

ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 74 OF THE SAN MARCOS CITY CODE BY CREATING A NEW ARTICLE 7 FOR THE PURPOSE OF REGULATING THE PLACEMENT AND MAINTENANCE OF NEWSRACKS ON CITY SIDEWALKS AND RIGHTS-OF-WAY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The uncontrolled placement and maintenance of newsracks on public sidewalks and rights-of-way presents a danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering or exiting vehicles and buildings, and persons performing essential utility, traffic control, and emergency services.

2. Newsracks located so as to cause a danger to persons using public rights-of-way, and unsightly newsracks located therein, such as newsracks that are poorly maintained or that have been defaced with graffiti, constitute public nuisances.

3. The City Council finds and declares that regulating the placement, appearance, size and servicing of newsracks on public rights-of-way is necessary to promote the public health, general welfare, and safety of persons using public rights-of-way, and to foster the aesthetics of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. That the findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. That Chapter 74 of the San Marcos City Code is amended by adding a new Article 7 that reads as follows:

ARTICLE 7. NEWSRACKS

Sec. 74.209. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

City contractor means a person who has a contract with the city for the installation, operation, maintenance, repair, removal, and replacement of multiple newsrack kiosks in a multiple newsrack kiosk zone.

Crosswalk has the meaning given that term in Section 541.302 of the Texas Transportation Code, as amended.

Code compliance division means the division of the City with primary responsibility for enforcement actions under this article.

Department means the department of the City designated by the city manager responsible for management of the requirements of this article.

Director means director of the department or his designee.

Main street district means the area generally bounded on the north by University Drive, on the east by CM Allen, on the south by Martin Luther King Drive, and on the west by Comanche Street as established and amended from time to time by Council.

Multiple newsrack kiosk means a single structure containing more than one newsrack that is installed by the city or a city contractor in the main street district.

Newsrack means any self-service or coin-operated box, container, storage kiosk, or other dispenser installed, used, or maintained for the display and sale or distribution without charge of newspapers, periodicals, magazines or other publications.

Sec. 74.210. Permit and decal required.

It shall be unlawful for any person to place, maintain, or cause to be placed, or maintained a newsrack on or projecting on, any public right-of-way without first receiving a permit from the city for the newsrack and affixing a decal evidencing such permit on the newsrack. It shall be unlawful for any person to place any newspapers, periodicals, magazines or other publications in a multiple newsrack kiosk without first receiving a permit from the city for the use of space in the kiosk.

Sec. 74.211. Permit.

(a) Application. An application for a newsrack permit for one or more newsracks or for space in a multiple newsrack kiosk shall be made to the director on a form prescribed by the director, which shall include, without limitation:

- (1) The name, street and mailing address, email 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 or kiosk space for which the permit is sought.

(2) The name, street and mailing address, email 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) or multiple newsrack kiosk space(s).

(3) The name and frequency of the publication proposed to be contained in each newsrack or kiosk space.

(4) For freestanding newsracks,:

a. the number of proposed newsracks and a description of the exact proposed locations.

b. a description of each proposed newsrack, including its dimensions and signage, and whether it contains a coin-operated mechanism.

(5) For multiple newsrack kiosks:

a. the location(s) of the kiosk(s) in which space is requested.

(b) *Separate application.* A separate application shall be required for each publication.

(c) *Issuance of permit.* If the application is properly completed and the type of newsrack and location proposed for each newsrack meets the standards set forth in this article, the department shall issue a permit within 10 business days from the date the applicant files the application with the director. A single permit shall be issued for all newsracks, applied for by an applicant, that meet the standards of this article. A permit shall not be transferable.

(d) *Period of permit validity.* A permit shall be valid for three years.

(e) *Permit application fee; decal fee.* The city council may establish a permit application fees and a decal fee by separate ordinance or resolution. All fees imposed under this article, if established by the city council, shall be paid to the director at the time the application is filed. Applicants shall pay a technology fee as established by the city council for each application submitted.

