#### ORDINANCE NO. 2011-01

# AN ORDINANCE OF THE CITY OF EL CERRITO ADDING CHAPTER 13.60 "NEWSRACK ZONES" TO THE EL CERRITO MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

### Section 1. Findings.

- (A) The City of El Cerrito has a substantial interest in promoting the public health, safety, welfare and convenience of its citizens and visitors by ensuring that public streets, public sidewalks and public rights-of-way are not unreasonably obstructed by newsracks, and that newsracks are properly maintained; and
- (B) In recent years, the proliferation of newsracks on public rights-of-way, and particularly poorly maintained or abandoned freestanding newsracks, have impeded the flow of pedestrian and traffic, interfered with the use of public sidewalks and public rights-of-way, contributed to the litter problems of public sidewalks, and resulted in visual blight; and
- (C) The City has a substantial interest in improving the visual appearance and pedestrian access along public rights-of-way, particularly along San Pablo Avenue, the City's primary transit, transportation and commercial corridor. Revitalization of San Pablo Avenue is identified as a goal in the City's General Plan; Economic Development Plan (2006); and Redevelopment Agency's 5-year Implementation Plan (2008); and
- (D) Consistent with such plans, it is in the City's interest to reduce the visual blight, the inconvenience and the hazards associated with unlimited numbers and designs of newsracks, poorly maintained newsracks and the virtually unrestricted placement of newsracks on public sidewalks and public rights-of-way along San Pablo Avenue; and
- (E) The purpose of this ordinance is to promote public health, safety, and welfare along public rights-of-way by controlling the placement, size, construction and appearance of newsracks through establishing newsrack zones in order to accomplish the following, to the extent reasonably possible in compliance with this section and the guidelines:
  - (i) Provide for pedestrian and vehicular safety and convenience;
- (ii) Ensure that there is no unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, place of business or public facility, or any legally parked or stopped vehicles;
  - (iii) Provide reasonable access for the safe and efficient use and maintenance

of sidewalks, poles, posts, traffic signs or signals, hydrants, mailboxes, police or fire call boxes, loading zones, transit shelters, curb ramps, parking meters, and locations used for public transportation services;

- (iv) Reduce visual blight and clutter and litter problems associated with poorly maintained, improperly located or abandoned newsracks;
- (v) Enhance the visual appearance and pedestrian environment along the City's principal commercial and transit corridor;
- (vi) Advance the economic interests of the City's businesses and residents, including the interests of those involved in the publication or distribution of newspapers and news periodicals through newsracks;
- (vii) Respect publications' interests in effective distribution, including by (i) allowing publications currently distributed from freestanding newsracks along public rights-of-way to receive distribution space, with a permit, in newsracks located at, or as close to, the locations of existing freestanding newsracks; (ii) allowing publications not currently distributed from freestanding newsracks to receive distribution space in newsracks as space allows, (iii) allowing the number, locations, and usage of newsracks to change over time in response to changing market conditions, development, and street activity;
- (F) In adopting this ordinance, the City Council is mindful that regulation of newsracks implicates rights protected by the First Amendment of the United States Constitution and by Article I, Section 2 of the California Constitution. To that end, the City Council directs the Public Works Director and other appropriate City officials to interpret and apply this section and the guidelines promulgated under this section, and to exercise their powers and duties, in a manner consistent with the constitutional rights of citizens and the regulated community.
- Section 2. <u>Amendment of Municipal Code</u>. Chapter 16.30 "Newsrack Zones" is hereby added to the El Cerrito Municipal Code as set forth herein:

#### Section 13.60.010 Intent and Purpose

The City of El Cerrito intends to promote the public health, safety, welfare and convenience of its citizens and visitors by ensuring that the public has clear and easy access to news periodicals, that the public rights-of-way are not unreasonably obstructed by newsracks, and that newsracks are properly maintained without creating visual blight.

#### Section 13.60.020 Definitions

(A) "Abandoned Newsrack" means any newsrack which remains empty for ten days longer than the regular publishing interval, except for a newsrack remaining empty due to labor

strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack.

