaper, news periodical, similar publication or other material unless such items are placed in a newsrack constructed, placed and maintained in accordance with this chapter. Any newsrack deemed abandoned by the City Manager shall be subject to removal and destruction pursuant to this Chapter.

#### **11.64.100 Abandoned Newsrack, Newsrack Space**

- a) Abandoned newsracks may be removed by the City and may be disposed of if not claimed by the person responsible for that newsrack within 30 business days. Before any newsrack is

removed, the permittee, owner or other person responsible for installation or maintenance shall be given written notice that the newsrack is suspected of being abandoned. No newsrack shall be removed if, before removal, the permittee, owner or other person responsible for its installation or maintenance informs the City the newsrack has not been abandoned and promptly stocks and maintains the subject newsrack.

- b) Upon removal of any abandoned newsrack, the permittee, owner or other person responsible for its installation or maintenance shall promptly be notified and given 30 business days in which to request a hearing pursuant to PGMC section 1.19.090.
- c) Any newsrack installed, used or maintained in violation of this chapter may be summarily removed and stored in any convenient place by the City. The City shall take reasonable steps to notify the permittee, owner or other person responsible for its installation or maintenance. Upon failure of these persons to claim such newsrack and pay the expenses of removal and storage within 30 calendar days after such removal, the newsrack is deemed unclaimed property in possession of the City and may be disposed of by any means allowed by law.

#### **11.64.110 Removal/ Hearing**

- a) Each newsrack installed or maintained in violation of this Article may be seized and removed. Prior to any newsrack being seized, the City shall issue a notice of violation/removal and give the person responsible for its installation and maintenance 30 business days in which to remedy the violation or to request a hearing to contest the seizure. The person responsible may request an appeal of the notice of violation/removal to the Administrative Enforcement Hearing panel under Chapter 1.19 PGMC, pursuant to a request for hearing under PGMC 1.19.090. Notice of the proceeding shall conform to PGMC 1.12.010, and the hearing shall conform to the process set at PGMC 1.19.090. The Hearing Officer shall have authority to determine all questions raised by such appeal; provided, however, that no such determination shall conflict with any substantive provision of this Chapter.
- b) The cost of removal and/or storage by the City of any newsrack publications subject to this chapter shall be chargeable as a civil debt to the owner thereof and may be collected by the City in the same manner as it collects any other civil debt or obligation. In addition, the newsrack space publications in question shall be deemed to be unclaimed property and may be disposed of accordingly

#### **11.64.120 Nuisance/ Cumulative Remedies**

The placement, installation or maintenance of any newsrack in violation of this Chapter shall be, and the same is declared to be, a public nuisance. This Chapter shall not be deemed a limitation upon any other remedies of the City authorized by law with respect to the matter herein specified.

In addition to any and all remedies set forth herein in connection with violations of this Chapter, any violation of this Chapter shall be punishable pursuant to Chapters 1.16 or 1.19 of this Code.

**11.64.130 Compliance by Permitted Vendors**

Permit holders of newsracks space located within the City on the effective date of the ordinance codified in this chapter shall have 30 days from said date to comply with the provisions of this chapter; thereafter, any newsracks space not in compliance shall be subject to removal by the City Manager as provided in this chapter.

SECTION 3. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE** this 7th day of February, 2018, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Garfield, Huitt, Peake, and Smith.

NOES: None.

ABSENT: None.

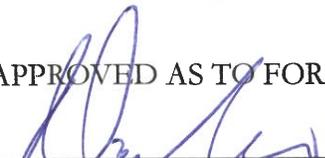
APPROVED:

  
BILL. KAMPE, Mayor

ATTEST:

  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

  
DAVID C. LAREDO, City Attorney