

DRAFT

ORDINANCE NUMBER _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING
CHAPTER 13.28 [NEWSRACKS] OF TITLE 13 [STREETS, SIDEWALKS, AND
UTILITIES] OF THE MENLO PARK MUNICIPAL CODE**

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS.

A. It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

B. The City of Menlo Park currently has limited control on the design, placement, and installation of newsracks within the public rights of way, which newsracks can cause interference and obstruction with the use of public rights of way; can cause interference with the safe and reasonable use of private property adjoining or in the vicinity of such public rights of way, and further can adversely impact the aesthetics of the City of Menlo Park creating structural and visual clutter. The goal of this ordinance will reduce such negative impacts.

C. The City Council of the City of Menlo Park finds and declares the addition of Chapter 13.28 [Newsracks] is necessary for the above reasons.

SECTION 2. ADDITION TO CODE. Section 13.28 [Newsracks] is hereby added in its entirety as follows:

Sections:

- 13.28.010 Purpose.
- 13.28.020 Definitions.
- 13.28.030 Permit Required.
- 13.28.040 Obtaining a Permit.
- 13.28.050 Standards for Maintenance and Display of Newsrack.
- 13.28.060 Size and Design Standards.
- 13.28.070 Standards for Placement and Location of Newsrack.
- 13.28.080 Blinder Racks Required.
- 13.28.090 Violation- Enforcement.
- 13.28.100 Nuisance.
- 13.28.110 Removal and Hearing.
- 13.28.120 Abandoned Newsracks.

13.28.010 Purpose.

The purpose and scope of the regulations in this chapter are as follows:

(a) The provisions of this chapter shall apply to all newsracks located within the City of Menlo Park; provided, that certain provisions, as specified, shall apply only to newsracks located on public property.

(b) It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

(c) The public health, safety, welfare and convenience require that interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from, and the enjoyment of store window displays on, properties adjoining public property be protected.

(d) Newsracks placed and maintained on public and private property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

(e) The regulations on the time, place and manner of the placement, location and maintenance of newsracks set forth in this chapter are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of news to the public.

13.28.020 Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be given the meaning set out in this section unless it is apparent from the context that a different meaning is intended.

(a) "Abandoned newsrack" means any newsrack which remains empty for ten (10) business days; provided, 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 shall not be deemed abandoned.

(b) "Harmful matter" means and is defined as in California Penal Code Section 313, as may from time to time be amended.

(c) "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 of newspapers, periodicals or other publications.

(d) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(e) "Public place(s)" means and includes any public property owned or controlled by the City of Menlo Park or any other public agency, or any outdoor private property which is open to the public.

(f) "Public property" means any public right-of-way or any property owned or controlled by the City of Menlo Park, including, without limitation, streets, sidewalks, alleys, and rights-of-way.

13.28.030 Permit Required.

It is unlawful to install, place, maintain or cause to be placed, installed or maintained a newsrack on, or projecting on, any public property without first receiving a permit therefor from the City of Menlo Park Public Works Department or its designee, and unless such newsrack is in compliance with the provisions of this chapter; provided that a newsrack located on public property as of June 30, 2018, may continue to remain in such location, under the following conditions:

(a) The newsrack is in compliance with the requirements for the installation and maintenance of newsracks contained in this chapter; and

(b) A permit application for such newsrack has been filed as of that date with the City of Menlo Park Public Works Department or its designee by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's newsrack; and

(c) A permit pursuant to such application has not been denied with respect to any such newsrack.

If no permit application has been filed by that date by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's newsrack, or such permit is denied, such newsrack shall be deemed to be in violation of the provisions of this chapter. Permits shall be good for two years.

Newsracks on private property do not require a newsrack permit, but do require design review approval if they do not conform to the design standards herein. Existing newsracks on private property shall constitute a non-conforming use.

13.28.040 Obtaining a Permit.

(a) Exclusive Requirements. The provisions of this chapter shall be the exclusive requirements for newsrack encroachments onto public property in the city.

(b) Application. Application for a newsrack permit for each location sought shall be submitted to the City of Menlo Park Public Works Department or its designee on a form prescribed by the City of Menlo Park, which shall include, without limitation:

(1) The name, street and mailing 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 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) A description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this chapter) and the proposed means of affixing the proposed newsrack;

(4) A description of the proposed newsrack, including its dimensions, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;

(5) The name and frequency of publication of each publication proposed to be contained in the newsrack;

(6) A statement signed by the applicant that the applicant agrees to indemnify, defend and hold harmless, the City of Menlo Park and its representatives from all claims, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any newsrack on public property by or on behalf of any such person, except such injury or harm as may be caused solely and exclusively by the negligence of the City of Menlo Park or its authorized representatives;

(7) A statement signed by the applicant that the applicant agrees, upon removal of a newsrack, to repair any damage to the public property caused by the newsrack or its removal; and

(8) Each applicant shall submit along with the permit application a fee as set forth in the City's Master Fee Schedule and insurance shall be provided under the same terms as required for a public works encroachment permit.

(c) Issuance of Permit. A permit shall be issued within fifteen (15) working days from the date of filing the application with the City of Menlo Park Public Works Department or its designee if the application is properly completed and the type of newsrack and location proposed for each newsrack meet the standards set forth in this chapter. A single permit shall be issued for each newsrack location applied for by an applicant which meet the standards of this chapter. Each permit holder shall maintain an active City of Menlo Park business license throughout the term of the permit. An applicant may submit more than one application, in order to apply for additional locations. A permit shall not be transferable.

(d) Period of Permit Validity. Permits shall remain valid if re-registered with the City of Menlo Park every two years, on a form provided by the City of Menlo Park. Failing to re-register or explicit cancellation by a permit holder will void the permit and it will be ineffective thereafter. Unregistered newsracks may be treated as abandoned under Section 13.28.120 or other applicable enforcement mechanism.

(e) Issuance of Permit Sticker. Each permittee shall be issued a pre-printed sticker for each permitted newsrack, which shall be affixed to the lower right corner of the front of each newsrack.

(f) Denial of Permit. If a newsrack permit is disapproved, in whole or in part, the City of Menlo Park Public Works Department or its designee shall notify the applicant within fifteen (15) working days from the date of filing a complete application with the City of Menlo Park, explaining the reasons for the denial of the permit. The applicant shall have ten (10) calendar days within which to appeal the decision to the City Manager in accordance with the appeal provisions set forth in subsection (g) of this section.

(g) Appeal of Permit Denial. After receiving a notice of appeal, the City Manager or the designee of the City Manager shall conduct a hearing within thirty (30) days of the receipt of the applicant's appeal, unless otherwise agreed to by the applicant. Written notice of the time and place of the hearing shall be given to the applicant, and shall be posted in the official posting locations of the City of Menlo Park. The hearing shall be informal, but oral and written evidence may be given by both sides. The City Manager or designee shall render a written decision within twenty (20) days after the date of the hearing. The decision of the City Manager shall be final.

(h) Amendment to Permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the City of Menlo Park Public Works Department or its designee. A permittee may install and maintain additional newsracks by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

13.28.050 Standards for Maintenance and Display of Newsracks.

(a) Every person placing or maintaining a newsrack on public property shall comply with the following requirements:

(1) Every newsrack shall be maintained in a neat and clean condition, and in good repair at all times. For example, without limitation, every newsrack shall be reasonably free of dirt and grease, be reasonably free of chipped, faded, peeling or cracked paint, be reasonably free of rust and corrosion, have no broken or cracked plastic or glass parts, and have no broken structural parts. No signs, advertising, stickers or adhesive labels, other than City of Menlo Park- issued identification/approval labels, unrelated to publications in the newsracks shall be displayed on newsracks.

(2) Every newsrack shall be constructed, installed and maintained in a safe and secure condition.

(3) Every newsrack shall be made of solid material on all sides, so as to contain the material inside the newsrack in a manner as to prevent it from blowing away or otherwise becoming litter. No wire or other open form of newsrack shall be permitted.

(4) Every newsrack shall be kept free of graffiti.

(5) Every newsrack that sits on legs shall be kept free of dirt and litter under the newsrack.

(6) Every newsrack shall be painted or covered with a protective coating, so as to keep it free from rust, and shall be cleaned and repainted on a regular basis.

(7) Every coin-operated newsrack shall be equipped with a coin-return device that is maintained in good repair and working order.

(8) Every coin-operated newsrack shall 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, and shall be legible.

(9) Other than the display of the publication contained therein, no newsrack shall display or be affixed with any words or pictures except for the identifying information, and the coin return information, if applicable.

(10) Old or out-of-date material removed from any newsrack by any person who owns, maintains, or stocks the newsrack shall be recycled or disposed of in a lawful manner. Such material shall not be disposed of in any trash receptacle owned or rented by others,

without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

(11) Upon the removal of a newsrack, the public right-of-way shall be returned to its original condition.

(b) Every newsrack located in a public place shall 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(s) contained therein. Such information shall be placed in a visible location on the front or top of the newsrack, and shall be legible. The size of the identifying information shall be no larger than three (3) inches by five (5) inches.

13.28.060 Size and Design Standards.

No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(a) No newsrack shall be more than fifty (50) inches high (including the pedestal in the case of modular newsracks) measured from the ground to the top surface of the newsrack, nor more than two (2) feet deep, nor more than twenty-four (24) inches wide.

(b) The highest operable part of the coin slot, if provided, and all controls, dispensers and other operable components of a newsrack shall be no higher than forty-eight (48) inches above the ground, and no lower than fifteen (15) inches above the ground.

(c) The design of a newsrack shall not create a danger to the persons using the newsrack in a reasonably foreseeable manner. All newsracks shall comply with all applicable federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

13.28.070 Standards for Placement and Location of Newsracks.

(a) No newsrack shall be placed, installed or maintained on any public property when such installation, use or maintenance endangers the safety of persons or property. No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(1) Newsracks shall be placed only on a sidewalk, in one of the following locations:

(A) Near a curb, in which case, the back of the newsrack shall be placed no less than eighteen (18) inches nor more than twenty-four (24) inches from the face of the curb; or

(B) Adjacent to the wall of a building, in which case, the back of the newsrack shall be placed parallel to such wall and not more than six (6) inches from the wall.

(2) Every newsrack shall be placed so as to open toward the sidewalk.

(3) Every newsrack shall be affixed to the sidewalk or to another newsrack, in a manner approved by the permit therefor; provided, no newsrack shall be chained to another newsrack. Newsracks shall not be chained or otherwise attached to any bus shelter, bench, street light, utility pole or device or sign pole, or to any tree, shrub or other plant, nor situated upon any landscaped area.

(4) No newsrack shall be placed, installed or maintained:

(A) Within ten (10) feet of any marked or unmarked crosswalk as measured from the curb return;

(B) Within five (5) feet of any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box;

(C) At any location where the clear space for the passage of pedestrians is reduced to less than six (6) feet;

(D) Within five (5) feet of any driveway;

(E) Within five (5) feet of any red curb of a bus stop zone;

(F) Within five (5) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk;

(G) In such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building;

(H) In such a manner as to impede or interfere with the reasonable use of any bicycle rack;

(I) In such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

(5) Any newsrack placed on El Camino Real must be approved by CalTrans in addition to the approvals required under this section, unless CalTrans waives such approval right.

(b) Newsracks may be placed or joined together; however, no group of newsracks placed along a curb shall extend for a distance of more than ten (10) feet (i.e., the combined width of five (5) newsracks); and no group of newsracks shall be closer than four (4) feet to another group of newsracks along a curb.

(c) The City of Menlo Park Public Works Department or its designee may allow a permittee to place a newsrack in a location in variance of the standards otherwise required by this section if it is found that such variance will not be detrimental to the public safety and that, due to the existing physical constraints at that location, imposition of the standards would make placement impossible and would cause a hardship to the permittee and its patrons. The written findings and the variance shall be made part of the permit. Prior to considering whether or not to grant a variance, the director of public works shall provide written notice of the requested variance to the owner(s) of the real property adjacent to or abutting the proposed newsrack location.

(d) If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, the City of Menlo Park Public Works Department or its designee shall give priority as to that location to publications on a historical "first come first served" basis to permit applicants as follows:

(1) First priority shall be publications that are published two (2) or more times a week;

(2) Second priority shall be given to publications that are published once per week;

(3) Third priority shall be given to publications that are published less than once per week but more than once per month;

(4) Fourth priority shall be given to publications that are published monthly or less frequently than monthly.

In the event the City of Menlo Park is required to utilize the priority system described in subsections (d)(1) through (4), the City of Menlo Park shall permit only one rack per publication or distributor in a single location.

13.28.080 Blinder Racks Required.

Newsracks located in public places, other than public places from which minors are excluded, and which display, sell or offer to sell any material that is harmful to minors, as defined by Chapter 7.6 of the California Penal Code, shall be equipped with devices commonly known as blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view. The definitions of Penal Code Chapter 7.6 are incorporated herein including the definition of "harmful matter" which includes the display of photographs or pictorial photographs or pictorial representations of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; and also includes the display of photographs or pictorial photographs or pictorial representations of less than completely and opaquely covered human genitals, pubic hair, buttocks, perineum, anal region, or female breast at or below the areola thereof, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

13.28.090 Violation- Enforcement.

(a) It shall be illegal to place, install, or maintain any newsrack or any material in a newsrack in a manner contrary to any provision of this chapter.

(b) Any person who violates any provision of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Section 1.12.010 [Penalty for violations] of this code.

