

ORDINANCE NO. 772 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
ESTABLISHING CHAPTER 11.35 OF THE MUNICIPAL CODE
(NEWSRACKS)

WHEREAS, the placement of newsracks within public rights-of-way and on other public property (e.g. parks) has the potential to pose hazards to pedestrians and motorists, to conflict with access to and use of utilities and public facilities (fire hydrants, bus shelters, etc.), and to hinder the City's efforts, as set forth in General Plan policy, to protect and preserve aesthetic resources, to revitalize the Historic Downtown, and to promote and enhance the economic vitality of the community; and

WHEREAS, it is necessary to protect minors from viewing harmful matter that may be located in the City's public right-of-way, sidewalks or other public property; and

WHEREAS, in order to protect rights established by the First Amendment of the Constitution of the United States, it is necessary to establish objective criteria by which newsracks may be placed, maintained and operated within public rights-of-way and on other public property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 11.35 of the Municipal Code, attached hereto as Exhibit "A", is hereby established to regulate the placement, maintenance and operation of newsracks in public rights-of-way and on public property.

SECTION 2. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 4. Inconsistency. To the extent that the terms of provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

SECTION 5 Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on June 15, 1999, and passed and adopted by the City Council of the City of El Paso de Robles on the 6th day of July, 1999, by the following roll call vote, to wit:

AYES:	Baron, Macklin, Mecham, and Swanson
NOES:	None
ABSTAIN:	Picanco
ABSENT:	None

Duane J. Picanco, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

EXHIBIT A TO ORDINANCE 772 N.S.

11.35.010 Intent and Purpose.

The City Council finds and declares that it is necessary to establish a comprehensive set of regulations applicable to newsracks within the public right-of-way and on other public property to accomplish the following important public purposes.

- A. Improve public safety. Since newsracks are usually located within the public right-of-way, they pose a potential hazard to pedestrians and other users of public sidewalks. If they are located too close to driveways or intersections, they can block the view of oncoming traffic. If they are located too close to the curb, they can unreasonably hinder ingress and egress from parked vehicles. If located too close to fire hydrants, mailboxes, traffic control devices, public bus benches and other public conveniences, they can unreasonably hinder access to and use of those facilities.
- B. Protect the appearance of El Paso de Robles. The General Plan for the City of El Paso de Robles contains policies and programs that call for protection and preservation of aesthetic resources and for revitalization of the Historic Downtown. The City Council finds that the number, size, construction, placement and appearance of newsracks can have a significantly adverse visual impact on the City, particularly in the Historic Downtown and other aesthetically sensitive areas. Further, the City Council finds that the City Park is the centerpiece of the Historic Downtown and declares that no newsracks shall be placed within City Park or within the park side of public rights-of-way bordering City Park.
- C. Promote and enhance the economic vitality of the community. It is necessary to avoid any undue interference with commerce and business which may be posed by newsracks located too close to retail shop windows or entrances to commercial property, or located in such a way as to interfere with views from private property.
- D. Protect Minors. It is necessary to protect minors from viewing harmful matter that may be located in the City's public right-of-way, sidewalks or other public property.
- E. Reduce Exposure of the City. It is necessary to reduce the City's exposure to personal injury or property damage claims and litigation related to the placement of newsracks.
- F. The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety, morals and general welfare of persons in the City in their use of public rights-of-way and other public property.
- G. It is not the intent of this chapter to in any way discriminate against, regulate to interfere with the publication, circulation, distribution or dissemination of a material protected by the First Amendment on the basis of the content of that material.

11.35.020 Definitions.

- A. "Blinder Racks" shall mean any opaque sheets or covers placed in front of the newsrack or the publications contained therein to prevent exposure of all or a part of the publication to public view.
- B. "Director" shall mean the Director of Public Works and his or her designated representative.
- C. "Distributor" shall mean the person, firm or corporation responsible for placing, operating and maintaining a newsrack in a public right -of -way. Distributors shall include owners or persons entitled to possession of newsracks and their designated representatives.
- D. "Harmful" material means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political or scientific value for minors
- E. "Newsrack" shall mean any type of unmanned device placed upon any public right-of-way or public land for the vending of, or the free distribution of, newspapers or news periodicals, advertising fliers, or other written or printed publications.
- F. "Parkway" means that portion of a street outside of the roadway, but not including the sidewalk.
- G. "Public right-of-way" and "Public land" shall mean any building, park, property, street, highway, sidewalk, surface easement, plaza, walkway, parkway or alley which is owned or held (whether in fee, easement, leasehold or other interest) by the City of El Paso De Robles.

- H. "Roadway" means that portion of the street improved, designed or ordinarily used for vehicular travel.
- I. "Sidewalk" means any surface provided for the exclusive use of pedestrians.

11.35.030 Permit Required

- A. It shall be unlawful for any person, firm or corporation to place, maintain or operate on any public right-of-way or public land, any newsrack without first having obtained an annual permit from the Director under the procedures set forth in this Chapter.
- B. Each permit shall be valid until the thirtieth (30th) day of June each year and may then be renewed for a period of one year unless sooner terminated as provided for in this chapter.
- C. One permit may be issued for newsracks maintained or operated by a Distributor at several different locations. Each permit shall designate the number and location or locations of newsracks for which the permit has been issued.
- D. A written application for a newsrack permit shall be filed with the Director on the City's form and shall include at least the following information.
 - 1. The name, address and telephone number of the Distributor, and if the Distributor is a subsidiary, the name, address and telephone number of the parent company.
 - 2. The name, address and telephone number of the Distributor's representative or other responsible person whom the City may notify or contact at any time concerning the Distributor's newsrack(s).
 - 3. A written description of the location of each newsrack to be placed, maintained and/or operated.
 - 4. A clear and legible drawing of the location of each newsrack. This drawing shall include the newsrack, sidewalk, streets, and other adjacent improvements, which shall include: (a) the nearest buildings and driveways; (b) the nearest bus stops, benches, street trees, and fire hydrants; and (c) each existing newsrack (including the name of the newsrack material contained therein and the type or brand of newsrack) within one hundred (100) feet of the proposed location. The drawing shall show distances between the newsrack and the other features required to be shown.
 - 5. Names of newspapers or other written material to be contained in each newsrack.
 - 6. Type or brand of newsrack, including a photograph or scaled drawing of the newsrack and mount.
 - 7. A written statement whereby the Distributor agrees to indemnify, defend and hold harmless the City, its officers, officials and employees, from any loss or liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the placement, maintenance, operation, or removal of the newsrack in the City.
- E. Fee. Each application for a newsrack(s) shall be accompanied by a non-refundable processing fee, in an amount set by resolution of the City Council from time to time, which shall not exceed the actual cost of investigating the facts contained in the application and processing of the application.
- F. Insurance. Each Distributor filing an application for a newsrack permit shall provide the City with a certificate of insurance showing that the Distributor has then in force comprehensive general liability and property damage insurance, endorsing the City as an additional insured, in an amount not less than one million dollars (\$1,000,000). This policy shall be subject to approval by the City Attorney for completeness. The Distributor shall provide and keep in force that policy of comprehensive general liability and property damage insurance during such time as it continues to locate any newsrack under the terms of this Chapter. The evidence of insurance filed with the City shall include a statement by the insurance carrier that thirty (30) days unconditional notice will be given to the City before any cancellation.
- G. Conditions for Permit.
 - 1. In issuing a permit for a particular site, the Director shall be guided solely by the standards and criteria set forth in this Chapter. In any case where Director disapproves of a particular site, such disapproval shall be without prejudice to the applicant who may designate a different location or locations and resubmit an application.
 - 2. Permits shall be issued for the placement of a newsrack or newsracks only after City inspection of a proposed site, or sites, and the placement, maintenance or operation thereof shall be conditioned upon compliance with the provisions of this Chapter.

3. Permits shall be issued within ten (10) working days after the following have occurred: (a) an application has been deemed complete; and (b) the Director made a finding that the application complies with all of the provisions of this Chapter.
4. If an application or a proposed site is denied at any stage of the process, the Director shall promptly notify the applicant in writing of the specific reason for such denial and the right of a hearing in accordance with Section 11.35.100.
5. The Distributor shall have an ongoing duty to provide the City with current information in order to allow the Director to contact the Distributor and any representative or other responsible person during the term of the permit. Any failure by the Distributor to provide the City with the current information set forth in subsections D.1 and D.2, above, shall constitute grounds for termination of the permit. Upon termination of any permit because of such failure to provide the City with current contact information, all newsracks covered by the permit shall be deemed abandoned and may be impounded in accordance with Section 11.35.090.
6. Once a permit has been issued, the location of a newsrack may not be changed without the Distributor first obtaining a new newsrack permit. Any newsrack that is relocated without a new permit may be impounded in accordance with Section 11.35.090.
7. Permit Sticker. Upon permit approval or renewal, the Director shall issue the Distributor a sticker or stickers evidencing the permit or renewal, which sticker shall be affixed to each newsrack, in the manner specified by the Director, within ten (10) working days of permit or renewal approval.

11.35.040 Design and Maintenance of Newsracks.

A. Newsrack Design

1. No newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width, or twenty-four (24) inches in thickness.
2. All opaque surfaces of a newsrack and the mounts shall be the same color.
3. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper, periodical or other printed materials dispensed therefrom.
4. Each newsrack from which newspapers, periodicals or other printed materials are sold shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanisms shall be maintained in good working order.
5. Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the name and address of the Distributor and the telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this division.

B. Maintenance

1. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Each newsrack shall be serviced and maintained so that it is reasonably free of:
 - (a) General dirt and grease.
 - (b) Chipped, faded, peeling and cracked paint, and graffiti on all visible painted areas.
 - (c) Rust and corrosion on all visible unpainted metal areas.
 - (d) Cracks, dents, blemishes and discoloration in the clear plastic or glass parts, if any, through which the publications are viewed.
 - (e) Tears, peeling or fading in the paper or cardboard parts and inserts.
 - (f) Broken or unduly misshapen structural parts.
2. Newsracks that are damaged or defective shall be replaced or repaired as soon as practical. When a newsrack is replaced, the Distributor shall notify the Director, who shall issue a replacement permit sticker.
3. When the use of a newsrack is permanently discontinued, it shall be removed and the location restored to its previous condition. A newsrack that is left empty for thirty (30) consecutive days shall be presumed to be abandoned.

11.35.050 Placement of Newsracks.

- A. Newsracks shall be attached to or removed from the sidewalk or other improvement in accordance with specifications provided by the Director.
- B. Newsracks may be placed or joined together, provided that no group of newsracks shall extend for a distance of more than eight (8) feet. A space of not less than four (4) feet shall separate each group of newsracks to allow for pedestrian and disabled access.
- C. Newsracks shall be placed parallel to the curb or to the wall of a building. Newsracks placed near the curb shall be placed no less than 18 inches nor more than 24 inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to the wall and not less than six inches nor more than 18 inches from the wall.
- D. Newsracks shall not be chained, bolted or otherwise attached to public property, or to any shrub, tree, tree stake, or other plant, street furniture, utility pole, street or traffic sign, mailbox, nor situated upon any landscaped area, unless approved by the Director.
- E. No newsrack shall be placed:
 - 1. In such a manner that it projects onto, into or over any part of the roadway of any public street, or rest, wholly or in part on a sidewalk vault, meter cover, manhole or access cover.
 - 2. In such a manner that it rests upon, in or over any public sidewalk or parkway, when such placement endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrians or vehicular traffic including any legally marked or stopped vehicle, the ingress into or egress from any residence or place of business or the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near the location.
 - 3. In such a manner that it rests within twenty-five (25) feet of the extension of the near curb line of an intersecting street, as shown on Figure 11.35.050.
 - 4. Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility;
 - 5. Within five (5) feet of any driveway, traffic signal controller or utility pole;
 - 6. Within five (5) feet in front of or twenty-five (25) feet behind any sign marking a designated bus stop;
 - 7. Within five (5) feet of any bus bench;
 - 8. At any location which create less than a four (4) foot wide path of travel as required by Title 24 of California Code of Regulations and the Americans with Disabilities Act;
 - 9. On any access ramp or curb cut for disabled persons;
 - 10. At any location where the newsrack impairs or interferes with visibility of or for pedestrians or drivers or causes a traffic hazard;
 - 11. On or within three (3) feet of any display window of any building abutting the sidewalk or parkway in such a manner as to impede or interfere with the reasonable use of such window for display purposes;
 - 12. Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping, art or monument;
 - 13. Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication;
 - 14. Facing another newsrack across the width of a public sidewalk or pedestrian way.
 - 15. No Newsracks shall be placed within City Park (the block bordered by Spring, Pine, 11th and 12th Streets) or within the park side of public rights-of-way bordering City Park, or within or adjacent to any other City park facility.

Notwithstanding the requirement to maintain clear passage for pedestrians and the disabled to less than 4 feet (48 inches), the Director of Public Works may allow for minor exceptions, not exceeding ten (10) percent of any of the foregoing distance standards, where a combination of physical factors unique to a particular location dictate that strict adherence with the foregoing distance standards is not practical, and providing that it is clear that any such exception will not adversely affect the public health and safety.

11.35.060 Display of Certain Matter Prohibited.

Material which is harmful to minors, as defined in Part 1, Title 9, Chapter 7.6 of the California Penal Code (commencing at Section 313), shall not be displayed in a public place other than a public place where minors are excluded, unless blinder racks are placed in front of the material in such a manner that the lower two-thirds (2/3) of the material is not exposed to public view.

Newsracks containing material which is harmful to minors shall not be placed or maintained within one thousand (1,000) feet of any public or private educational facilities or religious institutions.

11.35.070 Violations of Chapter; Notice to Correct.

- A. Any violation of the provisions of this Chapter is a violation of the Municipal Code of the City of El Paso de Robles and shall be subject to the provisions of Section 1.02.010 of this Code.
- B. Whenever the Director has determined that a newsrack has been placed, maintained and/or operated in violation of the provisions of this Chapter, a Notice to Correct shall be issued which shall specify the manner in which this Chapter is violated and request compliance. Such notice shall state the nature of the violation, the intention to impound the newsrack if the violation shall not be corrected or if a hearing is not requested, and the procedure for requesting such a hearing.
- C. The Director shall telephone the Distributor or other responsible party designated to receive such Notice to Correct, and shall confirm such notification by mailing a copy of the Notice to Correct by first class mail.
- D. Failure to properly correct the violation or to file a request for a hearing, as provided in Section 11.35.100, within ten (10) calendar days after the mailing date of the Notice to Correct shall result in the offending newsrack being summarily removed and impounded pursuant to Section 11.35.090.
- E. If Distributor fails to provide the City with current information as defined under the provisions of Section 11.35.030.G.5, its newsracks may be summarily removed and impounded pursuant to Section 11.35.090.
- F. Notwithstanding the above, in the case of any violation of this Chapter which creates an immediate danger to the public health, safety or welfare, which violation cannot be corrected by moving or otherwise repositioning an unanchored newsrack, the newsrack may be summarily removed and impounded by the City.

11.35.080 Abandonment and Voluntary Removal.

- A. Abandonment: In the event any newsrack remains empty for a period of thirty (30) continuous calendar days, the newsrack shall be considered abandoned, and may be treated in the manner of Section 11.35.070 for newsracks in violation of the provisions of this Chapter.
- B. Voluntary Removal: In the event a Distributor desires to voluntarily remove a newsrack, such Distributor shall notify the Director in writing of the date of the proposed removal. Upon removal of a newsrack, the Distributor, at his or her sole expense, shall restore the sidewalk, or public property and any improvements thereon, to a good and safe condition, leaving no hole or projection in the sidewalk and using the same type and quality of construction material as that which exists at the surface of the abutting sidewalk.

If removal of a newsrack causes any damage to City property, the Distributor or other responsible party shall be liable for all costs incurred by the City to repair the damage. If those repairs are not made in a timely manner, the City may undertake that repair work and collect from the Distributor the costs thereof, including reasonable attorneys fees and related costs of collection.

11.35.090 Impounding of Newsracks

- A. As provided for in Sections 11.35.070 and 11.35.080, newsracks may be impounded by the City if they are found to be placed, maintained or operated in violation of the provisions of this Chapter or abandoned.
- B. Whenever a newsrack is impounded, the Director shall immediately send a Notice of Impoundment to the Distributor. Such notice shall state that date the newsrack was removed and impounded, the reasons thereof, and the procedure for claiming the newsrack. If the newsrack was summarily impounded, such notice shall also state the procedure for requesting an appeal hearing.

