

File No. 101310

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee CITY OPERATIONS AND
NEIGHBORHOOD SERVICES

Date 11/22/10

Board of Supervisors Meeting

Date _____

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Completed by: Gail Johnson

Date 11/18/10

Completed by: _____

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The complete document is in the file.

[Public Works Code - Regulation of Freestanding Newsracks and Fixed Pedestal Newsracks]

Ordinance amending the San Francisco Public Works Code by amending Sections 184.2, 184.6, 184.8, and 184.12 thereof, relating to newsracks, to provide for: (1) the use of electronic mail for notices of violations; (2) removal of abandoned newsracks or newsracks maintained in violation of the Public Works Code within 7 calendar days of notice of violation sent by electronic mail; (3) imposition of administrative fines for violations resulting in newsrack seizures; (4) consolidation and/or reduction in size of fixed pedestal newsracks at under-used locations; (5) allocation of space in newsrack boxes on a first-come-first-served basis under certain circumstances; and (6) reduction of the fixed pedestal permit fee from \$60 to \$50.

NOTE: Additions are single-underline italics Times New Roman;
deletions are ~~strike-through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Public Works Code is hereby amended by amending Section 184.2 thereof, to read as follows:

SEC. 184.2. NEWSRACK CERTIFICATE.

Prior to the installation of any newsrack on any public street, sidewalk, or other public right-of-way, the person responsible for such installation and for the maintenance of such newsrack shall submit a newsrack certificate to the Director of Public Works. Any person may establish a single, master newsrack certificate covering all of such person's newsracks within the City. The newsrack certificate shall state the name, address and telephone number of the person responsible for installation and maintenance of the newsrack(s) covered by such certificate and set forth such person's agreement to indemnify and hold harmless the city

1 pursuant to Section 184.10 of this Article. The newsrack certificate must also state an electronic
2 mail address for the person responsible for installation and maintenance of the newsrack(s) covered by
3 such certificate. The Director of Public Works may use that electronic mail address to provide official
4 notice to the person pursuant to this Article, including notices of violations, either as an alternative to
5 or in addition to providing such notice by regular mail. Within 10 business days from the date the
6 newsrack certificate is submitted, the person responsible for such installation and for
7 maintenance of such newsrack shall submit a separate certificate evidencing the insurance
8 required to be carried under Section 184.9 of this Article.

9
10 Section 2. The San Francisco Public Works Code is hereby amended by amending
11 Section 184.6 thereof, to read as follows:

12 **SEC. 184.6. CORRECTION OF VIOLATIONS; HEARING.**

13 (a) Any newsrack installed or maintained in violation of this Article may be seized and
14 removed pursuant to Section 184.6. Seizure and removal of newsracks in violation of
15 Sections 184.4 or 184.5 may take place only if it is impractical to remedy the violation by
16 moving the newsrack to another point on the street, sidewalk or other public right-of-way
17 without mechanical assistance. Before any newsrack is seized, the person responsible for its
18 installation and maintenance shall be notified and given 10 business days in which to remedy
19 the violation or to request a hearing to contest the seizure in the manner provided in Section
20 184.6(b), or 7 calendar days if the person is notified of the violation by electronic mail. Notice to the
21 party responsible for the newsrack shall be given by written notice sent to the address for
22 such party stated on the newsrack certificate filed pursuant to Section 184.2 of this Article; or,
23 at the election of the Director, by electronic mail notice sent to the electronic mail address for such
24 party stated on the newsrack certificate, and an additional notice tag shall be affixed to the
25 newsrack on the date of notice. The latter notice shall be sufficient if no identification is

1 shown on the newsrack and no newsrack certificate has been filed. Both the notice sent to the
2 address or electronic mail address stated on the newsrack certificate and the additional notice
3 tag affixed to the newsrack shall state the place to request a hearing to contest the seizure, as
4 provided in Section 184.6(b).

5 (b) Any person notified under Section 184.6(a) may request a hearing before a
6 designated City official (the "Hearing Officer") in the manner set forth below. The Hearing
7 Officer shall be the Director of Public Works unless the newsrack allegedly installed or
8 maintained in violation of this Article is located within any MUNI stopping zone, in which case
9 the Hearing Officer shall be the General Manager of MUNI. The person notified under Section
10 184.6(a) may request a hearing by making a request to the office of the Director of Public
11 Works (if the Hearing Officer is the Director of Public Works) or, if the Hearing Officer is the
12 General Manager of MUNI, then by making a request to the office of the General Manager of
13 MUNI. The hearing shall be held not less than 10 business days after the request was made
14 by the party notified under Section 184.6(a). The hearing shall be informal, but oral and
15 written evidence may be given by both sides. Any action by the City with respect to the
16 alleged violation shall be stayed pending the Hearing Officer's decision following the hearing,
17 which decision shall be rendered no later than 10 business days after the hearing. The
18 Hearing Officer may give oral notice of the decision at the close of the hearing, but shall give
19 written notice as well of all decisions.