(c) The provisions contained in this chapter shall be subject to the code enforcement authority of the city as provided in Title 1 of this code.

13.28.100 Nuisance.

Any newsrack or any material in a newsrack placed, installed or maintained in violation of this chapter shall constitute a public nuisance and may be abated in accordance with applicable provisions of law.

13.28.110 Removal and Hearing.

In addition to the enforcement remedies available to the City of Menlo Park, which are set forth in Title 1 and in Sections 13.28.090 and 13.28.100 of this chapter, any newsrack placed, installed or maintained in violation of this chapter may be removed by the City of Menlo Park, subject to the notice and hearing procedures set forth in this section.

(a) Notice of Violation. Before removal of any newsrack, the City of Menlo Park shall notify the owner or distributor of the violation. Written notification by first class mail to the address or addresses shown on the offending newsrack shall constitute adequate notice. The city may, but need not, affix an additional notice tag onto the offending newsrack. If no identification is shown on the newsrack, posting of the notice on the newsrack alone shall be sufficient. The notice shall state the nature of the violation, shall specify actions necessary to correct the violation, and shall give the owner or distributor ten (10) business

days from the date appearing on the notice to either remedy the violation or to request a meeting before the City of Menlo Park Public Works Department or its designee. The date on the notice shall be no earlier than the date on which the notice is mailed or affixed to the newsrack, as the case may be.

(b) Meeting and Decision. Any owner or distributor notified under subsection (a) may request meeting with the City of Menlo Park Public Works Department or its designee by making a written request therefor within ten (10) business days from the date appearing on the notice. The meeting shall be informal, but oral and written evidence may be given by both sides. The City of Menlo Park Public Works Department or its designee shall give its decision within ten (10) business days after the date of the meeting. Any action by the city to remove the newsrack shall be stayed pending the written decision of the City of Menlo Park Public Works Department or its designee following the meeting.

(c) Removal and Impoundment. The City of Menlo Park may remove and impound a newsrack or newsracks in accordance with this section following the written decision of the City of Menlo Park Public Works Department or its designee upholding the determination of a violation, or if the owner or distributor has neither requested a meeting nor remedied the violation within ten (10) business days from the date on the notice. An impounded newsrack shall be retained by the City of Menlo Park for a period of at least ninety (90) calendar days following the removal, and may be recovered by the permittee upon payment of a fee as set forth in the municipal fee schedule. An impounded newsrack and its contents may be disposed of by the City of Menlo Park after ninety (90) calendar days.

(d) Summary Abatement. Notwithstanding the provisions of subsections (a) and (b), prior notice and an opportunity to be heard shall not be required prior to removal of any newsrack that is installed or maintained in such a place or manner as to pose an immediate or clear and present danger to persons, vehicles or property or any newsrack that is placed in any location without a permit. In such case, the City of Menlo Park shall proceed in the following manner:

(1) Within the next working day following removal, the City of Menlo Park shall notify by telephone the permittee or, in the case of an unpermitted newsrack, the owner of the newsrack or a person whose name is shown on the required identification. Within three (3) business days, the City of Menlo Park shall send written confirmation of the telephoned notice. The written confirmation shall contain the reasons for the removal and information supporting the removal, and shall inform the recipient of the right to request, in writing or in person, a post-removal meeting within four (4) business days of the date of such written notice and the person to whom such request shall be made.

(2) Upon timely request, the City of Menlo Park shall provide a meeting within forty-eight (48) hours of the request, unless the requesting party agrees to a later date. The proceeding shall be informal, but oral and written evidence may be given by both sides. The City of Menlo Park designee hearing the matter shall give his or her decision in writing to the requesting party within forty-eight (48) hours after such meeting. If the City of Menlo Park hearing officer finds that the removal was proper, he or she shall notify the requesting party to pay any applicable penalties and costs and recover the newsrack. If the City of Menlo Park hearing officer finds that the removal was improper and that placement of the newsrack was lawful, he or she shall order that the newsrack be released and reinstalled without charge.

(3) If the owner of an unpermitted rack cannot be determined and the rack does not contain the required identification, no notice of the removal shall be required.

13.28.120 Abandoned Newsracks.

An abandoned newsrack may be removed by the city and impounded, pursuant to the notice and hearing procedures set forth in Section 13.28.110. The City of Menlo Park may dispose of the newsrack if the permittee does not claim the newsrack and pay any required fees within ninety (90) days of its removal.

SECTION 3. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posting in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the ___ day of _____, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2018, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

APPROVED: _____
Mayor

ATTEST:

_____, City Clerk