

FILE NO. 991317

ORDINANCE NO. 234-99

1 [Prompt Review of Fixed Pedestal Permit Denials]

2 AMENDING THE SAN FRANCISCO PUBLIC WORKS CODE, ARTICLE 5.4, BY AMENDING  
3 SECTION 184.12 THEREOF, REGULATING THE PLACEMENT AND MAINTENANCE OF  
4 NEWSRACKS ON PUBLIC SIDEWALKS, STREETS AND RIGHTS-OF-WAY, TO PROVIDE  
5 FOR PROMPT ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS TO GRANT,  
6 DENY OR REVOKE FIXED PEDESTAL PERMITS, TO CLARIFY THE GROUNDS AND  
7 PROCEDURES TO GRANT, DENY OR REVOKE FIXED PEDESTAL PERMITS, TO  
8 CLARIFY THAT FREESTANDING NEWSRACKS MAY CONTINUE TO BE PLACED ON  
9 PUBLIC SIDEWALKS, STREETS AND RIGHTS-OF-WAY IN AREAS OF THE CITY THAT  
10 ARE NOT WITHIN FIXED PEDESTAL ZONES AND THAT PUBLICATIONS MAY CONTINUE  
11 TO BE DISTRIBUTED BY OTHER AUTHORIZED MEANS WITHIN FIXED PEDESTAL  
12 ZONES, AND TO MAKE OTHER MISCELLANEOUS TECHNICAL REVISIONS.

13  
14 Note: Additions are underlined; deletions are in ((double parentheses)).

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Article 5.4 of the San Francisco Public Works Code is hereby amended by  
17 amending Section 184.12 thereto, to read as follows:

18 **Section 184.12 FIXED PEDESTAL NEWSRACKS**

19 **Sec. 184.12(a). PURPOSE AND INTENT**

20 The Board of Supervisors hereby finds and declares:

21 (1) The City and County of San Francisco has a substantial interest in promoting  
22 the public health, safety, welfare and convenience of its citizens and visitors by ensuring that  
23 public streets, sidewalks and rights-of-way are not unreasonably obstructed by newsracks,  
24 and that newsracks are properly maintained.

1 (2) In recent years, the proliferation of newsracks on City streets, and particularly  
2 poorly maintained or abandoned free((-))standing newsracks, have contributed to the  
3 congestion of City sidewalks, impeded the flow of pedestrian and vehicular traffic, interfered  
4 with the use of streets, sidewalks and public rights-of-way, presented hazards to persons and  
5 property, contributed to the litter problems of City sidewalks, and resulted in visual blight.

6 (3) The City and County of San Francisco has a substantial interest in preserving  
7 and protecting its unique visual and aesthetic qualities identified in sections I.5.24 through  
8 I.5.25, I.5.32 through I.5.33, and II.4.2 of the San Francisco General Plan. To that end, and  
9 consistent with the Downtown Area Plan of the General Plan (§§ II.1.48 through II.1.50), the  
10 City must take steps to reduce the visual blight, the inconvenience and the hazards  
11 associated with unlimited numbers and designs of newsracks, poorly maintained newsracks  
12 and the virtually unrestricted placement of newsracks on City streets, sidewalks and rights-of-  
13 way.

14 (4) After extended inquiry, including the Board of Supervisors' recently-concluded  
15 six month pilot program employing fixed pedestal newsracks at various locations, it has  
16 become clear that an effective way to reduce the visual clutter and hazards associated with  
17 excessive numbers of newsracks is to prohibit free((-))standing newsracks in congested  
18 areas, and to allow only fixed pedestal newsracks in these areas.

19 (5) The purpose of this section is to promote the public health, safety and welfare  
20 and the aesthetic qualities of the City by controlling the placement, size, construction and  
21 appearance of newsracks, so as to:

22 (A) Provide for pedestrian and vehicular safety and convenience;

23 (B) Ensure that there is no unreasonable interference with the flow of pedestrian or  
24 vehicular traffic including ingress into, or egress from, any residence, place of business or  
25 public facility, or any legally parked or stopped vehicles;

1 (C) Ensure compliance with the Americans With Disabilities Act and improve  
2 passage for persons with disabilities by reducing impediments to passage caused by poorly-  
3 located newsracks;

4 (D) Provide reasonable access for the safe and efficient use and maintenance of  
5 sidewalks, poles, posts, traffic signs or signals, hydrants, mailboxes, police or fire call boxes,  
6 sidewalk elevators, delivery areas, loading zones, transit shelters, curb ramps, parking  
7 meters, and locations used for public transportation services;

8 (E) Reduce visual blight and clutter and litter problems associated with poorly  
9 maintained, improperly located or abandoned newsracks;

10 (F) Protect the unique aesthetic and historical attributes of the City; and

11 (G) Advance the economic interests of the City's businesses and residents,  
12 including the interests of those involved in the publication or distribution of newspapers and  
13 news periodicals through newsracks.

14 (6) In adopting this section, the Board of Supervisors is mindful that regulation of  
15 newsracks implicates rights protected by the First Amendment of the United States  
16 Constitution and by Article I, Section 2 of the California Constitution. To that end, the Board of  
17 Supervisors directs the Director of the Department of Public Works, the General Manager of  
18 the Municipal Railway, and other appropriate City officials to interpret and apply this section  
19 and the guidelines promulgated under this section, and to exercise their powers and duties, in  
20 a manner consistent with the constitutional rights of citizens and the regulated community.

21 (7) Use of streets, sidewalks and other public rights-of-way for distribution of  
22 newspapers may be denied where such use presents a danger to persons or property. Use of  
23 these areas for such purposes may be restricted where it unreasonably interferes with the  
24 intended use of the area or with pedestrian or vehicular traffic, or results in unreasonable  
25 levels of visual blight.

1 (8) In recent years, City officials have noticed that a number of newsracks in the  
2 City are placed in inappropriate locations, are abandoned, or are poorly maintained. Many of  
3 these newsracks also end up being used as trash receptacles, causing unsightly and  
4 unsanitary clutter and litter.

5 (9) Given the limited space available and the increasing congestion on certain  
6 public sidewalks, streets and rights-of-way, the City has a substantial interest in devising a  
7 systematic approach to newsrack placement in those locales to ensure a fair and equitable  
8 distribution of newspapers. This objective may be achieved by creating "Fixed Pedestal  
9 Zones" in highly congested areas or areas with particular public safety, aesthetic, historical, or  
10 economic concerns. Allowing fixed pedestal newsracks and prohibiting free((-))standing  
11 newsracks and unauthorized fixed pedestal units in these zones will promote the City's  
12 interest in promoting public safety, reducing visual blight and clutter, protecting the unique  
13 aesthetic and historical attributes of the City, and advancing the economic interests of the  
14 City's businesses and residents by improving the appearance of the area and resulting in  
15 better use of space and reduced congestion.

16 (10) A reasonable accommodation of these competing interests can be achieved by  
17 adoption of this section, which regulates the placement, size, construction, design and  
18 appearance of newsracks in specified areas.