20 (c) The City may seize and remove a newsrack if the person responsible for such
21 newsrack (i) has neither requested a hearing before the Hearing Officer nor remedied the
22 violation within 10 business days following date of notice, or within 7 calendar days if the notice
23 was given by electronic mail, or (ii) has failed to remedy the violation within 10 business days
24 after receiving a copy of the written decision that the newsrack was installed or maintained in
25 violation of this Article, or within 7 calendar days if the written decision was sent to the person by

1 electronic mail, following a hearing conducted pursuant to Section 184.6(b). Such person shall
2 be notified of the seizure. Seized newsracks shall be retained by the City and may be
3 recovered by the responsible party for a period of at least 10 business days following seizure.

4 (d) Notwithstanding the provisions of Section 184.6(a) through (c), if a newsrack is
5 installed or maintained in such a place or manner as to pose an immediate and serious
6 danger to persons or property, the City may seize such newsrack without prior notice to the
7 person responsible for such newsrack if it is impractical to remedy the danger by one person
8 moving the newsrack to another point on the street, sidewalk, or other public right-of-way
9 without mechanical assistance. The person responsible for such newsrack shall be notified
10 promptly after such seizure has occurred, and shall have the right to request an informal
11 hearing before the Director of Public Works (or, if the seized newsrack had been located
12 within any MUNI stopping zone in violation of Section 184.4(d), then before the General
13 Manager of MUNI) within 10 business days after receiving such notice to determine whether
14 the seizure was proper, or within 7 calendar days if the notice was sent by electronic mail. Any
15 newsrack seized pursuant to this Section shall be retained by the City and may be recovered
16 by the person responsible for such newsrack as provided in Section 184.6(c).

17 (e) Abandoned newsracks may be removed by a public officer, employee, contractor, or
18 other authorized representative of the City (and may be disposed of if not claimed by the person
19 responsible for that newsrack within 10 business days, or within 7 calendar days if notice is given
20 by electronic mail. The above notwithstanding, at least 10 business days before any newsrack
21 is removed under this subsection, or at least 7 calendar days if notice is given by electronic mail,
22 the person responsible for its installation or maintenance shall be given written notice
23 pursuant to this Section that such newsrack is suspected of being abandoned. Such
24 newsrack shall not be removed if, before removal, the party responsible for its installation or
25 maintenance informs the Director of Public Works that the newsrack has not been abandoned

1 and promptly stocks and maintains the subject newsrack. In addition, upon removal of any
2 abandoned newsrack, the person responsible for its installation or maintenance shall promptly
3 be notified and given 10 business days in which to request an informal hearing before the
4 Director of Public Works (or, if the newsrack had been located within any MUNI stopping zone
5 in violation of Section 194.4(d), then before the General Manager of MUNI) to contest the
6 removal under this subsection.

7
8 Section 3. The San Francisco Public Works Code is hereby amended by amending
9 Section 184.8, to read as follows:

10 **SEC. 184.8. ~~PENALTIES~~ADMINISTRATIVE FINES; OTHER REMEDIES.**

11 (a) Any other provisions of this Article to the contrary notwithstanding, as a condition of
12 recovering any newsrack properly seized pursuant to the terms of Section 184.6 of this Article,
13 the person responsible for such newsrack shall pay an impound fee covering the actual cost
14 to the City of transporting and storing such newsrack. ~~In addition, any person who violates~~
15 ~~Sections 184.4 or 184.5 of this Article shall be guilty of an infraction, and if such person's newsrack is~~
16 ~~properly seized pursuant to Section 184.6, such person may be punished by a fine not exceeding \$50 for~~
17 ~~the first such violation, \$75 for the second such violation, or \$100 for each violation thereafter. The~~
18 ~~Hearing Officer may waive these fines in appropriate circumstances.~~

19 (b) Violation of this Article or any regulation issued under this Article shall constitute an
20 infraction.

21 (c) In addition to any other remedies that may be available, if a violation of this Article or any
22 regulation issued under this Article results in the proper seizure of a newsrack pursuant to Section
23 184.6, the violation shall be punishable by an administrative fine. The Director is hereby authorized to
24 issue an administrative citation to the person responsible for any such violation. Administrative Code
25 Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended

1 from time to time, is hereby incorporated and shall govern the imposition, enforcement, collection, and
2 review of administrative citations issued by the Director to enforce this Article or any regulation issued
3 under this Article, except that the amount of the fine shall be \$50 for a first violation, \$100 for a second
4 violation within one year of the date of the first violation, and \$250 for each additional violation within
5 one year of the date of a second or subsequent violation. Revenue from fines imposed under this
6 Section may only be used to cover the costs of administering and enforcing this Article and regulations
7 issued under this Article.

8 (d) The provisions of this Section shall not limit any other remedies authorized by law.
9

10 Section 4. The San Francisco Public Works Code is hereby amended by amending
11 Section 184.12, to read as follows:

12 **SEC. 184.12. FIXED PEDESTAL NEWSRACKS.**

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

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

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

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

1 consistent with the Downtown Area Plan of the General Plan (§§ II.1.48 through II.1.50), the
2 City must take steps to reduce the visual blight, the inconvenience and the hazards
3 associated with unlimited numbers and designs of newsracks, poorly maintained newsracks
4 and the virtually unrestricted placement of newsracks on public streets, public sidewalks and
5 public rights-of-way.

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

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

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

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

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

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

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.
25

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
15 these newsracks also end up being used as trash receptacles, causing unsightly and
16 unsanitary 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
25 clutter, protecting the unique aesthetic and historical attributes of the City, and advancing the

1 economic interests of the City's businesses and residents by improving the appearance of the
2 area and resulting in better use of space and reduced congestion, while respecting
3 publication's interests in effective distribution. A reasonable accommodation of these
4 competing interests can be achieved by adoption of this section, which regulates the
5 placement, size, construction design, maintenance, and appearance of newsracks and fixed
6 pedestal units in specified areas.

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

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

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

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

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

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

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

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

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

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

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

23 (10) A "historically present" publication means a publication that, according to the
24 survey completed most recently before initial implementation of this section in any fixed
25

1 pedestal zone, was distributed from at least one freestanding newsrack situated cat the area
2 in question. For purposes of the preceding sentence:

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

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

21 (11) "Initial implementation" means the first stage of implementation of this section
22 throughout a fixed pedestal zone, and shall include the selection of locations for initial fixed
23 pedestal units in that zone which are as close as possible to the former locations of
24 freestanding newsracks, in compliance with this section and the guidelines; the allocation of
25

1 space within those units to historically present publications and, if possible, to other interested
2 publications; and the installation of those units.

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

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

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

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

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

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

23 (18) "Roadway" means that portion of a public street that is improved or customarily
24 used for vehicular traffic.
25

1 (19) "Section" or "this section," or "any subsection thereof" means Article 5.4, Section
2 184.12 of the San Francisco Public Works Code.

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

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

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

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

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

21 (i) First survey that group of freestanding newsracks in that area that is located on the
22 curb side of the sidewalk (as opposed to the property line side of the sidewalk) and is located
23 closest to the corner. Within that group, the Director shall first survey those freestanding
24 newsracks that face toward the property line, starting with those closest to the corner, and
25

1 shall then survey those freestanding newsracks that do not face toward the property line,
2 starting with those closest to the corner;

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

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

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

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

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

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

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

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

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

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

22 (d) GUIDELINES, FEES, AND AUTHORITY OF DIRECTOR.

23 (1) Promulgation of Guidelines.

24 (A) The Director is hereby authorized and directed to promptly promulgate guidelines
25 consistent with the provisions of this section controlling the selection of locations for, as well

1 as the placement, size, construction, design, methods of attachment, appearance, and
2 maintenance and repair of fixed pedestal units and newsrack boxes in fixed pedestal zones.
3 The guidelines shall also contain procedures for establishing or amending fixed pedestal
4 zones, for determining access by publications to fixed pedestal units, and for obtaining fixed
5 pedestal permits. The guidelines may also set maximum density levels for fixed pedestal
6 units in fixed pedestal zones, including different levels for commercial and residential areas of
7 the City.

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

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

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

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

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

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

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

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

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

21 (F) Where the Director intends to allow the vendor to place advertising on the back of
22 one or more fixed pedestal units authorized under this section, the agreement shall set forth
23 the requirements applicable to such advertising, including the requirements set forth in
24 subsection 184.12(i)(1)(F);
25

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

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

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

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

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

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

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

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

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

11 (4) Content-Based Discrimination Prohibited. The Director shall not consider the
12 content or viewpoint of the material to be distributed through fixed pedestal units in
13 administering or enforcing this section, or in adopting or implementing guidelines pursuant to
14 this section. Nothing in this paragraph shall be construed as limiting the authority of the
15 Director to require blinder racks for adult-oriented publications in accordance with subsection
16 184.12(i).

17 (5) Newsrack Advisory Committee. The Director is hereby authorized and directed to
18 establish a Newsrack Advisory Committee consisting of 11 members. The Newsrack
19 Program Manager of the Department of Public Works shall be a voting member, and shall
20 chair the Committee. The Director shall appoint to the Committee persons drawn from, or
21 having expertise in, the newspaper, news and/or commercial periodical, and distributing
22 industries in the City, and/or drawn from neighborhood and merchant groups, and other
23 interested members of the public. The number of Committee members who are
24 representatives of publishers and/or distributors shall equal the number of Committee
25 members who are representatives of neighborhood and/or merchant groups. The Director

1 shall endeavor to include on the Committee representatives paid and unpaid publications and
2 of more and less frequently published publications. The Committee shall advise the Director
3 in the implementation and administration of this section; resolve disputes concerning the
4 locations of fixed pedestal units, to the extent consistent with this section and the guidelines;
5 and minimize the cost to the City of the implementation and administration of this section. No
6 vendor or agent or employee of a vendor may serve on the Committee. Committee members
7 shall serve at the pleasure of the Director for a term of one year, and may be reappointed to
8 additional terms. The Committee shall hold regularly scheduled meetings, with notice posted
9 in the City's official newspaper.

10 (6) Fees.

11 (A) The Director is hereby authorized and directed to establish and collect an annual
12 permit fee to be paid by each permit holder. This fee is established at ~~\$60~~ \$50 for each
13 newsrack box, including each split newsrack box. The Director has determined that the
14 anticipated annual revenue from this fee within any particular year shall not exceed the actual
15 costs incurred by the Director for implementation, administration and enforcement of the
16 program during that year. The fee shall only be used to cover such costs, and not as a
17 revenue-generating source for the City. The fee adopted pursuant to this provision shall be
18 nonrefundable, and shall be uniformly imposed upon all permit holders based upon the number
19 of newsrack boxes authorized for each permit holder. The fee shall not exceed the pro-rata
20 share allocated to each newsrack box of the actual costs incurred in implementing,
21 administering, and enforcing the program established under this section.

