ORDINANCE NO. [REDLINE]
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AMENDING CHAPTER 9.79 (NEWSRACKS) OF TITLE 9
(PUBLIC PEACE, MORALS AND SAFETY) OF THE PALO ALTO
MUNICIPAL CODE TO CREATE A SPECIAL NEWSRACK AREA
IN THE CALIFORNIA AVENUE COMMERCIAL AREA

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) Many citizens and the California Avenue Downtown Association have expressed concerns about the increasing visual blight, sidewalk clutter, and safety hazards caused by increasing numbers of newsracks and pedestrians in the California Avenue commercial area of the City; and

(b) The Council finds that newsrack regulations are necessary to protect the public health, safety and welfare of the community because:

(1) Pedestrian traffic and the number of newsracks in the California Avenue Commercial Area, particularly on California Avenue from Park Boulevard across El Camino Real, have increased significantly during the last five years;

(2) Many of the newsracks in the California Avenue Commercial Area of Palo Alto are poorly maintained and in unsightly condition;

(3) Increasing numbers of newsracks interfere with public and private sidewalk maintenance of sidewalks, and can make sidewalk maintenance more expensive;

(4) Many of the newsracks in Palo Alto, particularly in the California Avenue Commercial Area, are located so as to interfere dangerously with pedestrian sidewalk traffic, impede crosswalk usage at several major intersections on California Avenue, and impede or prevent pedestrian entry and exit from parked cars;

(5) In the California Avenue Commercial Area, increasing numbers of newsracks are competing with increasing numbers of pedestrians for sidewalk space.

(6) Regulation of newsracks on and around California Avenue will prevent obstruction of travel, avoid danger from defective, improperly installed, or poorly maintained racks, and preserve and enhance the aesthetic quality and visitor experience in the California Avenue area.

(c) The Council finds that for each of the foregoing reasons there is a significant governmental interest in amending the newsrack ordinance to establish a Special
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Newsrack Area in the California Avenue Commercial Area that sets forth comprehensive time, place and manner regulations for newsracks in designated portions of the California Avenue Commercial Area, and that newsrack regulations are necessary to protect the public health, safety and welfare of Palo Alto.

SECTION 2. Chapter 9.79 of Title 9 of the Palo Alto Municipal Code is hereby amended to read as follows:

9.79.010 Purpose; Scope.

The purpose and scope of the regulations in this chapter are as follows:

(a) The provisions of this chapter shall apply to all newsracks located in public places within the City of Palo Alto; provided, that certain provisions, as specified, shall apply only to newsracks located on public property.

(b) It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

(c) The public health, safety, welfare and convenience require that: interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from, and the enjoyment of store window displays on, properties adjoining public property be protected.

(d) Newsracks placed and maintained on public property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

(e) The regulations on the time, place and manner of the placement, location and maintenance of newsracks set forth in this chapter are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of news to the public.

9.79.020 Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be given the meaning set out in this section unless it is apparent from the context that a different meaning is intended.

(a) "Abandoned newsrack" means any newsrack which remains empty for ten (10) business days; provided, that a newsrack remaining empty due to labor strike or any
temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack shall not be deemed abandoned.

(b) "City Engineer" means the Director of Public Works or his or her designee.

(c) "Harmful matter" means and is defined as in California Penal Code section 313, as may from time to time be amended.

(d) "Minor" means any natural person under 18 years of age.

(e) "Modular newsrack" means an industry standard structure composed of a group of individual newspaper dispensing cabinets mounted in top and bottom rows on a rack base that is supported by a maximum of three pedestals. This fixture is to be permanently affixed to the sidewalk or otherwise permanently anchored as approved by the City Engineer. All newsracks, trays, spacers, and pedestals shall be the same color as approved by the City Engineer (currently forest green).

(f) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display and sale or distribution of newspapers, periodicals or other publications.

(g) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(h) "Public place(s)" means and includes any public property owned or controlled by the City of Palo Alto or any other public agency, or any outdoor private property which is open to the public.

(i) "Public property" means any public right-of-way or any property owned or controlled by the City of Palo Alto, including, without limitation, streets, sidewalks, alleys, and rights-of-way.

(j) "Special Newsrack Area" means any area of the City of Palo Alto so designated by the City Council upon findings that the special circumstances of the area require special design, placement and other standards for newsracks.

(k) "Special Newsrack Container" means a specially designed permanently affixed container provided by or on behalf of the City, within which shall be the exclusive location for the placement of newsracks in designated special newsrack areas.

9.79.030 Permit Required.

It is unlawful to install, place, maintain or cause to be placed, installed or maintained a newsrack on, or projecting on, any public property without first receiving a permit therefor from the City Engineer and unless such newsrack is in compliance with the provisions of this chapter; provided, that, except for newsracks proposed to be located within a special
newsrack area, a newsrack located on public property as of April 5, 1999 may continue to remain in such location, under the following conditions:

(a) The newsrack is in compliance with the requirements for the installation and maintenance of newsracks contained in this chapter; and

(b) A permit application for such newsrack has been filed as of that date with the City Engineer by the duly authorized representative of both the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack; and

(c) A permit pursuant to such application has not been denied with respect to any such newsrack.

If no permit application has been filed by that date by the duly authorized representative of both the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack, or such permit is denied, such newsrack shall be deemed to be in violation of the provisions of this chapter.

9.79.040 Obtaining a Permit.

(a) Exclusive Requirements. The provisions of this chapter shall be the exclusive requirements for newsrack encroachments onto public property in the city.

(b) Application. Applications for a newsrack permit for one or more newsracks shall be made to the City Engineer on a form prescribed by the City Engineer, which shall include, without limitation:

1. The name, street and mailing address, and telephone number of the applicant, which shall be the duly authorized representative of both the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack for which the permit is sought;

2. The name, street and mailing address and telephone number of the distributor and associated publisher or other responsible person whom the city may notify or contact at any time concerning the applicant's newsrack(s);

3. The number of proposed newsracks and a description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this chapter) and the proposed means of affixing each proposed newsrack;

4. A description of each proposed newsrack, including its dimensions, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;

5. The name and frequency of publication of each publication proposed to be contained in each newsrack;
(6) A statement signed by the applicant that the applicant agrees to indemnify, defend and hold harmless, the city and its representatives from all claims, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any newsrack on public property by or on behalf of any such person, except such injury or harm as may be caused solely and exclusively by the negligence of the city or its authorized representatives; and

(7) A statement signed by the applicant that the applicant agrees, upon removal of a newsrack, to repair any damage to the public property caused by the newsrack or its removal.

(c) Issuance of Permit. A permit shall be issued within ten working days from the date of filing the application with the city engineer if the application is properly completed and the type of newsrack and location proposed for each newsrack meet the standards set forth in this chapter. A single permit shall be issued for all newsracks applied for by an applicant which meet the standards of this chapter. A permit shall not be transferable.

(d) Period of Permit Validity. All permits issued within three years from the effective date of this section shall expire on the date three years from the effective date of this section, regardless of the date of issuance. All permits issued within the second and succeeding three year periods shall, likewise, expire at the end of such three year period.

(e) Issuance of Permit Sticker. Each permittee shall be issued a pre-printed sticker for each permitted newsrack, which shall be affixed to the lower right corner of the front window or other acceptable location approved by the City, of each newsrack.

(f) Denial of Permit. If a newsrack permit is disapproved, in whole or in part, the city engineer shall notify the applicant within ten working days from the date of filing a complete application with the city engineer, explaining the reasons for the denial of the permit. The applicant shall have ten calendar days within which to appeal the decision to the city manager in accordance with the appeal provisions set forth in subsection (g) of this section.

(g) Appeal of Permit Denial. After receiving a notice of appeal, the city manager or the designee of the city manager shall conduct a hearing within thirty days of the receipt of the applicant's appeal, unless otherwise agreed to by the applicant. Written notice of the time and place of the hearing shall be given to the applicant, and shall be posted in the official posting locations of the city. The hearing shall be informal, but oral and written evidence may be given by both sides. The city manager or designee shall render a written decision within fifteen days after the date of the hearing. The decision of the city manager shall be final.

(h) Amendment to Permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the city engineer. A permittee may install and maintain additional newsracks by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.
9.79.050 Standards for Maintenance and Display of Newsracks.

(a) Every person placing or maintaining a newsrack on public property shall comply with the following requirements:

(1) Every newsrack shall be maintained in a neat and clean condition, and in good repair at all times. For example, without limitation, every newsrack shall be reasonably free of dirt and grease, be reasonably free of chipped, faded, peeling or cracked paint, be reasonably free of rust and corrosion, have no broken or cracked plastic or glass parts, and have no broken structural parts.

(2) Every newsrack shall be constructed, installed and maintained in a safe and secure condition.

(3) Every newsrack shall be made of solid material on all sides, so as to contain the material inside the newsrack in a manner as to prevent it from blowing away or otherwise becoming litter. No wire or other open form of newsrack shall be permitted.

(4) Every newsrack shall be kept free of graffiti.

(5) Every modular newsrack that sits on legs shall be kept free of dirt and litter under the newsrack.

(6) Every newsrack shall be painted or covered with a protective coating, so as to keep it free from rust, and shall be cleaned and repainted on a regular basis.

(7) Every coin-operated newsrack shall be equipped with a coin-return device that is maintained in good repair and working order.

(8) Every coin-operated newsrack shall 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, and shall be legible.

(9) Other than the display of the publication contained therein, no newsrack shall display or be affixed with any words or pictures except for the identifying information, and the coin return information, if applicable, required by subsection (e) of section 9.79.040 and subsections(a)(8)and(b), respectfully, of this section; provided, that, except as provided in section 9.79 080 (Special Newsrack areas), each side of a newsrack may display, in characters no more than four inches (4") high, the name and/or logo of the publication contained in the newsrack, and the front of each newsrack may be affixed with a single sign or decal, no larger than eight inches by ten inches (8"x10"), containing only information relating to the display, sale or distribution of the publication contained in the newsrack. If the newsrack is a Sho-Rack K-100 or K-Jack KJ55 style, or equivalent (i.e., double-high), which contains a built-
in sign holder, the newsrack may be affixed with a sign that fits within that holder, not to exceed eleven inches by seventeen inches (11" x 17"). If a newsrack has no sign or decal, the name and/or logo display may be up to eleven inches (11") high.

(10) Old or out-of-date material removed from any newsrack by any person who owns, maintains, or stocks the newsrack shall be recycled or disposed of in a lawful manner. Such material shall not be disposed of in any trash receptacle owned or rented by others, without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

(b) Every newsrack located in a public place shall 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(s) contained therein. Such information shall be placed in a visible location on the front or top of the newsrack, and shall be legible. The size of the identifying information shall be no larger than three inches by five inches (3" x 5").

9.79.060 Size and Design Standards.

Except as provided in section 9.79.080 (Special Newsrack Areas), no newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(a) No newsrack shall be more than fifty (50) inches high (including the pedestal in the case of modular newsracks) measured from the ground to the top surface of the newsrack, nor more than two (2) feet deep, nor more than twenty-four (24) inches wide.

(b) The highest operable part of the coin slot, if provided, and all controls, dispensers and other operable components of a newsrack shall be no higher than forty-eight (48) inches above the ground, and no lower than fifteen (15) inches above the ground.

(c) The design of a newsrack shall not create a danger to the persons using the newsrack in a reasonably foreseeable manner. All newsracks shall comply with all applicable federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

(d) Design of Modular Newsracks shall be generally consistent with the following:

1. Modular Newsracks shall be stacked a maximum of two newsracks high.

2. There shall be a maximum of ten newsracks per module.

3. The approved module shall be trays and pedestals that can accommodate the Sho-Rack Models 49-16 and 100 styles, or approved equivalent.

9.79.070 Standards for Placement and Location of Newsracks.
(a) Except as otherwise set forth in Section 9.79.080 (Special Newsrack Areas), no newsrack shall be placed, installed or maintained on any public property when such installation, use or maintenance endangers the safety of persons or property. No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(1) Newsracks shall be placed only on a sidewalk, in one of the following locations:

   (i) Near a curb adjacent to a street, in which case, the back of the newsrack shall be placed no less than eighteen (18) inches (twelve (12) inches along El Camino Real) nor more than twenty-four (24) inches from the face of the curb; or

   (ii) Adjacent to the wall of a building, in which case, the back of the newsrack shall be placed parallel to such wall and not more than six (6) inches from the wall.

(2) Every newsrack shall be placed so as to open toward the sidewalk.

(3) Every newsrack shall be affixed to the sidewalk, or to another newsrack, in a manner approved by the permit therefor; provided, no newsrack shall be chained to another newsrack. Newsracks shall not be chained or otherwise attached to any bus shelter, bench, street light, utility pole or device or sign pole, or to any tree, shrub or other plant, nor situated upon any landscaped area.

(4) No newsrack shall be placed, installed or maintained:

   (i) Within ten (10) feet of any marked or unmarked crosswalk as measured from the curb return;

   (ii) Within five (5) feet of any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box;

   (iii) At any location where the clear space for the passage of pedestrians is reduced to less than six (6) feet (five (5) feet along El Camino Real);

   (iv) Within five (5) feet of any driveway;

   (v) Within five (5) feet of any red curb of a bus stop zone;

   (vi) Within five (5) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk;

   (vii) In such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building;
(viii) In such a manner as to impede or interfere with the reasonable use of any bicycle rack;
(ix) In such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

(b) Newsracks may be placed or joined together; however, no group of newsracks placed along a curb shall extend for a distance of more than ten feet (i.e., the combined width of five newsracks); and no group of newsracks shall be closer than four feet to another group of newsracks along a curb.

(c) The City Engineer may allow a permittee to place a newsrack in a location in variance of the standards otherwise required by this section if the City Engineer finds that such variance will not be detrimental to the public safety and that, due to the existing physical constraints at that location, imposition of the standards would make placement impossible and would cause a hardship to the permittee and its patrons. The written findings and the variance shall be made part of the permit. Prior to considering whether or not to grant a variance, the City Engineer shall provide written notice of the requested variance to the owner(s) of the real property adjacent to or abutting the proposed newsrack location.

(d) If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, the City Engineer shall give priority as to that location to publications on a historical "first come first served" basis to permit applicants as follows:

1. First priority shall be publications that are published two or more times a week;
2. Second priority shall be given to publications that are published once per week;
3. Third priority shall be given to publications that are published less than once per week but more than once per month;
4. Fourth priority shall be given to publications that are published monthly or less frequently than monthly.

In the event the City Engineer is required to utilize the priority system described in subparagraphs (1) through (4), above, he or she shall permit only one rack per publication in a single location, provided that the Sunday edition of a daily publication shall be considered as a separate publication and shall be in the second category.

9.79.080 Special Newsrack Areas.
(a) The City Council hereby finds that special circumstances require special design, placement and other standards for newsracks located in following areas of the city; and such areas are hereby designated as Special Newsrack Areas:

(1) The Downtown Commercial Area.
   (i) The City Council hereby designates the "Downtown Commercial Area", bounded by and including both sides of the following streets: Middlefield, Hamilton, Alma, and Lytton, as a Special Newsrack Area.

   (ii) The Council finds that the Downtown Commercial Area has become very congested, with street furniture and other sidewalk encroachments, automobiles and other means of travel competing with pedestrians for the public space; and that special standards for the design and location of newsracks, in conjunction with a program for the furnishing and installation of street furniture, and the enforcement of existing regulations for other encroachments in the Downtown Commercial Area, will help to create a sense of order out of chaos and provide a friendly environment for those who come to the area.