(f) *Decal replacement.* The department or the code compliance division may require a permittee to replace a decal that has become worn, faded, defaced, or missing.

(g) *Renewal.* A permit may be renewed if, prior to its expiration, the permittee pays any renewal fee for each newsrack as may be established by the city council.

(h) *Issuance of decal.* Each permittee shall be issued a pre-printed decal for each permitted newsrack, which shall be affixed to the lower right or left corner inside the window opening on the front of each newsrack.

(i) *Denial of permit.* If the application is incomplete or the type of newsrack and location proposed for a newsrack does not meet the standards set forth in this article, then the director shall deny the permit application. If the newsrack permit is denied, in whole or in part, the director shall, by certified mail or by email to the address(es) provided by the applicant, notify the applicant within 10 business days from the date of filing a completed application with the city, explaining the reasons for the denial of the permit. The applicant shall have 10 business days from the receipt of notice of a denial to correct and resubmit the application or appeal the decision, in writing, to the hearing examiner designated by the director.

(j) *Suspension or termination of permit.* The director may, following 10 business days' written notice to the permittee and an opportunity to be heard, suspend or terminate a permit and remove any newsracks associated with the permit from the sidewalk or public right of way or remove any publications from a multiple newsrack kiosk space associated with the permit. Grounds for suspension or termination require a proven history of continual noncompliance with the requirements of this article, consisting of a minimum of two violations in a twelve month period for which citations have been issued under this article and a final judgment of guilt or a plea of nolo contendere has been entered. The period of suspension shall be at the discretion of the director, depending on the severity of the violations, not to exceed six months. When the director finds that termination is appropriate, the permittee may not apply for a new permit for a period of 12 months. The decision of the director may be appealed as provided in subsection (k) of this section.

(k) *Appeal of denial, suspension, or termination.* The hearing examiner shall conduct a hearing within 30 days of receipt of the applicant's written appeal request. Written notice of the time and place of the hearing shall be provided to the applicant at least 10 business days prior to the date of the hearing. The hearing shall be conducted according to procedures promulgated by the director. The hearing examiner shall render a written decision within 15 business days after the date of the hearing. The decision of the hearing examiner shall be final.

(l) *Amendment to permit.* In the event of a change in any of the information contained in the application, the permittee shall submit the change in writing to the director. A permittee may install and maintain additional newsracks by amendment

to the permit. This section shall govern the review and approval of any amendment.

(m) *Processing.* The director shall have authority to promulgate forms, rules, and procedures relating to the permitting process.

Sec. 74.212. Maintenance and display.

(a) Any newsrack requiring a permit under this article shall:

- (1) Be in a neat and clean condition and in good repair at all times, i.e., reasonably free of dirt and grease; no chipped, faded, peeling, or cracked paint; no rust and corrosion; no broken or cracked plastic or glass parts; and no broken structural parts.
- (2) Be constructed, installed, and maintained in a safe and secure condition.
- (3) Be kept free of graffiti.
- (4) Be painted or covered with a protective coating, so as to keep it free from rust and graffiti, and shall be cleaned and repaired on a regular basis.
- (5) Other than the display of the publication contained therein, not display or be affixed with any words or pictures, except for identifying information and coin return information as required herein; however, the front and back of each newsrack may be affixed with a single sign or decal, no larger than 15 inches by 17 inches, containing only the information relating to the display, sale or distribution of the publication contained in the newsrack.
- (6) 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 contained therein. Such information shall be placed in a visible location on the front of the newsrack, and shall be legible. The size of the identifying information shall be no larger than three inches by five inches.
- (7) Be affixed with one face plate, no larger than four inches by seven inches, on the front or top of the newsrack near the coin-operated mechanism, if applicable, containing only the information indicating the publication's price(s) and the acceptable coin combinations or indicating that the publication is free of charge.

