

1 [Regulation of Newsracks: Increasing Fixed Pedestal Permit Fee.]

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3 **Ordinance amending Section 184.12 of the San Francisco Public Works Code to**
4 **provide that the annual fee for a fixed pedestal permit shall be \$60.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are ~~*strikethrough italics Times New Roman*~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

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

9 Section 1. The San Francisco Public Works Code is hereby amended by amending
10 Section 184.12, to read as follows:

11 **SEC. 184.12. FIXED PEDESTAL NEWSRACKS.**

12 (a) PURPOSE AND INTENT. The Board of Supervisors hereby finds and declares:

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

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

22 (3) The City and County of San Francisco has a substantial interest in preserving and
23 protecting its unique visual and aesthetic qualities identified in Sections I.5.24 through I.5.25,
24 I.5.32 through I.5.33, and II.4.2 of the San Francisco General Plan. To that end, and
25 consistent with the Downtown Area Plan of the General Plan (§§ II.1.48 through II.1.50), the

1 City must take steps to reduce the visual blight, the inconvenience and the hazards
2 associated with unlimited numbers and designs of newsracks, poorly maintained newsracks
3 and the virtually unrestricted placement of newsracks on public streets, public sidewalks and
4 public rights-of-way.

5 (4) A six-month pilot program employing fixed pedestal newsracks at various locations
6 the City has shown that an effective way to reduce the visual clutter and hazards associated
7 with excessive numbers of newsracks is to prohibit freestanding newsracks in congested
8 areas, and to allow only fixed pedestal newsracks in these areas.

9 (5) The purpose of this section is to promote the public health, safety and welfare and
10 the aesthetic qualities of the City by controlling the placement, size, construction and
11 appearance of newsracks and fixed pedestal units so as to accomplish the following, to the
12 extent reasonably possible in compliance with this section and the guidelines:

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

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

17 (C) Ensure compliance with the Americans With Disabilities Act and improve passage
18 for persons with disabilities by reducing impediments to passage caused by poorly located
19 newsracks;

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

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

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

4 (G) Advance the economic interests of the City's businesses and residents, including
5 the interests of those involved in the publication or distribution of newspapers and news
6 periodicals through newsracks;

7 (H) Respect publications' interests in effective distribution, including by (i) allowing
8 publications currently distributed from freestanding newsracks to receive distribution space in
9 fixed pedestal units located at, or as close as reasonably possible to, the locations of such
10 freestanding newsracks; (ii) allowing publications not currently distributed from freestanding
11 newsracks to receive distribution space in fixed pedestal units, (iii) allowing the number,
12 locations, and usage of fixed pedestal units to change over time in response to changing
13 market conditions; and (iv) specifying reasonable conditions under which paid publications
14 shall have the right to repair, maintain, replace or otherwise engage in self-help as to specific
15 components of newsrack boxes they occupy that relate to newsrack box functionality;

16 (I) Provide for streetworthy fixed pedestal units and prompt and effective maintenance,
17 repair and replacement of such units, including by providing for expeditious maintenance,
18 repair and replacement of parts of such units which, if not thus maintained, repaired or
19 replaced, could significantly impede the effective use of such units for the sales or distribution
20 of publications; and

21 (J) Specify reasonable conditions under which paid publications may elect to have the
22 Vendor assume responsibility for repair, maintenance, or replacement of coin mechanisms
23 and related parts of newsrack boxes that those paid publications occupy, and may
24 subsequently revoke such election.

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

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

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

17 (9) Given the limited space available and the increasing congestion on certain public
18 sidewalks, streets and public rights-of-way, the City has a substantial interest in devising an
19 approach to placement of newsracks and fixed pedestal units in those areas that promote
20 public health, safety and welfare and the aesthetic quality of the City. This objective may be
21 achieved by creating "fixed pedestal zones" in highly congested areas or areas that have
22 particular public safety, aesthetic, historical, or economic concerns. Allowing fixed pedestal
23 units and prohibiting freestanding newsracks and unauthorized fixed pedestal units in these
24 zones will promote the City's interest in promoting public safety, reducing visual blight and
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1 clutter, protecting the unique aesthetic and historical attributes of the City, and advancing the
2 economic interests of the City's businesses and residents by improving the appearance of the
3 area and resulting in better use of space and reduced congestion, while respecting
4 publication's interests in effective distribution. A reasonable accommodation of these
5 competing interests can be achieved by adoption of this section, which regulates the
6 placement, size, construction design, maintenance, and appearance of newsracks and fixed
7 pedestal units in specified areas.

8 (10) This section is not intended to and does not ban freestanding newsracks on public
9 sidewalks, streets and public rights-of-way throughout the City. Subject to Section 184.12(c)
10 and the guidelines, freestanding newsracks may continue to be placed on public sidewalks,
11 streets and public rights-of-way in areas of the City that are not within fixed pedestal zones
12 created pursuant to this section, in accordance with Article 5.4, Sections 184 through 184.11,
13 of the San Francisco Public Works Code and the guidelines promulgated thereunder.
14 Publications also may continue to be distributed within fixed pedestal zones created pursuant
15 to this section by all authorized means other than freestanding newsracks.

16 (b) DEFINITIONS. The definitions contained in Section 184.1 shall apply to this section
17 except to the extent such definitions are inconsistent with the following:

18 (1) "Abandoned newsrack box" means any newsrack box that either remains empty for
19 more than fifteen (15) business days or contains only outdated issues in violation of the
20 guidelines promulgated under this section, after the expiration of applicable notice, grace and
21 cure periods. In case of a labor strike or a temporary and extraordinary interruption of
22 distribution or publication of the newspaper or other periodical sold or dispensed from that
23 newsrack box, the publication shall notify the Director in writing in order to avoid having the
24 newsrack box deemed abandoned.

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1 (2) A "block face" means the sidewalk between, and including, two contiguous curb
2 corners without an intervening street or other roadway, excluding driveways.

3 (3) A "curb corner" means the common area formed at the intersection of, and
4 consisting of the overlap of, two adjacent sidewalks.

5 (4) A "cluster of fixed pedestal units" means two or more fixed pedestal units located
6 such that each unit is within twenty-five feet (25') of another unit on the same block face.

7 (5) "Director" means the Director of the Department of Public Works or his or her
8 designated agent or representative.

9 (6) "Fixed pedestal zone" means any area designated by the Director, in accordance
10 with this section and the guidelines in which distribution of newspapers through newsracks is
11 restricted to fixed pedestal units installed in a style and manner approved by the Director.

12 (7) "Fixed pedestal permit" means a permit issued to a publication authorizing the
13 placement of the publication in one or more newsrack boxes in a fixed pedestal unit in a Fixed
14 Pedestal Zone.

15 (8) "Fixed pedestal unit" means an assembly which is of a type, design or model
16 approved by the Director and which contains one or more self-service or coin-operated boxes,
17 containers, storage units or other dispensers installed, used or maintained for the display and
18 sale or free distribution of publications, and which is attached to the public sidewalk, street or
19 public right-of-way in accordance with this section, guidelines promulgated under this section,
20 and any vendor contract.

21 (9) "Freestanding newsrack" means any self-service or coin-operated box, container,
22 storage unit or other dispenser installed, used or maintained for the display and sale or the
23 distribution without charge of publications, and which is not a fixed pedestal unit authorized
24 under this section.

1 (10) A "historically present" publication means a publication that, according to the
2 survey completed most recently before initial implementation of this section in any fixed
3 pedestal zone, was distributed from at least one freestanding newsrack situated cat the area
4 in question. For purposes of the preceding sentence:

5 (A) "Area" means either a corner area or a midblock area. A "corner area" is that
6 general portion of a block face that, as reasonably estimated by the Director in the compilation
7 of the survey without undertaking actual measurement, is no more than thirty-five feet (35')
8 from the edge of the nearest curb corner on that block face, or, if there is one or more item of
9 street furniture, utilities, or other fixed obstructions (except freestanding newsracks) within
10 those thirty-five feet (35'), no more than fifty feet (50') from the edge of the nearest curb
11 corner. A midblock area is that general portion of a block face that is not a corner area under
12 this subsection.

