



Legislation Text

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Preconsidered Int. No.

By Council Member Dear

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

Be it enacted by the council as follows:

Section 1. Declaration of legislative findings and intent. The Council finds that the dissemination of newspapers and other written matter is in the public interest, and that any governmental action with respect to such dissemination must be consistent with the protection accorded a free press by the First Amendment to the United States Constitution. The Council further finds that the City of New York has an important interest in regulating the use of its streets in such a manner as to ensure the safety of the public, the safe and unobstructed flow of pedestrian and vehicular traffic and the protection of personal property from damage. To accommodate these interests in a complementary and mutually advantageous manner, the Council adopts this local law.

§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 19-128.1 to read as follows:

§19-128.1 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 installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.

2. "Person" shall mean a natural person, partnership, corporation, limited liability company or other association.

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, intended for the use of pedestrians.

4. "Crosswalk area" shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.

5. "Corner quadrant area" shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.

6. "Board" shall mean the Environmental Control Board of the City of New York.

b. Requirements. It shall be unlawful for any person to place, install or maintain a newsrack on any sidewalk unless such newsrack is in compliance with the provisions of this subdivision.

1. The maximum height of any newsrack containing a single publication shall be fifty-four inches. The maximum width of any such newsrack shall be thirty inches. The maximum depth of any such newsrack shall be thirty inches.

2. No newsrack shall be used for advertising or promotional purposes, other than advertising or promotion related to the newspaper or other written matter offered for distribution in such newsrack.

3. Each newsrack used to sell newspapers or other written matter shall be equipped with a coin return mechanism in good working order so as to permit a person to secure a refund in the event that the newsrack malfunctions.

4. The owner or person in control of each newsrack shall affix his or her name, address, telephone number, and email address on the newsrack in a readily visible location.

5. Each newsrack shall be secured in such a manner as not to cause injury to persons or damage to property. Where a newsrack is attached to a fixture, it shall not damage or interfere with the use of that fixture.

6. Subject to the limitations set forth in this section, newsracks shall be placed near a curb and may be attached to curbside fixtures. The curbside outermost edge of a newsrack shall be no less than twelve inches and no more than eighteen inches from the edge of the curb.

7. A newsrack shall not be installed or maintained: (a) within fifteen feet of any fire hydrant; (b) in any driveway or within five feet of any driveway; (c) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut; (d) within fifteen feet of the entrance or exit of any elevated railway station or subway station if the flow of pedestrians into or out of such entrance or exit would be obstructed; (e) within any bus stop if such placement interferes with the ingress or egress of any passengers; (f) within a crosswalk area; (g) within a corner quadrant area, unless the newsrack is attached to or affixed immediately adjacent to an existing fixture within the quadrant, provided that the newsrack is not also within a crosswalk area; (h) on any surface where such installation or maintenance will cause damage to or will interfere with the use of any pipes, vault areas or telephone or electrical cables; (i) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design, such as the sidewalks surrounding Central Park or Prospect Park; (j) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping; or (k) where such installation or maintenance endangers the safety of persons or property.

c. Notification to City of Location of Newsrack

1. For newsracks installed on a sidewalk before the effective date of this local law, the owner or person in control of such newsracks shall, within 60 days after such effective date, submit to the commissioner a form identifying: (i) the address of each newsrack; (ii) the name of the publication(s) or written matter to be offered for distribution in such newsracks; and (iii) the name, address, telephone number, and email address of the owner or person in control of such newsracks; and representing that such newsracks comply with the provisions of this section.

2. For newsracks installed or relocated more than sixty days after the effective date of this local law, the owner or person in control of such newsracks shall, within ten business days after such installation or relocation, submit the information set forth above in paragraph one of subdivision c of this section to the commissioner.

d. Indemnification and Insurance

1. Each person who owns or controls a newsrack on a city sidewalk shall indemnify and hold harmless the city from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the city may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence of the city.

2. Each person who owns or controls a newsrack on a city sidewalk shall maintain a policy of general liability insurance for personal injury or death in the amount of no less than one hundred thousand dollars per claimant and three hundred thousand dollars per incident and for property damage in an amount no less than one hundred thousand dollars naming the city of New York, and its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any and all losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the installation and/or the maintenance of any such newsrack. Should said policy be called upon to satisfy any liability for damages covered by said policy, the policy must be of such a nature that the original amount of coverage is restored after any payment of damages under the policy.

e. Maintenance, Repair and Removal

1. Each newsrack shall be maintained in a clean and neat condition and shall be kept in good repair.

2. Any newsrack that has been damaged or vandalized shall be repaired, replaced or removed by the owner or person in control of such newsrack within ten days of receipt of notice of such damage or vandalism. If such newsrack has been damaged or vandalized so as to constitute a danger to public safety, it shall be made safe within twenty-four hours of notice of such condition or as soon thereafter as is possible.

