

ORDINANCE 2196

**ORDINANCE OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 23 OF THE TOWN CODE
REGULATING NEWSRACKS LOCATED ON OR PROJECTING INTO
THE PUBLIC RIGHT-OF-WAY.**

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:

SECTION I

Article VII of Chapter 23 is adopted as follows:

ARTICLE VII. NEWSRACKS

Sec. 23.70.010. Purpose.

The purpose of these regulations is to acknowledge and achieve the following:

- (a) There is a substantial governmental interest in promoting the public health, safety, welfare and convenience by ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.
- (b) Newsracks placed and maintained on the streets, sidewalks, or other public rights-of way, absent some reasonable regulation, may unreasonably interfere with the use of such streets, sidewalks, and public rights-of-way, and may present hazards to persons or property.
- (c) The streets, sidewalks and public rights-of way are historically associated with the sale and distribution of newspapers and other publications, and access to and use of these areas for such purposes is not to be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or where such use presents a hazard to persons or property.
- (d) Reasonable accommodation of these competing interests can be achieved by adoption of this Article, which regulates the design, placement, and maintenance of newsracks.
- (e) 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 street be minimized and repaired; the good appearance of the public streets and grounds 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 properties adjoining the public rights-of-way be protected.

- (f) It is intended that the provisions of this Article shall be consistent with required accessibility standards under the American with Disabilities Act (ADA). Accessibility standards affect the general safety and welfare of all citizens and visitors of Los Gatos, and it is the responsibility of the owner of each newsrack to comply with all such provisions.
- (g) The regulation of the sale or free distribution of newspapers and other publications dispensed in vending machines as set forth in this Article provides the least intrusive and burdensome means for ensuring the purposes stated in this section are carried out while still providing ample opportunities for the distribution of news and opinion to the citizens of the Town.
- (h) This Article does not and is not intended to regulate the placement of newsracks on private property or property under the jurisdiction of any public agency other than the Town.

Sec. 23.70.015. Definitions.

- (a) *Abandoned newsrack.* Any newsrack which has been left empty for a period of thirty (30) days, except for any newsrack remaining empty due to labor strike or other extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack.
- (b) *Modular newsrack.* An industry standard structure composed of a group of individual newspaper dispensing cabinets mounted in a double row of two or more cabinets on a rack base that is supported by one or two pedestals.
- (c) *Newsrack.* Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution without charge of newspapers, periodicals or other publications.
- (d) *Roadway.* As defined in the California Vehicle Code
- (e) *Sidewalk.* As defined in the California Vehicle Code.
- (f) *Special newsrack district.* Any area of the Town of Los Gatos so designated by the Town upon findings that the special circumstances of the district require special

design, placement and other standards for newsracks.

- (g) *Special newsrack container.* A specially designed, permanently affixed container provided by or on behalf of the Town, within which shall be the exclusive location for the placement of newsracks in a special newsrack district.

Sec. 23.70.020. Authority and Responsibilities.

The Community Development Director shall be responsible for ensuring compliance with this ordinance, including, but not limited to, issuing permits and monitoring existing newsracks within the Town to ensure compliance with design, placement, and maintenance standards.

Sec. 23.70.025. Requirements of Newsrack Permit.

- (a) The provisions of this Article shall be the exclusive requirements for newsrack encroaching on Town property.
- (b) Each newsrack distributor or its designee shall obtain a newsrack permit from the Town prior to placing any newsracks into the public right-of-way or on public property. The newsrack distributor or its designee shall attach to the permit application a certificate of insurance showing that such person has in force and effect a policy for liability and property damage endorsing the Town as an additional insured, in an amount not less than \$1,000,000. The policy of insurance shall remain in force at all times while the newsrack is located in the Town. Evidence of insurance shall be provided annually to Town and shall be a condition of the newsrack permit and failure to maintain insurance and provide a current certificate of insurance to Town may result in a suspension or revocation of the newsrack permit.
- (c) A newsrack permit issued pursuant to this Article shall operate as an encroachment permit and no separate permit pursuant to Section 23.30 (Encroachments) shall be required.

- (d) A newsrack fee has been established by the Town Council and no newsrack permit shall be valid until payment of said fee. Any fee or fees adopted by the Town shall not exceed the costs of processing permit applications, amendments, and renewals, as well as the costs of maintaining newsrack modular units and enforcing this Article. The Community Development Director may also require a bond or other form of security in an amount reasonably necessary to ensure maintenance and removal of each newsrack authorized by the newsrack permit in the manner required by this Article.
- (e) The newsrack permit shall be reviewed on an annual basis and subject to annual affirmation pursuant to the provisions of this Article. No later than July 1 of each year, each newsrack registrant shall file a statement with the Town affirming the continued placement of the registrant's newsracks that shall contain a list of the newsrack permit numbers and a description of each newsrack's location.
- (f) The newsrack permit application form shall state the name, address, and telephone number of those responsible for installation, use and maintenance of the newsracks, and shall describe, with particularity, the location(s) proposed for installation. Any newsrack permit shall be issued within ten (10) working days if the application is complete and the type of newsrack and location(s) proposed actually meet the standards set forth in this Article.
- (g) A person or distributor who has been issued a newsrack permit may install and maintain additional newsracks and change the location of existing permitted newsracks by modifying the original permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.
- (h) Every newsrack owner shall permanently affix within plain view to each newsrack, the name, address and telephone number of the person responsible for the maintenance and operation of the newsrack.
- (i) All persons or distributors who obtain a newsrack permit shall also obtain and display an identification/permit marker provided by the Town. Such marker shall be affixed to the newsrack within plain view.
- (j) In the event of a change of ownership of a newsrack, the new owner(s) shall within ten (10) days modify the existing permit providing the name, address, and telephone number(s) of the new owner(s) and obtain and affix a new marker for the newsrack.
- (k) As required in Town Code §1.10.115, any permit holder shall defend, indemnify and hold

harmless the Town and its officials and employees from any loss, liability, damage or cost sustained by any person or property, to the extent that any such loss, liability, damage or cost arises from the installation, operation or use of such newsrack.

Sec. 23.70.030. Design.

- (a) No newsrack shall be installed in the public right-of-way that does not meet the dimensions of not more than fifty-four (54) inches high including pedestal, measured from the ground to the top surface of the newsrack, not more than two (2) feet deep, not more than two (2) feet wide, and not less than fifteen (15) inches from the ground as measured from the ground to the bottom surface of the lowest compartment. The bottom of a newsrack may be as low as five (5) inches from the ground, so long as it is set back as required in Sec. 23.70.040(a)(3)(c) below.
- (b) No group of newsracks placed along a curb shall extend for a distance of more than eight (8) feet in length. 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 Article, the Town shall approve permits for said location on a historical basis.
- (c) All newsracks shall be permanently affixed to the ground.
- (d) The highest operable part of the coin slot, if provided for the newsrack, all controls, dispensers and other operable components of newsracks shall not be greater than forty eight (48) inches above the level of the adjacent pavement or sidewalk, nor lower than fifteen (15) inches above the level of the adjacent pavement or sidewalk.
- (e) A newsrack must also display the identification label required by Section 23.70.025(f) and may display contact information described in Section 23.70.025(h). No other advertising or displays are allowed on the exterior of a newsrack.

Sec. 23.70.035. Special Newsrack District.

- (a) The Town Council hereby finds that special circumstances require special design, placement and other standards for newsracks located in the following areas of the Town; and such areas are hereby designated as a “special newsrack district”:
 - (1) The Downtown C-2 Commercial Area.
 - (i) The Town Council hereby designates the downtown C-2 commercial area as shown on Exhibit B as a special newsrack district

- (ii) The Town has determined that the downtown C-2 commercial area is a unique area of the Town and the 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. Because of numerous congestion and safety complaints from merchants in the downtown C-2 commercial area and in light of the special aesthetic concerns and the extensive pedestrian use of the area, special regulation of newsracks in the downtown C-2 commercial area is necessary. In light of the unique conditions in the downtown C-2 commercial area, the Town will install special newsrack containers.
- (iii) Use of special newsrack containers is mandatory. Within the downtown C-2 commercial area, no non-conforming newsrack container may be installed. If adequate space in existing special newsrack containers does not exist, the Town shall install a special newsrack container within 90 days or shall permit the applicant to install a newsrack adjacent to the special newsrack container until such time as the Town installs a new or expanded special newsrack container.

Sec. 23.70.040. Placement and Standards

- (a) No person shall install, stock, use or maintain any newsrack which projects onto, into or over any part of the roadway or any public right-of-way, street, or which rests, wholly or in part, upon, along or over any portion of a roadway. No person shall install, use or maintain any newsrack which in whole or in part rests upon, in or over any sidewalk or roadway, when such installation, use, or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including disabled access, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, postal service collection boxes or other objects permitted at or near said location.
- (b) In any national, state or locally designated historic district, and in the Central Business District Commercial Zone (C-2), individual newsracks shall be contained in modular units for display and sale that meet the specifications established by the Town. The modular units shall be provided by the Town, operators, publications, or by separate vendor by agreement with the Town. The modular newsracks will be of a multi-unit configuration in order to provide the safe

passage of pedestrian and vehicular traffic, while ensuring equivalent access to distribution. The modular units shall be subject to and shall be attached to one another to facilitate consolidation. No alteration of these modular newsracks shall be permitted without the express written direction of the Town.

- (c) Any newsrack which in whole or in part rests upon, on or over any sidewalk shall comply with the following standards:
- (1) Newsracks shall only be placed near a curb or adjacent to the wall of a building. If no building exists at the proposed site, newsracks shall be placed parallel to the back of the sidewalk and not more than six (6) inches from the back of the sidewalk. The back of newsracks placed near the curb shall be placed no less than eighteen (18) inches nor more than twenty-four (24) inches from the edge of the curb except that along a curb that is painted red prohibiting parking, there shall be no minimum setback from the curb. The back of newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall.
 - (2) All newsracks shall be permanently affixed to the ground notwithstanding Section 23.70.035(e). Newsracks shall not be chained or otherwise attached to a bus shelter, bench, street light, utility pole, or sign pole, to any other sign or modular newsrack, or any tree, shrub, or other plant, nor situated upon any landscaped area, or tree grate. No newsrack shall be placed, installed, used or maintained:
 - a. At any location where the clear space for the passage of pedestrians is reduced to less than six (6) feet except that in areas where physical obstructions provide for less than a six (6) foot clearance, a clear space for passage of not less than four (4) feet may be permitted for a distance of not more than ten (10) feet with the written approval of the Planning Director.
 - b. Within ten (10) feet of any marked or unmarked crosswalk as measured from the curb return;
 - c. Within five (5) feet of any marked crosswalk at a midblock intersection as measured from the outside edge of the crosswalk, or if the bottom of the newsrack is lower than fifteen (15) inches above the ground, then the newsrack shall be at least ten (10) feet from the crosswalk;
 - d. Within three (3) feet of any fire hydrant, fire call box, police call box, or other

emergency facility;

- e. Within five (5) feet of any driveway apron, as measured from the edge of the curb;
- f. Within three (3) feet of any bench fixed parallel to curb, or within four (4) feet of any bench fixed perpendicular to curb;
- g. Within five (5) feet of any red curb of a bus stop zone;
- h. Within five (5) feet of any blue curb of a disabled parking zone;
- i. Within ten (10) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk; or
- j. Within twelve (12) inches of any accessible utility or meter flush mounted in sidewalk.
- k. If the Community Development Director determines that the placement of a newsrack in a specific location that would conform to the standards in this section would nevertheless constitute a safety hazard or unreasonably interfere with pedestrian travel or emergency access the Community Development Director may deny the placement by making written findings specifying what constitutes the hazard or unreasonable interference.

Sec. 23.70.045. Maintenance.

- (a) Each 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. Abandoned newsracks shall be unlawful, and may be removed by the Town or its designee pursuant to the provisions of this Article.
- (b) Upon the removal of a newsrack, the public right-of-way shall, at permittees sole expense, be returned to its original condition including but not limited to the refilling of holes installed for purposes of placing newsracks.

Sec. 23.70.050. Abatement of Violation(s).

- (a) Any newsrack in violation of this ordinance may be summarily removed, relocated, or corrected by direction of the Town as provided in this Section and impounded at a place

convenient to the Town.

- (b) Except for violations that pose an immediate threat to public health, safety, or welfare, before any newsrack is removed, relocated, or corrected by the Town, the owner shall be notified by posting and mailing, where feasible, to the address for such party stated on the newsrack permit and given ten (10) days to remedy the violation and/or contest removal. If no identification is shown on the newsrack and no newsrack permit has been obtained, posting of the notice on the newsrack alone shall be sufficient. Both forms of notice shall state the code section violations, the length of time within which the violation must be cured, and the forum within which the owner may request a hearing to contest the removal, relocation, or correction of the newsrack. If immediate action is taken by Town to preserve health, safety, or welfare, notice shall be provided after the newsrack was removed, relocated or corrected.
- (c) Any person notified under Section 23.70.050 (b) may submit a written request to the Town Clerk for a hearing before the Town, which hearing shall be held not less than ten (10) business days after the request was made. The hearing shall be informal, but oral and written evidence may be given by both sides. Any action by the Town with respect to the alleged violation shall be stayed pending the Town's decision following the hearing, which decision shall be rendered no later than ten (10) business days after the hearing. The Town may give oral notice of the decision at the close of the hearing, but shall give written notice as well of the decision.
- (d) The Town may remove a newsrack if the person responsible for such newsrack has (a) neither requested a hearing before the Town nor remedied the violation within ten (10) days following date of notice, or (b) has failed to remedy the violation within ten (10) days after receiving a copy of the written decision that the newsrack was installed or maintained in violation of this Article, following a hearing as conducted pursuant to this Section. Such person shall be notified of the removal.
- (e) Removed or impounded newsracks shall be retained by the Town or its designee and may be recovered by their owner within ninety (90) days of their removal. Newsracks which are not claimed within ninety (90) days shall be deemed permanently abandoned and shall be disposed of pursuant to Civil Code Section 2080.6.
- (f) Before release of the newsracks, the person responsible for such newsrack shall pay an impound fee covering the actual cost to the Town or its designee of transporting, storing and disposing of such newsrack.

- (g) The prior notice required by this Section will not be a prerequisite to the Town or its designee taking reasonably necessary steps to relocate or remove a newsrack that presents an immediately imminent danger to public health and safety, or an unmitigable obstruction to the movement of either pedestrian or vehicular traffic.
- (h) Abatement hereunder is a cumulative remedy and does not prohibit the Town or its designee from pursuing any other appropriate criminal or civil action with regard to the enforcement of this Article.

Sec. 23.70.055 Appeal of Denial or Order.

- (a) Any applicant or owner/operator of a permitted newsrack may appeal a denial of a permit or order of the Town or its designee to correct an alleged violation of this Article by filing a written appeal with the Community Development Director within ten (10) days of the date of the decision or order. The Town will set the matter for hearing before the Planning Commission within sixty (60) days but at least ten (10) days after the date that the appeal was filed with the Planning Director. The appellant shall be notified by mail, and the notice of the hearing shall be posted in accordance with Town requirements for posting. The Commission will hear the appeal de novo and consider all relevant facts and testimony presented. At the conclusion of the hearing, the Commission may approve, disapprove, or amend the decision or order of the Town or its designee, as the Commission determines is in conformance with the provisions of this Article.
- (b) The appellant may appeal the Commission's decision to the Town Council by filing a written appeal with the Town Clerk within ten (10) days of the date of the Commission's decision. The Town Clerk will set the matter for hearing before the Town Council within sixty (60) days but at least ten (10) days after the date that the appeal was filed with the Clerk. The appellant shall be notified by mail, and the notice of the hearing shall be in accordance with Town requirements for posting. The Council will hear the appeal de novo and consider all relevant facts and testimony presented. At the conclusion of the hearing, the Council may approve, disapprove, or amend the decision or order of the Commission, as the Council determines is in conformance with the provisions of this Article.

Sec. 23.70.060 Amortization Requirements.

- (a) Every newsrack within the public rights-of-way within the Town shall be removed and/or otherwise brought into conformance with this Article according to the

following schedule

- (1) For newsracks in Historic and Special Newsrack Districts - within 120 days of the effective date of this Article.
 - (2) All newsracks outside historic districts shall meet all requirements of this Article except permanent affixing to the sidewalk within 120 days of the effective date of this Article.
- (b) Within 120 days of the effective date of this ordinance, the owners and operators of existing newsracks shall obtain the permits required by this Article and install permit decals in accordance with this Article.
- (c) Nothing contained herein shall prevent or inhibit the Town or its designee from taking all legal and appropriate steps to ensure that existing newsracks are not located on or projecting into the public rights-of-way in the Town of Los Gatos so as to present a hazard to public health and safety, or otherwise reasonably immitigable obstruction to either pedestrian or vehicular traffic.

SECTION II

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on May 2, 2011 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on May 16, 2011. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES: Steven Leonardis, Diane McNutt, Steve Rice, Barbara Spector, and Mayor Joe Pirzynski

NAYS: None

ABSENT:

ABSTAIN:

SIGNED: 
MAYOR OF THE TOWN OF LOS
GATOS LOS GATOS, CALIFORNIA

ATTEST: 
CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA