

AMENDING CHAPTER 16-38 OF THE CITY OF BOSTON CODE - ORDINANCES, REGULATING PLACEMENT AND MAINTENANCE OF NEWSRACKS

City of Boston Code, Ordinances, Chapter 16-38 is hereby amended by striking the section in its entirety and inserting in place thereof the following:

16-38.1 Definitions

When used in this section the following terms shall have the following meanings:

Certificate holder means the holder of a Certificate of Compliance issued by the Commissioner in accordance with the provisions of this section.

Certificate of Compliance means the certificate issued by the Commissioner on a yearly basis to the certificate holder upon successful completion of the application process each year.

Commissioner means the Commissioner of Public Works of the City of Boston, or such person as said Commissioner may delegate.

Corral means a structure which allows for the appropriate placement of newsracks within designated high traffic areas.

Newsrack means any type of unmanned device for the vending or free distribution of newspapers, periodicals or printed material of whatever nature located in or on a public way.

Newsrack sticker means a sequentially numbered sticker issued by the Commissioner for placement on individual newsracks in accordance with the provisions of this section.

Operator means any natural person or other legal entity including, but not limited to, corporations, partnerships, joint ventures and the like who either own, operate or are otherwise in control of a newsrack located in or on a public way in the City of Boston.

Public way means any public highway, private way laid out under authority of statute, way dedicated to public use, or way under control of the park commissioner or other body having like power.

16-38.2 Certificate of Compliance

a. Requirement. No person shall place, affix, erect, construct or maintain a newsrack in or on any part of a public way without first obtaining a yearly Certificate of Compliance from the Commissioner in accordance with the provisions of this section. Only one annual Certificate of Compliance per Operator shall be required.

b. Application process. Each Operator of newsracks who intends to place newsracks in any part of the public way must complete an application on a yearly basis via the means required by the Commissioner. Any person with fees owed to the City of Boston shall not be eligible to apply for a Certificate of Compliance until outstanding debts are paid.

c. Application. The application shall describe in detail the location of each proposed newsrack, including the side of the street and/or corner at which each newsrack is planned to be

placed and indicating the distance, in feet, of the newsrack from curbs, crosswalks, fire hydrants, street lights, trash receptacles, traffic signal equipment, bike racks, and mail boxes within a twenty-foot radius of the newsrack. The application must also certify that the placement of the newsrack is in compliance with the regulations of the State Architectural Access Board, 521 CMR, and will not reduce the clear space for the passage of pedestrians to less than four (4') feet. The application shall also include:

1. The name, address, telephone number, and email address, of the applicant who is the operator of the newsrack(s);

2. The name, address, telephone number and email address of a natural person (if different from the applicant) who the City may notify and/or contact at any time concerning the operator/applicant's newsrack(s). The Commissioner may use the email address to provide official notice to the person pursuant to this section, including notices of violation and removal of newsracks

3. A certificate of insurance naming the City of Boston as an additional insured to indemnify the City and hold it harmless from any and all claims or judgments for personal injury, including death, or property damage and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the design, placement, installation, operation or maintenance of any of the applicant/operator's newsrack(s). The amount of insurance coverage shall be at least \$300,000 for operators with between 1 and 99 newsracks, and at least \$1,000,000 for operators with 100 or more newsracks.

4. A signed statement holding the City harmless for any damage to the newsracks as the result of routine City maintenance, including but not limited to snowplowing and street cleaning, or as the result of reasonable enforcement of these provisions.

5. A signed statement acknowledging the certificate holder's agreement to pay a per-newsrack removal fee in the case for all boxes left on the street in the case of an emergency declared by the City.

6. A schedule for quarterly inspections by the operator of permitted newsracks' condition and placement compliance.

d. Issuance of Certificate of Compliance. Each year, within thirty (30) days of the submission of a completed application, upon a finding that the applicant is in compliance with the provisions of the section, the Commissioner shall issue a Certificate of Compliance. Included with the Certificate of Compliance shall be an appropriate number of sequentially numbered newsrack stickers. Each sticker shall be color-coded to indicate year of applicability and indicate the permitted location. Only those newsrack(s) that have been issued a newsrack sticker in conjunction with the issuance of a Certificate of Compliance shall be deemed approved. The Commissioner shall approve proposed locations subject to the conditions and restrictions set forth in 16-38.3(c) on a first come, first serve basis. No preference shall be given to operators who may have had newsracks in a particular location prior to the effective date of this section. No publication shall be approved for more than one newsrack at any particular location. Certificates of Compliance are nontransferable, unless allowed by written permission of the Commissioner.

e. Denial of Certificate of Compliance. If an application for a Certificate of Compliance is denied in whole or in part, the Commissioner shall state the specific reasons for denial. The

Commissioner shall assist the applicant in determining reasonable alternative locations to those which were denied. Any applicant who has been denied a Certificate of Compliance may appeal such denial to the Public Improvement Commission (PIC) by submitting a written request for such a hearing to the Commissioner. Such hearing shall be heard at the next regularly scheduled hearing or within thirty (30) days. The PIC shall issue a decision within ten (10) days and any decision shall be subject to M.G.L. c. 30A.

f. Fees for Certificate of Compliance. The nonrefundable application fee for each yearly Certificate of Compliance shall be one hundred (\$100.00) dollars to cover the administrative costs of processing the application plus an annual nonrefundable fee of twenty-five (\$25.00) dollars per newsrack to cover the administrative costs of monitoring compliance with these provisions.

g. Amending Certificate of Compliance. If within the applicable year after the Commissioner has issued a Certificate of Compliance the certificate holder wishes to install additional newsracks, beyond those which have been approved under 16-38.2(d), the certificate holder must submit an application to amend the Certificate of Compliance. Only the twenty-five (\$25) dollars per newsrack nonrefundable fee shall apply to such amendments.

16-38.3 Installation

a. Stickers. Each newsrack shall prominently display the newsrack sticker issued by the Commissioner pursuant to the provisions of 16-38.2(d). The sticker must be adhered in a clearly visible location on the upper right-hand corner of the street-facing side of the newsrack. The Commissioner will give the certificate holder until the expiration of thirty (30) days of issuance of stickers to affix stickers to permitted newsracks.

b. Standards. Any newsrack placed in any part of the public way shall be:

1. Made of metal, plastic or an equivalent sturdy material approved by the Commissioner, with a clear plastic window through which the printed material is dispensed, and shall not be more than 50 inches in height and not more than 32 inches in length and width;

2. Sufficiently weighted and secure so as not to be easily moved or tipped over; and

3. Completely enclosed, with a self-closing door that is either self-latching or otherwise requires manual or mechanical release at each use.

c. Placement. Placement of any newsracks must be done in accordance with 16-38.2(c) & (d) and 16-38.3(d), the regulations of the Architectural Access Board, 521 CMR, and subject to the following prohibitions. Newsracks shall be placed parallel to and not less than eighteen (18") inches nor more than twenty-four (24") inches from the edge of the curb. No newsrack shall be placed within one hundred fifty (150') feet of another newsrack containing the same newspaper or periodical unless approved by the Commissioner after a demonstration that the placement of two such newsracks would not impair traffic, affect accessibility or otherwise create a hazardous situation. Newsracks placed near a building or structure must be placed parallel to and not more than six (6') inches from the wall and shall *not* be placed:

1. At any location whereby the clear space for pedestrian passage is reduced to less than four (4') feet;

2. Within five (5') feet of any marked or unmarked crosswalk;
3. Within five (5') feet of any fire hydrant, fire lane, fire call box, or other emergency facility;
4. Within five (5') feet of any traffic control signal or traffic sign;
5. Within five (5') feet of any mailbox, bicycle rack, City trash receptacle, telephone booth or stand;
6. Within five (5') feet of any part of a curb return of a curb ramp or driveway, or in the case of a curb ramp or driveway without a curb return, within five (5') feet of the point where the curb edgestone or edging begins a change in grade toward the driveway or ramp on each side thereof, or in the case of a termination of the curb, edgestone or edging without a change in grade or a turn, within five (5') feet of the point of the same terminates on each side of the ramp or driveway;
7. Within five (5') feet ahead or fifteen (15') feet to the rear of any designated bus stop, taxi stand, valet parking area, loading zone or fire lane; and
8. Which in any way protrudes onto a street or interferes or hinders city removal of snow, ice, and debris from the streets and sidewalks.

Should circumstances require relief from a placement provision set forth above, the Commissioner shall have the discretion to grant relief upon a demonstration of actual hardship and of non-interference with the safe and efficient operation of the public way by the certificate holder. The Commissioner shall have the sole discretion to determine whether a proposed location interferes with the safe and efficient operation of the public way, and the presumption shall be that proposed locations that do not conform to the standards of Section 16-38.3(c)(1)-(7) interfere.

d. Placement at designated high traffic areas. In the interest of maintaining safe, accessible and unobstructed pedestrian flow, the Commissioner may designate certain areas of the City as high pedestrian traffic areas. Freestanding newsracks shall not be allowed in such designated areas. The Commissioner shall determine the appropriate placement of newsracks, through the use of corrals or other similar devices as the Commissioner deems necessary. The Commissioner is authorized to establish high pedestrian traffic areas subject to the following requirements:

1. The Commissioner shall determine the location of the corrals or other similar devices consistent with the purpose and intent of this section based on the following criteria: (i) whether the area has a large amount of pedestrian traffic; (ii) whether limited space is available for freestanding newsracks; and (iii) whether said designation is consistent with the goal of eliminating pedestrian congestion and enhancing pedestrian safety in the area.
2. Within five (5) days of designating a high pedestrian traffic area, the Commissioner shall send notice to all operators. The notice shall contain the following information: (i) the precise area being designated; (ii) the date the designated area regulations will go into effect, which shall be at least thirty (30) days after sending the notice; and (iii) the procedure for obtaining a slot in the area corral or other similar device.

The Commissioner shall approve placement of newsboxes in designated devices within high traffic area locations on a first come, first serve basis. No preference shall be given to operators who may have had newsracks in a particular location prior to the effective date of this section. No publication shall be approved for more than one location at any particular high traffic area.

e. Attachment to Property. No operator shall chain or otherwise attach any newsrack to any other newsrack, tree, street light post, traffic signal or sign, or other city infrastructure in the public way.

f. Groupings of newsracks. Newsracks may be grouped together side-by-side, provided that no group of newsracks extends beyond four newsracks placed side-by-side along a curb and an open space of not less than five (5') feet unimpeded by any state- or City- owned infrastructure components or any piece of street furniture separates each group of newsracks. Notwithstanding this permissible grouping, no newsrack may be grouped with any other newsrack unless such location has been approved pursuant to 16-38.2(c) & (d).

g. Advertising prohibited. It shall be unlawful for any person to use a newsrack for advertising or publicity purposes other than dealing with the display, sale or purchase of the publications dispensed therein.

16-38.4 Maintenance

a. Condition. Each newsrack shall be maintained in a state of good repair and in a neat and clean condition, and free of accumulations of outdated printed materials, trash, rubbish, or debris.

b. Service. Each newsrack shall be regularly serviced so that:

1. It is kept reasonably free of graffiti;
2. It is kept reasonably free of chipped, faded, peeling and cracked paint or rust and corrosion;
3. The clear plastic window through which the printed material is dispensed is not broken and is kept reasonably free of tears, peeling or fading; and
4. The structural parts of the newsrack are not broken or unduly misshapen.
5. The immediate area surrounding and underneath the newsrack is kept reasonably free of dirt and debris.

16-38.5 Enforcement

a. Nonconforming Newsracks. Any newsrack found not to be in compliance with this section shall be subject to the enforcement provisions contained herein.

b. Enforcement. The Commissioner shall enforce the provisions of this chapter and shall have the authority to issue regulations for the purpose of enforcement.

1. If a newsrack is placed in the public way without a newsrack sticker as required by section 16-38.3(a) the Commissioner may remove it from the public way immediately and may dispose of such newsrack immediately.

2. Upon a determination that a newsrack permitted pursuant to section 16-38.2(d) placed in any part of a public way is damaged in a manner which poses an immediate threat to public safety, or has profane, racist or sexually-explicit graffiti present on it, the Commissioner may remove such newsrack immediately. The Commissioner shall send notice to the individual provided pursuant to 16-38.2(c) (1) or (2), informing the certificate holder that the newsrack has been removed, the location of the facility where the newsrack has been stored, and that it will be disposed of in ten (10) days, unless the certificate holder retrieves the newsrack.

3. Upon a determination by the Commissioner that a newsrack permitted pursuant to section 16-38.2(d) is in violation of sections 16-38.3 or 16-38.4, excluding those violations stipulated in section 16-38.5(b) (1) & (2), the certificate holder shall have five (5) days to correct the violation. Upon a determination of such a violation, the Commissioner shall send notice of the violation to the individual provided pursuant to 16-38.2(c) (1) or (2). Such notice shall include:

(a) The newsrack sticker number and location;

(b) The date of the incident, inspection, or other cause giving rise to the violation;

(c) A brief and concise statement of the facts causing the violation; and

(d) A statement informing the individual that at the expiration of five (5) days from the date of notice the Commissioner shall be free to remove the newsrack from the street if the violation has not been corrected and that at the expiration of fifteen (15) days from the date of notice the Commissioner shall be free to dispose of the newsrack unless the newsrack is retrieved and the violation is corrected.

4. A certificate holder may comply with its obligation under section 16-38.5(3) to correct the violation by permanently replacing the newsrack with a properly-stickered newsrack, or by temporarily positioning another newsrack in place of the offending newsrack while the violation is corrected. In the event that the certificate holder elects to use a temporary replacement, it shall:

(a) Give the Commissioner written notice of the location including the side of the street and/or corner at which the newsrack is temporarily placed and the date and time by which a properly stickered newsrack will be returned to the position; and

(b) Return a properly-stickered newsrack to the position by the date specified in the notice of temporary replacement.

5. Any person aggrieved by 16-38.5(3) may appeal such action to the Public Improvement Commission by submitting a written request for such a hearing to the Commissioner before the expiration of ten (10) days from the date of notice. Such hearing shall be heard at the next regularly scheduled hearing. The Public Improvement Commission shall issue a decision within ten (10) days and any decision shall be subject to M.G.L. c. 30A.

16-38.6 Abandonment

- a. *Abandonment.* Newsracks properly installed pursuant to this section shall be deemed abandoned if no printed material is found for a period of more than ten (10) days.
- b. *Notice and Removal.* Upon a determination that a newsrack is abandoned, the Commissioner shall remove the newsrack and send notice to the individual provided pursuant to 16-38.2(c) (1) or (2), informing the certificate holder that the newsrack has been removed, the location of the facility where the newsrack has been stored, and that it will be disposed in ten (10) days, unless the certificate holder retrieves the newsrack.
- c. *Voluntary abandonment.* In the event that a certificate holder voluntarily abandons a newsrack location, the certificate holder shall notify the Commissioner, completely remove the newsrack and restore the public way to a safe condition.

16-38.7 Emergency Removal

- a. The placement of any newsrack in the public way pursuant to the issuance of a certificate of compliance shall be subject to an agreement by the certificate holder that the certificate holder agrees to remove the newsrack, and agrees to pay to the City the reasonable cost of removing the newsrack, whenever the Commissioner determines that removal by the certificate holder or removal by the City is required to prevent an imminent threat to public safety.
- b. When the Commissioner determines that removal of a newsrack is required to prevent an imminent threat to public safety, the Commissioner shall endeavor to provide reasonable notice to the individual provided pursuant to 16-38.2(c) (1) or (2) instructing them to remove newsracks in the time and fashion deemed necessary by the Commissioner. When reasonable notice is not possible, or newsrack removal has not occurred prior to the date and time stipulated in emergency removal notices, the City shall have the right to remove newsracks immediately through any public officer, employee, contractor, or other authorized representative of the City at the lowest reasonable cost and shall notify the certificate holder of such removal, the sticker numbers of the newsracks removed, and the total cost of removal for the certificate holder's newsracks as soon as practicable. The certificate holder shall pay the City of Boston the removal costs indicated.

16-38.8 Fees

- a. A newsrack removed pursuant to the regulations set forth in sections 16-38.5 or 16-38.6 may be retrieved by the certificate holder within fifteen (15) days of its removal upon payment of a removal fee of fifty (\$50.00) dollars plus a storage fee of ten (\$10.00) dollars per day, to a maximum combined removal and storage fee of two hundred (\$200.00) dollars per newsrack.
- b. After fifteen (15) days, any newsracks removed by the Commissioner pursuant to this section shall be deemed "abandoned property" and shall be disposed of.
- c. Failure of a certificate holder to retrieve a newsrack within the specified fifteen (15) day period shall not operate to dismiss any fees owed to the City of Boston for removal and storage of such newsrack. Unpaid fees accrued pursuant to this subsection shall be considered a debt payable to the City of Boston

16-38.9 Effect on Other Laws

Nothing in this section shall affect the adoption of regulations affecting newsracks by other government bodies, such as historic district commissions, to the extent such bodies are authorized to adopt such regulations.

16-38.10 Severability

The provisions of this section shall be severable and if any section, part, or portion hereof shall be held invalid for any purpose by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining section, part or portion thereof.

16-38.11 Initial Application Acceptance Date

The Commissioner shall send written notice to all operators affected by this section informing them of the date when the Commissioner will accept the first applications for Certificates of Compliance. The Commissioner shall send said notice at least thirty (30) days prior to the initial application acceptance date.

16-38.12 Effective Date

This section shall take effect ninety (90) days from the date of approval.

In City Council [Date] Passed.
Approved by the Mayor [Date]

Attest:
Maureen Feeney
City Clerk

In City Council MAR 27 2013
Passed
Maureen Feeney **City Clerk**
Approved APR 01 2013
[Signature] **Mayor**