3. Any damage to city property resulting from the placement, installation, maintenance or removal of a newsrack shall be repaired promptly by the owner or person in control of such newsrack. If a newsrack is removed from its location on a city sidewalk, the owner or person in control of such newsrack shall be responsible for restoring the sidewalk and any other affected city property to the condition existing prior to

installation of the newsracks. Where the installation of a newsrack alters the condition of city property, a bond in an amount to be determined by the department shall be required to ensure proper restoration.

f. Enforcement

1. (a) Whenever any newsrack is found to be in violation of this local law, the commissioner shall cause a notice of violation to be attached to such newsrack specifying the date and nature of the violation to be heard by the Board and shall send written notification, via certified mail, to the owner or person in control of the newsrack. Such person shall within ten business days from the date of receipt of notification via certified mail, either cause the violation to be corrected or make a written request to the Board for a hearing.

(b) Within two business days from the date on which the request for hearing is received, the Board shall set a hearing date and shall notify the requester by certified mail of the date, time and place of said hearing. Said hearing shall occur within ten business days of the date of issuance of the notice. At the time set for such hearing, or at the date to which such hearing is continued, the Board or its designee shall receive all evidence relevant to the occurrence or non-occurrence of the specified violation(s), the compliance or noncompliance with any of the provisions of this section, and any other relevant information. Such hearing need not be conducted according to technical rules relating to evidence and witnesses. Oral evidence shall be taken only on oath or affirmation. Within five business days after the conclusion of the hearing, the Board shall find and determine, from the facts adduced at said hearing, whether the newsrack violates this section. The decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The Board shall send to the owner or person in control of the newsracks by certified mail, a copy of its decision and order.

2. If the owner or person in control of a newsrack that has been cited under paragraph one of this subdivision does not correct the alleged violation or request a hearing within the time provided in that subparagraph, or if a finding of violation is upheld in a hearing held pursuant to paragraph one of this subdivision and the violation is not remedied within ten days of receipt of the decision of the Board, the commissioner or his or her designee is authorized to provide for the removal of such newsrack and the contents

thereof to a place of safety. If such newsrack or the contents thereof are not claimed within thirty days after their removal, they shall be deemed to be abandoned and may be either sold at a public auction after having been advertised in the City Record, 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, and the owner or person in control shall be liable to the City for the costs of removal and storage and may be subject to a civil penalty in an amount up to one hundred dollars. Newsracks and the contents thereof that are removed pursuant to this subparagraph shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty or, if an action or proceeding concerning the violation is pending, upon the posting of a bond or other form of security acceptable to the department in an amount that will secure the payment of such costs and any penalty that may be imposed hereunder.

3. The commissioner may, upon due notice and an opportunity to be heard, serve 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 ten business days of the issuance of such order where such removal is required because the site or location at which such newsrack is placed is used or is to be used for public utility purposes, public transportation, or public safety purposes, or when such newsrack unreasonably interferes with 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 ten business days of the issuance of such order or request a hearing, the provisions contained in paragraph two of this subdivision regarding alternatives for such removal, storage, abandonment, disposal, and release, shall apply.

4. (a) Where emergency circumstances exist and the commissioner or his or her designee gives notice to the owner or other person in control of a newsrack to remove such newsrack, such person shall comply with such notice. For the purposes of this paragraph, emergency circumstances shall include, by way of example, an accident, fire or other comparable situation.

(b) If any owner or other person in control of a newsrack does not remove such newsrack when directed

to do so by the commissioner or his or her designee, in accordance with the provisions of subparagraph a of paragraph four of this subdivision, the commissioner or his or her designee is authorized to provide for the removal of such newsrack to a place of safety, and unless an administrative proceeding brought pursuant to subparagraph c of paragraph four of this subdivision 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 the reasonable costs for removal and storage payable prior to the release of such newsrack and the contents thereof.

(c) Upon written request, the Board 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 its determination within three business days after the conclusion of the hearing. The hearing shall take place under the provisions set forth in subparagraph b of paragraph one of this subdivision. If a determination is rendered at such hearing that emergency circumstances did not exist, such newsrack shall be replaced within ten days at such location by the commissioner or his or her designee. If no hearing is requested or if the determination rendered at such hearing is that such emergency circumstances existed, such newsrack and the contents thereof shall be released to the owner or other person lawfully entitled to possession. 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 emergency 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, 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.

5. In giving any notice required under this section, except as otherwise provided by law, the Commissioner may rely on the validity of any address (a) posted on the newsrack pursuant to paragraph four of subdivision b of this section as the address of the owner or person in control of the newsrack, or (b) submitted to the department pursuant to paragraph one of subdivision c of this section, and shall provide such notice by certified mail. If the owner of a newsrack or person in control of a newsrack shall have failed to provide an

address on the newsrack or by submission to the commissioner, the commissioner shall use reasonable effort to ascertain the identity and address of the owner, and to give notice to such person, but having done so, may take action as if proper notice had been given.

6. Nothing in the provisions of this section shall preclude the immediate removal of a newsrack when otherwise authorized by law.

g. Severability. If any subdivision, paragraph, subparagraph, sentence or clause of this section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.

§3. Notwithstanding any other provision of law, a newsrack on any sidewalk as of the effective date of this local law may continue to remain in such location until sixty days after the effective date of this local law. Thereafter, any such newsrack may continue to remain in such location only if such newsrack is in compliance with the provisions of this local law.

§4. Notwithstanding any provision of this law, no person shall be subject to the imposition of criminal liability for any violation of this section.

§5. This local law shall take effect one hundred and eighty days after its enactment into law, provided, however, that the commissioner of transportation shall take such actions as are necessary to implement this local law prior to such effective date.