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Int. No. 943

By Council Member Dear

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of newsracks.

Be it enacted by the Council as follows:

Section one. Declaration of legislative findings and intent. The Council finds that the unregulated placement and maintenance of newsracks on the City's sidewalks presents an inconvenience and danger to the safety and welfare of persons using those sidewalks, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services. The Council recognizes, however, that the placement of newsracks on sidewalks is so historically associated with the sale and distribution of written matter that access to those areas for such purposes should not be absolutely denied. The Council further finds that these strong and competing interests require a reasonable accommodation which can only be satisfactorily achieved through the regulation of the time, place and manner in which such newsracks are placed in operation.

§2. Subchapter one of chapter one of title 19 of the administrative code of the city of New York is amended by adding a new section 19-128 to read as follows:

19-128 Newsracks. a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Newsrack" shall mean any self-service or coin-operated box, container or other dispenser placed, used, or maintained exclusively for the sale or distribution of written matter.

2. "Person" shall mean an individual, partnership, corporation, limited liability company or other entity.

3. "Sidewalk" shall mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, routinely used or made available for use by pedestrians.

b. 1. No person shall place or maintain a newsrack on any sidewalk without having first obtained a permit therefor from the commissioner.

2. Other than because of failure to pay the permit fee or lack of compliance with insurance requirements, the commissioner may only deny a properly filed application for issuance of a permit to place or maintain a newsrack if: (a) the location for the newsrack applied for is within five feet of any portion of a crosswalk, driveway, vault or building entrance, within fifteen feet of a fire hydrant, within a bus stop or taxi stand, and within three feet of any portion of a sidewalk tree pit, mailbox, light stanchion, traffic sign post, traffic signal stanchion or any other publicly installed or authorized physical appurtenance; or

(b) the commissioner makes a written determination that placement of a newsrack at the location requested in the application would unreasonably impede the flow of pedestrian traffic and would likely impair the ability of police, fire or other emergency services personnel to respond to an emergency situation or would otherwise create a danger to the public safety.

c. The commissioner shall set forth by rule such reasonable requirements as he or she deems necessary for newsracks placed or maintained on any sidewalk pursuant to a permit issued under this section. Such rules shall include, but shall not be limited to, reasonable requirements related to the size, shape, appearance, material, placement, construction and maintenance of a newsrack, and insurance and indemnification requirements.

d. Prior to the issuance of a permit to install or maintain a newsrack on any sidewalk, each applicant shall pay to the commissioner a fee as shall be established by rule.

e. 1. Each permit to place or maintain a newsrack on any sidewalk shall expire three years from the date of issuance thereof.

2. A permit issued hereunder shall not be transferable, except with the written permission of the commissioner.

f. Any city agency which installs or authorizes the installation of any physical object on a sidewalk or street or alters or authorizes any physical alteration of a sidewalk or street shall notify the department of such activity or authorization no less than thirty days prior to the commencement of such activity. Upon review of such notice, the department shall determine whether such

activity warrants a written order of removal to be served upon any permittee in accordance with the provisions of subdivision g of this section.

g. 1. Notwithstanding any other provision of law to the contrary, the commissioner may serve, by certified mail, a written notice to cure upon the permittee or other person in control of a newsrack requiring the permittee to bring such newsrack into compliance with all of the provisions of this section or any rules promulgated hereunder or remove or cause to be removed such newsrack within seven days of the postmarked service of such order. Such notice shall permit the recipient to demand in writing an opportunity to be heard in the event that such person wishes to contest any portion of such notice. If, upon the expiration of the cure period, the newsrack has not been brought into compliance with the provisions of this section or any rules promulgated hereunder or has not been removed pursuant to the notice to cure and no written demand has been made by the recipient of the notice to cure for an opportunity to be heard, the commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer, is authorized to remove or arrange for the removal of such newsrack and the contents thereof to a secure location. Written notice of such removal shall be served by regular mail upon the permittee within five days of its removal and shall contain the address of the storage area to which such newsrack was removed and information regarding how the newsrack and the contents thereof may be retrieved. If such newsrack or the contents thereof is not claimed within thirty days after its removal, it shall be deemed to be abandoned and may be either sold at public auction after publication of notice in the City Record for a minimum of five consecutive business days, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of. Newsracks and the contents thereof that are removed pursuant to this subdivision shall be released to the permittee or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty imposed pursuant to section 19-150 of this subchapter for a violation of this section or any rules promulgated thereunder, or, if an action or proceeding for the violation is pending, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any penalty which may be imposed pursuant to section 19-150 of this subchapter.

2. Notwithstanding any other provision of law to the contrary, the commissioner may serve, by certified mail, an order upon the owner or other person in control of a newsrack requiring such person to remove or cause to be removed such newsrack within seven days of the postmarked service of such order where such removal is required because the location of such newsrack is used or is to be used for public utility purposes, public transportation, or other government use, or when such newsrack unreasonably interferes with the use of poles, posts, traffic signs or signals, hydrants, mailboxes, other objects permitted at or near said location, or authorized construction activities in nearby or adjacent buildings, or if removal is required in connection with a street widening or other capital project or improvement. If such person does not remove such newsrack within seven days of the postmarked service of such order, the

provisions of paragraph one of this subdivision regarding procedures for such removal, storage, abandonment, disposal, and release, shall apply.

3. (i) Notwithstanding any other provision of law to the contrary, where exigent circumstances exist and the commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer, gives notice to the owner or other person in control of a newsrack to remove such newsrack, such person shall comply with such notice as soon as practicable. For the purposes of this paragraph, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, the existence of obstructions in the public space, an accident, fire or other emergency situation, a parade, demonstration or other such authorized event at or near the location of such newsrack.

(ii) If any owner or other person in control of a newsrack does not remove such newsrack when directed to do so by the commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer in accordance with the provisions of subparagraph (a) of this paragraph, such commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer is authorized to provide for the removal of such newsrack to a secure location, and unless an administrative proceeding brought pursuant to subparagraph (c) of this paragraph has terminated in favor of such owner or other person in control of such newsrack, such owner or other person in control of such newsrack may be charged with reasonable costs for removal and storage payable prior to the release of such newsrack and the contents thereof.

(iii) Upon written request, the commissioner shall hold a hearing within five business days after the date of the removal of a newsrack pursuant to subparagraphs (a) or (b) of this paragraph and shall render his or her determination within three business days after the conclusion of the hearing. If a determination is rendered at such hearing that exigent circumstances did not exist, the commissioner shall arrange for the expeditious replacement of such newsrack at the location from which it was removed. If no hearing is requested or if the determination rendered at such hearing is that exigent circumstances existed, such newsrack and the contents thereof shall be released to the owner or other person lawfully entitled to possession, but may not be placed again at the location from which it was removed. If no hearing request has been made and such newsrack or the contents thereof is not claimed within thirty days after the date of removal, or if the newsrack or the contents thereof is not claimed within thirty days after a hearing determination that exigent circumstances existed, such newsrack or the contents thereof shall be deemed abandoned and may be either sold at a public auction after having been advertised in the City Record for a minimum of five consecutive business days, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of.

h. The commissioner may promulgate such rules as are necessary to carry out the provisions of this subchapter.

§3. Notwithstanding any other provision of law to the contrary, a newsrack on any sidewalk as of the effective date of this local law may continue to remain in such location provided that such newsrack is in compliance with the requirements for the

placement and maintenance of newsracks contained in rules promulgated by the commissioner pursuant to subdivision c of section 19-128 of the administrative code of the city of New York, as added by section two of this local law, and provided that (1) a permit application to place or maintain a newsrack on any sidewalk is filed by the owner or other person in control of such newsrack with the department of transportation within sixty days after such effective date; and (2) such permit application has not been denied. If no permit application has been filed within sixty days by the owner or other person in control of such newsrack or such permit application is denied, such newsrack shall be deemed to be in violation of the provisions of section 19-128 of the administrative code of the city of New York, as added by section two of this local law, and any rules promulgated thereunder.

§4. This local law shall take effect one hundred and eighty days after its enactment into law, except that the commissioner of transportation shall take any administrative actions, including the promulgation of rules, necessary for the implementation of this local law prior to its effective date.