22 (B) The fee shall be reviewed annually by the Director, who shall propose to the Board
23 of Supervisors any recommended adjustments, along with written justification for the
24 adjustment and any necessary legislation. In any year where the Director anticipates that the
25 revenue from fees will exceed the estimated administrative costs, less penalties, during that

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

11 (e) PERMIT REQUIREMENT.

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

19 (2) Duty to Obtain Permit. Except where this section or the guidelines expressly
20 provide otherwise, each publication seeking access to a newsrack box or boxes in a fixed
21 pedestal unit or cluster of fixed pedestal units shall apply to the City or a fixed pedestal permit
22 for each newsrack box in each fixed pedestal unit to which the publication seeks access. The
23 permit holder shall be responsible for the payment of all fees or penalties due or imposed
24 under this section with respect to that permit holder's newsrack box(es). Once a permit has
25 been granted pursuant to this section and the requirements of the guidelines, and if the permit

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

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

7 (4) Permit Issuance.

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

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

1 (5) Violations. Failure to comply with any requirement of this section, or any
2 requirement of the guidelines authorized by this section, shall constitute a violation of this
3 section. Any such violation may be cause for removal of the offending freestanding newsrack
4 or unauthorized fixed pedestal unit, or disabling of the offending newsrack box pursuant to
5 subsection 184.12(j), and for the imposition of administrative penalties pursuant to subsection
6 184.12(k).

7 (6) Permit Revocation.

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

21 (B) The grounds for revocation of a fixed pedestal permit are: (i) the permit holder did
22 not submit the required permit fee, as specified in the guidelines, within ten (10) business
23 days of the Director's approval of the voluntary space allocation agreement or of the space
24 allocation meeting at which the permit holder was allocated the newsrack box that is the
25 subject of the permit; (ii) the permit holder did not submit the required annual fee on time; (iii)

1 the newsrack box that is the subject of the permit has been vacated pursuant to subsection
2 184.12(j)(3)(D); (iv) the newsrack box that is the subject of the permit has been abandoned
3 pursuant to subsection 184.12(b)(1); or (v) the Director's decision to grant the permit was
4 successfully challenged by a person aggrieved by the determination pursuant to subsection
5 184.12(m) and the guidelines. In addition, the Board of Supervisors may at any time in its
6 exclusive legislative discretion elect to repeal or amend this section and thereby render null
7 and void any permits issued pursuant this section.

8 (f) ESTABLISHMENT OF FIXED PEDESTAL ZONES.

9 (1) Fixed Pedestal Units Restricted. No person shall place, operate or maintain a fixed
10 pedestal unit on any public street, public sidewalk or public right-of-way located in a fixed
11 pedestal zone except in accordance with a vendor contract. Any unauthorized fixed pedestal
12 unit which in whole or in part is attached to or rests upon a public street, public sidewalk or
13 public right-of-way located in a fixed pedestal zone shall be subject to impoundment pursuant
14 to subsection 184.12(j). The owner of any unauthorized fixed pedestal unit properly
15 impounded by the Director under subsection 184.12(j) shall be responsible for restoring the
16 sidewalk to its original condition by replacing the concrete or other material in accordance with
17 Section 703.2 of the Public Works Code.

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

25 (3) Fixed Pedestal Zones.

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

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

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

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

21 (iv) Except as this section or the guidelines provide otherwise, the Director shall
22 establish fixed pedestal zones following consultation with the Newsrack Advisory Committee.
23 Each zone shall be deemed established as of the date the Director publishes notice of the
24 zone's location in the City's official newspaper following such consultation.
25

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

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

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

17 (1) General.

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

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

24 (2) Selection of Fixed Pedestal Unit Locations.

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

18 (i) Each publication shall have a reasonable opportunity to submit a proposal (a "plan")
19 to the Director proposing fixed pedestal units at locations situated pursuant to Section
20 184.12(g)(2)(A), at which the publication is historically present within the fixed pedestal zone,
21 according to the survey. If at least three-quarters (3/4) of the publications that are historically
22 present at a location in the survey do not collectively submit a single plan concerning that
23 location, the Director may select a location or locations for fixed pedestal units to replace the
24 freestanding newsracks at that location in accordance with Section 184.12(g)(2)(A). Any plan
25 submitted by any publication(s) may include one or more proposed locations.

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

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

23 (B) Petition Units. After initial implementation within a fixed pedestal zone has been
24 completed, any publication may submit a petition to the Director requesting the installation of
25 an additional fixed pedestal unit be installed at a location specified in the petition. Other

1 interested publications may submit a proposal for the location of the petition unit to the
2 Director. If the Director receives a proposal for the location of the petition unit from at least
3 three-quarters (3/4) of the interested publications (including the petitioner) that complies with
4 this section and the guidelines, the location set forth in such proposal shall be the proposed
5 location or purposes of locating the petition unit. If the Director does not receive such a
6 proposal, the location proposed in the petition shall be the proposed location for purposes of
7 locating the petition unit. The location of each petition unit shall be determined in accordance
8 with procedures contained in the guidelines. If the location as thereby determined is
9 consistent with the requirements of this section and the guidelines, the Director shall authorize
10 the installation of the fixed pedestal unit at the specified location. The Director shall deny any
11 petition under this paragraph that would violate the maximum density levels set forth in the
12 guidelines, or that would cause the total number of fixed pedestal units to exceed the number
13 of fixed pedestal units available under any vendor contract. The Director also shall deny any
14 petition that seeks the installation of one or more fixed pedestal units at an intersection at which, within
15 the twelve months preceding the petition, a consolidation of fixed pedestal units has taken place
16 pursuant to Section 184.12(g)(2)(E). However, the Director shall not deny any petition that
17 complies with Section 184.12 and the guidelines on the ground that one or more fixed
18 pedestal units are being held in reserve.

19 (C) Relocated Units. In the event that the vendor initiates relocation of any fixed
20 pedestal unit due to excessive repair costs pursuant to the vendor contract, the Director shall
21 promptly select the location to which the unit shall be relocated and reconfigure the fixed
22 pedestal zone to exclude the area from which the fixed pedestal unit is being relocated, as set
23 forth in the guidelines. The Director shall maintain a list of potential locations for such
24 purpose.
25

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

11 (E) Consolidation. If newsrack boxes in fixed pedestal units located at a particular intersection
12 have been abandoned or have otherwise become available for reallocation, and the Director has made
13 reasonable efforts to reallocate such newsrack boxes but notwithstanding such efforts newsrack boxes
14 in such fixed pedestal units remain un-allocated, the Director may consolidate the fixed pedestal units
15 located at that intersection by removing one or more of those units at that intersection. Any such
16 consolidation shall comply with the following requirements:

17 (i) Consolidation shall occur only if the fixed pedestal unit(s) to be located at that intersection
18 after consolidation will provide distribution space sufficient to allow each publication that was being
19 distributed from one or more fixed pedestal unit(s) at that intersection immediately before
20 consolidation (an "affected publication") to still be distributed from the same number of newsrack
21 boxes at that intersection after consolidation as it was distributed from before consolidation;

22 (ii) The Director shall notify the affected publications, in writing, of his intent to consolidate
23 the fixed pedestal units at that intersection, and of the number of units to be removed as part of the
24 consolidation;

1 (iii) The affected publications shall have thirty (30) days to provide the Director with a written
2 proposal, agreed to by at least 75% of the affected publications, as to which of the fixed pedestal units
3 located at that intersection shall be removed to accomplish the removal of the number of units the
4 Director intends;

5 (iv) If such a written proposal is timely submitted and is consistent with the requirements of this
6 Section 184.12 and the guidelines, the Director shall accept the proposal;

7 (v) If no such written proposal is timely submitted that is consistent with the requirements of
8 this Section 184.12 and the guidelines, the Director shall accomplish the intended number of removals
9 by selecting for removal those fixed pedestal unit(s) at that intersection that have the highest share of
10 their newsrack boxes unoccupied, so long as removal of such unit(s) will allow each affected
11 publication to continue to be distributed from the same number of newsrack boxes at that intersection
12 after consolidation as it was distributed from before consolidation;

13 (vi) Where a fixed pedestal unit is to be removed as part of consolidation, and a publication
14 that was distributed from a newsrack box in that unit before consolidation (a "pre-consolidation box")
15 is, as part of the consolidation process, allocated space in a fixed pedestal unit that will remain at that
16 intersection following consolidation (a "post-consolidation box"), that publication shall not be required
17 to vacate the pre-consolidation box before the post-consolidation box is made available for its use. The
18 publication also shall not be required to pay an additional fixed pedestal permit fee to occupy the post-
19 consolidation box during the year for which it already paid a fixed pedestal permit fee to occupy the
20 pre-consolidation box.

21 (F) Modifying The Size Of A Fixed Pedestal Unit. If newsrack boxes in a fixed pedestal unit
22 have been abandoned or have otherwise become available for reallocation, and the Director has made
23 reasonable efforts to reallocate those newsrack boxes but notwithstanding such efforts newsrack boxes
24 in the fixed pedestal unit remain un-allocated, the Director may modify the size of the fixed pedestal
25

1 unit to reduce the number of newsrack boxes it contains. Any such modification in size shall comply
2 with the following requirements:

3 (i) The modification shall occur only if even after the modification, the fixed pedestal unit will
4 provide distribution space sufficient to allow each publication that was being distributed from one or
5 more newsrack boxes in the unit immediately before the modification (an "affected publication") to still
6 be distributed from the same number of newsrack boxes in that unit after the modification;

7 (ii) The Director shall notify the affected publications, in writing, of his intent to modify the
8 fixed pedestal unit's size, specifying the number of newsrack boxes the unit shall contain after
9 modification;

10 (iii) The Director shall endeavor to ensure that notwithstanding a modification in the size of a
11 fixed pedestal unit, affected publications remain able to be distributed from the unit as continuously as
12 reasonably possible while the modification is in process. A publication being distributed from a fixed
13 pedestal unit whose size has been modified shall not be required to pay an additional fixed pedestal
14 permit fee to occupy that unit during the year for which it already paid a fixed pedestal permit fee to
15 occupy the unit before modification.

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

17 (1) General.

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

22 (B) Notwithstanding any other provision in this Section, (i) no publication may receive
23 more than one newsrack box per fixed pedestal unit or cluster of fixed pedestal units on the
24 basis of historical presence, and (ii) a publication's use of more than one freestanding
25

1 newsrack at a particular area prior to initial implementation shall not be a ground for that
2 publication to receive more than one newsrack box on the basis of historical presence.

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

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

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

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

14 (ii) Second priority, in the case of fixed pedestal units) that are located at a corner area
15 (as defined in Section 184.12(b)(10)), shall be given to those publications that were
16 historically present in the immediately adjacent midblock area. Second priority, in the case of
17 fixed pedestal unit(s) that are located at a midblock area (as defined in Section
18 184.12(b)(10)), shall be given to those publications that were historically present in the
19 immediately adjacent corner area.

20 (iii) Third, priority shall be given to all other publications that have applied for space in
21 the fixed pedestal unit or cluster of fixed pedestal unit, including, subject to Section
22 184.12(h)(1)(a) publications that were historically present at that area or an immediately
23 adjacent midblock area but have already received one newsrack box in that unit or cluster on
24 the basis of such historical presence.
25

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

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

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

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

20 (i) First priority shall be given to each publication that was historically present in the
21 zone, according to the most recently completed survey of that zone, and that, during initial
22 implementation in that zone, sought but did not receive the maximum number of newsrack
23 boxes that could be allocated to it on the basis of historical presence, in accordance with this
24 section and the guidelines.
25

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

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

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

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

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

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

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

8 (B) The twelve (12) month period within which a historically present publication must
9 have used a freestanding newsrack in order to obtain first priority in such allocation shall
10 consist of the twelve (12) months before the newsrack box became available for re-allocation;
11 *and*

12 (C) If the Director has held a space allocation meeting within the last 12 months in an attempt
13 to allocate space in a particular newsrack box, but that space remains unallocated following such
14 meeting, the Director may allocate that space on a first-come-first-served basis ("informal allocation"),
15 provided that:

16 (i) space cannot be informally allocated to a publication that already occupies another
17 newsrack box in that fixed pedestal unit;

18 (ii) informal allocation must be made without regard to historic presence or frequency of
19 publication;

20 (iii) space may only be informally allocated to a publication that has a current newsrack
21 certificate on file, that has provided the Director with black and white camera-ready art for its name
22 and trade dress, and that, within 10 business days after the informal allocation, pays the required fixed
23 pedestal permit fee (a "qualified applicant");

24 (iv) the Director has published notice of his intent to informally allocate such space, and also
25 has provided such notice by electronic mail to each publication that has a newsrack certificate on file;

1 (v) DPW's website lists all newsrack boxes currently available for informal allocation; and
2 (vi) the space shall be informally allocated to the first qualified applicant to return to the
3 Director, via fax or electronic mail, a properly completed "request to receive unallocated newsrack
4 box" form, which form shall be available on DPW's website.

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

11 (6) Split Door Newsrack Boxes.

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

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

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

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

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

5 (7) Space in Consolidated Fixed Pedestal Units. Where fixed pedestal units at an intersection
6 have been consolidated pursuant to Section 184.12(g)(2)(E), space in each fixed pedestal unit located
7 at that intersection following consolidation shall be allocated as follows:

8 (A) A newsrack box that already was allocated to a publication before consolidation shall not
9 be re-allocated as part of the consolidation process, and shall remain allocated to that publication
10 following consolidation, unless that publication vacates, abandons, or otherwise ceases to be entitled to
11 distribute from that newsrack box.

12 (B) Newsrack boxes that were not allocated before consolidation shall, if possible, be allocated
13 to publications that seek space in such newsrack boxes and that, immediately before consolidation,
14 were being distributed from fixed pedestal units at that intersection that have been or are to be removed
15 as a result of consolidation. Such publications shall select from the available spaces in the post-
16 consolidation fixed pedestal unit(s) in any mutually agreed-upon order, or, absent such agreement, in
17 an order determined by lots. Such publications shall continue to select spaces in the post-consolidation
18 fixed pedestal unit(s) until each such publication has had an opportunity to select the same number of
19 newsrack boxes in the post-consolidation unit(s) as it previously had been allocated in the unit(s) that
20 were located at that intersection before consolidation and were removed as the result of consolidation.
21 At that point, any newsrack boxes in the post-consolidation fixed pedestal unit(s) that remain
22 unallocated shall be subject to reallocation pursuant to Section 184.12(h)(4).

23 (8) Space in Fixed Pedestal Units Whose Size Has Been Modified. Where the size of a fixed
24 pedestal unit has been modified pursuant to Section 184.12(g)(2)(F), space in that unit following the
25 modification shall be allocated as follows:

1 (A) If possible, publications that seek space in the unit and were being distributed from that
2 unit immediately before its modification shall unanimously agree among themselves with respect to
3 allocation of space in the unit in a writing received by the Director within ten (10) business days of the
4 Director's notice of modification given pursuant to Section 184.12(g)(2)(F)(ii).

5 (B) Failing such agreement, each publication that had been allocated a newsrack box in the
6 upper left corner, the upper right corner, the lower left corner, or the lower right corner of the unit
7 immediately before its modification shall be allowed to select the same corner newsrack box following
8 the modification. After each such publication has had an opportunity to select the appropriate corner
9 newsrack box, then each remaining publication that seeks space in the unit and was being distributed
10 from the unit immediately before its modification shall have an opportunity to select from the remaining
11 unallocated newsrack boxes in the unit, making their selections in an order determined by lots. At that
12 point, any newsrack boxes in the unit that remain unallocated shall be subject to reallocation pursuant
13 to Section 184.12(h)(4).

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

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

24 (A) Every fixed pedestal unit and newsrack box shall be maintained in a neat and
25 clean condition and in good repair at all times. The vendor shall be responsible for inspecting

1 fixed pedestal units and newsrack boxes under its control to ensure compliance with this
2 section no less than once per day Monday through Friday;

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) In any circumstances where the permit holder decides to vacate a location, the
8 permit holder shall promptly notify the Director and the vendor of the intention to vacate the
9 location;

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

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

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

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

22 (C) Where a vendor contract authorizes any publication to perform or to receive
23 reimbursement from the vendor for any repair, maintenance, or replacement of any part of a
24 fixed pedestal unit, each publication exercising such authority shall comply with all conditions
25 or restrictions on such authority as may be stated in this section, the guidelines, and the

1 vendor contract. Except as otherwise provided in the vendor contract, each publication shall
2 use only vendor-approved parts, cleaning products, and methods to perform any repair,
3 maintenance or replacement of any part of a fixed pedestal unit authorized by that vendor
4 contract.

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

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

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

22 (3) The requirements of this subsection are not intended to alter the obligation of any
23 vendor(s) or permit holders to comply, with all other applicable laws. Except as expressly
24 stated otherwise, no provision of this section, the guidelines, or any vendor contract, including
25 those provisions concerning the repair, maintenance, or replacement of any portion of any

1 fixed pedestal unit or newsrack box, is intended to diminish any right or remedy that any party
2 may have relating to damage to its property.

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

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

18 (j) ENFORCEMENT; VIOLATIONS; HEARINGS.

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

23 (A) Notice of Violation. Within twenty-four (24) hours after such removal, the Director
24 shall by telephone notify the permit holder or owner of the removal. Within forty-eight (48)
25 hours after removal, the Director shall notify the owner in writing of the removal and the

1 reasons for removal. The notice shall also inform the owner of the right to request, either in
2 writing or in person, within ten (10) business days of the date of the postmark of such written
3 notice, a meeting with the Director to determine whether such removal was proper.

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

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

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

24 (A) Notice of Violation and Impoundment. The Director shall post a notice of violation
25 on the unauthorized fixed pedestal newsrack or freestanding newsrack, and shall use all

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

16 (B) Meeting and Decision. Upon timely request, the Director shall provide such a
17 meeting by the close of the next business day following receipt of the request, unless the
18 owner agrees to a later date. The proceeding shall be informal, but oral and written evidence
19 may be offered. The Director shall give his or her decision in writing to the owner within three
20 (3) business days after such meeting. If no meeting has been requested, and/or the Director
21 finds that the impoundment was proper, the Director shall notify the owner that the impounded
22 newsrack may be recovered following payment of a \$200.00 administrative penalty pursuant
23 to subsection 184.12(k). The owner of an unauthorized fixed pedestal unit shall also be
24 responsible for restoring the sidewalk to its original condition pursuant to subsection
25 184.12(f)(1). If the Director finds that the impoundment was improper and/or that placement

1 of the fixed pedestal unit or freestanding newsrack was lawful, the Director shall order the
2 immediate release to the owner and reinstallation by the City at its expense of the fixed
3 pedestal unit or freestanding newsrack without charge.

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

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

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

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

23 (C) Disablement of Newsracks. The Director may disable a newsrack box in
24 accordance with this subsection, subject to the resolution of any appellate or review process
25 initiated by the permit holder, following either (1) the written decision of the Director upholding

1 the determination of a violation; or (2) where the permit holder or owner has neither requested
2 a meeting nor remedied the violation within the time periods set forth above. A newsrack box
3 that has been disabled may be recovered by the permit holder upon payment of a \$200.00
4 administrative penalty imposed pursuant to subsection 184.12(k).

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

10 (k) ADMINISTRATIVE PENALTIES; OTHER REMEDIES.

11 (1) Administrative Penalties.

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

23 (B) The Director is responsible for charging and collecting any penalty or fee assessed
24 pursuant to this subsection. The Director shall notify in writing the person or publication
25

1 responsible for the violation of the cost of the penalty and declare that such costs are due and
2 payable to the Treasurer of the City and County of San Francisco.

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

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

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

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

23 (I) IMPLEMENTATION AND APPLICATION TO EXISTING NEWSRACKS. The
24 Director is instructed to promptly phase in the implementation of this section in consultation
25 with the Newsrack Advisory Committee. In order to accomplish this purpose, the Director is

1 authorized to establish implementation areas within fixed pedestal zones and to establish
2 dates by which all fixed pedestal units in the implementation areas shall be in compliance with
3 the requirements of this subsection, and by which all freestanding newsracks and
4 unauthorized fixed pedestal units shall be removed. The deadlines for compliance with this
5 section and the Director's guidelines shall be prominently posted in the implementation areas
6 not less than thirty (30) days prior to the date for initial implementation specified in the
7 guidelines. Publications shall have ninety (90) days from the initial date specified in the
8 guidelines to come into compliance with the provisions of this section and the guidelines
9 promulgated under this section. Deadlines for compliance with these requirements shall be
10 published in the City's official newspaper.

11 (m) APPEALS.

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

1 Director's determination, including the facts relied on in the determination, with citations to any
2 provisions of this Section and the guidelines upon which the Director relies.

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

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

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

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
8 statutes and rules, including Section 1094.8 of the Code of Civil Procedure and San Francisco
9 Superior Court Uniform Local Rules of Court, Rule 8.16, revised July 1, 1999, both of which
10 provide for expedited judicial review of the denial of a permit for an activity protected by the
11 First Amendment. Pursuant to Section 1094.8(c) of the Code of Civil Procedure, the City
12 hereby designates fixed pedestal permits as eligible for expedited judicial review pursuant to
13 Section 1094.8.

14 (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; (v) electronic mail sent to an electronic mail address that the intended recipient has
20 provided to the Director for that purpose; or (vi) air courier addressed to the party or parties for
21 whom intended at the addresses set forth in the party's applications or such other address as
22 the intended recipient shall have designated in writing to the Director from time to time
23 (provided, however, notice of change of address or facsimile number shall be effective only
24 upon receipt).

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

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

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

22 (p) LIMITATION OF LIABILITY. By adopting this section, the City and County of San
23 Francisco is assuming an undertaking only to promote the general welfare. It is not assuming,
24 nor is it imposing on its officers and employees, an obligation for breach of which it is liable in
25 money damages to any person who claims that such breach proximately caused injury. This

1 subsection shall not affect any rights that may be available under a vendor contract and shall
2 not create any such rights.

3 (q) SEVERABILITY. If any provision, subdivision, paragraph, phrase or clause of this
4 section or the application of this section is for any reason held to be invalid or unconstitutional
5 by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness
6 of the remaining portions of this section. The Board of Supervisors declares that it would
7 have passed each section, paragraph, sentence, clause or phrase of this section irrespective
8 of the fact that any portion of this section could be declared unconstitutional, invalid or
9 ineffective. This subsection shall not affect the terms of any vendor contract or the rights or
10 obligations of any party to such a contract under such a contract.

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

13 By:

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15 WAYNE SNODGRASS
16 Deputy City Attorney
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LEGISLATIVE DIGEST

[Requiring publishers using newsracks to provide email contact information, allowing notices of violation to be sent via email, requiring violations to be corrected within 7 days of notice by email, authorizing administrative penalties, authorizing consolidation of underused pedmount newsracks, allowing space in pedmount newsracks to be allocated on a first-come-first-served basis, and reducing pedmount newsrack fee.]

Ordinance amending the San Francisco Public Works Code by amending Sections 184.2, 184.6, 184.8, and 184.12 thereof, relating to newsracks, to provide for: (1) the use of electronic mail for notices of violations; (2) removal of abandoned newsracks or newsracks maintained in violation of the Public Works Code within 7 calendar days of notice of violation sent by electronic mail; (3) imposition of administrative fines for violations resulting in newsrack seizures; (4) consolidation and/or reduction in size of fixed pedestal newsracks at under-used locations; (5) allocation of space in newsrack boxes on a first-come-first-served basis under certain circumstances; and (6) reduction of the fixed pedestal permit fee from \$60 to \$50.

Existing Law

With respect to freestanding newsracks, current law does not require publishers using such newsracks to give the Department of Public Works ("DPW") email contact information, does not provide for notices to be emailed to publishers, requires publishers to correct violations within 10 business days, and does not provide for administrative fines. With respect to pedestal-mounted newsracks, current law does not provide a way to replace a large pedmount of which numerous cubicles are not in use with a smaller pedmount or to reduce the number of pedmounts at an intersection when many of their cubicles are not in use. Current law also requires that unused pedmount cubicles be re-allocated according to a formal process typically requiring DPW to meet with all interested publishers. The fee for a publisher to occupy a cubicle in a pedmount is currently \$60 per year.

Amendments to Current Law

With respect to freestanding newsracks, this legislation would require publishers using such racks to provide email contact information, authorize DPW to send notices to publishers via email, and require publishers notified by email of newsrack violations to correct those violations within seven calendar days. It also would allow for DPW to issue administrative fines for newsrack violations. With respect to pedmount newsracks, this legislation would allow DPW to consolidate groups of pedmounts at an intersection, or reduce the size of particular pedmounts, when many of the ped mount cubicles are abandoned or not in use despite attempts by DPW to re-assign them to other publishers. It also would allow DPW to

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make such re-assignments on a first-come-first-served basis under certain circumstances. It would also reduce the annual fee for a pedmount newsrack permit from \$60 to \$50.

Background Information

These changes recognize the increased use of electronic mail communication and the need to facilitate enforcement of, and promote compliance with, the rules governing freestanding newsracks. The proposed changes to the pedmount newsrack laws are in response to the numbers of vacant pedmount cubicles, and seek to facilitate re-assignment of cubicles and thereby minimize the number of pedmount cubicles remaining vacant.