

ORDINANCE NO. 1030

**AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING TITLE 7 (PUBLIC WORKS) OF THE SAN ANSELMO MUNICIPAL CODE BY ADDING CHAPTER 9 (NEWSRACKS).**

THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

Chapter 9 of Title 7 is hereby added to the San Anselmo Municipal Code to read as follows:

**Chapter 9**

**NEWSRACKS**

**Sections:**

- 7-9.01 Purpose and Intent**
- 7-9.02 Definitions**
- 7-9.03 Standards**
- 7-9.04 Prohibited Locations**
- 7-9.05 Permit Requirements**
- 7-9.06 Violations**
- 7-9.07 Liability Insurance**
- 7-9.08 Indemnification**

**7-9.01 Purpose and Intent.**

The Town Council of the Town of San Anselmo finds that:

- A. Newsracks placed on public streets, sidewalks, right-of-way, and other public property can interfere with the health, safety, welfare, and convenience of the public and the aesthetic quality of the town.
- B. Public streets, sidewalks, and other public property are public forums and their historical and reasonable use in distributing and circulating newspapers, magazines, and other publications by means of newsracks is protected by the constitution and serve the public by providing accessible news. This access to the use of these areas for such purpose will not be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or when such use presents a hazard to person or property.

- C. The Town Council concludes that in the interest of the public, regulation of the downtown area must be established regarding the placement, design, and maintenance of newsracks while still providing ample opportunities for the distribution of news to the public through the use of newsracks.

**7-9.02 Definitions.**

For the purpose of this ordinance, certain words used herein are defined as follows:

- A. "Multiunit newsrack" means any combination of newsracks placed together on a pedestal type holder.
- B. "Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser, installed, used, or maintained for the display, sale or distribution without a charge, of any written or printed material.
- C. "Newsrack Card" means any form of information on the outside of the newsrack that advertises the publication inside the newsrack.
- D. "Newsrack District" means that portion of the Town of San Anselmo located on San Anselmo Avenue from Bridge Avenue to Bolinas Avenue, Center Blvd. From Bridge Ave. to Sir Francis Drake Blvd., Greenfield Ave. from Sir Francis Drake Blvd. to Sequoia Ave., and a distance of one hundred fifty (150) feet from curb return radii to all contributory streets and/or walkways adjacent to such streets.
- E. "Newsrack Permit" means a permit issued to a person allowing the placement of a newsrack within a specifically designated portion of a thoroughfare.
- F. "Right-Of-Way" includes all the areas described in Section 1-3.13 (t) of this Code.
- G. "Sidewalk" means any surface or walkway dedicated to public use and provided for the primary use of pedestrians.
- H. "Street" means all the areas described in Section 1-3.13 (t) of this Code.

**7-9.03 Standards**

All newsracks which are placed in the Newsrack District on any public property, within the public right-of-way or street, or within any public easement shall comply with the following criteria:

- A. All permanent newsracks located within the Newsrack District shall be of a multi-unit configuration. Multi-unit newsracks shall utilize no more than two (2) horizontal rows of six (6) compartments per row, and not more than one (1) such group of newsracks shall be allowed at any corner of a street intersection. If the demand for newsracks exceed twelve (12) at a single location, placement of additional newsracks shall be allowed at a location as determined by the Director of Public Works provided that such additional newsracks comply with all other provisions of this ordinance. Notwithstanding the requirements herein, a temporary single unit newsrack may be allowed by the Director for a period of sixty days in order to

determine the suitability of a permanent newsrack location. Such temporary newsrack shall not be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack without the consent of the owner of the property.

