

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2002**

No. 23

Introduced by Council Members Moskowitz and Gallagher; also Council Members Comrie, Sanders Jr. and Golden.

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 unregulated placement and maintenance of newsracks on the City's sidewalks present an inconvenience and danger to the safety and welfare of persons using such sidewalks, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services. Further, the proliferation of unregulated newsracks has a deleterious impact on the appearance of such sidewalks and the City in general. The Council recognizes, however, 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. 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" shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

5. "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.

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

7. "Board" shall mean the environmental control board of the city of New York.

8. "Close proximity" shall mean a distance adjacent to an area designed to facilitate safe ingress or egress that will reasonably permit and protect such safe ingress or egress.

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

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

2. No newsrack shall be used for advertising or promotional purposes, other than announcing the name and/or website of 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, if any, on the newsrack in a readily visible location. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

5. Subject to the limitations set forth in this section, newsracks shall be placed near a curb.

6. A newsrack shall not be placed, installed or maintained: (a) within fifteen feet of any fire hydrant; (b) in any driveway or within close proximity 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 close proximity of the entrance or exit of any railway station or subway station; (e) within any bus stop; (f) within a crosswalk area; (g) within a corner area or within five feet of any corner 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, telephone or electrical cables or other similar locations; (i) on any cellar door, grating, utility maintenance cover or other similar locations; (j) on, in or over any part of the roadway of any public street; (k) unless eight feet of sidewalk width is preserved for unobstructed pedestrian passage; (l) 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; (m) 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 (n) where such placement, installation or maintenance endangers the safety of persons or property. Any limitation on the placement or installation of newsracks pursuant to this paragraph shall be no more restrictive than necessary to ensure the safe and unobstructed flow of pedestrian and vehicular traffic, and otherwise to assure the safety of persons and property.

7. Every newsrack shall be placed or installed in a manner that will ensure that such newsrack cannot be tipped over.

c. Notification to city of location of newsrack. 1. Where a newsrack has been placed or installed on a sidewalk before the effective date of this section, the owner or person in control of such newsrack shall, within sixty days after such effective date, submit to the commissioner a form identifying: (i) the address of such newsrack; (ii) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; 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. Subsequent to the initial notification requirements set forth in paragraph 1 of this subdivision, the owner or person in control of any newsrack shall submit the information set forth in paragraph one of this subdivision four times a year to the commissioner in accordance with a quarterly notification schedule to be established by the commissioner.

3. Notification to the city, as required by paragraphs 1 and 2 of this subdivision, may be submitted to the department electronically.

d. Indemnification and insurance. 1. Each person who owns or controls a newsrack placed or installed on any sidewalk shall indemnify and hold the city harmless 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 or intentional act of the city.

2. Each person who owns or controls a newsrack on any sidewalk shall maintain a general liability insurance policy 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 placement, installation and/or the maintenance of any newsrack. The minimum limits of such insurance coverage shall be no less than three hundred thousand dollars combined single limit for bodily injury, including death, and property damage, except that any person who maintains an average of one hundred or more newsracks at any one time shall maintain such minimum insurance coverage of one million dollars. An insurance certificate demonstrating compliance with the requirements of this subdivision shall be submitted annually by December 31st to the commissioner by the person who owns or controls such insured newsracks. 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. Failure to maintain a satisfactory insurance policy pursuant to this subdivision, or failure to submit an annual insurance certificate to the commissioner pursuant to this subdivision, shall be deemed a violation of this section subject to subdivision f of this section.

e. Maintenance, continuous use, repair and removal. 1. Each newsrack shall be maintained in a clean and neat condition and shall be kept in good repair. Any person who owns or is in control of a newsrack shall be required to monitor each newsrack so that it is kept clean and free of graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions and is kept in good repair. Such person shall also use best efforts to ensure that each newsrack under his or her ownership or control is not used as a depository for the placement of refuse and shall be required to remove any refuse placed within such newsrack within twenty-four hours of being made aware of such condition.

2. In no event shall the owner or person in control of a newsrack fail to keep such newsrack supplied with written matter for a period of more than seven consecutive days without securing the door so as to prevent the deposit of refuse therein. In no event shall such newsrack remain empty for a period of more than twenty-one consecutive days.

3. 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 persons or property, it shall be made safe within a reasonable time following notice of such condition.

4. 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 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 that newsrack.

f. Enforcement. 1. (a) Whenever any newsrack is found to be in violation of this section, the commissioner shall issue a notice of correction by affixing it to such newsrack specifying the date and nature of the violation and shall send written notification, by regular mail, to the owner or person in control of the newsrack. Such person shall within seven business days from the date of receipt of notification via regular mail cause the violation to be corrected.

(b) If an owner or other person in control of a newsrack fails to comply with a notice of correction issued pursuant to subparagraph a of this subdivision or an order by the commissioner to remove served pursuant to paragraph three of this subdivision, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. If the return date of the notice of violation is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. At the time set for such hearing, or at the date to which such hearing is continued, the board 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 render a decision, based upon 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 newsrack by regular mail, a copy of its decision and order.