- (B) "Box" or "Newsrack Box" means an individual space within a newsrack that dispenses one publication. Boxes can be split into separate distribution areas; each individual area is then considered a separate Box.
  - (C) "Cluster" means one or two newsracks in close proximity.
- (D) "Newsrack" means an unmanned device for the vending or free distribution of periodicals that consists of one or more fixed pedestals, trays, four (4) to eight (8) newsrack boxes, and tops.
- (E) "Newsrack Zone" means an area designed by the City of El Cerrito in which a newsrack permit is required before placing periodicals within a Newsrack or Newsrack Box, as designated in Section 13.60.030 or as may be adopted by resolutions of the City Council. A map of established Newsrack Zones shall be available for review at the Public Works Department.
- (F) "Periodical" means a newspaper, newsletter, or other news publication issued at regular intervals.
- (G) "Permit" or "Newsrack Permit" means the Newsrack Permit issued pursuant to Section 13.60.060.
- (H) "Permitee" means any person holding a Newsrack Permit pursuant to Section 13.60.060.
- (I) "Person" means an individual, group of individuals, association, firm, partnership, corporation, cooperative, trust or other legal entity, public or private.
- (J) "Private Newsrack" means any freestanding newsrack that does not meet the requirements of Newsracks or Newsrack Boxes.
- (K) "Publisher" means a Person that prepares and issues a Periodical for circulation, whether for a price or for free.

## Section 13.60.030 Newsrack Zones

- (A) <u>Establishment of Newsrack Zones</u>. A Newsrack Zone is hereby established along the entire length of San Pablo Avenue within the City of El Cerrito, including all public right-of-way along this road and adjoining streets, roads, and other public rights-of-way to a distance of 100 feet on either side of San Pablo Avenue.
- (B) <u>Additional Newsrack Zones</u>. The City of El Cerrito may from time to time establish other Newsrack Zones by adoption of a resolution of the majority of the City Council.

## Section 13.60.040 Provision of Newsracks

- (A) <u>City Newsracks</u>. The City shall install and own all Newsracks within a Newsrack Zone. Private Newsracks are prohibited inside a Newsrack Zone.
  - (B) <u>Newsrack Boxes</u>. Individual Newsrack Boxes must be provided by the Permittees.

- (C) <u>Design Specifications</u>. In order to maintain consistency in appearance within a Newsrack Zone and compatibility of equipment, the Public Works Director shall establish specifications for dimensions, styles and models of Newsracks and Boxes.
- . (D) <u>Location</u>. The Director of Public works retains ultimate discretion to determine the location of Newsrack installation, but he or she may use the following criteria:
- (i) installation near, but not necessarily in the precise location of existing units, in recognition of historic location and market conditions;
- (ii) consistent and not-cluttered pattern throughout a Newsrack Zone, such that residents and visitors can anticipate the provision of newspapers at or near certain locations, such as transit stops and businesses;
  - (iii) placement that will not impede mobility or other public activities;
- (iv) no more than one Cluster occurs per block face, or if a block face is longer than 300 feet, Clusters shall be no closer than 250 feet from another Cluster, and Clusters will be divided so as not to interfere with pedestrian access to sidewalks from the street, i.e. no more than 20 feet of sidewalk frontage can be blocked without a minimum of a 4 feet passage between Clusters.
- (E) <u>Installation</u>. Initial installation will occur with creation of a Newsrack Zone. Additional installation will be considered by the Director of Public Works at his or her discretion, but at least annually and whenever four (4) or more requests are received for a single location. A map of precise locations shall be available for review at the Public Works Department.

## Section 13.60.050 Availability and Priority

- (A) <u>Creation of Newsrack Zone</u>. When a Newsrack Zone is established, the Director of Public Works will provide written notification to Publishers who currently maintain Newsracks within the proposed Newsrack Zone, as well as any Publishers that have requested notification. The notice will explain the creation of the Zone, the need to remove existing Newsracks, and offer priority application to existing Publishers. Existing Publishers shall be given thirty (30) business days to submit applications, at which point additional applications will be considered on a first-come, first-served basis. Upon installation of the Newsracks, Publishers will be given thirty (30) business days to remove the old Newsracks, upon which point they will be removed and disposed of by the City.
- (B) Annual Availability. The Director of Public Works shall conduct an annual review of availability and he shall provide written notification to current Permittees as well as any Publishers that have requested notification. The notice will describe the location of available spaces and offer priority application to current Permittees. Current Permittees shall be given thirty (30) business days to submit applications, at which point additional applications will be considered on a first-come, first-served basis.

## Section 13.60.060 Newsrack Permit Required

(A) <u>Permit Required</u>. No Person shall place, use, maintain, or place Periodicals into any Newsrack which in whole or in part rests upon, in or over any portion of any Newsrack Zone unless a Permit has been first obtained pursuant to this chapter.

### (B) Permits.

- (i) A Permit authorizes a Permittee to place a Box inside a specified Newsrack Location.
- (ii) Permits are issued for a three (3) year period. Permittees who maintain their Boxes in accordance with this chapter will be eligible to renew their Permit and will be given first priority to remain in their current locations.
- (C) <u>Fees</u>. The fee will be established to cover the cost of the administrative and maintenance expenses associated with the Newsrack program and will be adopted by resolution and published in the City's Master Fee Schedule.
- (D) <u>Applications</u>. Applications shall be available at City Hall. Every application shall contain the following:
  - (i) fee:
- (ii) contact information, including the name, address, and telephone number of the Person or Persons responsible for use and maintenance of the Box(es);
  - (iii) location(s) proposed for use;
- (iv) agreement to use Boxes that meet the dimensions, style, and models designated by the Director of Public Works and described in the application; and
- (v) agreement to maintain and use the Box(es) in compliance with this chapter.
- (E) <u>Issuance</u>. All Permits shall be issued within thirty (30) business days of receipt of application if the following criteria are met:
  - (i) space exists in a Newsrack;
- (ii) no single Periodical will have more than one space per Cluster or within 100 feet of a duplicate Periodical; and
  - (iii) the applicant agrees to all the requirements set forth in the application.
- (F) <u>Denial</u>. If a Permit is denied, in whole or in part, the Director of Public Works shall notify the applicant in writing within thirty (30) business days of receipt of application, explaining the reasons for denial and the procedures for appeal. The applicant may appeal the decision to the City Manager, in writing, stating the grounds with particularity, within ten (10) business days. The City Manager shall schedule a hearing within thirty (30) business days of the appeal, for which appellant shall receive at least three (3) business days notice and shall have the opportunity to present oral and written reasons why the application should not be denied. Any decision of the Director of Public Works is stayed pending final decision of the City Manager, which shall be issued in writing within ten (10) business days of that hearing.

## Section 13.60.070 Use and Maintenance of Newsrack Boxes

Permittees must maintain their Boxes and use the Newsrack subject to the following requirements:

- (A) <u>Limited Logos and Advertising</u>. Newsracks shall carry no advertising or public notices, other than a logo or similar information identifying the publication, and limited to a height of five (5) inches on the bottom one-third of the front and back sides. No logos or similar information identifying the newspaper shall be allowed on the sides of the Newsracks.
- (B) <u>Contact Information</u>. The address and telephone number to contact Permittee shall be displayed on the front of the Box or Newsrack in such manner as to be readily visible and readable to a prospective customer. The size of the identifying information shall not exceed twelve (12) square inches.
- (C) <u>Maintenance</u>. Every Box shall be maintained by the Permittee in good repair and working order, including removal of any of the following, without limitation: dirt and grease; chipped, faded, peeling or cracked paint; dents and rust corrosion; broken or cracked plastic, glass or structural parts; and adhesive labels other than City issued identification or approval labels. The City reserves the right to remove graffiti from any portion of the Box. Permittee shall be responsible for impacts of graffiti or graffiti removal.
- (D) <u>Abandonment</u>. Boxes that have been damaged or stolen shall be replaced or repaired within fifteen (15) business days of the date written notice was mailed by the City, unless the Permittee wishes to abandon the location, in which event Permittee shall promptly remove the Box and repair any damage to public property caused by the installation or removal of such Box.