13 (B) Because freestanding newsracks are often inadvertently moved into locations that
14 are illegal under City laws or regulations, a freestanding newsrack is "situated" in the area in
15 question even if it is placed in a location that violates one or more City laws or regulations
16 concerning freestanding newsrack placement. Notwithstanding the foregoing sentence, no
17 freestanding newsrack shall support a claim of historical presence, or be counted in any
18 survey of historically present freestanding newsracks, if it is secured to a tree, tree grate, or
19 tree guard; is secured to or interfering with a fire hydrant, police or fire call box, or parking
20 meter; or is located in a crosswalk, in any part of a bus zone save the last fifteen feet (15')
21 thereof, in a blue zone, in any location where it interferes with a handicapped access ramp, or
22 in any other location where it poses a similar significant threat to public safety or property.

23 (11) "Initial implementation" means the first stage of implementation of this section
24 throughout a fixed pedestal zone, and shall include the selection of locations for initial fixed
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1 pedestal units in that zone which are as close as possible to the former locations of
2 freestanding newsracks, in compliance with this section and the guidelines; the allocation of
3 space within those units to historically present publications and, if possible, to other interested
4 publications; and the installation of those units.

5 (12) "Newsrack" means a freestanding newsrack or an unauthorized fixed pedestal
6 unit.

7 (13) "Newsrack box" shall mean the individual space within a fixed pedestal unit that
8 dispenses one publication, including the door, coin return mechanism and associated
9 hardware. Except as stated otherwise in this section or the guidelines, if the vendor has split a
10 newsrack box into two separate distribution areas, each such area shall constitute as
11 separate newsrack box. "Newsrack box" does not include any freestanding newsrack.

12 (14) "Permit holder" means a publication that has been issued one or more fixed
13 pedestal permits by the Director, or that is otherwise authorized to occupy one or more
14 newsrack boxes.

15 (15) A "petition unit" means a fixed pedestal unit installed pursuant to a petition under
16 subsection 184.12(g)(3)(B) after initial implementation has occurred throughout the fixed
17 pedestal zone in question.

18 (16) "Publication" includes all editions of that publication, including but not limited to
19 morning, evening, or special editions, as well as any editions of that publication published
20 jointly with another publisher.

21 (17) "Public right-of-way" means land which by deed, conveyance, agreement,
22 easement, dedication, usage or process of law is reserved and dedicated to the general public
23 for street, highway, alley, public utility, or pedestrian walkway purposes, whether or not said
24 land has been improved or accepted for maintenance by the City.

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1 (18) "Roadway" means that portion of a public street that is improved or customarily
2 used for vehicular traffic.

3 (19) "Section" or "this section," or "any subsection thereof" means Article 5.4, Section
4 184.12 of the San Francisco Public Works Code.

5 (20) "Sidewalk" means any public surface or public walkway provided for the exclusive
6 or primary use of pedestrians.

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

9 (22) A "survey" means a written enumeration of the freestanding newsracks situated on
10 public sidewalks and public rights-of-way in one or more portions of the City that (A) states the
11 name of the publication distributed from each such freestanding newsrack, with such names
12 listed according to survey order; (B) states whether each such freestanding newsrack is
13 situated at a corner area or midblock area, as reasonably estimated by the Director without
14 undertaking actual measurement; (C) is conducted after the effective date of this Section; and
15 (D) is accompanied by a contemporaneous videotape or comparable photographic depiction
16 of such freestanding newsracks that the Director retains for at least twelve (12) months after
17 initial implementation in that zone is completed. For purposes of the preceding sentence
18 "area" and "situated" shall have the meanings set forth in Section 184.12(b)(10).

19 (23) "Survey order" means that the Director, in conducting a survey of freestanding
20 newsracks situated in a particular area, as defined in Section 184.12(b)(10), shall proceed in
21 the following order:

22 (A) In surveying a corner area, the Director shall:

23 (i) First survey that group of freestanding newsracks in that area that is located on the
24 curb side of the sidewalk (as opposed to the property line side of the sidewalk) and is located
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1 closest to the corner. Within that group, the Director shall first survey those freestanding
2 newsracks that face toward the property line, starting with those closest to the corner, and
3 shall then survey those freestanding newsracks that do not face toward the property line,
4 starting with those closest to the corner;

5 (ii) Then repeat the process described in subsection (i) immediately above for each
6 other group of freestanding newsracks in that area that also is located on the curb side of the
7 sidewalk, proceeding from group to group in order of increasing distance from the corner, until
8 all groups of freestanding newsracks in that area that are located on the curb side of the
9 sidewalk have been surveyed;

10 (iii) Then repeat the process described in subsection (i) for each remaining group of
11 freestanding newsracks located in that area (i.e. freestanding newsracks not on the curb side
12 of the sidewalk), proceeding from group to group in order of increasing distance from the
13 corner, until all groups of freestanding newsracks in that area have been surveyed.

14 (B) In surveying a midblock area, the Director shall:

15 (i) First survey that group of freestanding newsracks in that area that is located on the
16 curb side of the sidewalk and that a vehicle moving on that side of the street would first
17 encounter. Within that group, the Director shall first survey those freestanding newsracks that
18 face toward the property line, proceeding from newsrack to newsrack in the direction in which
19 vehicular traffic on that side of the street moves, and shall then survey those freestanding
20 newsracks that do not face toward the property line, again proceeding from newsrack to
21 newsrack in the direction in which vehicular traffic on that side of the street moves;

22 (ii) Then repeat the process described in subsection (i) immediately above for each
23 other group of freestanding newsracks in that area that also is located on the curb side of the
24 sidewalk, proceeding from group to group in the direction in which vehicular traffic on that side
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1 of the street moves, until all groups of freestanding newsracks in that area that are located on
2 the curb side of the sidewalk have been surveyed;

3 (iii) Then repeat the process described in subsection (i) for each remaining group of
4 freestanding newsracks located in that area, proceeding from group to group in the direction
5 in which vehicular traffic on that side of the street moves, until all groups of freestanding
6 newsracks in that area have been surveyed.

7 (24) "Unauthorized fixed pedestal unit" means an assembly containing one or more
8 self-service or coin-operated boxes, containers, storage units or other dispensers installed,
9 used or maintained for the display and sale or free distribution of publications, and which is
10 attached to the public sidewalk, street or public right-of-way in a fixed pedestal zone, which is
11 not authorized pursuant to a vendor contract.

12 (25) "Vendor" means any individual or entity that has entered into an agreement with
13 the Director, or any agent thereof, to provide, install and maintain fixed pedestal units
14 pursuant to this section.

15 (26) "Vendor contract" means any agreement between the Director and a vendor
16 pursuant subsection 184.12(d)(3).

17 (c) SCOPE. The requirements this section shall apply to all fixed pedestal units,
18 unauthorized fixed pedestal units, newsrack boxes and freestanding newsracks located within
19 fixed pedestal zones designated by the Director in accordance with subsection 184.12(f) or
20 within fifteen feet (15') of any fixed pedestal unit that is located in such a zone. To the extent
21 any provision in Sections 184 through 184.11 is in conflict or inconsistent with this section, it is
22 the Board of Supervisors' intention that this section shall control in any fixed pedestal zone or
23 within fifteen feet (15') of any fixed pedestal unit that is located in such a zone.

24 (d) GUIDELINES, FEES, AND AUTHORITY OF DIRECTOR.
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1 (1) Promulgation of Guidelines.

2 (A) The Director is hereby authorized and directed to promptly promulgate guidelines
3 consistent with the provisions of this section controlling the selection of locations for, as well
4 as the placement, size, construction, design, methods of attachment, appearance, and
5 maintenance and repair of fixed pedestal units and newsrack boxes in fixed pedestal zones.
6 The guidelines shall also contain procedures for establishing or amending fixed pedestal
7 zones, for determining access by publications to fixed pedestal units, and for obtaining fixed
8 pedestal permits. The guidelines may also set maximum density levels for fixed pedestal units
9 in fixed pedestal zones, including different levels for commercial and residential areas of the
10 City.

11 (B) In promulgating guidelines, the Director's decisions shall be consistent with the
12 purpose of this section, as set forth in subsection 184.12(a)(5)(A)– (J).

13 (C) The guidelines shall be adopted by way of a Department of Public Works order
14 signed by the Director after giving due consideration to the recommendations of the Newsrack
15 Advisory Committee. The provisions of this section governing fixed pedestal units, access to
16 fixed pedestal units by publications, and prohibiting freestanding newsracks and unauthorized
17 fixed pedestal units in fixed pedestal zones shall not be implemented or enforced until the
18 guidelines specified in this paragraph are in effect and notice of the effective date has been
19 published in the City's official newspaper.

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

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

6 (A) The vendor shall provide for streetworthy fixed pedestal units, and shall be
7 responsible for installing and promptly and effectively maintaining the condition and
8 appearance of, and repairing and replacing, all fixed pedestal units and newsrack boxes
9 subject to the agreement (except for responsibilities which are the obligation of the permit
10 holder pursuant to subsection 184.12(i) in accordance with the terms of the agreement and
11 the requirements of this section;

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

16 (C) A statement to accordance with Section 6.63-1 of the San Francisco Administrative
17 Code that the vendor has a clear and unequivocal understanding that a possessory interest
18 subject to taxation may be created by the agreement and the vendor shall pay any and all
19 possessory interest taxes levied upon the vendor's interest therein pursuant to an assessment
20 lawfully made by the Assessor;

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

1 (E) The vendor shall have no authority to make determinations concerning where fixed
2 pedestal units will be located, or concerning which publications shall have access to a fixed
3 pedestal unit;

4 (F) Where the Director intends to allow the vendor to place advertising on the back of
5 one or more fixed pedestal units authorized under this section, the agreement shall set forth
6 the requirements applicable to such advertising, including the requirements set forth in
7 subsection 184.12(i)(1)(F);

8 (G) The vendor shall provide a reasonable opportunity for paid publications to elect to
9 have the vendor assume responsibility for repair, maintenance, or replacement of coin
10 mechanisms and related parts of newsrack boxes that those paid publications occupy, and to
11 subsequently revoke such an election;

12 (H) The vendor shall specify reasonable conditions under which publications shall have
13 the right to repair, maintain, replace or otherwise engage in self-help as to specific
14 components of newsrack boxes they occupy, and to obtain reimbursement for certain repair,
15 maintenance, or replacement;

16 (I) The vendor shall provide for installation of reasonable security features to protect
17 the integrity of the fixed pedestal units, including any coin mechanisms and associated
18 hardware;

19 (J) The vendor shall allow paid publications, at their own cost, to change the coin
20 mechanism in newsrack boxes they occupy, subject to reasonable notice and procedures, to
21 adapt to changing technology and advances;

22 (K) The vendor shall maintain and display a "hotline" telephone number on the fixed
23 pedestal units authorized by the vendor contract;

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1 (L) The vendor shall reasonably retain information as to complaints concerning and
2 repairs to each newsrack box in each fixed pedestal unit authorized by the vendor contract
3 and make such information available, reasonably promptly, to the publication occupying each
4 such newsrack box and to the Director;

5 (M) The vendor shall provide a way to split newsrack boxes into two separate
6 distribution areas for the distribution of publications that are distributed free of charge; and

7 (N) The vendor shall be responsible for the installation, repair and replacement of price
8 plates, if any, including installation, repair and replacement necessitated by a change in the
9 price of a publication.

10 (O) The current provisions of the "First Amended and Restated Pedestal-Mounted
11 Newsrack Agreement By and Between the City and County of San Francisco and Clear
12 Channel Adshel, Inc." satisfy the current requirements of this section concerning vendor
13 contracts, as of the date of the City's approval and authorization of said agreement, including
14 the requirements listed at Section 184.12(d)(3)(A)– (N), above. In the event of any
15 disagreement, interpretive issue, ambiguity, or silence in respect to the terms of this section
16 and said agreement, said agreement, except as to any amendment, modification or
17 supplement to either or both the agreement or this section, shall control the rights and
18 obligations of the Vendor under said agreement, whose fulfillment of the current provisions of
19 said agreement shall constitute compliance with this section.

20 (4) Content-Based Discrimination Prohibited. The Director shall not consider the
21 content or viewpoint of the material to be distributed through fixed pedestal units in
22 administering or enforcing this section, or in adopting or implementing guidelines pursuant to
23 this section. Nothing in this paragraph shall be construed as limiting the authority of the
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1 Director to require blinder racks for adult-oriented publications in accordance with subsection
2 184.12(i).

3 (5) Newsrack Advisory Committee. The Director is hereby authorized and directed to
4 establish a Newsrack Advisory Committee consisting of 11 members. The Newsrack Program
5 Manager of the Department of Public Works shall be a voting member, and shall chair the
6 Committee. The Director shall appoint to the Committee persons drawn from, or having
7 expertise in, the newspaper, news and/or commercial periodical, and distributing industries in
8 the City, and/or drawn from neighborhood and merchant groups, and other interested
9 members of the public. The number of Committee members who are representatives of
10 publishers and/or distributors shall equal the number of Committee members who are
11 representatives of neighborhood and/or merchant groups. The Director shall endeavor to
12 include on the Committee representatives paid and unpaid publications and of more and less
13 frequently published publications. The Committee shall advise the Director in the
14 implementation and administration of this section; resolve disputes concerning the locations of
15 fixed pedestal units, to the extent consistent with this section and the guidelines; and minimize
16 the cost to the City of the implementation and administration of this section. No vendor or
17 agent or employee of a vendor may serve on the Committee. Committee members shall serve
18 at the pleasure of the Director for a term of one year, and may be reappointed to additional
19 terms. The Committee shall hold regularly scheduled meetings, with notice posted in the
20 City's official newspaper.

21 (6) Fees.

22 (A) The Director is hereby authorized and directed to establish and collect an annual
23 permit fee to be paid by each permit holder. This fee is *initially* established at ~~\$6030~~ for each
24 newsrack box, including each split newsrack box. The Director has determined that *this fee is*
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1 ~~not expected to generate proceeds in excess of the costs anticipated to be incurred in implementing this~~
2 ~~section during the first year that this section is in effect. In future years,~~ the anticipated annual
3 revenue from this fee within any particular year shall not exceed the actual costs incurred by
4 the Director for implementation, administration and enforcement of the program during that
5 ~~year.e preceding twelve (12) months~~. The fee shall only be used to cover such costs, and not as
6 a revenue-generating source for the City. The fee adopted pursuant to this provision shall be
7 uniformly imposed upon all permit holders based upon the number of newsrack boxes
8 authorized for each permit holder. The fee shall not exceed the pro-rata share allocated to
9 each newsrack box of the actual costs incurred in implementing, administering, and enforcing
10 the program established under this section.

11 (B) The fee shall be reviewed annually by the Director, who shall propose to the Board
12 of Supervisors any recommended adjustments, along with written justification for the
13 adjustment and any necessary legislation. In any year where the Director anticipates that the
14 revenue from fees will exceed the estimated administrative costs, less penalties, during that
15 year, the Director shall recommend an adjustment reducing the fee. Where the proceeds from
16 the fee are less than the estimated costs of program administration, less penalties, the
17 Director may recommend an adjustment. In proposing adjustments, the Director shall take into
18 account the anticipated penalties and other charges to be collected from violators during the
19 forthcoming year. These proceeds shall be used to offset program administration and
20 enforcement costs that would otherwise be defrayed by fees imposed during the forthcoming
21 year so that the fees, including any surplus from the prior year, do not exceed the projected
22 actual costs of administering the program. For any year in which the fee proceeds exceed
23 actual administration, inspection and abatement expenses, such surplus shall be taken into
24 account in fixing the fee for the subsequent year.

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1 (e) PERMIT REQUIREMENT.

2 (1) Fixed Pedestal Permit. Permits are necessary to facilitate the regulation and
3 inspection of newsrack boxes for the purposes set forth in this section. Except where this
4 section or the guidelines expressly provide otherwise, no person may place any publication in
5 any newsrack box in a fixed pedestal unit on a public sidewalk, street or public right-of-way in
6 a fixed pedestal zone for the purpose of sale or distribution without having first obtained from
7 the Director a fixed pedestal permit authorizing placement of the publication in that newsrack
8 box.

9 (2) Duty to Obtain Permit. Except where this section or the guidelines expressly provide
10 otherwise, each publication seeking access to a newsrack box or boxes in a fixed pedestal
11 unit or cluster of fixed pedestal units shall apply to the City or a fixed pedestal permit for each
12 newsrack box in each fixed pedestal unit to which the publication seeks access. The permit
13 holder shall be responsible for the payment of all fees or penalties due or imposed under this
14 section with respect to that permit holder's newsrack box(es). Once a permit has been
15 granted pursuant to this section and the requirements of the guidelines, and if the permit has
16 not subsequently been revoked, the permit holder shall not be required to renew or reapply for
17 another fixed pedestal permit for the same newsrack box.

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

22 (4) Permit Issuance.

23 (A) The Director shall grant or deny a properly completed and timely application for a
24 fixed pedestal permit from a publication, or from the agent for a publication, accompanied by
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1 written authorization from the publication, as specified in the guidelines, within fifteen (15)
2 business days of the Director's receipt of the application. However, if the Director has not
3 completed the application of the space allocation procedures set forth in subsection 184.12(h)
4 and the guidelines, the Director shall have an additional five (5) business days to grant or
5 deny the application.

6 (B) The Director shall issue the fixed pedestal permit unless the Director finds one or
7 more of the following grounds for denial to exist, in which case the Director shall deny the
8 application for a permit. The grounds for denial of an application for a fixed pedestal permit
9 are: (i) the application is incomplete; (ii) the application was not submitted on time; (iii) space
10 in the newsrack box that is the subject of the application is not available after application of
11 the space allocation procedures set forth in subsection 184.12(h) and the guidelines; or (iv)
12 the publication that applied for the permit has failed to pay any outstanding administrative
13 penalties levied against it pursuant to subsection 184.12(k)(1)(A). If an application is denied,
14 the Director shall notify the applicant promptly in writing, explaining the reasons for the denial,
15 and citing the relevant portions of this subsection and the guidelines.

16 (5) Violations. Failure to comply with any requirement of this section, or any
17 requirement of the guidelines authorized by this section, shall constitute a violation of this
18 section. Any such violation may be cause for removal of the offending freestanding newsrack
19 or unauthorized fixed pedestal unit, or disabling of the offending newsrack box pursuant to
20 subsection 184.12(j), and for the imposition of administrative penalties pursuant to subsection
21 184.12(k).

22 (6) Permit Revocation.

23 (A) The Board of Supervisors specifically determines that any fixed pedestal permit
24 issued pursuant to this section confers a non-transferable, revocable privilege upon the permit
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1 holder. Where one or more of the grounds for revocation specified in subparagraph (B) exist,
2 the Director shall promptly initiate such revocation in order to ensure that space in the fixed
3 pedestal unit is made available to another publication that will lawfully use it, including
4 publications that did not receive such space during initial implementation in the fixed pedestal
5 zone in which the fixed pedestal unit in question is located. Any such permit may be revoked
6 by the Director fifteen (15) business days after the Director provides written notice to the
7 permit holder that one or more of the grounds for revocation specified in subparagraph (B)
8 exist, if the permit holder does not correct all of the violations on or before the close of the
9 fifteenth (15th) business day. If the permit is revoked, the Director shall notify the permit
10 holder promptly in writing, explaining the reasons or the revocation, and citing the relevant
11 portions of this subsection and the guidelines.

12 (B) The grounds for revocation of a fixed pedestal permit are: (i) the permit holder did
13 not submit the required permit fee, as specified in the guidelines, within ten (10) business
14 days of the Director's approval of the voluntary space allocation agreement or of the space
15 allocation meeting at which the permit holder was allocated the newsrack box that is the
16 subject of the permit; (ii) the permit holder did not submit the required annual fee on time; (iii)
17 the newsrack box that is the subject of the permit has been vacated pursuant to subsection
18 184.12(j)(3)(D); (iv) the newsrack box that is the subject of the permit has been abandoned
19 pursuant to subsection 184.12(b)(1); or (v) the Director's decision to grant the permit was
20 successfully challenged by a person aggrieved by the determination pursuant to subsection
21 184.12(m) and the guidelines. In addition, the Board of Supervisors may at any time in its
22 exclusive legislative discretion elect to repeal or amend this section and thereby render null
23 and void any permits issued pursuant this section.

24 (f) ESTABLISHMENT OF FIXED PEDESTAL ZONES.
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1 (1) Fixed Pedestal Units Restricted. No person shall place, operate or maintain a fixed
2 pedestal unit on any public street, public sidewalk or public right-of-way located in a fixed
3 pedestal zone except in accordance with a vendor contract. Any unauthorized fixed pedestal
4 unit which in whole or in part is attached to or rests upon a public street, public sidewalk or
5 public right-of-way located in a fixed pedestal zone shall be subject to impoundment pursuant
6 to subsection 184.12(j). The owner of any unauthorized fixed pedestal unit properly
7 impounded by the Director under subsection 184.12(j) shall be responsible for restoring the
8 sidewalk to its original condition by replacing the concrete or other material in accordance with
9 Section 703.2 of the Public Works Code.

10 (2) Freestanding Newsracks Prohibited. No person shall place, operate or maintain a
11 freestanding newsrack on any public street, public sidewalk or public right-of-way located in
12 fixed pedestal zone, or located within fifteen feet (15') of any fixed pedestal unit that is located
13 in a fixed pedestal zone. Any freestanding newsrack which in whole or in part or rests upon a
14 public street, sidewalk or right-of-way located in a fixed pedestal zone, or located within fifteen
15 feet (15') of any fixed pedestal unit that is located in a fixed pedestal zone, shall be subject to
16 impoundment pursuant to subsection 184.12(j).

17 (3) Fixed Pedestal Zones.

18 (A) The Director is authorized to establish one or more fixed pedestal zones within the
19 City subject to the following requirements:

20 (i) The Director shall determine the location of fixed pedestal zones in compliance with,
21 and consistent with the purpose and intent of, this section and the guidelines. Subject to
22 subsection 184.12(f)(3)(A)(iii), such zones generally shall be established only in areas of the
23 City which have one or more of the following: extensive public transit service, usage, and/or
24 facilities; large concentrations of freestanding newsracks; or large numbers of pedestrians.

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1 (ii) The Director shall not establish a fixed pedestal zone in any area of the City unless,
2 within the immediately preceding twenty-four (24) months, the Director has completed a
3 survey of that area and made that survey publicly available reasonably promptly upon its
4 completion, and no later than the establishment of the fixed pedestal zone. Each such survey
5 shall be completed reasonably promptly after it is begun.

6 (iii) Where a fixed pedestal zone would not otherwise contain sufficient space to install
7 fixed pedestal units sufficient to accommodate those publications which the survey shows to
8 be historically present in that zone, in accordance with this section and the guidelines, the
9 Director shall establish or amend the zone to include adjoining portions of intersecting side
10 streets, or adjacent portions of the street on which the zone was established (including where
11 the zone was established only on one side of a street, portions of the other side of that street),
12 as necessary to increase the space available in the zone for fixed pedestal units to
13 accommodate such publications, if reasonably possible.

14 (iv) Except as this section or the guidelines provide otherwise, the Director shall
15 establish fixed pedestal zones following consultation with the Newsrack Advisory Committee.
16 Each zone shall be deemed established as of the date the Director publishes notice of the
17 zone's location in the City's official newspaper following such consultation.

18 (B) Subject to the requirements of this section, the guidelines, and any vendor contract,
19 initial implementation of this section within each fixed pedestal zone shall begin promptly after
20 the Director establishes that zone. All aspects of initial implementation that require information
21 contained in a survey, including the selection of fixed pedestal unit locations or the initial
22 allocation of space in fixed pedestal units to historically present publications, shall only occur
23 on the basis of a survey that was completed no more than twenty-four (24) months earlier.

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1 (C) Not later than twelve (12) months after the Director first implements this section
2 pursuant to subsection 184.12(l), and at least once every two (2) years thereafter, the Director
3 shall issue a report in writing to the Board of Supervisors. This report shall address the
4 implementation of this section, inform the Board of the effectiveness of the existing Fixed
5 Pedestal Zones, and make any recommendations and include proposed legislation regarding
6 changes that the Director believes are necessary, including, without limitation, any changes
7 believed necessary to ensure that publications that did not receive space in fixed pedestal
8 units in initial implementation are subsequently able to receive such space.

9 (g) LOCATIONS AND PLACEMENT OF FIXED PEDESTAL UNITS.

10 (1) General.

11 (A) All fixed pedestal units within a designated fixed pedestal zone shall be of a design
12 designated by the Director and approved by the Art Commission pursuant to its authority
13 under City Charter Section 5.103. The Director shall consider the factors set forth in
14 subsection 184.12(a)(5) in selecting designs for fixed pedestal units.

15 (B) The Director shall monitor the installation and maintenance of fixed pedestal units
16 and newsrack boxes in fixed pedestal zones.

17 (2) Selection of Fixed Pedestal Unit Locations.

18 (A) Initial Units. During initial implementation in each fixed pedestal zone, the locations
19 of fixed pedestal units in that zone shall be selected, so that to the extent reasonably possible
20 and in compliance with this section and the guidelines, (i) publications that are historically
21 present at corner areas (as defined in Section 184.12(b)(10)) may receive space in fixed
22 pedestal units located in that zone as close as reasonably possible to, and no more than
23 seven feet (7') from, the curb corner, excluding space taken up by intervening street furniture;
24 (ii) publications that are historically present at midblock areas (as defined in Section
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1 184.12(b)(10)) may receive space in fixed pedestal units in that zone located as close as
2 possible to the midblock locations of their former freestanding newsracks; and (iii) the number
3 of newsrack boxes at each fixed pedestal unit location equals the number of freestanding
4 newsracks historically present at each such location. Notwithstanding the foregoing sentence,
5 initial implementation, including the selection (fixed pedestal unit locations, in a fixed pedestal
6 zone may occur even if the objectives stated subsections (i),(ii), and/or (iii) of the foregoing
7 sentence cannot be wholly achieved, in which case those objectives will be achieved to the
8 extent reasonably possible consistent with this section and the guidelines. Fixed pedestal unit
9 locations shall be selected in accordance with the requirements of the guidelines and with the
10 following requirements:

11 (i) Each publication shall have a reasonable opportunity to submit a proposal (a "plan")
12 to the Director proposing fixed pedestal units at locations situated pursuant to Section
13 184.12(g)(2)(A), at which the publication is historically present within the fixed pedestal zone,
14 according to the survey. If at least three-quarters (3/4) of the publications that are historically
15 present at a location in the survey do not collectively submit a single plan concerning that
16 location, the Director may select a location or locations for fixed pedestal units to replace the
17 freestanding newsracks at that location in accordance with Section 184.12(g)(2)(A). Any plan
18 submitted by any publication(s) may include one or more proposed locations.

19 (ii) The Director may amend or reject all or part of a plan submitted by at least three-
20 quarters (3/4) of the publications that are historically present at a particular survey location
21 only if the plan fails to comply with this Section and the guidelines. If the Director amends or
22 rejects all or part of such a plan, he shall explain the basis for the amendment or rejection in
23 writing, citing the portions of this Section and/or the guidelines upon which he relies, and shall
24 afford those publications a reasonable opportunity to revise their plan to address the grounds
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1 for such amendment or rejection. If those publications do not do so, the Director may
2 determine the locations of fixed pedestal units as to which he amended or rejected the
3 publishers' plan provided such determination is in compliance with this Section and the
4 guidelines.

5 (iii) If at least three-quarters (3/4) of the publications that are historically present at a
6 particular survey location revise their plan to address the grounds for the Director's
7 amendment or rejection thereof within a reasonable time, and those publications and the
8 Director cannot agree on locations for fixed pedestal units in the zone following such
9 revisions, the locations in dispute may be resolved by the Newsrack Advisory Committee in
10 accordance with all requirements of this section, the guidelines, and the vendor contract, if
11 and only if the Director receives a request for such Newsrack Advisory Committee review
12 submitted by at least three-quarters (3/4) of the publications that are historically present at
13 the survey location in dispute. The Committee's determination (or, if the Committee fails to
14 promptly decide, the Director's most recent determination) shall constitute the City's final
15 administrative determination. Any party may bring a court reporter to any such Committee
16 meeting and record a transcript of the meeting.

17 (B) Petition Units. After initial implementation within a fixed pedestal zone has been
18 completed, any publication may submit a petition to the Director requesting the installation of
19 an additional fixed pedestal unit be installed at a location specified in the petition. Other
20 interested publications may submit a proposal for the location of the petition unit to the
21 Director. If the Director receives a proposal for the location of the petition unit from at least
22 three-quarters (3/4) of the interested publications (including the petitioner) that complies with
23 this section and the guidelines, the location set forth in such proposal shall be the proposed
24 location or purposes of locating the petition unit. If the Director does not receive such a
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1 proposal, the location proposed in the petition shall be the proposed location for purposes of
2 locating the petition unit. The location of each petition unit shall be determined in accordance
3 with procedures contained in the guidelines. If the location as thereby determined is
4 consistent with the requirements of this section and the guidelines, the Director shall authorize
5 the installation of the fixed pedestal unit at the specified location. The Director shall deny any
6 petition under this paragraph that would violate the maximum density levels set forth in the
7 guidelines, or that would cause the total number of fixed pedestal units to exceed the number
8 of fixed pedestal units available under any vendor contract. However, the Director shall not
9 deny any petition that complies with Section 184.12 and the guidelines on the ground that one
10 or more fixed pedestal units are being held in reserve.

11 (C) Relocated Units. In the event that the vendor initiates relocation of any fixed
12 pedestal unit due to excessive repair costs pursuant to the vendor contract, the Director shall
13 promptly select the location to which the unit shall be relocated and reconfigure the fixed
14 pedestal zone to exclude the area from which the fixed pedestal unit is being relocated, as set
15 forth in the guidelines. The Director shall maintain a list of potential locations for such
16 purpose.

17 (D) Reserve Units. To accommodate the installation of additional fixed pedestal units
18 after initial implementation, and to respond to changing conditions and publications that may
19 seek distribution space in fixed pedestal units in the future, the Director shall implement this
20 section in a manner that maintains some of the fixed pedestal units authorized under a vendor
21 contract in reserve. Such reserve shall be numerous enough to allow the maximum number of
22 fixed pedestal units that can be installed in existing fixed pedestal zones in compliance with
23 this section and the guidelines, to be installed in those zones. No request, petition, or plan for
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1 a fixed pedestal unit that complies with this Section and the guidelines shall be denied on the
2 ground that one or more fixed pedestal units are being held in reserve.

3 (h) ALLOCATION OF SPACE WITHIN FIXED PEDESTAL UNITS.

4 (1) General.

5 (A) Except as this section or the guidelines expressly provide otherwise, no publication
6 that has obtained a space in a fixed pedestal unit or cluster of fixed pedestal units may
7 receive a second space in that unit or cluster until all other publications that have applied for
8 space in that unit or cluster of units have had the opportunity to select a space.

9 (B) Notwithstanding any other provision in this Section, (i) no publication may receive
10 more than one newsrack box per fixed pedestal unit or cluster of fixed pedestal units on the
11 basis of historical presence, and (ii) a publication's use of more than one freestanding
12 newsrack at a particular area prior to initial implementation shall not be a ground for that
13 publication to receive more than one newsrack box on the basis of historical presence.

14 (2) Initial Implementation. During initial implementation throughout a fixed pedestal
15 zone, space in each fixed pedestal unit or cluster of fixed pedestal units in that zone shall be
16 allocated as follows:

17 (A) If possible, publications that have applied for space in such a unit or cluster shall
18 agree unanimously among themselves with respect to allocation of space in the fixed pedestal
19 unit(s).

20 (B) Absent such agreement, the Director shall allocate space in the unit or cluster
21 among publications that have applied for such space as follows:

22 (i) First priority shall be given to publications that were historically present in the area
23 (as defined in Section 184.12(b)(10)) in which were located the freestanding newsracks that
24 the fixed pedestal unit or cluster of fixed pedestal units is intended to replace.

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1 (ii) Second priority, in the case of fixed pedestal units) that are located at a corner area
2 (as defined in Section 184.12(b)(10)), shall be given to those publications that were
3 historically present in the immediately adjacent midblock area. Second priority, in the case of
4 fixed pedestal unit(s) that are located at a midblock area (as defined in Section
5 184.12(b)(10)), shall be given to those publications that were historically present in the
6 immediately adjacent corner area.

7 (iii) Third, priority shall be given to all other publications that have applied for space in
8 the fixed pedestal unit or cluster of fixed pedestal unit, including, subject to Section
9 184.12(h)(1)(a) publications that were historically present at that area or an immediately
10 adjacent midblock area but have already received one newsrack box in that unit or cluster on
11 the basis of such historical presence.

12 (iv) The Director shall implement this allocation scheme as to fixed pedestal units
13 located at corner areas before doing so at immediately adjacent midblock areas. In
14 implementing this allocation scheme as to each fixed pedestal unit or cluster of fixed pedestal
15 units, the Director shall conduct a meeting at which each publication in each category,
16 beginning with category (i), historically present publications, may select a newsrack box in a
17 given fixed pedestal unit or cluster until all newsrack boxes have been selected. If any
18 newsrack boxes remain unselected after each publication in category (i) that so desires has
19 chosen a newsrack box in that fixed pedestal unit or cluster, each publication in category (ii)
20 shall select a newsrack box until all newsrack boxes have been selected or each publication
21 in category (ii) that so desires has chosen a newsrack box in that fixed pedestal unit or
22 cluster, and so forth through category (iii). The publications in each category may agree
23 among themselves as to the order they will follow in selecting newsrack boxes; if they are
24 unable to agree, publications in categories (i) and (ii) shall select according to survey order,
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1 and publications in category (iii) shall select according to such order as the Director
2 determines by lots.

3 (3) Petition Units. Space in each petition unit shall be allocated as follows:

4 (A) If possible, publications seeking space in a petition unit shall agree unanimously
5 among themselves with respect to the allocation of space in the unit.

6 (B) Absent such agreement, the Director shall allocate space in the unit as follows:

7 (i) First priority shall be given to each publication that was historically present in the
8 zone, according to the most recently completed survey of that zone, and that, during initial
9 implementation in that zone, sought but did not receive the maximum number of newsrack
10 boxes that could be allocated to it on the basis of historical presence, in accordance with this
11 section and the guidelines.

12 (a) To receive first priority, each such publication, within twelve (12) months before the
13 Director received the petition, must have been distributed from a freestanding newsrack that,
14 according to the most recently completed survey of that zone, was located on the same block
15 face as, or a block face that immediately adjoins and is on the same street and same side of
16 the street as, the block face on which the petition unit will be located, and that has not
17 previously been used successfully as a basis for first priority in space allocation in any petition
18 unit.

19 (b) Within the group of publications described in subsection 184.12(h)(3)(B)(i),
20 publications shall select space in the petition unit based on frequency of publication, with all
21 publications published at least once per week choosing first, followed by all publications
22 published less often than once per week but more often than once per month, followed by all
23 publications published once per month or less frequently. Within each such frequency
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1 category, publications shall select space in the petition unit in any mutually agreed upon
2 order, or, absent such agreement, in an order determined by lots.

3 (ii) Second priority shall be given to all other publications that have applied for space in
4 the petition unit.

5 (a) The order in which such publications shall select space in the petition unit shall be
6 determined according to Section 184.12(h)(3)(B)(i)(b).

7 (b) Notwithstanding subsection (a), above, if any such publication already occupies at
8 least one newsrack box in a fixed pedestal unit located either on the same block face as the
9 petition unit ("the petition block face"), the block face(s) immediately across the street from the
10 petition block face, or either of the two block faces that immediately adjoin and are on the
11 same street and same side of the street as the petition block face, that publication shall not
12 select space in the petition unit until all other publications that have applied for space in the
13 petition unit have received at least one such space.

14 (4) Abandoned Newsrack Boxes. When a newsrack box in an already installed fixed
15 pedestal unit has been abandoned or otherwise becomes available for reallocation, space in
16 that newsrack box shall be allocated in the same manner as space in a petition unit, provided
17 that:

18 (A) Such a newsrack box may not be re-allocated to the publication that occupied it
19 immediately before such re-allocation, unless no other publication seeks space in that
20 newsrack box; and

21 (B) The twelve (12) month period within which a historically present publication must
22 have used a freestanding newsrack in order to obtain first priority in such allocation shall
23 consist of the twelve (12) months before the newsrack box became available for re-allocation.

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1 (5) Relocated Fixed Pedestal Units. Space in a fixed pedestal unit that has been
2 relocated due to excessive repair costs pursuant to a vendor contract shall be allocated in the
3 same manner as space in a petition unit, provided that the twelve (12) month period within
4 which a historically present publication must have used a freestanding newsrack in order to
5 obtain first priority in such allocation shall consist of the twelve (12) months before the Director
6 selects the location at which the fixed pedestal unit shall be installed.

7 (6) Split Door Newsrack Boxes.

8 (A) Newsrack boxes may be split into two separate distribution areas to distribute free
9 publications, including those historically present free publications that sought but did not
10 receive the maximum number of newsrack boxes that could be allocated to them on the basis
11 of historical presence, in accordance with this section and the guidelines.

12 (B) Space within split newsrack boxes shall be allocated consistent with the guidelines,
13 provided that:

14 (i) Any free publication may elect to designate a newsrack box in which space has
15 been assigned to it as a split door newsrack box, so long as one-half of the split door
16 newsrack box is continuously used to distribute that publication ("the primary publication").

17 (ii) The other half of the split door newsrack box may be used to distribute the primary
18 publication, or to distribute any other free publication published by publisher of the primary
19 publication ("a secondary publication"), regardless of the secondary publication's frequency of
20 publication or when the secondary publication was first published or distributed.

21 (iii) The publisher of the primary publication may substitute any one of its free
22 publications (including the primary publication) for another as the secondary publication,
23 consistent with this section and the guidelines, so long as one-half of the split box is
24 continuously used to distribute the primary publication.

1 (i) STANDARDS FOR DESIGN, MAINTENANCE AND DISPLAY. The vendor and
2 permit holders shall comply with the following requirements. Failure to comply with any of
3 these requirements shall constitute a violation of this section, and shall be grounds for
4 imposition of penalties in accordance with subsections 184.12(j) and 184.12(k).

5 (1) Except as this subsection or the guidelines provide otherwise, and subject to
6 Section 184.12(d)(3)(O) with respect to the current provisions of the "First Amended and
7 Restated Pedestal-Mounted Newsrack Agreement By and Between the City and County of
8 San Francisco and Clear Channel Adshel. Inc.," the vendor shall be responsible for ensuring
9 that all fixed pedestal units and newsrack boxes under its control are in compliance with the
10 following requirements:

11 (A) Every fixed pedestal unit and newsrack box shall be maintained in a neat and clean
12 condition and in good repair at all times. The vendor shall be responsible for inspecting fixed
13 pedestal units and newsrack boxes under its control to ensure compliance with this section no
14 less than once per day Monday through Friday;

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

17 (C) Every fixed pedestal unit and newsrack box shall be kept free of graffiti and rust,
18 and shall be repaired on a regular basis;

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

22 (E) Except as authorized pursuant to a vendor contract with respect to advertising
23 panels and names and logos of the vendor and/or any entities with whom it has contracted for
24 services to performance of said contract, no fixed pedestal unit or newsrack box shall be used
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1 for advertising signs or publicity purposes other than for the advertising, identification,
2 promotion, display, sale or distribution of the newspaper(s) or other publication(s) distributed
3 from it;

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

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

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

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

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

14 ADVERTISING ON THIS NEWSRACK IS NOT CONTROLLED BY, AND MAY NOT
15 REFLECT THE VIEWS OF, ANY OF THE PUBLICATIONS DISTRIBUTED WITHIN.

16 (v) The letters comprising the above disclaimer shall be printed in white reflective
17 lettering against a black disclaimer background. The disclaimer shall be centered above or
18 below any panel containing such advertising.

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, the
21 permit holder shall promptly notify the Director and the vendor of the intention to vacate the
22 location;

23 (B) All coin-operated newsrack boxes shall be equipped with a coin-return device that
24 is maintained in good repair and working order to enable persons to secure full refunds if they
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1 are unable to receive the publication paid for. In the case of coin-operated newsrack boxes,
2 the permittee shall be responsible, at its own cost, for the following, unless it timely elects to
3 have the vendor assume such responsibility pursuant to the vendor contract:

4 (i) For maintenance, repair, and replacement of all hardware related to the charging or
5 coin mechanism or to the security of coins, including all locks and keys;

6 (ii) For remedying any problem with the functionality of the door of its newsrack box
7 where such remedy requires access to any coin mechanism panel, or access to or repair of
8 any hardware relating to the charging or coin mechanism: and

9 (iii) For any changes to, or replacement or resetting of, any mechanism necessary to
10 effect a change in the price of a publication distributed from the newsrack box.

11 (C) Where a vendor contract authorizes any publication to perform or to receive
12 reimbursement from the vendor for any repair, maintenance, or replacement of any part of a
13 fixed pedestal unit, each publication exercising such authority shall comply with all conditions
14 or restrictions on such authority as may be stated in this section, the guidelines, and the
15 vendor contract. Except as otherwise provided in the vendor contract, each publication shall
16 use only vendor-approved parts, cleaning products, and methods to perform any repair,
17 maintenance or replacement of any part of a fixed pedestal unit authorized by that vendor
18 contract.

19 (D) Except as otherwise authorized by this subsection or the guidelines, and except as
20 authorized pursuant to a vendor contract with respect to advertising panels and names and
21 logos of the vendor and/or any entities with whom it has contracted for services in
22 performance of said contract, no newsrack box shall be used for advertising signs or publicity
23 purposes other than for the advertising, display, sale or distribution of the newspaper(s) or
24 other publication(s) distributed from it. Consistent with the guidelines, each publication may
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1 display its name on a specified area on the front of its newsrack boxes, on the side of any
2 fixed pedestal unit in which it has received space in a newsrack box, and on the back of such
3 units, where the backs of such units are not used to display advertising.

4 (E) Each newsrack box shall display the permit holder's name, street address (Post
5 Office Box numbers will not be allowed), and phone number.

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

12 (3) The requirements of this subsection are not intended to alter the obligation of any
13 vendor(s) or permit holders to comply, with all other applicable laws. Except as expressly
14 stated otherwise, no provision of this section, the guidelines, or any vendor contract, including
15 those provisions concerning the repair, maintenance, or replacement of any portion of any
16 fixed pedestal unit or newsrack box, is intended to diminish any right or remedy that any party
17 may have relating to damage to its property.

18 (4) To the extent any provision in a vendor contract requires any vendor to reimburse
19 any publication for the publication's repair, maintenance, or replacement of any portion of a
20 fixed pedestal unit or newsrack box, any publication denied reimbursement required under
21 such provision may only bring suit against the vendor under this section, and only to obtain
22 reimbursement for such repair, maintenance or replacement, but not attorneys' fees in such
23 suit. Nothing contained herein or in the guidelines shall be construed to grant any publication
24 contractual rights under a vendor contract.

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1 (5) To the extent any provision in a vendor contract authorizes or requires the Director
2 to decide any matter concerning a publication's authority to repair, maintain, or replace any
3 portion of a fixed pedestal unit or newsrack box, or to obtain reimbursement from the vendor
4 for such repair, Maintenance, or replacement, (i) the Director's decision concerning such
5 matter shall be the City's final administrative decision, and (ii) any delay by the Director in
6 making such decision or in otherwise complying with his obligations under such provision shall
7 not prejudice any publication's right to the potential reimbursement provided by such
8 provision.

9 (j) ENFORCEMENT; VIOLATIONS; HEARINGS.

10 (1) Newsracks posing an immediate danger to persons, vehicles or property. The
11 Director is authorized to remove and impound without prior notice any newsrack that poses an
12 immediate danger to persons, vehicles or property. Such removal and impoundment shall be
13 in accordance with the notice and hearing procedures set forth below.

14 (A) Notice of Violation. Within twenty-four (24) hours after such removal, the Director
15 shall by telephone notify the permit holder or owner of the removal. Within forty-eight (48)
16 hours after removal, the Director shall notify the owner in writing of the removal and the
17 reasons for removal. The notice shall also inform the owner of the right to request, either in
18 writing or in person, within ten (10) business days of the date of the postmark of such written
19 notice, a meeting with the Director to determine whether such removal was proper.

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

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1 the Director shall notify the owner that the impounded newsrack may be recovered following
2 payment of a \$200.00 administrative penalty pursuant to subsection 184.12(k). The owner of
3 an unauthorized fixed pedestal unit shall also be responsible for restoring the sidewalk to its
4 original condition pursuant to subsection 184.12(f)(1). If the Director finds that the
5 impoundment was improper and/or that placement of the fixed pedestal unit or freestanding
6 newsrack was lawful, the Director shall order the immediate release to the owner and
7 reinstallation by the City at its expense of the fixed pedestal unit or freestanding newsrack
8 without charge.

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

12 (2) Unauthorized fixed pedestal units and any freestanding newsracks. The Director is
13 authorized to remove and impound any unauthorized fixed pedestal units and any
14 freestanding newsrack located in a Fixed Pedestal Zone in accordance with the following
15 procedures.

16 (A) Notice of Violation and Impoundment. The Director shall post a notice of violation
17 on the unauthorized fixed pedestal newsrack or freestanding newsrack, and shall use all
18 reasonable efforts to immediately contact the owner of the newsrack or other responsible
19 party by facsimile and telephone where this information is contained on the newsrack or is
20 available from the Director's records. The notice attached to the newsracks, and any written
21 notice transmitted to the owner, shall also inform the owner of the right to request, by
22 facsimile, telephone or in person, by the close of business on the first business day following
23 the date of the notice of violation, a meeting with the Director to determine whether the
24 newsrack is in violation of this section. If the newsrack has not been removed, and the owner
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1 has not requested a meeting with the Director by the close of the next business day following
2 the day that the notice of violation has been affixed, the Director may remove and impound
3 the offending newsrack. Within forty-eight (48) hours after removal, the Director shall notify
4 the owner in writing of the removal and the reasons for removal. If the owner did not request a
5 meeting with the Director prior to removal of the newsrack, the notice shall also inform the
6 owner of the right to request, either in writing or in person, within ten (10) business days of the
7 date of the postmark of such written notice, a meeting with the Director to determine whether
8 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 no meeting has been requested, and/or the Director
14 finds that the impoundment was proper, the Director shall notify the owner that the impounded
15 newsrack may be recovered following payment of a \$200.00 administrative penalty pursuant
16 to subsection 184.12(k). The owner of an unauthorized fixed pedestal unit shall also be
17 responsible for restoring the sidewalk to its original condition pursuant to subsection
18 184.12(f)(1). If the Director finds that the impoundment was improper and/or that placement of
19 the fixed pedestal unit or freestanding newsrack was lawful, the Director shall order the
20 immediate release to the owner and reinstallation by the City at its expense of the fixed
21 pedestal unit or freestanding newsrack without charge.

22 (C) Disposal of Impounded Newsracks. Unauthorized fixed pedestal units or
23 freestanding 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.
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1 (3) Other Violations. Any other violation of this section, or the guidelines promulgated
2 under this section, by a permit holder or owner may be cause for disablement of the offending
3 newsrack box(es), subject to the notice and hearing procedures set forth below.

4 (A) Notice of Violation. Before a newsrack box may be disabled under this subsection,
5 the Director shall notify the permit holder or owner of the violation. The notice shall be in
6 writing and shall state the nature of the violation. The notice shall give the permit holder or
7 owner ten (10) business days from the date the postmark of such written notice to either
8 remedy the violation or request a meeting before the Director. An additional notice shall be
9 affixed to the offending newsrack box.

10 (B) Meeting and Decision. Upon timely request, the Director shall conduct the meeting
11 within three (3) business days of receiving the request. The meeting shall be informal, but oral
12 and written evidence may be offered. Thereafter, the Director shall give his or her decision in
13 writing to the owner, permit holder or designated agent for notice, within three (3) business
14 days after the meeting. Any action by the City with respect to the alleged violation shall be
15 stayed pending the written decision of the Director following the meeting and resolution of any
16 other appellate or review process initiated by the permit holder.

17 (C) Disablement of Newsracks. The Director may disable a newsrack box in
18 accordance with this subsection, subject to the resolution of any appellate or review process
19 initiated by the permit holder, following either (1) the written decision of the Director upholding
20 the determination of a violation; or (2) where the permit holder or owner has neither requested
21 a meeting nor remedied the violation within the time periods set forth above. A newsrack box
22 that has been disabled may be recovered by the permit holder upon payment of a \$200.00
23 administrative penalty imposed pursuant to subsection 184.12(k).

1 (D) Failure to Pay Penalties. Where the permit holder of, other publication authorized to
2 occupy, a newsrack box that has been disabled fails to pay the administrative penalty
3 specified in subparagraph (C) within thirty (30) calendar days, the newsrack box shall be
4 considered as having been vacated, subject to the resolution of any appellate or review
5 process initiated by the permit holder.

6 (k) ADMINISTRATIVE PENALTIES; OTHER REMEDIES.

7 (1) Administrative Penalties.

8 (A) Any fixed pedestal permit holder, or the owner of a freestanding newsrack or
9 unauthorized fixed pedestal unit found to have violated any of the provisions of this section
10 pursuant to subsection 184.12(j) shall receive a notice of violation in accordance with
11 subsection 184.12(j)(1), 184.12(j)(2) or 184.12(j)(3). If a newsrack is impounded pursuant to
12 section 184.12(j)(1) or is found to be in violation of this section following expiration of the time
13 periods set forth in section 184.12(j)(2) or (j)(3), the permit holder or owner shall be subject to
14 an administrative penalty of \$200.00 per violation. A permit holder shall not be issued any
15 additional permits until all outstanding administrative penalties levied against that permit
16 holder under this subsection, after the expiration of all applicable notice, grace, and cure
17 periods, and subject to resolution of any appellate or review process initiated by the permit
18 holder, have been paid.

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

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

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

9 (3) Permit Suspension. Failure to pay any administrative penalties imposed pursuant to
10 this subsection, or repeated refusal, following a minimum of three (3) written notices within
11 thirty (30) days from the Director, to maintain newsrack boxes in compliance with this
12 subsection and the Director's guidelines shall, after notice of the violation, and the expiration
13 of all applicable notice, grace, and cure periods, and subject to resolution of any appellate or
14 review process initiated by the permit holder, be cause for suspension of all of the permit
15 holder's fixed pedestal permits in the Fixed Pedestal Zone containing the subject newsrack
16 box(es) for a period not to exceed one hundred eighty (180) days.

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

19 (I) IMPLEMENTATION AND APPLICATION TO EXISTING NEWSRACKS. The
20 Director is instructed to promptly phase in the implementation of this section in consultation
21 with the Newsrack Advisory Committee. In order to accomplish this purpose, the Director is
22 authorized to establish implementation areas within fixed pedestal zones and to establish
23 dates by which all fixed pedestal units in the implementation areas shall be in compliance with
24 the requirements of this subsection, and by which all freestanding newsracks and
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1 unauthorized fixed pedestal units shall be removed. The deadlines for compliance with this
2 section and the Director's guidelines shall be prominently posted in the implementation areas
3 not less than thirty (30) days prior to the date for initial implementation specified in the
4 guidelines. Publications shall have ninety (90) days from the initial date specified in the
5 guidelines to come into compliance with the provisions of this section and the guidelines
6 promulgated under this section. Deadlines for compliance with these requirements shall be
7 published in the City's official newspaper.

8 (m) APPEALS.

9 (1) (A) Unless otherwise provided herein or in the guidelines, any person other than a
10 vendor who is aggrieved by and seeks review of a determination made by the Director
11 pursuant to subsections 184.12(e)– (k), inclusive of this section must file with the Director a
12 written request for review of the Director's decision by the Newsrack Advisory Committee.
13 Such a request must be delivered to the Director not more than ten (10) business days
14 following the issuance of the Director's decision. The Newsrack Advisory Committee shall
15 consider the request at its next regularly-scheduled meeting, or at a special meeting held or
16 this purpose before the next regularly-scheduled meeting, if the next regularly-scheduled
17 meeting is not going to be held within ten (10) business days of the Director's receipt of the
18 request, consistent with public meeting law requirements. At the meeting, the Newsrack
19 Advisory Committee shall vote either to affirm or dissent from the Director's decision. The
20 Newsrack Advisory Committee's vote shall be provided to the Director within two (2) business
21 days. The Director shall have three (3) additional business days to render a final decision
22 affirming or reversing his or her original determination. Such decision shall explain the
23 Director's determination, including the facts relied on in the determination, with citations to any
24 provisions of this Section and the guidelines upon which the Director relies.

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

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

19 (3) The Board of Appeals shall determine whether the action taken by the Director was
20 proper solely based on the provisions of this section and the Director's guidelines. If the
21 determination of the Board differs from that of the Director, the Board shall, in a written
22 decision, specify wherein there was error in interpretation of this section or the guidelines
23 promulgated under this section, or abuse of discretion on the part of the Director, and shall
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1 specify in its findings, as part of such written decision, the facts relied upon in arriving at its
2 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 statutes
8 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 (n) NOTICE PROCEDURES.

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

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

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

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

17 (p) LIMITATION OF LIABILITY. By adopting this section, the City and County of San
18 Francisco is assuming an undertaking only to promote the general welfare. It is not assuming,
19 nor is it imposing on its officers and employees, an obligation for breach of which it is liable in
20 money damages to any person who claims that such breach proximately caused injury. This
21 subsection shall not affect any rights that may be available under a vendor contract and shall
22 not create any such rights.

23 (q) SEVERABILITY. If any provision, subdivision, paragraph, phrase or clause of this
24 section or the application of this section is for any reason held to be invalid or unconstitutional
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1 by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness
2 of the 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 This subsection shall not affect the terms of any vendor contract or the rights or obligations of
6 any party to such a contract under such a contract.

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9 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

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11 By: _____
WAYNE SNODGRASS
Deputy City Attorney

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