(2) The California Avenue Commercial Area
   (i) The City Council hereby designates the "California Avenue Commercial Area, bounded by and including both sides of the following streets: California Avenue, El Camino Real, Park Boulevard, and one hundred fifty (150) feet from California Avenue on Ash Street, Birch Street, and Park Boulevard, as a Special Newsrack Area.

   (ii) The Council finds that the California Avenue Commercial Area has become very congested with street furniture and other sidewalk encroachments, automobiles, and other means of travel competing with pedestrians for the public space, and that special standards for the design and location of newsracks, in conjunction with the enforcement of existing regulations for other encroachments in the California Avenue Commercial Area, will help create a sense of order, provide a pedestrian friendly environment for those who visit and use the area, and improve the aesthetic appearance of the area.

(b) Notwithstanding any contrary provisions in this chapter, the following special standards shall apply to newsracks and the placement of publications in newsracks within any Special Newsrack Area so designated pursuant to subdivisions (a) and (b) of this section:

(1) No newsrack shall be located in a Special Newsrack Area—the Downtown Commercial Area except within a Special Newsrack Container. No newsrack shall be located in the California Avenue Commercial Area except within a Modular Newsrack. All newsracks in a special newsrack container—Newsracks in all Special Newsrack Areas and shall meet the following specifications:

   (i) Every newsrack shall be a modular design, 49-16 or K-100 style (as Manufactured by "Sho-Rack") or KJ50/KJ55F (as manufactured by "K-Jack") or M-30/M-33 (as manufactured by National News vend) or the equivalent, as determined by the City Engineer.
(ii) Each publication shall use the same color for all of its newsracks located within a Special Newsrack Area.

(iii) The name and/or logo otherwise permitted pursuant to subparagraph (a)(9) of Section 9.79.050 may be placed only on the front face of the box.

(iv) Permittees of double high racks may be required to provide devices commonly known as "spacers" for the newsracks adjacent to each double high rack, to ensure that all newsracks in a single location group of racks are the same height. Permittees who use newsracks of a brand other than Sho-Rack may be required to furnish spacers to achieve height uniformity. Spacers shall conform to the approved color of the associated newsrack.

(2) Original placement of newsracks within a Special Newsrack Area.

(i) No newsrack shall be located in a Special Newsrack Area unless a permit has been obtained in accordance with this subsection (2) or subsection (3).

(ii) Within thirty days after the effective date of the ordinance designating a Special Newsrack Area, or as soon as practicable thereafter, the City Engineer shall establish a date (the "cut-off date") by which application shall be made to the City Engineer for every newsrack proposed to be located within a Special Newsrack Area. No application shall be considered that is filed later than the cut-off date established for that area. The City Engineer shall give notice of the cut-off date by publication once in a newspaper of general circulation in the City. The City Engineer shall also endeavor to mail notice of the cut-off date to the owners and/or distributors of newsracks existing as of the effective date of the ordinance designating a Special Newsrack Area; provided, however, that failure to provide mailed notice to any person shall not invalidate any action taken pursuant to this section or this chapter.

The process for obtaining a permit shall be in accordance with Section 9.79.040, provided, that where the number of newsracks for which application has been made exceed the number of Special Newsrack Containers or Modular Newsracks available in a special newsrack area, or in a particular location within a Special Newsrack Area, the City Engineer shall issue newsrack permits in the manner described in regulations established by the City Engineer and approved by the City Council.

(3) After the original placement of newsracks within a Special Newsrack Area, as described in subparagraph (2) of this subsection (b), application may be made for placement of a newsrack in a location within a Special Newsrack Area for which no empty Special Newsrack Container or Modular Newsrack is available. Such applications shall be placed on a waiting list. In the event a Special Newsrack Container or Modular Newsrack becomes available, the City Engineer shall issue a permit for that location to the applicant for the location, if there is only one applicant. In the case of multiple applicants for a single location, the City Engineer shall determine which applicant shall receive the permit in the manner described in regulations established by the City Engineer and approved by the City Council.

9.79.090 Blinder Racks Required.
(a) Newsracks located in public places, other than public places from which minors are excluded, and which display to the public view harmful matter, shall be equipped with devices commonly known as blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

(b) Newsracks located in public places, other than public places from which minors are excluded, and which display to the public view material depicting or describing specified sexual activities, as defined in subdivision (1) of this subsection, or which contain material depicting or describing specified anatomical areas, as defined in subdivision (2) of this subsection, where such picture, or illustration, or statement has as its purpose or effect sexual arousal, gratification or affront, shall be equipped with blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

(1) "Specified sexual activities" means:

(i) Human genitals in a state of sexual stimulation or arousal;

(ii) Acts of human masturbation, sexual intercourse or sodomy;

or

(iii) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(2) "Specified anatomical areas" means:

(i) Less than completely and opaquely covered human genitals, pubic hair, buttocks, perineum, anal region, or female breast at or below the areola thereof; or

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

9.79.100 Violation; Enforcement.

(a) It shall be illegal to place, install, or maintain any newsrack or any material in a newsrack in a manner contrary to any provision of this chapter.

(b) Any person who violates any provision of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in subsection (b) of Section 1.08.010 of this Code.

(c) Employees in the positions designated in this section are authorized to exercise the authority provided in Penal Code section 836.5 and are authorized to issue citations for violations of this chapter. The designated employee positions are: (1) Code Enforcement Officer; (2) Supervisor, Building Inspection. Employees exercising the authority provided for in
this subsection (c) are generically referred to in this chapter as "Code Enforcement Officer," notwithstanding their official employee position.

9.79.110 Nuisance.

Any newsrack or any material in a newsrack placed, installed or maintained in violation of this chapter shall constitute a public nuisance and may be abated in accordance with applicable provisions of law.

9.79.120 Removal and Hearing.

In addition to the enforcement remedies available to the City, which are set forth in Chapter 1.12 and in Sections 9.79.100 and 9.79.110 of this chapter, any newsrack placed, installed or maintained in violation of this chapter may be removed by the City, subject to the notice and hearing procedures set forth in this section.

(a) Notice of violation. Before removal of any newsrack, the Code Enforcement Officer shall notify the owner or distributor of the violation. Written notification by first class mail to the address or addresses shown on the offending newsrack shall constitute adequate notice. The Code Enforcement Officer may, but need not, affix an additional notice tag onto the offending newsrack. If no identification is shown on the newsrack, posting of the notice on the newsrack alone shall be sufficient. The notice shall state the nature of the violation, shall specify actions necessary to correct the violation, and shall give the owner or distributor ten (10) business days from the date appearing on the notice to either remedy the violation or to request a meeting before the Chief Building Official—Director of Planning & Community Environment or designee of the Chief Building Official—Director of Planning & Community Environment, who shall not be the Code Enforcement Officer. The date on the notice shall be no earlier than the date on which the notice is mailed or affixed to the newsrack, as the case may be.

(b) Meeting and decision. Any owner or distributor notified under subsection (a) may request a meeting with the Director of Planning & Community Environment—Chief Building Official or designee by making a written request therefor within ten (10) business days from the date appearing on the notice. The meeting shall be informal, but oral and written evidence may be given by both sides. The Chief Building Official—Director of Planning & Community Environment or designee shall give his or her decision within ten (10) business days after the date of the meeting. Any action by the City to remove the newsrack shall be stayed pending the written decision of the Director of Planning & Community Environment—Chief Building Official or designee following the meeting.

(c) Removal and impoundment. The City may remove and impound a newsrack or newsracks in accordance with this section following the written decision of the Director of Planning & Community Environment—Chief Building Official or designee upholding the determination of a violation, or if the owner or distributor has neither requested a meeting nor remedied the violation within ten (10) business days from the date on the notice. An impounded newsrack shall be retained by the City for a period of at least thirty (30) calendar days following the removal, and may be recovered by the permittee upon payment of a fee as set forth in the
Municipal Fee Schedule. An impounded newsrack and its contents may be disposed of by the City after thirty (30) calendar days.

(d) Summary abatement. Notwithstanding the provisions of subsections (a) and (b), prior notice and an opportunity to be heard shall not be required prior to removal of any newsrack that is installed or maintained in such a place or manner as to pose an immediate or clear and present danger to persons, vehicles or property or any newsrack that is placed in any location without a permit. In such case, the City shall proceed in the following manner:

1. Within the next working day following removal, the Director of Planning & Community Environment Chief Building Official or designee shall notify by telephone the permittee or, in the case of an unpermitted newsrack, the owner of the newsrack or a person whose name is shown on the required identification. Within three (3) business days, the Director of Planning & Community Environment Chief Building Official or designee shall send written confirmation of the telephoned notice. The written confirmation shall contain the reasons for the removal and information supporting the removal, and shall inform the recipient of the right to request, in writing or in person, a post-removal meeting within four (4) business days of the date of such written notice.

2. Upon timely request, the Director of Planning & Community Environment Chief Building Official or designee shall provide a meeting within forty-eight (48) hours of the request, unless the requesting party agrees to a later date. The proceeding shall be informal, but oral and written evidence may be given by both sides. The Director of Planning & Community Environment Chief Building Official or designee shall give his or her decision in writing to the requesting party within forty-eight (48) hours after such meeting. If the Director of Planning & Community Environment Chief Building Official or designee finds that the removal was proper, he or she shall notify the requesting party to pay any applicable penalties and costs and recover the newsrack. If the Director of Planning & Community Environment or designee finds that the removal was improper and that placement of the newsrack was lawful, the Director of Planning & Community Environment Chief Building Official or designee shall order that the newsrack be released and reinstalled without charge.

3. If the owner of an unpermitted rack cannot be determined and the rack does not contain the required identification, no notice of the removal shall be required.

9.79.130 Abandoned Newsracks.

An abandoned newsrack may be removed by the City and impounded, pursuant to the notice and hearing procedures set forth in Section 9.79.120. The City may dispose of the newsrack if the permittee does not claim the newsrack and pay any required fees within thirty (30) days of its removal.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, word, or portion of the chapter enacted by Section 2 of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The City Council declares
that it would have adopted the chapter and each section, subsection, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, words or portions, be declared invalid or unconstitutional.

SECTION 4. The City Council finds that this project (amendment to newspark ordinance) is exempt from the provisions of the Environmental Quality Act ("CEQA") pursuant to Section 15061 (b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment. The ordinance amends established regulations that are followed in the issuance of ministerial permits and in code enforcement activities.

SECTION 5. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

______________________________  ______________________________
City Clerk                                  Mayor

APPROVED AS TO FORM:

______________________________  ______________________________
City Attorney                       City Manager

______________________________
Director of

______________________________
Director of Administrative Services
NOT YET APPROVED

ORDINANCE NO.  
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO 
AMENDING CHAPTER 9.79 (NEWRACKS) OF TITLE 9 
(PUBLIC PEACE, MORALS AND SAFETY) OF THE PALO ALTO 
MUNICIPAL CODE TO CREATE A SPECIAL NEWRACK AREA 
in the CALIFORNIA AVENUE COMMERCIAL AREA

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) Many citizens and the California Avenue Downtown Association have expressed concerns about the increasing visual blight, sidewalk clutter, and safety hazards caused by increasing numbers of newsracks and pedestrians in the California Avenue commercial area of the City; and

(b) The Council finds that newsrack regulations are necessary to protect the public health, safety and welfare of the community because:

(1) Pedestrian traffic and the number of newsracks in the California Avenue Commercial Area, particularly on California Avenue from Park Boulevard across El Camino Real, have increased significantly during the last five years;

(2) Many of the newsracks in the California Avenue Commercial Area of Palo Alto are poorly maintained and in unsightly condition;

(3) Increasing numbers of newsracks interfere with public and private sidewalk maintenance of sidewalks, and can make sidewalk maintenance more expensive;

(4) Many of the newsracks in Palo Alto, particularly in the California Avenue Commercial Area, are located so as to interfere dangerously with pedestrian sidewalk traffic, impede crosswalk usage at several major intersections on California Avenue, and impede or prevent pedestrian entry and exit from parked cars;

(5) In the California Avenue Commercial Area, increasing numbers of newsracks are competing with increasing numbers of pedestrians for sidewalk space.

(6) Regulation of newsracks on and around California Avenue will prevent obstruction of travel, avoid danger from defective, improperly installed, or poorly maintained racks, and preserve and enhance the aesthetic quality and visitor experience in the California Avenue area.
NOT YET APPROVED

(c) The Council finds that for each of the foregoing reasons there is a significant governmental interest in amending the newsrack ordinance to establish a Special Newsrack Area in the California Avenue Commercial Area that sets forth comprehensive time, place and manner regulations for newsracks in designated portions of the California Avenue Commercial Area, and that newsrack regulations are necessary to protect the public health, safety and welfare of Palo Alto.

SECTION 2. Chapter 9.79 of Title 9 of the Palo Alto Municipal Code is hereby amended to read as follows:

9.79.010 Purpose; Scope.

The purpose and scope of the regulations in this chapter are as follows:

(a) The provisions of this chapter shall apply to all newsracks located in public places within the City of Palo Alto; provided, that certain provisions, as specified, shall apply only to newsracks located on public property.

(b) It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

(c) The public health, safety, welfare and convenience require that: interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from, and the enjoyment of store window displays on, properties adjoining public property be protected.

(d) Newsracks placed and maintained on public property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

(e) The regulations on the time, place and manner of the placement, location and maintenance of newsracks set forth in this chapter are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of news to the public.

9.79.020 Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be given the meaning set out in this section unless it is apparent from the context that a different meaning is intended.
NOT YET APPROVED

(a) "Abandoned newsrack" means any newsrack which remains empty for ten (10) business days; provided, that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack shall not be deemed abandoned.

(b) "City Engineer" means the Director of Public Works or his or her designee.

(c) "Harmful matter" means and is defined as in California Penal Code section 313, as may from time to time be amended.

(d) "Minor" means any natural person under 18 years of age.

(e) "Modular newsrack" means an industry standard structure composed of a group of individual newspaper dispensing cabinets mounted in top and bottom rows on a rack base that is supported by a maximum of three pedestals. This fixture is to be permanently affixed to the sidewalk or otherwise permanently anchored as approved by the City Engineer. All newsracks, trays, spacers, and pedestals shall be the same color as approved by the City Engineer (currently forest green).

(f) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display and sale or distribution of newspapers, periodicals or other publications.

(g) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(h) "Public place(s)" means and includes any public property owned or controlled by the City of Palo Alto or any other public agency, or any outdoor private property which is open to the public.

(i) "Public property" means any public right-of-way or any property owned or controlled by the City of Palo Alto, including, without limitation, streets, sidewalks, alleys, and rights-of-way.

(j) "Special Newsrack Area" means any area of the City of Palo Alto so designated by the City Council upon findings that the special circumstances of the area require special design, placement and other standards for newsracks.

(k) "Special Newsrack Container" means a specially designed permanently affixed container provided by or on behalf of the City, within which shall be the exclusive location for the placement of newsracks in designated special newsrack areas.

9.79.030 Permit Required.

It is unlawful to install, place, maintain or cause to be placed, installed or maintained a newsrack on, or projecting on, any public property without first receiving a permit.
therefor from the City Engineer and unless such newsrack is in compliance with the provisions of this chapter; provided, that, except for newsracks proposed to be located within a special newsrack area, a newsrack located on public property as of April 5, 1999 may continue to remain in such location, under the following conditions:

(a) The newsrack is in compliance with the requirements for the installation and maintenance of newsracks contained in this chapter; and

(b) A permit application for such newsrack has been filed as of that date with the City Engineer by the duly authorized representative of the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack; and

(c) A permit pursuant to such application has not been denied with respect to any such newsrack.

If no permit application has been filed by that date by the duly authorized representative of the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack, or such permit is denied, such newsrack shall be deemed to be in violation of the provisions of this chapter.

9.79.040 Obtaining a Permit.

(a) Exclusive Requirements. The provisions of this chapter shall be the exclusive requirements for newsrack encroachments onto public property in the city.

(b) Application. Applications for a newsrack permit for one or more newsracks shall be made to the City Engineer on a form prescribed by the City Engineer, which shall include, without limitation:

(1) The name, street and mailing address, and telephone number of the applicant, which shall be the duly authorized representative of the publisher and/or, if applicable, any independent distributor authorized to service the publisher's newsrack for which the permit is sought;

(2) The name, street and mailing address and telephone number of the distributor and associated publisher or other responsible person whom the city may notify or contact at any time concerning the applicant's newsrack(s);

(3) The number of proposed newsracks and a description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this chapter) and the proposed means of affixing each proposed newsrack;

(4) A description of each proposed newsrack, including its dimensions, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;
(5) The name and frequency of publication of each publication proposed to be contained in each newsrack;

(6) A statement signed by the applicant that the applicant agrees to indemnify, defend and hold harmless, the city and its representatives from all claims, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any newsrack on public property by or on behalf of any such person, except such injury or harm as may be caused solely and exclusively by the negligence of the city or its authorized representatives; and

(7) A statement signed by the applicant that the applicant agrees, upon removal of a newsrack, to repair any damage to the public property caused by the newsrack or its removal.

(c) Issuance of Permit. A permit shall be issued within ten working days from the date of filing the application with the city engineer if the application is properly completed and the type of newsrack and location proposed for each newsrack meet the standards set forth in this chapter. A single permit shall be issued for all newsracks applied for by an applicant which meet the standards of this chapter. A permit shall not be transferable.

(d) Period of Permit Validity. All permits issued within three years from the effective date of this section shall expire on the date three years from the effective date of this section, regardless of the date of issuance. All permits issued within the second and succeeding three year periods shall, likewise, expire at the end of such three year period.

(e) Issuance of Permit Sticker. Each permittee shall be issued a pre-printed sticker for each permitted newsrack, which shall be affixed to the lower right corner of the front window or other acceptable location approved by the City, of each newsrack.

(f) Denial of Permit. If a newsrack permit is disapproved, in whole or in part, the city engineer shall notify the applicant within ten working days from the date of filing a complete application with the city engineer, explaining the reasons for the denial of the permit. The applicant shall have ten calendar days within which to appeal the decision to the city manager in accordance with the appeal provisions set forth in subsection (g) of this section.

(g) Appeal of Permit Denial. After receiving a notice of appeal, the city manager or the designee of the city manager shall conduct a hearing within thirty days of the receipt of the applicant's appeal, unless otherwise agreed to by the applicant. Written notice of the time and place of the hearing shall be given to the applicant, and shall be posted in the official posting locations of the city. The hearing shall be informal, but oral and written evidence may be given by both sides. The city manager or designee shall render a written decision within fifteen days after the date of the hearing. The decision of the city manager shall be final.

(h) Amendment to Permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the city
engineer. A permittee may install and maintain additional newsracks by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

9.79.050 Standards for Maintenance and Display of Newsracks.

(a) Every person placing or maintaining a newrack on public property shall comply with the following requirements:

(1) Every newrack shall be maintained in a neat and clean condition, and in good repair at all times. For example, without limitation, every newrack shall be reasonably free of dirt and grease, be reasonably free of chipped, faded, peeling or cracked paint, be reasonably free of rust and corrosion, have no broken or cracked plastic or glass parts, and have no broken structural parts.

(2) Every newrack shall be constructed, installed and maintained in a safe and secure condition.

(3) Every newrack shall be made of solid material on all sides, so as to contain the material inside the newrack in a manner as to prevent it from blowing away or otherwise becoming litter. No wire or other open form of newrack shall be permitted.

(4) Every newrack shall be kept free of graffiti.

(5) Every modular newrack that sits on legs shall be kept free of dirt and litter under the newrack.

(6) Every newrack shall be painted or covered with a protective coating, so as to keep it free from rust, and shall be cleaned and repainted on a regular basis.

(7) Every coin-operated newrack shall be equipped with a coin-return device that is maintained in good repair and working order.

(8) Every coin-operated newrack shall 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 newrack, and shall be legible.

(9) Other than the display of the publication contained therein, no newrack shall display or be affixed with any words or pictures except for the identifying information, and the coin return information, if applicable, required by subsection (e) of section 9.79.040 and subsections(a)(8)and(b), respectfully, of this section; provided, that, except as provided in section 9.79 080 (Special Newrack areas), each side of a newrack may display, in characters no more than four inches (4") high, the name and/or logo of the publication contained in the newrack, and the front of each newrack may be affixed with a single sign or decal, no
larger than eight inches by ten inches (8"x10"), containing only information relating to the display, sale or distribution of the publication contained in the newsgack. If the newsgack is a Sho-Rack K-100 or K-Jack KJ55 style, or equivalent (i.e., double-high), which contains a built-in sign holder, the newsgack may be affixed with a sign that fits within that holder, not to exceed eleven inches by seventeen inches (11"x17"). If a newsgack has no sign or decal, the name and/or logo display may be up to eleven inches (11") high.

(10) Old or out-of-date material removed from any newsgack by any person who owns, maintains, or stocks the newsgack shall be recycled or disposed of in a lawful manner. Such material shall not be disposed of in any trash receptacle owned or rented by others, without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

(b) Every newsgack located in a public place shall be affixed with identifying information, which shall contain the name, address and telephone number of the newsgack owner and of the distributor of the publication(s) contained therein. Such information shall be placed in a visible location on the front or top of the newsgack, and shall be legible. The size of the identifying information shall be no larger than three inches by five inches (3" x 5").

9.79.060 Size and Design Standards.

Except as provided in section 9.79.080 (Special Newsgack Areas), no newsgack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(a) No newsgack shall be more than fifty (50) inches high (including the pedestal in the case of modular newsgacks) measured from the ground to the top surface of the newsgack, nor more than two (2) feet deep, nor more than twenty-four (24) inches wide.

(b) The highest operable part of the coin slot, if provided, and all controls, dispensers and other operable components of a newsgack shall be no higher than forty-eight (48) inches above the ground, and no lower than fifteen (15) inches above the ground.

(c) The design of a newsgack shall not create a danger to the persons using the newsgack in a reasonably foreseeable manner. All newsgacks shall comply with all applicable federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

(d) Design of Modular Newsgacks shall be generally consistent with the following:

(1) Modular Newsgacks shall be stacked a maximum of two newsgacks high.

(2) There shall be a maximum of ten newsgacks per module.
NOT YET APPROVED

(3) The approved module shall be trays and pedestals that can accommodate the Sho-Rack Models 49-16 and 100 styles, or approved equivalent.

9.79.070 Standards for Placement and Location of Newsracks.

(a) Except as otherwise set forth in Section 9.79.080 (Special Newsrack Areas), no newsrack shall be placed, installed or maintained on any public property when such installation, use or maintenance endangers the safety of persons or property. No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(1) Newsracks shall be placed only on a sidewalk, in one of the following locations:

(i) Near a curb adjacent to a street, in which case, the back of the newsrack shall be placed no less than eighteen (18) inches (twelve (12) inches along El Camino Real) nor more than twenty-four (24) inches from the face of the curb; or

(ii) Adjacent to the wall of a building, in which case, the back of the newsrack shall be placed parallel to such wall and not more than six (6) inches from the wall.

(2) Every newsrack shall be placed so as to open toward the sidewalk.

(3) Every newsrack shall be affixed to the sidewalk, or to another newsrack, in a manner approved by the permit therefor; provided, no newsrack shall be chained to another newsrack. Newsracks shall not be chained or otherwise attached to any bus shelter, bench, street light, utility pole or device or sign pole, or to any tree, shrub or other plant, nor situated upon any landscaped area.

(4) No newsrack shall be placed, installed or maintained:

(i) Within ten (10) feet of any marked or unmarked crosswalk as measured from the curb return;

(ii) Within five (5) feet of any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box;

(iii) At any location where the clear space for the passage of pedestrians is reduced to less than six (6) feet (five (5) feet along El Camino Real);

(iv) Within five (5) feet of any driveway;

(v) Within five (5) feet of any red curb of a bus stop zone;
(vi) Within five (5) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk;

(vii) In such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building;

(viii) In such a manner as to impede or interfere with the reasonable use of any bicycle rack;

(ix) In such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

(b) Newsracks may be placed or joined together; however, no group of newsracks placed along a curb shall extend for a distance of more than ten feet (i.e., the combined width of five newsracks); and no group of newsracks shall be closer than four feet to another group of newsracks along a curb.

(c) The City Engineer may allow a permittee to place a newsrack in a location in variance of the standards otherwise required by this section if the City Engineer finds that such variance will not be detrimental to the public safety and that, due to the existing physical constraints at that location, imposition of the standards would make placement impossible and would cause a hardship to the permittee and its patrons. The written findings and the variance shall be made part of the permit. Prior to considering whether or not to grant a variance, the City Engineer shall provide written notice of the requested variance to the owner(s) of the real property adjacent to or abutting the proposed newsrack location.

(d) If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, the City Engineer shall give priority as to that location to publications on a historical "first come first served" basis to permit applicants as follows:

(1) First priority shall be publications that are published two or more times a week;

(2) Second priority shall be given to publications that are published once per week;

(3) Third priority shall be given to publications that are published less than once per week but more than once per month;

(4) Fourth priority shall be given to publications that are published monthly or less frequently than monthly.

In the event the City Engineer is required to utilize the priority system described in subparagraphs (1) through (4), above, he or she shall permit only one rack per publication in a single location, provided that the Sunday edition of a daily publication shall be considered as a separate publication and shall be in the second category.
NOT YET APPROVED

9.79.080 Special Newsrack Areas.

(a) The City Council hereby finds that special circumstances require special design, placement and other standards for newsracks located in following areas of the city; and such areas are hereby designated as Special Newsrack Areas:

(1) The Downtown Commercial Area.
   (i) The City Council hereby designates the "Downtown Commercial Area", bounded by and including both sides of the following streets: Middlefield, Hamilton, Alma, and Lytton, as a Special Newsrack Area.

   (ii) The Council finds that the Downtown Commercial Area has become very congested, with street furniture and other sidewalk encroachments, automobiles and other means of travel competing with pedestrians for the public space; and that special standards for the design and location of newsracks, in conjunction with a program for the furnishing and installation of street furniture, and the enforcement of existing regulations for other encroachments in the Downtown Commercial Area, will help to create a sense of order out of chaos and provide a friendly environment for those who come to the area.

(2) The California Avenue Commercial Area

   (i) The City Council hereby designates the “California Avenue Commercial Area, bounded by and including both sides of the following streets: California Avenue, El Camino Real, Park Boulevard, and one hundred fifty (150) feet from California Avenue on Ash Street, Birch Street, and Park Boulevard, as a Special Newsrack Area.

   (ii) The Council finds that the California Avenue Commercial Area has become very congested with street furniture and other sidewalk encroachments, automobiles, and other means of travel competing with pedestrians for the public space, and that special standards for the design and location of newsracks, in conjunction with the enforcement of existing regulations for other encroachments in the California Avenue Commercial Area, will help create a sense of order, provide a pedestrian friendly environment for those who visit and use the area, and improve the aesthetic appearance of the area.

(b) Notwithstanding any contrary provisions in this chapter, the following special standards shall apply to newsracks and the placement of publications in newsracks within any Special Newsrack Area so designated pursuant to subdivisions (a) and (b) of this section:

(1) No newsrack shall be located in the Downtown Commercial Area except within a Special Newsrack Container. No newsrack shall be located in the California Avenue Commercial Area except within a Modular Newsrack. Newsracks in all Special Newsrack Areas shall meet the following specifications:

   (i) Every newsrack shall be a modular design, 49-16 or K-100 style (as Manufactured by "Sho-Rack") or KJ50/KJ55F (as manufactured by "K-Jack") or M-
30/M-33 (as manufactured by National News Vend) or the equivalent, as determined by the City Engineer.

(ii) Each publication shall use the same color for all of its news racks located within a Special Newsrack Area.

(iii) The name and/or logo otherwise permitted pursuant to subparagraph (a) (9) of Section 9.79.050 may be placed only on the front face of the box.

(iv) Permittees of double high racks may be required to provide devices commonly known as "spacers" for the news racks adjacent to each double high rack, to ensure that all news racks in a single location group of racks are the same height. Permittees who use news racks of a brand other than Sho-Rack may be required to furnish spacers to achieve height uniformity. Spacers shall conform to the approved color of the associated newsrack.

(2) Original placement of news racks within a Special Newsrack Area.

(i) No newsrack shall be located in a Special Newsrack Area unless a permit has been obtained in accordance with this subsection (2) or subsection (3).

(ii) Within thirty days after the effective date of the ordinance designating a Special Newsrack Area, or as soon as practicable thereafter, the City Engineer shall establish a date (the "cut-off date") by which application shall be made to the City Engineer for every newsrack proposed to be located within a Special Newsrack Area. No application shall be considered that is filed later than the cut-off date established for that area. The City Engineer shall give notice of the cut-off date by publication once in a newspaper of general circulation in the City. The City Engineer shall also endeavor to mail notice of the cut-off date to the owners and/or distributors of news racks existing as of the effective date of the ordinance designating a Special Newsrack Area; provided, however, that failure to provide mailed notice to any person shall not invalidate any action taken pursuant to this section or this chapter.

The process for obtaining a permit shall be in accordance with Section 9.79.040, provided, that where the number of news racks for which application has been made exceed the number of Special Newsrack Containers or Modular Newsracks available in a special newsrack area, or in a particular location within a Special Newsrack Area, the City Engineer shall issue newsrack permits in the manner described in regulations established by the City Engineer and approved by the City Council.

(3) After the original placement of news racks within a Special Newsrack Area, as described in subparagraph (2) of this subsection (b), application may be made for placement of a news rack in a location within a Special Newsrack Area for which no empty Special Newsrack Container or Modular Newsrack is available. Such applications shall be placed on a waiting list. In the event a Special Newsrack Container or Modular Newsrack becomes available, the City Engineer shall issue a permit for that location to the applicant for the location, if there is only one applicant. In the case of multiple applicants for a single location, the City Engineer shall determine which applicant shall receive the permit in the manner described in regulations established by the City Engineer and approved by the City Council.
NOT YET APPROVED

9.79.090 Blinder Racks Required.

(a) Newsracks located in public places, other than public places from which minors are excluded, and which display to the public view harmful matter, shall be equipped with devices commonly known as blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

(b) Newsracks located in public places, other than public places from which minors are excluded, and which display to the public view material depicting or describing specified sexual activities, as defined in subdivision (1) of this subsection, or which contain material depicting or describing specified anatomical areas, as defined in subdivision (2) of this subsection, where such picture, or illustration, or statement has as its purpose or effect sexual arousal, gratification or affront, shall be equipped with blinder racks in front of the material so that the lower two-thirds of the material is not exposed to public view.

(1) "Specified sexual activities" means:

(i) Human genitals in a state of sexual stimulation or arousal;

(ii) Acts of human masturbation, sexual intercourse or sodomy;

or

(iii) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(2) "Specified anatomical areas" means:

(i) Less than completely and opaquely covered human genitals, pubic hair, buttocks, perineum, anal region, or female breast at or below the areola thereof; or

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

9.79.100 Violation; Enforcement.

(a) It shall be illegal to place, install, or maintain any newsrack or any material in a newsrack in a manner contrary to any provision of this chapter.

(b) Any person who violates any provision of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in subsection (b) of Section 1.08.010 of this Code.

(c) Employees in the positions designated in this section are authorized to exercise the authority provided in Penal Code section 836.5 and are authorized to issue citations
for violations of this chapter. The designated employee positions are: (1) Code Enforcement Officer; (2) Supervisor, Building Inspection. Employees exercising the authority provided for in this subsection are generically referred to in this chapter as "Code Enforcement Officer," notwithstanding their official employee position.

9.79.110 Nuisance.

Any newsrack or any material in a newsrack placed, installed or maintained in violation of this chapter shall constitute a public nuisance and may be abated in accordance with applicable provisions of law.

9.79.120 Removal and Hearing.

In addition to the enforcement remedies available to the City, which are set forth in Chapter 1.12 and in Sections 9.79.100 and 9.79.110 of this chapter, any newsrack placed, installed or maintained in violation of this chapter may be removed by the City, subject to the notice and hearing procedures set forth in this section.

(a) Notice of violation. Before removal of any newsrack, the Code Enforcement Officer shall notify the owner or distributor of the violation. Written notification by first class mail to the address or addresses shown on the offending newsrack shall constitute adequate notice. The Code Enforcement Officer may, but need not, affix an additional notice tag onto the offending newsrack. If no identification is shown on the newsrack, posting of the notice on the newsrack alone shall be sufficient. The notice shall state the nature of the violation, shall specify actions necessary to correct the violation, and shall give the owner or distributor ten (10) business days from the date appearing on the notice to either remedy the violation or to request a meeting before the Director of Planning & Community Environment or designee of the Director of Planning & Community Environment, who shall not be the Code Enforcement Officer. The date on the notice shall be no earlier than the date on which the notice is mailed or affixed to the newsrack, as the case may be.

(b) Meeting and decision. Any owner or distributor notified under subsection (a) may request a meeting with the Director of Planning & Community Environment or designee by making a written request therefor within ten (10) business days from the date appearing on the notice. The meeting shall be informal, but oral and written evidence may be given by both sides. The Director of Planning & Community Environment or designee shall give his or her decision within ten (10) business days after the date of the meeting. Any action by the City to remove the newsrack shall be stayed pending the written decision of the Director of Planning & Community Environment or designee following the meeting.

(c) Removal and impoundment. The City may remove and impound a newsrack or newsracks in accordance with this section following the written decision of the Director of Planning & Community Environment or designee upholding the determination of a
violation, or if the owner or distributor has neither requested a meeting nor remedied the violation within ten (10) business days from the date on the notice. An impounded newsrack shall be retained by the City for a period of at least thirty (30) calendar days following the removal, and may be recovered by the permittee upon payment of a fee as set forth in the Municipal Fee Schedule. An impounded newsrack and its contents may be disposed of by the City after thirty (30) calendar days.

(d) Summary abatement. Notwithstanding the provisions of subsections (a) and (b), prior notice and an opportunity to be heard shall not be required prior to removal of any newsrack that is installed or maintained in such a place or manner as to pose an immediate or clear and present danger to persons, vehicles or property or any newsrack that is placed in any location without a permit. In such case, the City shall proceed in the following manner:

(1) Within the next working day following removal, the Director of Planning & Community Environment or designee shall notify by telephone the permittee or, in the case of an unpermitted newsrack, the owner of the newsrack or a person whose name is shown on the required identification. Within three (3) business days, the Director of Planning & Community Environment or designee shall send written confirmation of the telephoned notice. The written confirmation shall contain the reasons for the removal and information supporting the removal, and shall inform the recipient of the right to request, in writing or in person, a post-removal meeting within four (4) business days of the date of such written notice.

(2) Upon timely request, the Director of Planning & Community Environment or designee shall provide a meeting within forty-eight (48) hours of the request, unless the requesting party agrees to a later date. The proceeding shall be informal, but oral and written evidence may be given by both sides. The Director of Planning & Community Environment or designee shall give his or her decision in writing to the requesting party within forty-eight (48) hours after such meeting. If the Director of Planning & Community Environment or designee finds that the removal was proper, he or she shall notify the requesting party to pay any applicable penalties and costs and recover the newsrack. If the Director of Planning & Community Environment or designee finds that the removal was improper and that placement of the newsrack was lawful, the Director of Planning & Community Environment or designee shall order that the newsrack be released and reinstalled without charge.

(3) If the owner of an unpermitted rack cannot be determined and the rack does not contain the required identification, no notice of the removal shall be required.

9.79.130 Abandoned Newsracks.

An abandoned newsrack may be removed by the City and impounded, pursuant to the notice and hearing procedures set forth in Section 9.79.120. The City may dispose of the newsrack if the permittee does not claim the newsrack and pay any required fees within thirty (30) days of its removal.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, word, or portion of the chapter enacted by Section 2 of this ordinance is, for any reason, held to
be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The City Council declares that it would have adopted the chapter and each section, subsection, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, words or portions, be declared invalid or unconstitutional.

SECTION 4. The City Council finds that this project (amendment to newsrack ordinance) is exempt from the provisions of the Environmental Quality Act ("CEQA") pursuant to Section 15061 (b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment. The ordinance amends established regulations that are followed in the issuance of ministerial permits and in code enforcement activities.

SECTION 5. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

Director of

Director of Administrative Services
Types of Newsracks on the Public Sidewalk on California Avenue

Freestanding Newsracks

Newsracks on Pedestal-Mounted Fixture
Below is the procedure for the allocation of newsrack locations in the Downtown Special Newsrack Area of Palo Alto (DSNA) and the California Avenue Special Newsrack Area. The process for applying for a permit is set forth in Sections 9.79.080 and 9.79.040 of the Palo Alto Municipal Code. This handout is an effort to help understand the process and streamline the application process.

A. DOWNTOWN SPECIAL NEWSRACK AREA (DSNA)

As of November 5, 1999 (the baseline survey date), 355 newsracks were in use in the Downtown Commercial Special Newsrack Area (DSNA). As of the effective date of the Newsrack Ordinance (Chapter 9.79 of the Palo Alto Municipal Code), only 252 newsracks will be accommodated in the DSNA. The DSNA is bounded by Alma, Lytton, Middlefield and Hamilton, on both sides of the street. All permitted DSNA newsracks will be located in containers provided by the City. All other newsracks will be subject to removal.

1. Original Placement in the DSNA

The process for the original allocation of newsracks in the DSNA will give priority to publications published more frequently, as follows:

i. First priority category: those published more often than once a week.

ii. Second priority category: those published weekly. Sunday editions of daily publications will be in this category.

iii. Third priority category: those published more often than monthly.

iv. Fourth priority category: those published monthly or less often.

However, the number of newsracks allocated to each category shall be limited to the relative percentage of newsracks that existed as of November 5, 1999:

First priority ..........61 percent
Second priority .......18 percent
Third priority ..........11 percent
Fourth priority ........10 percent

Therefore, each category will be entitled to the following number of racks:

First priority ..........151
Second priority ........46
Third priority ..........29
Fourth priority ........26

As part of the application process for the DSNA newsracks, the City Engineer will provide permit applicants with a plat or map showing where all permitted newsrack containers will be located. The plat or map will show the location of each group of containers as well as the relative location of each individual container within a group.
After all completed applications have been received (see 9.79.080(b)(2)(ii)), the City Engineer will sort the requests for permits by individual location/container and determine how many requests have been made for each location/container. If the City has received requests for more permits than the number of available newsrack containers, the following process will be used:

1. The City Engineer will conduct, in turn, meetings for each of the priority categories. Those publications in each category that filed applications will be notified by mail of the date and time for the meeting for that category. The First priority category will meet first.

2. The City Engineer will conduct the meetings, with the help of other staff members. The purpose for the meeting will be to determine the allocation of the 151 First priority publications, by location/container. Applicants will be expected to cooperate in this group effort. In the allocation process, the following considerations will apply:

   (a) Reasonable efforts will be made to accommodate, to the extent feasible, the locations requested by each publication.

   (b) To the extent a conflict exists, preference for a particular location will be given based on historical (i.e., November 5, 1999) presence at that location.

   (c) No publication that is prepared to comply with the applicable regulations will be denied the right to locate at least one newsrack in the DSNA whether or not that publication had been located in the DSNA previously.

3. If the applicants, with the help of staff members, cannot reach consensus on how to allocate 151 newsrack locations/containers among the applicants in the First priority category, the following process will be used:

   (a) Applicants will be limited to the relative proportion of their newsracks as were located in the DSNA as of November 5, 1999. Any applicant that had no newsracks in the DSNA as of November 5, 1999 shall be entitled to one (only) newsrack in this allocation process. The relative proportion for the remaining publications shall be determined after subtracting the one newsrack for each of those entitled to only one.

   (b) No applicant will have more choices than the number of locations it applied for.

   (c) The name of each applicant will be placed in a container, and a staff member will draw names in random order. The first applicant whose name is drawn will make a selection of one location/container. Then each applicant will take a turn as its name is drawn. When the last applicant has made its first choice, a new round of names will be drawn from those applicants who have applied and qualify for more than one location. At the end of each round, another drawing will be held to determine the order for making choices, until all locations are chosen.

4. The process for publications in the Second, Third and Fourth priority category, respectively, will be the same as for the First priority category.

5. The following considerations will apply in addition to those described in 3 (a) through (c) above:

   (a) Any applicant for a Sunday publication, which needs two container spaces in a group, may choose two spaces when its turn arises, but will be "charged" with two spaces out of its allotted number of spaces. Proportional allotments will have been made on the basis of one space per newsrack existing on November 5, 1999.

   (b) Any applicant may place more than one publication in a single newsrack and be "charged" for only a single newsrack. (This would likely apply to certain "freebies.")
6. Within ten (10) days after the allocation has been made for each priority category, the publications in that category shall submit to the City Engineer satisfactory documentation to prove that they have ordered the number of modular newsracks for their allocation. Satisfactory documentation shall include a receipt for payment made to the manufacturer for the number of racks allocated.

7. If any publications fail to submit such satisfactory documentation within the required time period, the City will recalculate the allocations for each priority category, subtracting those for which satisfactory documentation was not submitted, and begin the allocation process again.

8. After all allocations have been made, the City Engineer will issue permits to applicants accordingly. Each permit shall be nontransferable and will be valid for three years from the date of issuance.

2. Subsequent Placement in the DSNA

The City staff will enforce the provisions of the Newsrack Ordinance on an ongoing basis and will provide a status report to the City Council at the end of the first year after the DSNA newsracks have been installed.

The City Engineer will accept applications for newsrack permits at any time, and will hold such applications if the locations requested in the applications are occupied by a permitted newsrack.

During the three year permit period, if the City determines that any newsrack or newsrack container for which a permit was issued has been abandoned, the City Engineer shall consider the applications then on file, and issue permits for the space as follows:

1. If one or more of the applications on file is for a publication or publications that had no permitted newsrack in the DSNA, and if such publication(s) have not violated Chapter 9.79 within the prior three (3) years, the City Engineer shall give preference to such "new" publication(s) for the available location. As among such "new" publications, the City Engineer will give preference to applications in the order they were received.

2. If no "new" publications have submitted applications for DSNA newsrack locations, and more applications have been filed than space available, the City Engineer will conditionally allocate the available space(s) by drawing lots from among all applications on file.

3. Within ten (10) days from the date the conditional allocation is made, the selected applicant(s) shall submit to the City Engineer satisfactory documentation to prove that the selected applicant has ordered a modular newsrack for each allocated location. If a selected applicant does not submit such documentation within the required time period, the City Engineer shall remove that application from consideration, and shall repeat the process.

Applications must be made by the Permittee for subsequent permits (i.e., for continued use of a location or locations beyond the initial three year permit). In case of multiple applications for a single location, preference will be given to the then current Permittee, provided the Permittee is in compliance with Chapter 9.79.

These allocation regulations are subject to initial City Council approval. The City Engineer may make nonsubstantive changes to regulations approved by the City Council without further Council approval.

B. CALIFORNIA AVENUE SPECIAL NEWSRACK AREA (CASNA)

The California Avenue Special Newsrack Area (CASNA) is bounded by California Avenue from El Camino Real to Park Boulevard, extending 150 feet from California Avenue on Ash and Birch Streets, on both sides of all streets. As of June 4, 2008, there were 148 individual newsracks within the CASNA. As of the effective date of the Newsrack Ordinance amendment establishing the CASNA, there will be a limit of 154 newsracks to be accommodated in the required modular fixtures. All other newsracks will be subject to removal.
1. **Original Placement in CASNA**

The City Engineer, with the input of the newspaper distributors, the community, and City staff has established locations where modular newsrack fixtures are allowed to be placed and the number of individual newsracks contained within each modular fixture. Exhibit B shows the specific permitted locations of each modular fixture that will be allowed as well as the number of individual newsracks allowed within each fixture.

The City Engineer has the discretion to make adjustments to the locations of modular fixtures within the CASNA set forth Exhibit B if necessary to accommodate changing conditions in the CASNA.

The process for original allocation of newsracks in the CASNA will give “current” publications occupying boxes in the CASNA area as of the June 4, 2008 survey date a right of first refusal for the number and general location of box or boxes they were shown to occupy in the survey. Public Works will provide permit applicants with a copy of Exhibit B showing the location of each modular fixture as well as the number of individual newsracks allowed within each fixture.

As part of the application, publications currently occupying freestanding boxes in the CASNA shall be required to submit satisfactory documentation to prove that they have ordered the number of modular-mounted newsracks necessary to replace their freestanding boxes. Upon receipt of applications, the City Engineer will issue permits to all current publications that have submitted applications.

Following allocation of newsracks to “current” publications, Public Works will then accept encroachment permit applications for any remaining newsrack slots and issue encroachment permits per the regulations in section B(2).

2. **Subsequent Placement of Newsracks in the CASNA**

The City Engineer will accept applications for newsrack permits in the CASNA area at any time, and will hold such applications on a waiting list if the locations requested in the applications are occupied by a permitted newsrack.

If, following the original allocation process or anytime after the original permit period, the City determines that containers are available, the City Engineer shall consider all the applications then on file and issue permits to fill all available spaces as follows:

1. If one or more of the applications on file is for a publication or publications that had no permitted newsrack in the CASNA, and if such publication(s) have not violated Chapter 9.79 within the prior three (3) years, the City Engineer shall give preference to such “new” publication(s) for the available location. As among such “new” publications, the City Engineer will give preference to applications in the order they were received.

2. If no “new” publications have submitted applications for CASNA newsrack locations, and more applications have been filed than space available, the City Engineer will conditionally allocate the available space(s) as follows:

   (a) The first applicant on the waiting list will be allocated one newsrack slot at an available location of their choosing
   (b) The second applicant on the waiting list will be allocated one newsrack slot at an available location of their choosing
   (c) This process will be repeated until all applicants on the waiting list have been allocated one newsrack slot or until all available slots have been allocated

   (d) If additional slots remain after all applicants on the waiting list are allocated one newsrack slot, steps (a) through (c) will be followed to allocate a second or more newsracks to each applicant on the waiting list

3. Within ten (10) days from the date the conditional allocation is made, the selected
applicant(s) shall submit to the City Engineer satisfactory documentation to prove that the selected applicant has ordered a modular-mounted newsrack for each allocated location. If a selected applicant does not submit such documentation within the required time period, the City Engineer shall remove that application from consideration and shall repeat the process.

Attachments:
Exhibit A – Downtown Special Newsrack Area map
Exhibit B – California Avenue Special Newsrack Area map

This publication is intended to be an informal means of informing the public about a City process. Although it is assumed the information provided is accurate, this sheet only provides an overview and is not intended to create any sort of legal obligation on the City's part. The actual process is governed by City ordinances, regulations and procedures.