2. If the board renders a decision upholding the finding of a violation against the respondent upon default or after a hearing held pursuant to paragraph one of this subdivision, and the violation is not remedied within seven

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 any contents thereof to a place of safety. If such newsrack and any contents thereof are not claimed within thirty days after their removal by a person entitled to their return, 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 shall be subject to a civil penalty pursuant to paragraph five of subdivision f of this section. 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 notice, 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 seven 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 seven business days of the issuance of such order, the provisions contained in subparagraph b of paragraph one of this subdivision and paragraph two of this subdivision regarding issuance of a notice of violation and alternatives for removal, storage, abandonment, disposal, and release, shall apply.

4. Notwithstanding any other provision of law to the contrary, if a newsrack has been deemed to have been abandoned in accordance with this paragraph, the 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 and may either be sold at 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. A newsrack shall be deemed to have been abandoned for purposes of this paragraph if the name, address or other identifying material of the owner or other person in control of such newsrack is not affixed to such newsrack as required by paragraph four of subdivision b of this section.

5. (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 mean circumstances which present an imminent threat to public health or safety.

(b) If any owner or other person in control of a newsrack does not remove such newsrack when directed to do so pursuant to the provisions of subparagraph a of paragraph five of this subdivision, or if circumstances are such that public safety requires the immediate removal of a newsrack and it is not reasonable to give the owner or other person in control of such newsrack notice prior to removal, the commissioner or his or her designee may provide for the removal of such newsrack to a place of safety. Unless an administrative proceeding brought pursuant to subparagraph c of paragraph five 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 of removal and storage payable prior to the release of such newsrack and the contents thereof.

(c) If an owner or other person in control of a newsrack fails to comply with a notice issued pursuant to subparagraph a of this paragraph to remove such newsrack, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. If the newsrack has been removed by the city pursuant to subparagraph b of this paragraph, such notice of violation shall be served immediately after removal, and, if the return date of the notice of violation is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. The hearing shall take place under the provisions set forth in subparagraph b of paragraph one of this subdivision and a decision shall be rendered by the board within five business days after the conclusion of the hearing. If a decision is rendered at such hearing that emergency circumstances did not exist, such newsrack shall be returned within

ten days to the location from which it was removed by the commissioner or his or her designee. If a decision is rendered against the respondent upon default or after a hearing 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, after a board decision that removal was proper, such newsrack and any contents thereof are not claimed within thirty days after the date of removal by a person entitled to their return, such newsrack and any 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.

6. Any owner or person in control of a newsrack found to be in violation of any provision of this section shall, after a board decision has been issued upon default or after a hearing, be subject to a civil penalty in the amount of no less than one hundred dollars and no more than five hundred dollars for each violation.

7. The commissioner, shall remove or cause to be removed from any sidewalk for a period of three consecutive months, every newsrack and the contents thereof under the ownership or control of any person who repeatedly violates any provision or provisions of this subdivision. For purposes of this paragraph, a person shall be deemed to have repeatedly violated this section if such person has been determined by the board, upon default or after a hearing, to have violated the provisions of this section ten or more times within any-six month period and that person has failed to pay three or more civil penalties imposed during that same time period. The department shall maintain a record of all persons who repeatedly violate any provision or provisions of this subdivision. In the event that the commissioner removes or causes to be removed all newsracks and the contents thereof under the ownership or control of any person based upon this paragraph, such person shall be permitted to replace all such newsracks at the locations from which they were removed upon payment in full of all outstanding civil penalties imposed for violations of this section and the reasonable costs of removal and storage, provided that such newsracks meet the requirements of this section. If any newsracks or contents thereof removed pursuant to this paragraph are not claimed within thirty days after the expiration of the three-month removal period, such newsracks or the contents thereof shall be deemed abandoned and may be either sold at 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.

8. In giving any notice of correction or serving any commissioner's order 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 subdivision c of this section, and shall provide such notice by regular mail. If the owner of a newsrack or person in control of a newsrack shall have failed to comply with paragraph four of subdivision b or with subdivision c of this section, the commissioner shall make reasonable efforts to ascertain the identity and address of the owner or person in control of such newsrack for the purpose of giving any required notice, and having done so, may take action as if any required notice had been given.

9. Nothing in 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 placed or installed 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 remain in such location only if such newsrack is in compliance with the provisions of this local law.

§4. Notwithstanding the provisions of any other law, no person shall be subject to the imposition of criminal liability for any violation of section 19-128.1 of the administrative code of the city of New York as added by section two of this local law.

§5. This local law shall take effect one hundred and eighty days after its enactment into law, except that the commissioner of transportation shall be authorized to take such administrative actions deemed necessary to effectuate the provisions of this local law prior to its effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the city of New York, passed by the Council on August 15, 2002, and approved by the Mayor on August 27, 2002.

VICTOR L. ROBLES, City Clerk Of The Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 23 of 2002, Council Int. No. 14-B) contains the correct text and:

Received the following vote at the meeting of the New York City Council on August 15, 2002: 45 for, 0 against, 0 not voting.

Was signed by the Mayor on August 27, 2002.

Was returned to the City Clerk on August 27, 2002.

STEPHEN LOUIS, Acting Corporation Counsel