(b) In addition to the requirements of subsection (a) of this section, any coin-operated newsrack requiring a permit under this article shall:

- (1) Be equipped with a coin-return device that is maintained in good repair and working order.
- (2) 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, shall be legible, and no larger than three inches by five inches.

Sec. 74.213. Size and design standards.

(a) *Size requirements.* Any newsrack requiring a permit under this article shall have a height of not less than 36 inches and not more than 54 inches (including the base); a width of not less than 15 inches and not more than 25 inches; and a depth of not less than 12 inches and not more than 21 inches.

(b) *Physical requirements.* Any newsrack requiring a permit under this article shall meet the following requirements:

- (1) A newsrack shall be manufactured from 20-gauge or thicker zinc coated steel.
- (2) Be made of solid material on all sides; no wire or other open form of newsrack will be permitted.
- (3) All hinge rods and springs on a newsrack shall be made of steel.
- (4) Coin mechanisms, if any, shall be housed in the body of a newsrack or in armored heads made from 12-gauge or thicker steel welded or bolted to the body of a newsrack.
- (5) The door of a newsrack shall be constructed with a window opening to display clearly the front page of the current edition, and the window opening shall be covered by plastic manufactured from no less than .060" polycarbonate clear plastic material.
- (6) Newsrack door handles shall be a loop-style handle with a minimum one-inch clearance, designed to allow a person to slip his hands easily in and out of the handle.
- (7) Newsrack door springs shall meet the tension requirements of the Americans with Disabilities Act.
- (8) The design of a newsrack shall not create a danger to the persons using the newsrack.

(c) Any newsrack requiring a permit under this article shall comply with federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act, Texas Accessibility Standards, and other laws and regulations relating to barrier-free design.

Sec. 74.214. Placement and location.

(a) A person may not install, use or maintain a newsrack on any public right-of-way if the newsrack:

- (1) Endangers public safety;
- (2) Interferes with public utility, public transportation, or other governmental use; or
- (3) Interferes with or impedes:
 - a. Pedestrian or vehicular traffic;
 - b. Entry or exit from a residence or business;
 - c. Access to a legally parked or stopped vehicle;
 - d. Use of a traffic sign or signal, emergency call box, transit shelter, bus stop, elevator, mailbox, or other public service;
 - e. Access to use of a delivery area or loading zone;
 - f. Access to or operation of a fire hydrant, fire department inlet connection, fire protection system control valve, fire call box, police call box, traffic control signal box, or other emergency facility.

(b) Except as otherwise provided in this section, a newsrack requiring a permit under this article shall be placed or maintained on any public right-of-way in compliance with the following standards:

- (1) Every newsrack shall be placed so as to open toward the sidewalk.
- (2) If multiple newsracks are permitted at the same location, all such newsracks must be placed together in a straight line and abutting adjoining newsracks; however, no group of newsracks shall extend for a distance of more than 10 feet; no group of newsracks shall be closer than four feet to another group of newsracks; and no group of newsracks shall contain more than one newsrack of the same publication.

- (3) No newsrack shall be chained or otherwise attached to another newsrack. Newsracks shall not be chained or otherwise attached to any parking meter, kiosk, trash receptacle, street light, utility pole or device, sign pole, stand pipe, transit shelter, bus bench, bus stop, or to any tree, shrub or other plant, or other structure other than the newsrack base.
- (4) No newsrack shall be placed, installed or maintained:
- a. Within three feet of any fire hydrant, emergency call box, or other emergency facility.
 - b. Within three feet of any parking meter, bench, kiosk, trash receptacle, tree well, utility pole, signal pole, sign pole, stand pipe, or control cabinet.
 - c. Within five feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the edge of any bus bench, or the pole sign for any designated bus stop.
 - d. Within five feet of any alley, loading zone, disabled ramp or curb cut.
 - e. At any location where the clear space for the passage of pedestrians after placement or installation is less than three feet, or as required by ADA Accessibility Guidelines, whichever is greater.
 - f. Within three feet of or on any area of flowers, shrubs, or similar landscaping, or in such a manner where ordinary use of the newsrack will cause damage to such landscaping.
 - g. Within three feet of any commercial window display.
 - h. Within three feet of or in such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.
 - i. In such a manner as to be permanently affixed to any sidewalk, street or other city property.
 - j. Within 10 feet of any crosswalk.
 - k. At a location other than the location specified in the

approved permit application.

(c) Along an arterial roadway, no newsrack shall be placed or maintained within ten feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the edge of any bus bench, or the pole sign for any designated bus stop.

(d) In the event the city must expand or otherwise reconfigure public right-of-way or make improvements thereto to improve the adjacent street, sidewalk, or for other public purpose, any and all newsracks displaced by such improvements shall be removed by the permittee at the permittee's sole cost and expense and in accordance with the instructions of the city. Wherever possible, and only in accordance with the requirements of this ordinance, the city shall attempt to allow the relocation of any newsracks displaced as provided herein to the newly reconfigured right-of-way without additional permit fee; provided, however, where such right-of-way will no longer accommodate newsracks in accordance with the requirements of this ordinance, the city shall not be obligated to provide alternative or other sites for such displaced newsracks.

Sec. 74.215. Abandoned newsracks.

In the event any newsrack is severely damaged, or remains empty for more than 31 days, the newsrack shall be deemed abandoned, and may be seized and removed in the manner as provided in section 74.216.

Sec. 74.216. Seizure and removal of newsracks.

(a) The city may seize and remove a newsrack if the person responsible for the newsrack has failed:

- (1) To obtain a permit as required by this article;
- (2) To remedy a violation within 10 business days following the date of notice or a written decision by the hearing examiner that the newsrack was installed or maintained in violation of this article; or
- (3) To request a hearing within 10 business days following the date of notice of a violation.

(b) Other than in the instance of failing to obtain a permit as provided in subsection (a)(1), before any newsrack is seized, the person responsible for its installation and maintenance shall be notified and provided 10 business days in which to remedy the violation or to request a hearing to contest the seizure.

(c) A person notified under this section may request, in writing, a hearing before a hearing examiner designated by the director.

(d) Within 30 days of receipt of the applicant's written request, the hearing examiner shall conduct a hearing at which the appellant and the city may present evidence and testimony. Written notice of the time and place of the hearing shall be provided to the applicant.

(e) The hearing shall be conducted according to procedures promulgated by the director.

(f) The hearing examiner shall render a written decision within 15 days after the date of the hearing. The hearing examiner, applying the standards in this article, affirm, reverse or modify the decision of the hearing examiner. The decision of the hearing examiner shall be final.

Sec. 74.217. Newsracks in the Main Street District.

(a) Newspapers, periodicals, magazines or other publications displayed within the public right-of-way in the main street district shall be displayed in multiple newsrack kiosks. Before multiple newsrack kiosks are installed in the main street district, the director shall prepare a plan that includes:

- (1) the number and proposed locations of the multiple newsrack kiosks to be installed;
- (2) the design criteria for the multiple newsrack kiosks to be installed; and
- (3) a summary of the process for allocation of spaces in the multiple newsrack kiosks in accordance with subsection (d)(1).

(b) After the plan is prepared, the director shall:

- (1) send notice of the plan by regular United States mail to all publishers or distributors of publications having current newsracks in the main street district whose addresses are readily ascertainable from information on the newsrack, from the publication inside the newsrack, or from information on file with the city; and
- (2) publish notice of the plan in a newspaper in the city.

(c) *Individual newsracks prohibited.* After sending and publishing notice under subsection (b), the director will install and maintain multiple newsrack kiosks and allocate spaces in accordance with the plan. Thereafter, a publisher shall remove any of its existing newsracks and use only a multiple newsrack kiosk provided by the city.