## Section 13.60.080 Violations & Remedies

- (A) <u>Infraction</u>. Any violation of this chapter shall constitute an infraction punishable pursuant to Chapter 1.08 of this Code.
- (B) <u>Removal</u>. At the request of the Public Works Director, a Box or Private Newsrack in violation of this chapter may be removed by a designated employee of the City in accordance with this Section.
- (i) <u>Notice</u>. Before any Permitted Box or Private Newsrack is removed, the Permittee or Publisher shall be notified by mailing to the address for such party stated on the Permit and given ten (10) business days to remedy the violation and/or contest removal. Before an unpermitted Box or Newsrack is removed, the Publisher shall be notified by posting the notice on the Box or Newsrack. Both forms of notice shall state the violation, the proposed revocation, and the procedure to request a hearing.
- (ii) Appeal Hearing. The applicant may appeal the decision to the City Manager, in writing, stating the grounds with particularity, within ten (10) business days. The City Manager shall schedule a hearing within thirty (30) business days of the appeal, for which appellant shall receive at least three (3) business days notice and shall have the opportunity to

present oral and written reasons why the Box or Private Newsrack should not be removed. Any decision of the Public Works Director is stayed pending final decision of the City Manager, which shall be issued in writing within ten (10) business days of that hearing.

- (iii) <u>Procedures</u>. The Public Works Director may authorize removal of a Box or Private Newsrack if the Permittee or Publisher to whom notice was sent has (1) neither requested an appeal hearing nor remedied the violation within ten (10) business days following date of notice, or (2) has failed to remedy the violation within ten (10) business days after receiving a copy of the City Manager's written decision that the Box or Newsrack was installed or maintained in violation of this chapter. The Permittee or Publisher shall be notified of the removal through the same methods set forth in subsection (B) of this Section.
- (C) <u>Emergency Removal</u>. The procedures for removal set forth in subsection (B) of this Section are not required where the Box or Private Newsrack poses an immediate threat or danger to the public safety, including pedestrians or vehicles. If Permittee or Publisher identification is clearly visible on rack, written notice of the removal and opportunity to contest must be provided within ten (10) business days of the removal.
- (D) <u>30-Day Retention</u>. Removed or impounded Boxes and Private Newsracks shall be retained by the Department of Public Works and may be recovered by their owner within thirty (30) business days of their removal upon payment of an impound fee that covers the actual cost to the City of transportation and storage. If not claimed during that time, they shall be deemed permanently abandoned and the City may dispose of them in whatever manner it chooses.
- (E) <u>Cumulative Remedies</u>. All remedies prescribed under this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.
- Section 3. Ordinance Adoption. This amendment is adopted pursuant to the procedures established by state law, and all required notices have been given.
- Section 4. <u>Compliance with California Environmental Quality Act (CEQA)</u>. This ordinance is not a project within the meaning of section 15378 of the State CEQA Guidelines, because it has no potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment.
- Section 5. <u>Severability</u>. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.
- Section 6. <u>Effective Date</u>. This ordinance shall take effect and be enforced thirty (30) business days after the date of its adoption, and prior to the expiration of fifteen (15) business days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing ordinance was introduced at a regular meeting of the City Council on the 22<sup>nd</sup> of February, 2011, and adopted by the following vote on the 7<sup>th</sup> of March, 2011:

AYES:

Councilmembers Abelson, Benassini, Jones, Lyman and Mayor Cheng

NOES:

None

ABSENT:

None

ABSTAIN:

None

APPROVED:

Ann Cheng, Mayor

ATTEST:

Cheryl Morse, City Clerk

#### ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2011-01 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 7<sup>th</sup> day of March, 2011; and that said Ordinance has been ordered published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this 8<sup>th</sup> day of March, 2011.

Cheryl Morse, City Clerk