- C. A Distributor who provides satisfactory proof of the ownership of the impounded newsrack may, at any time within thirty (30) days of the mailing of the Notice of Impoundment obtain the return of the newsrack and its contents upon paying any removal costs, storage, repair and any other costs incurred by the City.
- D. The costs of removal and storage of any newsrack shall be born be the Distributor and may be collected by the City in the same manner as it collects any other civil debt or obligation. No newsrack which has been removed and stored by the City shall be released to the Distributor unless the costs of removal, storage and any necessary repair to the sidewalk or other public property on which the newsrack was placed have been paid. If a newsrack has been removed and stored remains unclaimed for a period of 30 days after the Notice of Impoundment has been sent, it shall be deemed to be unclaimed personal property and disposed of in accordance with the law.
- E. If, after a hearing, the impounded newsrack is found not to have been in violation of this Chapter, the newsrack shall be returned to the Distributor without payment of any impound fee or, if an impound fee has previously been paid, the impound fee shall be refunded.

11.35.100 Hearing and Appeal

- A. Any Distributor maintaining a newsrack found in violation of this Chapter, or any applicant for a newsrack permit that was denied by the Director, may request a hearing before the Director within ten (10) calendar days after the giving of a Notice of Correction, a Notice of Impoundment or notice that a newsrack permit application was denied. The request shall be in writing, shall state the basis thereof, and shall be filed with the Public Works Department.
- B. The hearing shall be held within ten (10) calendar days of the filing of the request. At the hearing the Distributor may present evidence or argument as to whether the newsrack has been placed, maintained or operated in violation of this Chapter. Within five (5) working days after the close of the hearing, the Director shall render a decision in writing and shall give such written decision to the Distributor.
- C. Any Distributor, within ten (10) calendar days after the date of the Director's written decision may appeal such decision to the City Council. The appeal shall be in writing, shall state the basis upon which the appeal is made, shall be accompanied by an appeal fee, to be established by the City Council from time to time, and shall be filed with the City Manager. The City Council shall attempt to hear the appeal at the next regularly-scheduled City Council meeting for which proper notice can be given. At the appeal hearing, the Distributor or any person may present evidence or argument as to whether the newsrack was placed, maintained or operated in violation of this Chapter. Within five (5) calendar days after the City Council's decision is rendered, the City Manager shall give written notice of the decision of the City Council on the appeal to the Distributor. The decision of the City Council on the appeal shall be final.

11.35.110 Effective Date and Existing Newsracks

- A. Notice to Distributors: Within thirty (30) days of the effective date of this Chapter, the Director shall make an inventory of all existing newsracks and give written notice to Distributors of the adoption of this ordinance.
- B. Removal or Initial Filing:
 - 1. Within thirty (30) days of the date of the written notice described in Subsection A, any Distributor of any existing newsrack located within City Park or within the park side of rights-of way bordering City Park, shall remove said newsrack(s) or said newsrack(s) shall be summarily impounded.
 - 2. For any newsrack(s) existing in the City as of the effective date of this Chapter, and not included within paragraph B.1, above, within thirty (30) days of the date of the written notice described in Subsection A, the Distributor of such newsrack shall either remove the newsrack, or file an application for a permit or permits required by this Chapter for all sites at which the Distributor maintains a newsrack.
- C. Initial Permit Processing: For the initial processing of permit applications on existing newsracks, the City shall have up to thirty (30) days to issue permits upon the receipt of a completed permit application that complies with the requirements of this Chapter. The initial permits shall expire on June 30, 2000.
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- D. Initial Compliance/Abatement: In the event the Director receives a permit application for an existing newsrack that does not comply with the requirements of this Chapter, the Director shall so notify the Distributor in writing within thirty (30) days of Distributor's submission of a permit application. Such notice shall specify the manner in which the newsrack does not comply with this Chapter. The Distributor shall have thirty (30) days from the date of the Director's notice of noncompliance to (a) take such steps necessary to bring its newsrack(s) into compliance and (b) resubmit a completed permit

application for such newsrack(s). If the Distributor fails to complete both of the actions described in the preceding sentence within such thirty (30) day period, the nonconforming newsrack(s) shall be impounded pursuant to the provisions of Section 11.35.080.

11.35.120 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.

FIGURE 11.35.050