19 (11) This section is not intended to and does not ban freestanding newsracks on  
20 public sidewalks, streets and rights-of-way throughout the City. Freestanding newsracks may  
21 continue to be placed on public sidewalks, streets and rights-of-way in areas of the City that  
22 are not within Fixed Pedestal Zones created pursuant to this section, in accordance with  
23 Article 5.4, Sections 184 through 184.11, of the San Francisco Public Works Code and the  
24 guidelines promulgated thereunder. Publications also may continue to be distributed within  
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1 Fixed Pedestal Zones created pursuant to this section by all authorized means other than  
2 freestanding newsracks.

3 **SEC. 184.12(b). DEFINITIONS.**

4 The definitions contained in section 184.1 shall apply to this section except to the  
5 extent such definitions are inconsistent with the following:

6 (1) "Abandoned newsrack box" means any newsrack box which either remains  
7 empty for more than fifteen (15) business days or contains only outdated issues in violation of  
8 the guidelines promulgated under this section. In case of a labor strike or a temporary and  
9 extraordinary interruption of distribution or publication of the newspaper or other periodical  
10 sold or dispensed from that newsrack box, the publication shall notify the Director in writing in  
11 order to avoid having the newsrack box deemed abandoned.

12 (2) "Director" means the Director of the Department of Public Works or his or her  
13 designated representative.

14 (3) "Existing news kiosk" means either ~~(((1))A)~~ a public service kiosk authorized by  
15 the Director in accordance with the City's automated public toilet program; or ~~(((2))B)~~ any  
16 stand, shelter, or other structure installed, used, or maintained for the display, sale or storage  
17 of newspapers, news periodicals or other news publications which is attended by the owner or  
18 his employee or an authorized vendor while making sales therefrom.

19 (4) "Fixed Pedestal Zone" means any area designated by the Director, following  
20 consultation with the Advisory Committee based on particular public safety, historical,  
21 aesthetic, or economic concerns, where distribution of newspapers through newsracks is  
22 restricted to fixed pedestal units that are installed in a style and manner approved by the  
23 Director.

1 (5) "Fixed Pedestal Permit" means a permit issued to a publication authorizing the  
2 placement of the publication in one or more newsrack boxes in a fixed pedestal unit in a Fixed  
3 Pedestal Zone.

4 (6) "Fixed Pedestal Unit" means an assembly which is of a type, design or model  
5 approved by the Director and which contains one or more self-service or coin-operated boxes,  
6 containers, storage units or other dispensers installed, used or maintained for the display and  
7 sale or free distribution of newspapers, news periodicals or other publications, and which is  
8 attached to the sidewalk, street or public right-of-way in accordance with this section,  
9 guidelines promulgated under this section, and any agreement pursuant to subsection  
10 184.12(d)(3) between the Director and a Vendor.

11 (7) "Free((-S))standing Newsrack" means any self-service or coin-operated box,  
12 container, storage unit or other dispenser installed, used or maintained for the display and  
13 sale or the distribution without charge of newspapers, news periodicals or other news  
14 publications, and which is not a fixed pedestal unit authorized under this section.

15 (8) "Newsrack" means either a Newsrack Box, a Free((-S))standing Newsrack, or  
16 an Unauthorized Fixed Pedestal Unit.

17 (9) "Newsrack Box" shall mean the individual space within a fixed pedestal unit  
18 which dispenses one newspaper or other periodical, including the door, coin return  
19 mechanism and associated hardware. "Newsrack Box" does not include any free((-))standing  
20 newsrack.

21 (10) "Permit ((-)) holder" means a publication which has been issued one or more  
22 fixed pedestal permits by the Director.

23 (11) "Publication" means any morning, evening, or special editions of a publication,  
24 as well as any editions published jointly with another publisher.  
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1 (12) "Public Right-Of-Way" means land which by deed, conveyance, agreement,  
2 easement, dedication, usage or process of law is reserved and dedicated to the general public  
3 for street, highway, alley, public utility, or pedestrian walkway purposes, whether or not said  
4 land has been improved or accepted for maintenance by the City.

5 (13) "Roadway" means that portion of a public street that is improved or customarily  
6 used for vehicular traffic.

7 (14) "Sidewalk" means any surface or walkway provided for the exclusive or primary  
8 use of pedestrians.

9 (15) "Street" means all that area dedicated to the public use, including but not limited  
10 to roadways, sidewalks and planter strips.

11 (16) "Unauthorized fixed pedestal unit" means an assembly which contains one or  
12 more self-service or coin-operated boxes, containers, storage units or other dispensers  
13 installed, used or maintained for the display and sale or free distribution of newspapers, news  
14 periodicals or other publications, and which is attached to the sidewalk, street or public right-  
15 of-way in a Fixed Pedestal Zone, and which is not authorized pursuant to an agreement under  
16 subsection 184.12(d)(2) between the Director and a Vendor.

17 (17) "Vendor" means any individual or entity that has entered into an agreement with  
18 the Director to provide, install and maintain fixed pedestal units pursuant to this section.

19 **SEC. 184.12(c). SCOPE.**

20 The requirements of this section shall apply to all fixed pedestal units, unauthorized  
21 fixed pedestal units, newsrack boxes and free((-))standing newsracks located within Fixed  
22 Pedestal Zones designated by the Director in accordance with subsection 184.12(f). To the  
23 extent any provision in sections 184 through 184.11 is in conflict or inconsistent with this  
24 section, it is the Board of Supervisors' intention that this section shall control in any Fixed  
25 Pedestal Zone.

1           **SEC. 184.12(d). GUIDELINES, FEES, AND AUTHORITY OF DIRECTOR.**

2           (1)    Promulgation of Guidelines. (A) The Director is hereby authorized and directed  
3 to promptly promulgate guidelines consistent with the provisions of this section controlling the  
4 placement, size, construction, design, methods of attachment and appearance of fixed  
5 pedestal units and newsrack boxes in Fixed Pedestal Zones, as well as procedures for  
6 establishing or amending Fixed Pedestal Zones and procedures for determining access by  
7 publications to fixed pedestal units. The Director is also authorized and directed to  
8 promulgate guidelines and procedures consistent with the provisions of this section for  
9 obtaining or amending fixed pedestal permits.

10           (B) In promulgating guidelines, the Director's decisions shall be consistent with the  
11 purpose of this section, as set forth in subsection 184.12(a)(5). In addition, in promulgating  
12 those guidelines governing the establishment of Fixed Pedestal Zones, the numbers and  
13 placement of fixed pedestal units in Fixed Pedestal Zones (including the maximum density  
14 levels authorized by subsection 184.12(f)(3)(c)), access to fixed pedestal units (including the  
15 minimum reservations of space authorized by subsection 184.12(f)(4)(B)(ii)), and the  
16 allocation of space in fixed pedestal units, the Director's decisions shall be based on the  
17 following: (1) pedestrian and vehicular congestion and safety considerations at the location(s)  
18 in question, including impediments to access by individuals with disabilities; (2) demand for,  
19 and access to, publications at the location(s), including the availability of alternative channels  
20 of distribution other than through newsracks; (3) urban blight, litter, aesthetic and historical  
21 concerns; (4) the fiscal impact on the presence or absence of newsracks on businesses in the  
22 community, including the publishers of newspapers and periodicals; and (5) access to, and  
23 use of street furniture and public transit facilities, including such access and use by individuals  
24 with disabilities.  
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1 (C) The guidelines shall be adopted by way of a Department of Public Works order  
2 signed by the Director after giving due consideration to the recommendations of the Advisory  
3 Committee. The provisions of this section governing fixed pedestal units, access to fixed  
4 pedestal units by publications, and prohibiting free((-))standing newsracks and unauthorized  
5 fixed pedestal units in Fixed Pedestal Zones shall not be implemented or enforced until the  
6 guidelines specified in this paragraph are in effect and notice of the effective date has been  
7 published in the City's official newspaper.

8 (2) Procedures for Adopting or Amending Guidelines. Prior to adopting or  
9 amending the guidelines the Director shall publish notice in the City's official newspaper of the  
10 Director's intent to adopt or amend the guidelines. Copies of the proposed or amended  
11 guidelines shall be made available to the public upon request.

12 (3) Authority to Contract for Services. The Director is hereby authorized to select  
13 and enter into an agreement with a vendor or vendors to provide for the installation and  
14 maintenance of fixed pedestal units in accordance with this section. Any such agreement  
15 shall include, in addition to any other provisions required by applicable City laws  
16 ((ordinances)) or by guidelines adopted by the Director pursuant to subparagraph (1), the  
17 following requirements:

18 (A) the vendor(s) shall be responsible for installing and maintaining the condition  
19 and appearance of all fixed pedestal units and newsrack boxes subject to the agreement  
20 (except for maintenance responsibilities which are the obligation of the permit ((-)) holder  
21 pursuant to subsection 184.12(g)) in accordance with the terms of the agreement and the  
22 requirements of this section;

23 (B) the vendor(s) shall provide a way to disable and render inoperative any  
24 newsrack box that is found by the Director to be in violation of this section by means such as  
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1 a locking plate over the offending newsrack box. The vendor(s) shall agree to disable any  
2 such newsrack boxes within 24 hours of receiving notice to do so from the Director;

3 (C) a statement in accordance with section 6.63-1 of the San Francisco  
4 Administrative Code that the vendor(s) has a clear and unequivocal understanding that a  
5 possessory interest subject to taxation may be created by the agreement and the vendor shall  
6 pay any and all possessory interest taxes levied upon the vendor's interest therein pursuant to  
7 an assessment lawfully made by the Assessor;

8 (D) the vendor(s) shall furnish evidence of insurance that is satisfactory to the City  
9 Risk Manager, and that names the City as an additional insured;

10 (E) the vendor(s) shall have no authority to make determinations concerning where  
11 fixed pedestal units will be located, or concerning which publications shall have access to a  
12 fixed pedestal unit;

13 (F) where the Director intends to allow the vendor(s) to place advertising on the  
14 back of one or more fixed pedestal units authorized under this section, the agreement shall  
15 set forth the requirements applicable to such advertising, including the requirements set forth  
16 in subsection 184.12(g)(1)(F).

17 (4) Content-Based Discrimination Prohibited. The Director shall not consider the  
18 content or viewpoint of the material to be distributed through fixed pedestal units in  
19 administering or enforcing this section ((ordinance)), or in adopting or implementing guidelines  
20 pursuant to this section ((ordinance)). Nothing in this paragraph shall be construed as limiting  
21 the authority of the Director to require blinder racks for adult-oriented publications in  
22 accordance with subsection 184.12(g).

23 (5) Newsrack Advisory Committee. The Director is hereby authorized and directed  
24 to establish a Newsrack Advisory Committee consisting of 11 members. The Newsrack  
25 Program Manager of the Department of Public Works shall be a voting member, and shall

1 chair the Committee. The Director shall appoint to the Committee persons drawn from, or  
2 having expertise in, the newspaper, news periodical, and distributing industries in the City,  
3 and/or drawn from neighborhood and merchant groups, and other interested members of the  
4 public to advise the Director in the implementation and administration of this section and to  
5 minimize the cost to the City of the implementation and administration of this section. No  
6 Vendor or agent or employee of a Vendor may serve on the Committee. Committee members  
7 shall serve at the pleasure of the Director for a term of one year, and may be reappointed to  
8 additional terms. The Advisory Committee shall hold regularly-scheduled meetings, with  
9 notice posted in the City's official newspaper.

10 (6) Fees. (A) The Director is hereby authorized and directed to establish and collect  
11 an annual permit fee to be paid by each permit ((-)) holder. This fee is initially established at  
12 \$30 for each newsrack box. The Director has determined that this fee is not expected to  
13 generate proceeds in excess of the costs anticipated to be incurred in implementing this  
14 section during the first year that this section is in effect. In future years, the anticipated annual  
15 revenue from this fee shall not exceed the actual costs incurred by the Director for  
16 implementation, administration and enforcement of the program during the preceding twelve  
17 (12) months. The fee shall only be used to cover such costs, and not as a revenue-  
18 generating source for the City. The fee adopted pursuant to this provision shall be uniformly  
19 imposed upon all permit ((-)) holders based upon the number of newsrack boxes authorized  
20 for each permit ((-)) holder. The fee shall not exceed the pro-rata share allocated to each  
21 newsrack box of the actual costs incurred in implementing, administering, and enforcing the  
22 program established under this section.

23 (B) The fee shall be reviewed annually by the Director, who shall propose to the Board  
24 of Supervisors any recommended adjustments, along with written justification for the  
25 adjustment and any necessary legislation. In any year where the Director anticipates that the

1 revenue from fees will exceed the estimated administrative costs, less penalties, during that  
2 year, the Director shall recommend an adjustment reducing the fee. Where the proceeds  
3 from the fee are less than the estimated costs of program administration, less penalties, the  
4 Director may recommend an adjustment. In proposing adjustments, the Director shall take  
5 into account the anticipated penalties and other charges collected from violators during the  
6 forthcoming year. These proceeds shall be used to offset program administration and  
7 enforcement costs that would otherwise be defrayed by fees imposed during the forthcoming  
8 year so that the fees, including any surplus from the prior year, do not exceed the projected  
9 actual costs of administering the program. For any year in which the fee proceeds exceed  
10 actual administration, inspection and abatement expenses, such surplus shall be taken into  
11 account in fixing the fee for the subsequent year.

12 **SEC. 184.12(e). PERMIT REQUIREMENT.**

13 (1) Fixed Pedestal Permit. Permits are necessary to facilitate the regulation and  
14 inspection of newsrack boxes for the purposes set forth in this section ((ordinance)). No  
15 person may place any publication in any newsrack box in a fixed pedestal unit on a public  
16 sidewalk, street or public right-of-way in a Fixed Pedestal Zone for the purpose of sale or  
17 distribution without having first obtained from the Director a fixed pedestal permit authorizing  
18 placement of the publication in that newsrack box.

19 (2) Duty to Obtain Permit. Each publication seeking access to a newsrack box or  
20 boxes in a fixed ((-)) pedestal unit or clustered fixed pedestal units shall apply to the City for a  
21 fixed pedestal permit for each newsrack box in each fixed ((-)) pedestal unit to ((location at))  
22 which the publication seeks access. The permit ((-)) holder shall be responsible for the  
23 payment of all fees or penalties due or imposed under this section with respect to that permit  
24 ((-)) holder's newsrack box(es). Once a permit has been granted pursuant to this section and  
25 the requirements of the guidelines, and if the permit has not subsequently been revoked, the

1 permit holder shall not be required to renew or reapply for another fixed pedestal permit for  
2 the same newsrack box.

3 (3) Application. Application for a fixed pedestal permit shall be made in writing on a  
4 form and in a manner provided by the City and filed with the Director or by other medium  
5 approved by the Director. The application package shall inform the applicant of the  
6 requirements of this section and the guidelines promulgated under this section.

7 (4) Permit Issuance. (A) ((Upon receipt of)) The Director shall grant or deny a  
8 properly completed and timely application for a fixed pedestal permit from a publication, or  
9 from the agent for a publication, accompanied by written authorization from the publication,  
10 along with the required fee, as specified in the guidelines, ((the Director shall issue a fixed  
11 pedestal permit authorizing placement of the publication in one or more newsrack boxes in a  
12 specified fixed-pedestal unit)) within fifteen (15) business ((working)) days of the Director's  
13 receipt of the application. However, if the Director has not completed the application of the  
14 space allocation procedures set forth in subsection 184.12(f) and the guidelines, the Director  
15 shall have an additional five (5) business days to grant or deny the application. ((unless,  
16 based on the requirements of this section or the guidelines promulgated under this section,  
17 there are grounds requiring denial of the permit.))

18 (B) The Director shall issue the fixed pedestal permit unless the Director finds one or  
19 more of the following grounds for denial to exist, in which case the Director shall deny the  
20 application for a permit. The grounds for denial of an application for a fixed pedestal permit  
21 are: (1) the application is incomplete; (2) the application was not submitted on time; (3) the  
22 required fee was not submitted on time; (4) the publication that applied for the permit is being  
23 distributed through an existing news kiosk located less than one hundred (100) feet from the  
24 location of the fixed pedestal unit containing the newsrack box that is the subject of the  
25 application; or (5) space in the newsrack box that is the subject of the application is not

1 available after application of the space allocation procedures set forth in subsection 184.12(f)  
2 and the guidelines, including the guidelines establishing minimum amounts of space for  
3 publications that are published biweekly or less often. If an application is denied  
4 ((disapproved in whole or in part)), the Director shall notify the applicant promptly in writing,  
5 explaining the reasons for the denial, and citing the relevant portions of this subsection and  
6 the guidelines.

7 (5) Violations. Failure to comply with any requirement of this section, or any  
8 requirement of the guidelines authorized by this section, shall constitute a violation of this  
9 section. Any such violation may be cause for removal of the offending free((-))standing  
10 newsrack or unauthorized fixed pedestal unit, or disabling of the offending newsrack box  
11 pursuant to subsection 184.12(h), and for the imposition of administrative penalties pursuant  
12 to subsection 184.12(i).

13 (6) ((Effect of)) Permit Revocation. (A) The Board of Supervisors specifically  
14 determines that any fixed pedestal permit issued pursuant to this section confers a  
15 non-transferable, revocable privilege upon the permit ((-)) holder. Any such permit may be  
16 revoked ((for cause as outlined in this section)) by the Director fifteen (15) business days after  
17 the Director provides written notice to the permit holder that one or more of the grounds for  
18 revocation specified in subparagraph (B) exist, if the permit holder does not correct all of the  
19 violations on or before the close of the fifteenth (15<sup>th</sup>) business day. If the permit is revoked,  
20 the Director shall notify the permit holder promptly in writing, explaining the reasons for the  
21 revocation, and citing the relevant portions of this subsection and the guidelines.

22 (B) The grounds for revocation of a fixed pedestal permit are: (1) the permit holder did  
23 not submit the required annual fee on time; (2) the newsrack box that is the subject of the  
24 permit has been vacated pursuant to subsection 184.12(h)(3)(D); or (3) the Director's decision  
25 to grant the permit was successfully challenged by a person aggrieved by the determination

1 pursuant to subsection 184.12(k). In addition, the Board of Supervisors may at any time in its  
2 exclusive legislative discretion elect to repeal or amend this section and thereby render null  
3 and void any permits issued pursuant this section.

4 **184.12(f). ESTABLISHMENT OF FIXED PEDESTAL ZONES AND PLACEMENT OF**

5 **FIXED PEDESTAL UNITS.** (1) Fixed Pedestal Units Restricted. No person shall place,  
6 operate or maintain a fixed ((-)) pedestal unit on any public street, sidewalk or right-of-way  
7 located in a Fixed Pedestal Zone except in accordance with an agreement between a vendor  
8 and the Director pursuant to subsection 184.12(d)(3). Any unauthorized fixed pedestal unit  
9 which in whole or in part is attached to or rests upon a public street, sidewalk or right-of-way  
10 located in a Fixed Pedestal Zone shall be subject to impoundment pursuant to subsection  
11 184.12(h). The owner of any unauthorized fixed ((-)) pedestal unit properly impounded by the  
12 Director under subsection 184.12(h) shall be responsible for restoring the sidewalk to its  
13 original condition by replacing the concrete or other material in accordance with Section 703.2  
14 of the Public Works Code.

15 (2) Free((-S))standing Newsracks Prohibited. No person shall place, operate or  
16 maintain a free((-))standing newsrack on any public street, sidewalk or right-of-way located in  
17 a Fixed Pedestal Zone. Any free((-))standing newsrack which in whole or in part or rests upon  
18 a public street, sidewalk or right-of-way located in a Fixed Pedestal Zone shall be subject to  
19 impoundment pursuant to subsection 184.12(h).

20 (3) Fixed Pedestal Zones.

21 (A) All fixed ((-)) pedestal units within a designated Fixed Pedestal Zone shall be of  
22 a design designated by the Director and approved by the Art Commission pursuant to its  
23 authority under City Charter Section 5.103. The Director shall consider the factors set forth in  
24 subsection 184.12(a)(5) in selecting designs for fixed ((-)) pedestal units.  
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1 (B) The Director shall monitor the installation and maintenance of fixed pedestal  
2 units and newsrack boxes within the Zones.

3 (C) The Director is authorized to establish one or more Fixed Pedestal Zones in any  
4 area of the City, consistent with the purpose and intent of this section, and to determine the  
5 location of each fixed pedestal unit in each such Zone. The Director shall establish Fixed  
6 Pedestal Zones and the location of fixed pedestal units following consultation with the  
7 Advisory Committee and a public hearing in accordance with the guidelines. The Director is  
8 further authorized to establish in the guidelines maximum density levels for fixed pedestal  
9 units ((newsrack boxes)) in Fixed Pedestal Zones. In establishing such levels, the Director  
10 may set different levels for commercial and residential areas of the City.

11 (D) Not later than ((December 31, 1999,)) twelve (12) months after the Director first  
12 implements this section pursuant to subsection 184.12(j), the Director shall issue a report in  
13 writing to the Board of Supervisors. This report shall inform the Board of the effectiveness of  
14 the existing Fixed Pedestal Zones, and shall make any recommendations and include  
15 proposed legislation regarding changes that the Director believes are necessary.

16 (4) Allocation of Space in Fixed Pedestal Units.

17 (A) Publications seeking space in a fixed pedestal unit shall endeavor to reach  
18 agreement amongst themselves with respect to the publications' access to fixed pedestal  
19 units and allocation of space in fixed pedestal units.

20 (B) Where the above process does not resolve access to newsrack boxes in a fixed  
21 pedestal unit, the Director shall allocate space based upon frequency of publication as  
22 follows:

23 i. If an inadequate number of spaces in newsrack boxes is available to  
24 accommodate the publications seeking access to a fixed pedestal unit, publications will be  
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1 allocated space in such fixed pedestal unit based on frequency of publication in the following  
2 order:

3 a. First priority shall be given to daily and weekly publications (inclusive of  
4 their Saturday, Sunday or weekend editions whether or not published jointly with another  
5 newspaper) that are published at least one (1) day per week;

6 b. Second priority shall be given to publications published less often than  
7 once per week but more frequently than once per month;

8 c. Third priority shall be given to monthly or less frequent publications.

9 ii. The Director shall establish in the guidelines minimum amounts of space  
10 to be made available in fixed pedestal units, or in the case of clustered fixed pedestal units,  
11 space to be made available in the cluster, for publications that are published biweekly or less  
12 often and have submitted properly completed and timely applications for fixed pedestal  
13 permits for newsrack boxes in those units. The Director shall follow the factors set forth in  
14 section 184.12(d)(1)(B) in establishing these requirements. To the extent that the allocation  
15 procedure set forth in subparagraph (i) would result in these publications receiving less space  
16 in a fixed pedestal unit or clustered fixed pedestal units than the minimum amount established  
17 by the Director pursuant to this subparagraph, this subparagraph shall control. For purposes  
18 of this paragraph, "clustered fixed pedestal unit" shall mean two or more fixed pedestal units  
19 located such that each unit is within a twenty-five (25) foot radius of another unit.

20 iii. Notwithstanding the requirements of subparagraph (i), no publication that  
21 has selected a space in a fixed pedestal unit or clustered fixed pedestal units may receive a  
22 second space in that fixed pedestal unit or cluster until all other interested publications have  
23 had the opportunity to select a space in that unit or cluster of units.

24 iv. In implementing this allocation scheme as to each fixed pedestal unit or  
25 clustered fixed pedestal units, the Director shall conduct a meeting at which each publication

1 in each category, subject to the requirements of subparagraph (ii), beginning with category  
2 (a), daily and weekly publications, will be allowed to select a newsrack box ((position)) in a  
3 given fixed pedestal unit ((location)). When each publication in that category that so desires  
4 has chosen a newsrack box ((position)) in that fixed pedestal unit ((location)), each publication  
5 in category (b) shall select a newsrack box ((position)), and so forth through category (c). The  
6 publications in each category may agree among themselves as to the order they will follow in  
7 selecting newsrack boxes ((positions)); if they are unable to agree, the Director shall  
8 determine the order within each category by drawing lots.

9 v. In allocating space in fixed pedestal units, the Director shall not give access  
10 in a fixed pedestal unit to any publication that is being distributed through an existing news  
11 kiosk located less than one hundred (100) feet from the location of the fixed pedestal unit.

12 (C) If all available fixed pedestal units in a Fixed Pedestal Zone are filled and a  
13 publication decides to vacate a space in a fixed pedestal unit in that Zone, other publications  
14 seeking access to the location may reach an agreement among themselves to reassign the  
15 space. The Director shall maintain a list of publications that are interested in additional  
16 spaces as they become available, and shall provide notice to those publications when spaces  
17 become available. If no agreement is reached, the Director shall assign a publication to the  
18 available space based upon frequency of publication of the interested publications, as set  
19 forth in subparagraph 184.12(f)(4)(B) above.

20 (D((E))) Where a publication not previously distributed in a Fixed Pedestal Zone  
21 seeks access to fixed pedestal units in that Zone, such publication shall first endeavor to  
22 locate in any vacant spaces in existing fixed pedestal units located in that Zone before  
23 requesting that the Director locate a separate fixed pedestal unit in that Zone.

24 (E((F))) Any interested person may petition the Director to request the addition of  
25 one or more additional fixed pedestal units in a Fixed Pedestal Zone. Such petition shall be in

1 writing, and shall include written statements from publications that are willing to apply for  
2 permits for each proposed locations. Upon receiving such a petition, the Director shall inspect  
3 the Zone and determine whether placement of one or more fixed pedestal units would be  
4 authorized under the requirements of this section and the guidelines. If the proposed location  
5 is consistent with the requirements of this section and the guidelines, the Director shall  
6 authorize the installation of the fixed pedestal unit at the specified location. The Director shall  
7 deny any petition under this paragraph that would cause the total number of fixed pedestal  
8 units ((newsrack boxes)) to exceed the maximum density levels set forth in the guidelines.

9 **184.12(g). STANDARDS FOR DESIGN, MAINTENANCE AND DISPLAY.**

10 The vendor and permit ((-)) holders shall comply with the following requirements.  
11 Failure to comply with any of these requirements shall constitute a violation of this section,  
12 and shall be grounds for imposition of penalties in accordance with subsections 184.12(h) and  
13 184.12(i).

14 (1) The vendor shall be responsible for ensuring that all fixed pedestal units and  
15 newsrack boxes under its control are in compliance with the following requirements:

16 (A) Every fixed pedestal unit and newsrack box shall be maintained in a neat and  
17 clean condition, and in good repair at all times. The vendor shall be responsible for inspecting  
18 fixed pedestal units and newsrack boxes under its control to ensure compliance with this  
19 section no less than once every ten (10) business days;

20 (B) Every fixed pedestal unit and newsrack box shall be constructed, installed and  
21 maintained in a safe and secure condition,

22 (C) Every fixed pedestal unit and newsrack box shall be kept free of graffiti and rust,  
23 and shall be repainted on a regular basis;

24 (D) Fixed pedestal units or newsrack boxes that are damaged or defaced shall be  
25 replaced, repaired or removed within ten (10) business days from the date of written notice

1 from the Director;

2 (E) Except as authorized pursuant to an agreement between a vendor and the  
3 Director in accordance with subsection 184.12(d)(3), no fixed pedestal unit or newsrack box  
4 shall be used for advertising signs or publicity purposes other than for the advertising, display,  
5 sale or distribution of the newspaper(s) or other publication(s) distributed from it;

6 (F) Where a vendor is authorized to place advertising on fixed pedestal units, the  
7 vendor shall comply with the following requirements:

8 (i) Advertising shall be placed only on the back side of fixed pedestal units,  
9 and only on such units dispensing six or more publications;

10 (ii) Advertising on any individual fixed pedestal unit shall be less than  
11 eighteen (18) square feet in area;

12 (iii) No portion of the advertising shall extend above the top edge of the fixed  
13 pedestal unit;

14 (iv) Each fixed pedestal unit containing advertising shall have a sign adjacent  
15 to such advertising that states, in typeface at least one inch high, the following:

16 **ADVERTISING ON THIS NEWSRACK IS NOT CONTROLLED BY, AND MAY**  
17 **NOT REFLECT THE VIEWPOINTS OF, ANY OF THE PUBLICATIONS**  
18 **DISTRIBUTED FROM THIS NEWSRACK.**

19 (2) The permit ((-)) holder shall comply with the following requirements:

20 (A) In any circumstances where the permit ((-)) holder decides to vacate a location,  
21 the permit ((-)) holder shall promptly notify the Director of the intention to vacate the location;

22 (B) All coin-operated newsrack boxes shall be equipped with a coin-return device  
23 that is maintained in good repair and working order to enable persons to secure full refunds if  
24 they are unable to receive the publication paid for. In the case of coin-operated newsrack  
25

1 boxes, the permittee shall be responsible for maintenance of the coin-operated mechanism,  
2 including the coin return;

3 (C) Except as otherwise authorized by this subsection, no newsrack box shall be  
4 used for advertising signs or publicity purposes other than for the advertising, display, sale or  
5 distribution of the newspaper(s) or other publication(s) distributed from it. Each publication  
6 may attach a sign or decal to a specified area on the front of its newsrack boxes, as set forth  
7 in the guidelines, for the purpose of displaying the name of the publication contained in the  
8 newsrack box. The publication shall be responsible for ensuring that any such signs or decals  
9 are maintained in accordance with the requirements of this subsection and the guidelines;

10 (D) Each newsrack box shall display a label containing the permit ((-)) holder's  
11 name, street address (Post Office Box numbers will not be allowed), phone number, permit  
12 number, and for coin-operated newsracks, the instructions for receiving a refund in the event  
13 of coin return malfunction.

14 (E) Any permit ((-)) holder distributing publications containing on the first or cover  
15 page, material harmful to minors as defined in Section 313 of the California Penal Code, such  
16 that the harmful material is visible in the newsrack box, shall equip each newsrack box  
17 containing such publications with blinder racks so that the lower two-thirds (2/3) of the first or  
18 cover page is not exposed to view. The permit ((-)) holder shall be responsible for the  
19 installation and maintenance of the blinder racks.

20 (3) The requirements of this subsection are not intended to alter the obligation of  
21 vendors or permit ((-)) holders to comply with all other applicable laws.

22 **184.12(h). ENFORCEMENT; VIOLATIONS; HEARINGS**

23 (1) Newsracks posing an immediate danger to persons, vehicles or property. The  
24 Director is authorized to remove and impound without prior notice any newsrack that poses an  
25

1 immediate danger to persons vehicles or property. Such removal and impoundment shall be  
2 in accordance with the notice and hearing procedures set forth below.

3 (A) Notice of Violation. Within twenty-four (24) hours after such removal, the  
4 Director shall by telephone notify the permit ((-)) holder or owner of the removal. Within forty-  
5 eight (48) hours after removal, the Director shall notify the owner in writing of the removal and  
6 the reasons for removal. The notice shall also inform the owner of the right to request, either  
7 in writing or in person, within five (5) business days of the date of the postmark of such written  
8 notice, a meeting with the Director to determine whether such removal was proper.

9 (B) Meeting and Decision. Upon timely request, the Director shall provide such a  
10 meeting by the close of the next business day following receipt of the request, unless the  
11 owner agrees to a later date. The proceeding shall be informal, but oral and written evidence  
12 may be offered. The Director shall give his or her decision in writing to the owner within three  
13 (3) business days after such meeting. If the Director finds that such impoundment was  
14 proper, the Director shall notify the owner that the impounded newsrack may be recovered  
15 following payment of a \$200.00 administrative penalty pursuant to subsection 184.12(i). The  
16 owner of an unauthorized fixed ((-)) pedestal unit shall also be responsible for restoring the  
17 sidewalk to its original condition pursuant to subsection 184.12(f)(1). If the Director finds that  
18 the impoundment was improper and/or that placement of the fixed pedestal unit or free((-))  
19 standing newsrack was lawful, the Director shall order the immediate release to the owner  
20 and reinstallation by the City at its expense of the fixed pedestal unit or free((-))standing  
21 newsrack without charge.

22 (C) Disposal of Impounded Newsracks. Unauthorized fixed pedestal units or free  
23 ((-))standing newsracks that are not claimed within thirty (30) calendar days of impoundment  
24 shall be disposed of in a manner determined by the Director in accordance with state law.  
25

1           (2)    Unauthorized fixed ((-)) pedestal units and any free((-))standing newsracks. The  
2 Director is authorized to remove and impound any unauthorized fixed pedestal units and any  
3 free((-))standing newsrack located in a Fixed Pedestal Zone in accordance with the following  
4 procedures.

5           (A)    Notice of Violation and Impoundment. The Director shall post a notice of  
6 violation on the unauthorized fixed ((-)) pedestal newsrack or free((-))standing newsrack, and  
7 shall use all reasonable efforts to immediately contact the owner of the newsrack or other  
8 responsible party by facsimile and telephone where this information is contained on the  
9 newsrack or is available from the Director's records. The notice attached to the newsrack,  
10 and any written notice transmitted to the owner shall also inform the owner of the right to  
11 request, by facsimile, telephone or in person, by the close of business on the first business  
12 day following the date of the notice of violation, a meeting with the Director to determine  
13 whether the newsrack is in violation of this section. If the newsrack has not been removed,  
14 and the owner has not requested a meeting with the Director by the close of the next business  
15 day following the day that the notice of violation has been affixed, the Director may remove  
16 and impound the offending newsrack. Within forty-eight (48) hours after removal, the Director  
17 shall notify the owner in writing of the removal and the reasons for removal. If the owner did  
18 not request a meeting with the Director prior to removal of the newsrack, the notice shall also  
19 inform the owner of the right to request, either in writing or in person, within five (5) business  
20 days of the date of the postmark of such written notice, a meeting with the Director to  
21 determine whether such removal was proper.

22           (B)    Meeting and Decision. Upon timely request, the Director shall provide such a  
23 meeting by the close of the next business day following receipt of the request, unless the  
24 owner agrees to a later date. The proceeding shall be informal, but oral and written evidence  
25 may be offered. The Director shall give his or her decision in writing to the owner within three

1 (3) business days after such meeting. If no meeting has been requested, and/or the Director  
2 finds that the impoundment was proper, the Director shall notify the owner that the impounded  
3 newsrack may be recovered following payment of a \$200.00 administrative penalty pursuant  
4 to subsection 184.12(i). The owner of an unauthorized fixed ((-)) pedestal unit shall also be  
5 responsible for restoring the sidewalk to its original condition pursuant to subsection  
6 184.12(f)(1). If the Director finds that the impoundment was improper and/or that placement  
7 of the fixed pedestal unit or free((-))standing newsrack was lawful, the Director shall order the  
8 immediate release to the owner and reinstallation by the City at its expense of the fixed  
9 pedestal unit or free((-))standing newsrack without charge.

10 (C) Disposal of Impounded Newsracks. Unauthorized fixed pedestal units or free((-))  
11 standing newsracks that are not claimed within thirty (30) calendar days of impoundment shall  
12 be disposed of in a manner determined by the Director in accordance with state law.

13 (3) Other Violations. Any other violation of this section, or the guidelines  
14 promulgated under this section, by a permit ((-)) holder or owner may be cause for  
15 disablement of the offending newsrack box(es), subject to the notice and hearing procedures  
16 set forth below.

17 (A) Notice of Violation. Before a newsrack box may be disabled under this  
18 subsection, the Director shall notify the permit ((-)) holder or owner of the violation. The notice  
19 shall be in writing, shall state the nature of the violation, and shall give the permit ((-)) holder  
20 or owner five (5) business days from the date of the postmark of such written notice to either  
21 remedy the violation or request a meeting before the Director. An additional notice tag shall  
22 be affixed to the offending newsrack box.

23 (B) Meeting and Decision. Upon timely request, the Director shall conduct the  
24 meeting within three (3) business days of receiving the request. The meeting shall be  
25 informal, but oral and written evidence may be offered. Thereafter, the Director shall give his



1 or her decision in writing to the owner, permit ((-)) holder or designated agent for notice, within  
2 three (3) business days after the meeting. Any action by the City with respect to the alleged  
3 violation shall be stayed pending the written decision of the Director following the meeting.

4 (C) Disablement of Newsracks. The Director may disable a newsrack box in  
5 accordance with this subsection following either (1) the written decision of the Director  
6 upholding the determination of a violation; or (2) where the permit ((-)) holder or owner has  
7 neither requested a meeting nor remedied the violation within the time periods set forth above.  
8 A newsrack box that has been disabled may be recovered by the permit ((-)) holder upon  
9 payment of a \$200.00 administrative penalty imposed pursuant to subsection 184.12(i).

10 (D) Failure to Pay Penalties. Where the permit ((-)) holder of a newsrack box that  
11 has been disabled fails to pay the administrative penalty specified in subparagraph (C) within  
12 thirty (30) calendar days, the newsrack box shall be considered as having been vacated  
13 pursuant to subsection 184.12(f).

14 **184.12(i). ADMINISTRATIVE PENALTIES; OTHER REMEDIES.**

15 (1) Administrative Penalties. (A) Any fixed pedestal permit ((-)) holder, or the  
16 owner of a free((-))standing newsrack or unauthorized fixed ((-)) pedestal unit found to have  
17 violated any of the provisions of this section ((ordinance)) pursuant to subsection 184.12(h)  
18 shall receive a notice of violation in accordance with subsection 184.12(h)(1), 184.12(h)(2) or  
19 184.12(h)(3). If a newsrack is impounded pursuant to section 184.12(h)(1) or is found to be in  
20 violation of this section following expiration of the time periods set forth in section 184.12(h)(2)  
21 or (h)(3), the permit ((-)) holder or owner shall be subject to an administrative penalty of  
22 \$200.00 per violation. A permit ((-)) holder shall not be issued any additional permits, or be  
23 granted any amendments to any existing permits until all outstanding administrative penalties  
24 levied against that permit ((-)) holder under this subsection have been paid.  
25

1 (B) The Director is responsible for charging and collecting any penalty or fee  
2 assessed pursuant to this subsection. The Director shall notify in writing the person or  
3 publication responsible for the violation of the cost of the penalty and declare that such costs  
4 are due and payable to the Treasurer of the City and County of San Francisco.

5 (C) Any person or publication who has been assessed administrative penalties may  
6 seek administrative review of such penalties and fees by filing an appeal with the Director that  
7 specifies in detail the basis for appeal. Within ten (10) days of the receipt of the appeal,  
8 unless extended by mutual agreement of the affected parties, the Director shall cause a  
9 hearing to be held before an impartial hearing officer. The decision of the hearing officer shall  
10 be final.

11 (2) Deposit of Penalties. Any administrative penalty received by the Treasurer of  
12 the City and County of San Francisco in accordance with the requirements of this subsection  
13 shall be paid into the Department of Public Works' Engineering and Inspection Fund, and shall  
14 be used only for the costs of administering and enforcing the requirements of this section and  
15 the guidelines promulgated under this section.

16 (3) Permit Suspension. Failure to pay any administrative penalties imposed  
17 pursuant to this subsection, or repeated refusal, following a minimum of three (3) written  
18 notices within thirty (30) days from the Director, to maintain newsrack boxes in compliance  
19 with this subsection and the Director's guidelines shall, after notice of the violation, be cause  
20 for suspension of all of the permit ((-)) holder's fixed ((-)) pedestal permits in the Fixed  
21 Pedestal Zone containing the subject newsrack box(es) for a period not to exceed one  
22 hundred eighty (180) days.

23 (4) Other Remedies. The provisions of this section shall not limit any other  
24 remedies authorized by law.  
25

1           **184.12(j). IMPLEMENTATION AND APPLICATION TO EXISTING NEWSRACKS.**

2           The Director is instructed to promptly phase in the implementation of this section in  
3 consultation with the Advisory Committee. In order to accomplish this purpose, the Director is  
4 authorized to establish implementation areas within Fixed Pedestal Zones and to establish  
5 dates by which all fixed pedestal units in the implementation areas shall be in compliance with  
6 the requirements of this subsection, and by which all free((-)standing newsracks and  
7 unauthorized fixed pedestal units shall be removed. The deadlines for compliance with this  
8 section and the Director's guidelines shall be prominently posted in the implementation areas  
9 not less than thirty (30) days prior to the date for initial implementation specified in the  
10 guidelines. Publications shall have ninety (90) days from the initial date specified in the  
11 guidelines to come into compliance with the provisions of this section and the guidelines  
12 promulgated under this section. Deadlines for compliance with these requirements shall be  
13 published in the City's official newspaper.

14           **184.12(k). APPEALS.**

15           (1)    (A) Unless otherwise provided herein, any person who is aggrieved by a  
16 determination made by the Director pursuant to subsections 184.12(e), 184.12(f), 184.12(g),  
17 184.12(h), or 184.12(i) of this section ((ordinance)) may file with the Director a written request  
18 for review of the Director's decision by the Newsrack Advisory Committee. Such a request  
19 must be delivered to the Director not more than ten (10) business days following the issuance  
20 of the Director's decision. The Newsrack Advisory Committee shall consider the request at its  
21 next regularly-scheduled meeting, or at a special meeting held for this purpose before the next  
22 regularly-scheduled meeting, if the next regularly-scheduled meeting is not going to be held  
23 within ten (10) business days of the Director's receipt of the request, consistent with public  
24 meeting law requirements. At the meeting, the Newsrack Advisory Committee ((, and)) shall  
25 vote either to affirm or dissent from the Director's decision. The Newsrack Advisory

1 Committee's vote shall be provided to the Director within two (2) business days. The Director  
2 shall have three (3) additional business days to render a final decision affirming or reversing  
3 his or her original determination.

4 (B) Review by the Newsrack Advisory Committee pursuant to subparagraph (A) shall  
5 be optional, at the election of the person aggrieved by the Director's determination. If the  
6 person aggrieved by the Director's determination elects review by the Newsrack Advisory  
7 Committee, then that person waives any claim that the City did not provide him, her or it with a  
8 prompt administrative appeal or prompt judicial review during the period the matter is under  
9 review pursuant to subparagraph (A). If the person aggrieved by the Director's determination  
10 does not elect review by the Newsrack Advisory Committee, the Director's original  
11 determination shall constitute the Director's final decision.

12 (2) Following a final decision of the Director pursuant to subparagraph (1), any  
13 person who is aggrieved by a determination made by the Director ((either)) granting, ((or))  
14 denying or revoking a permit pursuant to subsection 184.12(e) may file an appeal with the  
15 Board of ((Permit)) Appeals ((a written appeal of such decision)) in accordance with Part III,  
16 Section 8 et seq. of the San Francisco Municipal Code. The Board of Appeals shall set the  
17 hearing on the appeal not less than fifteen (15) days after the filing of the appeal, shall act on  
18 the appeal not more than thirty (30) days after such filing, and shall not entertain a motion for  
19 rehearing. These time limits may be extended by stipulation of the parties or order of the  
20 Board on good cause shown.

21 (3) The Board of ((Permit)) Appeals shall determine whether the action taken by the  
22 Director was proper solely based on the provisions of this section and the Director's  
23 guidelines. If the determination of the Board differs from that of the Director, the Board shall,  
24 in a written decision, specify wherein there was error in interpretation of this section or the  
25 guidelines promulgated under this section, or abuse of discretion on the part of the Director,

1 and shall specify in its findings, as part of such written decision, the facts relied upon in  
2 arriving at its determination. The determination of the Board shall be final and conclusive.

3 (4) Any party to the appeal to the Board of Appeals who is aggrieved by the  
4 determination of the Board may seek judicial review of the Board's final decision in the  
5 Superior Court of California, County of San Francisco, by filing a petition for a writ of  
6 mandamus under Sections 1085 and/or 1094.5 of the California Code of Civil Procedure, as  
7 appropriate. The petition shall be heard and decided in accordance with all applicable  
8 statutes and rules, including Section 1094.8 of the Code of Civil Procedure and San Francisco  
9 Superior Court Uniform Local Rules of Court, Rule 8.16, revised July 1, 1999, both of which  
10 provide for expedited judicial review of the denial of a permit for an activity protected by the  
11 First Amendment. Pursuant to Section 1094.8(c) of the Code of Civil Procedure, the City  
12 hereby designates fixed pedestal permits as eligible for expedited judicial review pursuant to  
13 Section 1094.8.

14 **184.12(I). NOTICE PROCEDURES.**

15 (1) All notices, consents, demands and other communications required or permitted  
16 to be given under this section shall be effective only if rendered or given in writing unless  
17 otherwise specified in this section ((ordinance)), and shall be delivered either by (i) registered  
18 or certified mail; (ii) expedited messenger service; (iii) personal delivery to an authorized  
19 representative; (iv) facsimile; or (v) air courier addressed to the party or parties for whom  
20 intended at the addresses set forth in the party's applications or such other address as the  
21 intended recipient shall have designated in writing to the Director from time to time (provided,  
22 however, notice of change of address or facsimile number shall be effective only upon  
23 receipt).

24 (2) Notice to the City or the Director shall be addressed to the address specified for  
25 this purpose in the guidelines.

1           (3) All notices and other communications shall be deemed to have been rendered  
2 or given (i) if sent by registered or certified mail, on the date it is officially recorded as  
3 delivered to the intended recipient by return receipt or equivalent, and in the absence of such  
4 record of delivery, the effective date shall be presumed to have been on the third business  
5 day after the date when it shall have been deposited in the mail; (ii) if sent by expedited  
6 messenger service, on the date it is officially recorded by the messenger service carrier as  
7 delivered to the intended recipient; (iii) if personally delivered, upon receipt by an authorized  
8 representative; (iv) if by facsimile, one (1) hour after its transmission, if such time is during the  
9 hours of 9:00 a.m. and 5:00 p.m. in the place of its receipt or, if it is not, on the opening of  
10 business on the succeeding business day in place of the receipt, subject to having in fact  
11 been received in legible form; and (v) if sent by air courier, one (1) business day after delivery  
12 to an air courier for overnight expedited delivery.

13           **184.12(m). NATURE OF DIRECTOR'S DUTIES.**

14           It is the intent of the Board of Supervisors that the duties imposed upon the Director of  
15 Public Works by this section be directory in nature, and that as a result, the Director's failure  
16 to comply with a particular procedural step shall not invalidate any subsequent action by the  
17 Director to which the procedural requirement relates.

18           **184.12(n). LIMITATION OF LIABILITY.**

19           By adopting this section ((newsrack ordinance)), the City and County of San Francisco  
20 is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it  
21 imposing on its officers and employees, an obligation for breach of which it is liable in money  
22 damages to any person who claims that such breach proximately caused injury.


23           **184.12(o). SEVERABILITY.**

24           If any provision, subdivision, paragraph, phrase or clause of this section or the  
25 application of this section is for any reason held to be invalid or unconstitutional by a court of

1 competent jurisdiction, such decision shall not affect the validity or effectiveness of the  
2 remaining portions of this section. The Board of Supervisors declares that it would have  
3 passed each section, paragraph, sentence, clause or phrase of this section irrespective of the  
4 fact that any portion of this section could be declared unconstitutional, invalid or ineffective.  
5

6 APPROVED AS TO FORM:

7 LOUISE H. RENNE, City Attorney  
8

9  
10 By:   
11 DAVID A. GREENBURG  
12 Deputy City Attorney  
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# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

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**File Number:** 991317

**Date Passed:**

Ordinance amending the Public Works Code by amending Section 184.12, regulating the placement and maintenance of newsracks on public sidewalks, streets and rights-of-way, to provide for prompt administrative and judicial review of decisions to grant, deny or revoke fixed pedestal permits, to clarify the grounds and procedures to grant, deny or revoke fixed pedestal permits, to clarify that free-standing newsracks may continue to be placed on public sidewalks, streets and rights-of-way in areas of the city that are not within fixed pedestal zones and that publications may continue to be distributed by other authorized means within fixed pedestal zones, and to make other miscellaneous technical revisions.

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August 9, 1999 Board of Supervisors — CALLED FROM COMMITTEE: Board of Supervisors

August 16, 1999 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 9 - Ammiano, Becerril, Bierman, Katz, Kaufman, Leno, Newsom, Yaki, Yee  
Absent: 2 - Brown, Teng

August 16, 1999 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 7 - Becerril, Brown, Katz, Kaufman, Leno, Newsom, Yaki  
Noes: 3 - Ammiano, Bierman, Yee  
Absent: 1 - Teng

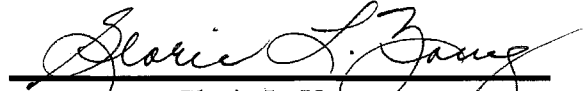
August 23, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Becerril, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki  
Noes: 3 - Ammiano, Bierman, Yee



File No. 991317


I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 23, 1999  
by the Board of Supervisors of the City and  
County of San Francisco.

  
\_\_\_\_\_

Gloria L. Young  
Clerk of the Board

AUG 23 1999

\_\_\_\_\_  
Date Approved

  
\_\_\_\_\_

Mayor Willie L. Brown Jr.