B. Newsrack requirements shall be as follows:

1. Multi-unit newsracks shall not exceed fifty-four (54) inches in height with a pedestal base not to exceed fifteen and one half (15.5) inches.
2. The number of compartments of multi-unit newsracks for any requested location shall be determined by the Director of Public Works based upon estimated/existing demand.
3. Newsracks shall either be placed parallel to a curb, adjacent to a wall, bus bench, or building (or if there is no building, adjacent to the property line).
  - a). Newsracks placed near a street curb shall be placed so that the edge closest to the curb is twelve inches from the curb.
  - b). Newsracks placed adjacent to the wall of a building shall be placed with their long axis parallel to the wall so that their back edge is six inches from the wall.
  - c). Newsracks placed along a property line shall be placed with their long axis parallel to the property line so that their back edge is six inches from fences, trees, and other objects.
3. No temporary single unit newsrack shall exceed four (4) feet in height, thirty (30) inches in width, or two (2) feet in depth.
4. No newsrack shall be placed within one hundred (100) feet of another newsrack on the same side of street, alley or walkway as determined by the Director of Public Works.
5. Newsracks shall be of a standard type in trade use including the Safeway Tan color, Sho-Rack TK-49-116 compartment units with 15 ½ " pedestals, or equivalent as determined by the Director of Public Works.

C. The name, address, and telephone number of the owner shall be attached or affixed to the front of the newsracks in an area not to exceed six inches.

D. Each newsrack shall be constructed, installed, and maintained in a safe and secure condition.

E. Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times. Failure to maintain shall cause the removal of such newsrack.

F. Upon removal of any newsrack by the applicant/owner of the newsrack, said applicant/owner shall repair and restore the location to its prior

condition.

- G. No newsrack shall be used for advertising material other than that dealing with the sale or distribution of the publications sold within. Newsrack cards shall be no larger than eleven inches high and seventeen inches wide and may be placed on the front of the newsrack below the display window.
- H. Newsracks shall have the following clear space:
  - 1. Sidewalks of less than eight feet in width, shall have at least three feet clear space.
  - 2. Sidewalks of more than eight feet in width shall have at least six feet clear space.
- I. The Director of Public Works may waive or modify the standards for newsracks if there is good cause.
  - 1. A written request for waiver or modification of standards may be submitted to the Director regarding newsrack placement, installation, and design. If the Director determines that the modification meets the intent of this ordinance and would not endanger the public health or safety or reasonably interfere with the use of the public right-of-way, a waiver may be issued.
  - 2. Notice of all modifications approved by the Director of Public Works shall be given to the Town Council who may choose to review his decision. Modifications and waivers shall not become effective until one day following the Town Council meeting after notice of the modification or waiver has been made. Should the Town Council review the modification or waiver, the decision will not be effective until the Town Council has acted.

#### **7-9.04 Prohibited Locations**

Newsracks are prohibited from the following locations:

- A. Within three feet of any marked crosswalk.
- B. Within three feet of any bus bench in any location where the accessway for pedestrian use is reduced to less than thirty six inches.
- C. Within three feet of any display window of any building adjacent to the sidewalk as to interfere with the reasonable use of such window for display purposes.
- D. Within five feet of any fire hydrant, fire/police callbox, or other emergency facility.
- E. Within five feet of any driveway or alleyway.
- F. Within five feet of any bicycle rack.

- G. Within five feet ahead of, or twenty-five feet to the rear of any sign marking a designated bus stop.
- H. At any location which violates local and state handicapped accessibility regulations.
- I. At any location where the newsrack obstructs or interferes with access to, or the use and enjoyment of, abutting property.
- J. At any location where the newsrack will interfere with or obstruct flow of pedestrian traffic on the sidewalk or public area.
- K. At any location where the newsrack will endanger person/property.
- L. At any location where the newsrack causes, creates, or constitutes a traffic hazard.
- M. Within three feet of any streetlight, street tree, trash receptacle, mail/UPS box, or any other sidewalk furniture.

#### **7-9.05 Permit Requirements**

Newsrack permits shall be obtained in order to install, place, and maintain a newsrack on any public property.

- A. Newsrack permits shall be required annually. Permit fees, if any, shall be determined by resolution of the Town Council.
- B. Application forms, available through the Town, shall be completed and submitted to the Department of Public Works. The application form shall inform the applicant of the provisions of this ordinance and require the following:
  1. The name, address, and telephone number of the owner of the newsrack and the name and address of an agent for notice, who will be notified in case of violation, relocation, or removal.
  2. The location of each newsrack to be installed, placed or maintained in the Town by the applicant.
- C. The Director of Public Works shall issue a permit for the newsrack, if approved, within ten working days upon receipt of the completed application and if the type of newsrack and the location(s) proposed meet the standards set forth in this ordinance. The Director of Public Works will notify the applicant in writing if the permit is denied. The applicant shall have fifteen days following receipt of such notice to appeal the denial to the Town Council.
- D. A person who has secured a newsrack permit may apply for an amendment to the original permit which shall cover any number or all of his/her newsracks within the Town. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

## 7-9.06 Violations

### A. Violations with immediate danger

1. Any newsrack which creates an immediate danger to persons, property or vehicles, shall constitute a violation and be seized and impounded by the Town without prior notice to the owner.
2. Within two working days after the seizure, the Town shall notify the agent if known, by mail, of the seizure and the reasons therefore, including the facts constituting immediate danger. The notice shall inform the agent for notice of the right to request, within twelve days of the date of such notice, a hearing before the Director of Public Works to determine whether such seizure was proper. Upon timely request, the Director of Public Works shall hold such hearings within ten business days, unless the owner agrees to a later hearing. The hearing shall be informal with oral and written evidence which may be given by both sides. The Director of Public Works shall give his decision in writing to the agent for notice within seven working days after any such hearing. If the Director of Public Works finds that such seizure was proper he shall notify the agent to retrieve the newsrack.

### B. Violation without immediate danger.

1. Any newsrack which violates the provisions of this ordinance and is not an immediate danger to the public, property, and vehicles, the Director of Public Works shall notify the agent for notice of the violation.
  - a. Notice of noncompliance shall state the violation and state a specific date, not to exceed twenty days, for the owner to remedy the violation.
  - b. If identification is not located on the newsrack a notification tag shall be attached to the newsrack stating the violation and the date of notice of violation.
  - c. A person notified of this violation may request a hearing before the Director of Public Works, by submitting a written request to the Office of the Director. The hearing shall be informal. Oral and written evidence may be given by both sides. Any action by the Town with respect to the alleged violation shall be stayed pending the decision of the Director of Public Works following the hearing.
  - d. Written notice from the Director of Public Works regarding the decision of the hearing shall be received by the agent of notice within seven working days from the date of hearing.
  - e. If the owner of the newsrack fails within the time permitted to remove or correct the violation, the Director of Public Works shall remove and impound the newsrack and shall notify the agent for notice to recover the newsrack.

- C. Any newsrack remaining empty for thirty consecutive days shall be deemed abandoned, except that a newsrack remaining empty due to labor strike or a temporary interruption of distribution or publication by the newspaper sold from that newsrack shall not be deemed abandoned. An abandoned newsrack may be seized by the Town and impounded.
- D. Seized newsracks shall be retained by the Town and may be recovered by the responsible party within thirty days from the seizure upon payment of any costs required incurred by the town for seizure, removal and storage.

**7-9.07 Insurance**

Each applicant for a newsrack permit shall furnish to the town a certificate showing that such applicant has then in force public liability and property damage insurance, naming the town as an additional insured, in an amount not less than one million dollars minimum liability combined single limit (bodily injury and property damage) per person and per occurrence. The permit holder shall provide and keep in force that policy of public liability insurance during such time as it continues to locate any newsrack under the terms of this ordinance. The evidence of insurance filed with the town shall include a statement by the insurance carrier that thirty days notice will be given to the town before any cancellation.

**7-9.08 Indemnification**

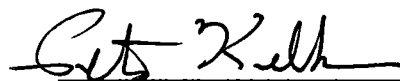
Each owner operating or maintaining a newsrack upon public property, Right of way, street, or public easement shall agree, prior to the granting of a permit to indemnify and hold harmless the town, its officers and employees, from any loss, liability, damage, or cost sustained by any person or property, arising from the installation, operation or use of such newsrack; provided, however, that such obligation to indemnify and hold harmless the town, its officers and employees, shall not extend to any loss, liability, damage or cost resulting from the active negligence of any Town official, agent, or employee.

Introduced at a regular meeting of the Town Council on September 24, 2002, and PASSED AND ADOPTED by the Town Council of the Town of San Anselmo at a regularly scheduled meeting on October 8, 2002, by the following roll call vote:

AYES: Chignell, Kilkus, Kroot

NOES: (none)

ABSENT: Breen, Hodgens

 *Judith Hodgens* Vice-Mayor  
Judith Hodgens, Mayor

ATTEST:

Debra Stutsman

Debra Stutsman, Town Clerk

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