

ORDINANCE NO. 2248

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANTON AMENDING CHAPTER 6.28 OF THE MUNICIPAL CODE REGARDING CONSOLIDATION OF NEWSRACKS LOCATED IN THE DOWNTOWN AREA

WHEREAS, with technology changing the manner in which people read the news, learn about apartments for rent, or advertise for events or services, the five existing newsracks in the downtown area are no longer in full use; and

WHEREAS, a consolidation of downtown newsracks, and delegation of authority to the City Manager to adopt and implement an administrative newsrack policy for the downtown area, will enable more public sidewalk space in the downtown area to be re-purposed for community and public use, enhance the pedestrian-friendly atmosphere, and improve the appearance and maintenance of the remaining newsracks.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Finds that the proposed amendments to the Pleasanton Municipal Code have no possibility to have a significant effect on the environment per Title 14 California Code of Regulations (CEQA Guidelines) §15061(b)(3).

SECTION 2. Chapter 6.28 NEWSRACKS is hereby amended as set forth in the attached Exhibit A.

SECTION 3. A summary of this ordinance shall be published once within fifteen (15) days after its adoption in "The Valley Times," a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

SECTION 4. This ordinance shall be effective thirty (30) days after its passage and adoption.

{Signatures and votes to follow on the next page}

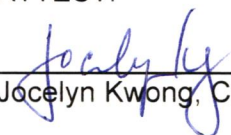
The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on November 7, 2023, and adopted on December 5, 2023, by the following vote:

Ayes: Councilmembers Arkin, Balch, Nibert, Mayor Brown
Noes: Councilmember Testa
Absent: None
Abstain: None




Karla Brown, Mayor

ATTEST:



Jocelyn Kwong, City Clerk

APPROVED AS TO FORM:



Daniel G. Sodergren, City Attorney

EXHIBIT A

6.28 Newsracks

Article I. Generally

6.28.010 findings—purpose.

The city council finds and declares that:

a. There is a substantial governmental interest in promoting the public health, safety, welfare and convenience by ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.

b. Public streets and sidewalks are public forums and their reasonable use in distributing and circulating newspapers by means of newsracks is not only a constitutionally protected right but serves a significant purpose in providing access to news for citizens of the city.

c. The reasonable use of newsracks within the public rights-of-way and other public property can be accomplished without interfering with the normal and reasonable use of these areas by the public, all while still providing ample access to the news.

d. The public health, safety, welfare and convenience require that:

1. Unreasonable interference with motorist or pedestrian traffic be avoided;
2. Obstruction of views of traffic signs and street-crossing pedestrians be eliminated;
3. Damage done to sidewalks or streets be minimized and repaired;
4. The good appearance of the public streets and grounds be maintained;
5. Trees and other landscaping be allowed to grow without disturbance;
6. Access to emergency and other public facilities be maintained; and
7. Ingress and egress from properties adjoining the public rights-of-way be maintained.

e. The regulation of newsracks as set forth in this chapter provides the least intrusive and burdensome means for ensuring the purposes stated in this section are

carried out while still providing ample opportunities for the distribution of news to the citizens of the city via newsracks located within public rights-of-way and public property.

f. With fewer printed newspapers, free magazines, and advertisements, it is appropriate to consolidate newsracks in the downtown.

6.20.020 definitions.

For purposes of this chapter the following words and phrases shall have meanings as follows:

a. "Downtown" means that area of the city designated as the Business Improvement District.

b. "Newsrack" means any self-service, coin-operated or credit card-activated box, container, storage unit, kiosk, or other dispenser installed, used or maintained for the sale or distribution of publications.

c. "Publications" means any newspapers, news periodicals, magazines, or other news or informational/advertising publications.

Article II. Newsracks in downtown

6.20.030 Newsracks in downtown

a. No privately owned newsracks shall be allowed in downtown.

b. Any entity that distributes publications in downtown shall only utilize City-owned newsracks located at 855 Main Street and 300 Main Street and 400 Old Bernal Avenue for such distribution.

c. The city manager shall approve and implement an administrative policy regarding the use of City-owned newsracks in downtown. Any entity that distributes publications in downtown is subject to the application requirements and other provisions of this policy.

Article III. Newsracks in other areas of the city

6.28.040 Application.

This article applies to all areas of the city except downtown.

6.28.050 Encroachment permit—required.

Prior to installation of any newsrack or similar dispenser on public property, within the public right-of-way of any street, or within any public easement adjacent to any street, the person or persons responsible for such installation, use and/or maintenance shall apply for and secure an encroachment permit as provided in chapter [13.04](#) of this code, except, however, no fees or bonds shall be required. No encroachment permit shall be issued except in conformance with this chapter. Any person may establish a single master encroachment permit covering any number or all of his or her newsracks within the city.

6.28.060 Encroachment permit—application.

The encroachment permit application shall state the name(s) and address(es) of those responsible for installation, use and maintenance of the newsrack(s) subject to the permit, and shall describe with particularity the location(s) proposed for installation. The application shall be approved and an encroachment permit issued within 10 calendar days if the type of newsrack and the location(s) proposed meet the standards set forth in this chapter. If some, but not all, of the proposed locations conform to the standards for newsrack placement, the application shall be approved and an encroachment permit issued for those locations conforming to the standards.

6.28.070 Encroachment permit—appeal.

If an application is disapproved, in whole or in part, the community development director shall notify the applicant(s) promptly, explaining fully the reasons for denial of an encroachment permit. The applicant(s) shall have 15 days following receipt of such notice to appeal the denial to the city manager.

6.28.080 Encroachment permit—amendment.

A person securing an encroachment permit may install and maintain additional newsracks by an amendment to the permit originally granted to that person. The rules and procedures of sections [6.28.020](#) through this section shall also apply to the review and approval of any such amendment.

6.28.090 Permissible types of newsracks.

a. Multiunit configurations. Newsracks in a multiunit configuration standard in trade use permanently affixed to the ground in a manner conforming to a standard detail for permanent installation of newsracks as established by the community development director shall be required or permitted as follows:

b. Single-unit configuration. Any single newsrack of standard design commonly in trade use may be either movable or permanently affixed to the ground in the following circumstances:

1. Single-unit newsracks 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. Single-unit newsracks shall not be chained, bolted or otherwise attached to any tree, shrub or other plant nor situated upon any landscaped area.

c. Permissible height and arrangement. The height of any newsrack shall be no greater than five feet measured from the ground to the top surface of the newsrack. The compartments of multiunit newsracks shall be placed in such a manner as to utilize no more than two horizontal rows of six compartments per row.

6.28.100 standards for newsrack placement.

No newsrack shall be installed, used or maintained in any location upon public property, within rights-of-way, or within public easements adjacent to streets where such installation, use or maintenance endangers the safety of persons or property, or interferes with public utility, public transportation, or other government use, or unreasonably interferes with or impedes the flow of pedestrian, bicyclist, or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of traffic signs or signals, hydrants or mailboxes. Except as allowed pursuant to section [6.28.080](#), the following general standards shall apply:

a. When a sidewalk is contiguous to a street curb, newsracks shall be placed on the side of the sidewalk away from the curb so that the back edge of the newsrack is not farther than six inches from the edge of the sidewalk.

b. When a sidewalk is separated from a street by a planter strip, newsracks may be placed on either side of the sidewalk so that the back edge of the newsrack is no farther than six inches from the edge of the sidewalk; newsracks may not be placed adjacent to the curb.

c. When a newsrack is placed adjacent to the wall of any building, the newsrack shall be placed with its long axis parallel to the building and with the back edge of the newsrack at least six inches away from the building.

d. Clear space for pedestrian/bicycle passage shall be maintained as follows:

1. Sidewalks of more than eight feet in width, at least six feet clear space;

2. Bicycle-pedestrian paths, at least eight feet clear space;
3. Sidewalks of less than eight feet in width, at least three feet clear space.

e. No newsrack shall be installed, used or maintained within the following distances, measured parallel to the street unless otherwise indicated, from the following:

1. Within three feet of any marked crosswalk;
2. Within the area adjacent to the curb return of any intersection with unmarked crosswalks;
3. Within three feet of any unmarked crosswalk at a "t" intersection;
4. Within a five-foot radius of any fire hydrant, fire call box, or other emergency facility;
5. Within three feet of any driveway, entrance to a building, or sidewalk leading to the entrance of a building;
6. In front of, or so situated so as to impede access to, any bus bench or shelter;
7. Within three feet of any no-parking or no-stopping zone, unless the newsrack is located on the side of the sidewalk farthest from the street.

6.28.110 Modification of placement standards.

The community development director may waive or modify the standards for newsrack placement contained in this chapter upon a showing of good cause and upon his or her determination that placing a newsrack at the location requiring the modification would not endanger the public health or safety. Notice of any modification approved by the community development director shall be given to the city council who may choose to review his or her decision. No modification or waiver shall be effective until one day following the city council meeting after notice of the modification or waiver has been made. Should the city council wish to review the matter, no modification or waiver shall be effective until the city council has acted.

6.28.120 Maintenance required.

Each newsrack shall be maintained in a neat and clean condition and in good repair at all times.

6.28.130 repair of damaged newsracks—removal upon discontinuance.

Newsracks that have been damaged or stolen shall be replaced or repaired as soon as is practical, unless the permit holder wishes to abandon the location, in which event the permit holder shall promptly remove its newsrack or compartment, as the case may be. When use of any newsrack is permanently discontinued, it shall be removed and the location restored to its previous condition, normal wear and tear excepted.

6.28.140 advertising.

No newsrack shall be used for advertising signs or publicity purposes other than one concerned with the display, sale or distribution of the newspaper distributed from it.

6.28.150 identification.

Every person maintaining a newsrack under the terms of this chapter shall have his or her name, address, telephone number and email address affixed to it in a place where such information will be readily visible.

6.28.160 abatement of violation.

a. Removal sanctioned. A newsrack installed or maintained in violation of this chapter may be seized and removed by a public officer of the city or his or her designee if it is impractical for the public officer to remedy the violation by moving the newsrack to another point on the sidewalk or public right-of-way.

b. Notification prior to removal. Before any newsrack is seized, the person responsible for its installation and maintenance shall be notified and given five days to remedy the violation or request a hearing before the community development director to contest seizure. Notice shall be given in writing and sent to the address stated on the newsrack encroachment permit application or the newsrack and an additional notice tag shall be affixed to the newsrack on the date of notice. The latter notice shall be sufficient when no identification is shown on the newsrack and no permit has been issued. If the person responsible for the newsrack does not respond to the City's notice within 10 days of such notice, the newsrack will be considered to be abandoned and will be removed.

c. Hearing may be required. A person notified under subsection b of this section may request a hearing before the community development director by making a written request to the office of the director. The hearing shall be informal, but oral and written evidence may be given by both sides. Any action by the city with respect to the alleged violation shall be stayed pending the director's decision following the hearing.

d. Seizure and retention of newsracks. The time period requiring remedy of a violation having run, or any appeal having been lost, the city may seize and remove the newsrack in violation of this chapter. The responsible party shall be notified of the seizure. Seized newsracks shall be retained by the city and may be recovered by the responsible party within 30 days from their seizure upon payment of the costs incurred by the city for seizure and removal.

e. Seizure without notice if imminent danger. Notwithstanding the provisions of subsection b of this section, prior notice of seizure is not required where the newsrack poses an immediate danger to pedestrians or vehicles, provided notice of the seizure and an opportunity to contest is given to the person responsible for the seized newsrack within five days after the seizure.

f. Removal of abandoned newsracks. Abandoned newsracks may be removed by a public officer or his or her designee and may be disposed of if it is not claimed by the responsible party within 30 days. Newsracks remaining empty for 30 days or not claimed within 30 days of seizure shall be deemed abandoned, except that a newsrack remaining empty due to labor strike or any temporary interruption of distribution or publication by the newspaper sold from that newsrack shall not be deemed abandoned.

6.28.170 liability insurance.

Each person, prior to the granting of an encroachment permit under this chapter, shall furnish to the city a certificate showing that such person has then in force public liability and property damage insurance, naming the city as an additional insured, in an amount and in a form approved by the city attorney

6.28.180 indemnification.

Every person operating or maintaining a newsrack upon or within the public property, rights-of-way or public easements adjacent to streets of the city shall agree, prior to the granting of an encroachment permit, to indemnify and hold harmless the city, its officers and employees, from any loss, liability, damage, or cost sustained by any person or property, arising from the installation, operation or use of such newsrack.