(d) Allocation of space. The director shall allocate newsrack spaces in multiple newsrack kiosks in accordance with the following procedures:

(1) Initial allocation.

- a. The director shall determine how many newsrack spaces are available in multiple newsrack kiosks placed within the main street district.
- b. The director shall determine how many freestanding newsracks are operated in the main street district as of the effective date of this ordinance.
- c. If the number of freestanding newsracks exceeds the number of newsrack spaces available in multiple newsrack kiosks, the director shall conduct a lottery to determine the allocation of the newsrack spaces. The director shall place in a pool the names of all publications dispensed in the freestanding newsracks. If the same publication is being dispensed by more than one newsrack, its name will be placed in the pool twice. The director shall draw from the pool a number of publication names equal to the number of newsrack spaces available in multiple newsrack kiosks. The director shall assign numbers to the names, beginning with the Number 1 for the first-drawn name and continuing in a sequential manner. The publishers of the publications allocated a newsrack space through the lottery process will select locations in the multiple newsrack kiosks in the order in which their publication names were drawn. The director shall draw the remaining publication names from the pool and assign them a number, beginning with the number following the one assigned to the last publication allocated a newsrack space in a multiple newsrack kiosk. These remaining publications will be allocated space in a multiple newsrack kiosk in the order drawn if a newsrack space later becomes available.
- d. If the number of freestanding newsracks equals the number of newsrack spaces available in multiple newsrack kiosks, the publications dispensed in those newsracks will each be allocated a newsrack space in a multiple newsrack kiosk. The publishers of the publications allocated newsrack spaces under this paragraph shall select locations in the multiple newsrack kiosks in the order in which their properly completed permit applications are received by the director.
- e. If the number of freestanding newsracks is less than the number of newsrack spaces available in multiple newsrack kiosks, the

publications dispensed in those newsracks will each be allocated a newsrack space in a multiple newsrack kiosk. The publishers of the existing publications allocated newsrack spaces under this paragraph shall select locations in a multiple newsrack kiosk in the order in which their properly completed permit applications are received by the director. The remaining newsrack spaces will be allocated for new publications in the order in which permit applications for such spaces are received.

(2) *Future allocation.* Whenever one or more newsrack spaces become available in a multiple newsrack kiosk the space(s) will be allocated for new publications in the order in which permit applications for such spaces are received.

(3) *Random five-year reallocation.* Five years after the initial allocation of newsrack spaces in a multiple newsrack kiosk and every five years thereafter, the director shall reallocate the newsrack spaces in accordance with the applicable procedures above. When the number of publishers exceeds the number of available spaces, a publisher that lawfully using a space in a kiosk, but that was not reallocated a space in the kiosk under this paragraph, shall remove any publications from that multiple newsrack kiosk within 10 days after the reallocation is conducted.

(e) Unless the city provides a coin operated lock, a publisher allocated a newsrack space in a multiple newsrack kiosk shall install and maintain any coin-operated lock it requires to be on its assigned newsrack. The locking device must be approved by the director (or a city contractor, if applicable) and must not interfere with the use of the other newsracks in the multiple newsrack kiosk.

(f) The city may contract with another person for the installation, operation, maintenance, repair, removal, and replacement of multiple newsrack kiosks in the main street district.

Sec. 74.216. Issuance of citations.

Employees designated by the police department and the code compliance division are authorized to issue citations charging the violation of any provision of this article.

Sec. 74.217. Violations.

Any failure to comply with any applicable provision of this article shall be an offense punishable as provided in section 1.015 of San Marcos City Code.

SECTION 3. In codifying the changes authorized by this ordinance, paragraphs, sections

and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. This ordinance shall become effective on January 1, 2019.

PASSED AND APPROVED on first reading on December 19, 2017.

PASSED, APPROVED AND ADOPTED on second reading on January 16, 2018.

John Thomaides
Mayor

Attest:

Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney