

1 [Regulation of Newsracks: Amendment of Space Allocation Provisions of Fixed Pedestal
2 Newsrack Program.]

3 **Ordinance amending Section 184.12 of the San Francisco Public Works Code to**
4 **provide that priority in allocation of space in fixed pedestal newsracks shall be given to**
5 **publications that were historically distributed from freestanding newsracks at the**
6 **locations of the fixed pedestal newsracks and that are published one or more times per**
7 **week.**

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

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

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

15 **SEC. 184.12. FIXED PEDESTAL NEWSRACKS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (H) Respect publications' interests in effective distribution, including by (i) allowing
12 publications that are published one or more times per week and are currently distributed from
13 freestanding newsracks to receive distribution space in fixed pedestal units located at, or as
14 close as reasonably possible to, the locations of such freestanding newsracks; (ii) allowing
15 publications that are not currently distributed from freestanding newsracks, or that are currently
16 distributed from freestanding newsracks and are published less often than once per week, to receive
17 distribution space in fixed pedestal units, (iii) allowing the number, locations, and usage of
18 fixed pedestal units to change over time in response to changing market conditions; and (iv)
19 specifying reasonable conditions under which paid publications shall have the right to repair,
20 maintain, replace or otherwise engage in self-help as to specific components of newsrack
21 boxes they occupy that relate to newsrack box functionality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (11) "Initial implementation" means the first stage of implementation of this section
7 throughout a fixed pedestal zone, and shall include the selection of locations for initial fixed
8 pedestal units in that zone which are as close as possible to the former locations of
9 freestanding newsracks, in compliance with this section and the guidelines; the allocation of
10 space within those units to historically present publications *that are published one or more times*
11 *per week* and, if possible, to other interested publications; and the installation of those units.

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

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

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

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

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

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

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

10 (19) "Section" or "this section," or "any subsection thereof" means Article 5.4, Section
11 184.12 of the San Francisco Public Works Code.

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

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

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

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

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

7 (i) First survey that group of freestanding newsracks in that area that is located on the
8 curb side of the sidewalk (as opposed to the property line side of the sidewalk) and is located
9 closest to the corner. Within that group, the Director shall first survey those freestanding
10 newsracks that face toward the property line, starting with those closest to the corner, and
11 shall then survey those freestanding newsracks that do not face toward the property line,
12 starting with those closest to the corner;

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

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

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

23 (i) First survey that group of freestanding newsracks in that area that is located on the
24 curb side of the sidewalk and that a vehicle moving on that side of the street would first
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1 encounter. Within that group, the Director shall first survey those freestanding newsracks that
2 face toward the property line, proceeding from newsrack to newsrack in the direction in which
3 vehicular traffic on that side of the street moves, and shall then survey those freestanding
4 newsracks that do not face toward the property line, again proceeding from newsrack to
5 newsrack in the direction in which vehicular traffic on that side of the street moves;

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

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

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

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

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

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

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

9 (1) Promulgation of Guidelines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (4) Content-Based Discrimination Prohibited. The Director shall not consider the
2 content or viewpoint of the material to be distributed through fixed pedestal units in
3 administering or enforcing this section, or in adopting or implementing guidelines pursuant to
4 this section. Nothing in this paragraph shall be construed as limiting the authority of the
5 Director to require blinder racks for adult-oriented publications in accordance with subsection
6 184.12(i).

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

1 (6) Fees.

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

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

5 (e) PERMIT REQUIREMENT.

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

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

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

3 (4) Permit Issuance.

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

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

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

3 (6) Permit Revocation.

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

17 (B) The grounds for revocation of a fixed pedestal permit are: (i) the permit holder did
18 not submit the required permit fee, as specified in the guidelines, within ten (10) business
19 days of the Director's approval of the voluntary space allocation agreement or of the space
20 allocation meeting at which the permit holder was allocated the newsrack box that is the
21 subject of the permit; (ii) the permit holder did not submit the required annual fee on time; (iii)
22 the newsrack box that is the subject of the permit has been vacated pursuant to subsection
23 184.12(j)(3)(D); (iv) the newsrack box that is the subject of the permit has been abandoned
24 pursuant to subsection 184.12(b)(1); or (v) the Director's decision to grant the permit was
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1 successfully challenged by a person aggrieved by the determination pursuant to subsection
2 184.12(m) and the guidelines. In addition, the Board of Supervisors may at any time in its
3 exclusive legislative discretion elect to repeal or amend this section and thereby render null
4 and void any permits issued pursuant this section.

5 (f) ESTABLISHMENT OF FIXED PEDESTAL ZONES.

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

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

22 (3) Fixed Pedestal Zones.

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

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

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

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

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

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

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

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

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

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

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

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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 implement this
4 section in a manner that maintains some of the fixed pedestal units authorized under a vendor
5 contract in reserve. Such reserve shall be numerous enough to allow the maximum number of
6 fixed pedestal units that can be installed in existing fixed pedestal zones in compliance with
7 this section and the guidelines, to be installed in those zones. No request, petition, or plan for
8 a fixed pedestal unit that complies with this Section and the guidelines shall be denied on the
9 ground that one or more fixed pedestal units are being held in reserve.

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

11 (1) General.

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

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

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

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

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

6 (i) First priority shall be given to publications that were historically present in the area
7 (as defined in Section 184.12(b)(10)) in which were located the freestanding newsracks that
8 the fixed pedestal unit or cluster of fixed pedestal units is intended to replace and are published
9 one or more times per week.

10 (ii) Second priority, in the case of fixed pedestal units) that are located at a corner area
11 (as defined in Section 184.12(b)(10)), shall be given to those publications that were
12 historically present in the immediately adjacent midblock area and are published one or more
13 times per week. Second priority, in the case of fixed pedestal unit(s) that are located at a
14 midblock area (as defined in Section 184.12(b)(10)), shall be given to those publications that
15 were historically present in the immediately adjacent corner area and are published one or more
16 times per week.

17 (iii) Third, priority shall be given to all other publications that have applied for space in
18 the fixed pedestal unit or cluster of fixed pedestal unit, including, subject to Section
19 184.12(h)(1)(a) publications that were historically present at that area or an immediately
20 adjacent midblock area but have already received one newsrack box in that unit or cluster on
21 the basis of such historical presence.

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

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

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

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

17 (i) First priority shall be given to each publication that was historically present in the
18 zone, according to the most recently completed survey of that zone, that is published one or
19 more times per week, and that, during initial implementation in that zone, sought but did not
20 receive the maximum number of newsrack boxes that could be allocated to it on the basis of
21 historical presence, in accordance with this section and the guidelines.

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

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

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

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

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

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

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

6 (B) The twelve (12) month period within which a historically present publication *that is*
7 *published one or more times per week* must have used a freestanding newsrack in order to obtain
8 first priority in such allocation shall consist of the twelve (12) months before the newsrack box
9 became available for re-allocation.

10 (5) Relocated Fixed Pedestal Units. Space in a fixed pedestal unit that has been
11 relocated due to excessive repair costs pursuant to a vendor contract shall be allocated in the
12 same manner as space in a petition unit, provided that the twelve (12) month period within
13 which a historically present publication *that is published one or more times per week* must have
14 used a freestanding newsrack in order to obtain first priority in such allocation shall consist of
15 the twelve (12) months before the Director selects the location at which the fixed pedestal unit
16 shall be installed.

17 (6) Split Door Newsrack Boxes.

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

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

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

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

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

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

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

22 (A) Every fixed pedestal unit and newsrack box shall be maintained in a neat and clean
23 condition and in good repair at all times. The vendor shall be responsible for inspecting fixed
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1 pedestal units and newsrack boxes under its control to ensure compliance with this section no
2 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 on
19 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;

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

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

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

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

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

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

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

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

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

1 (C) Where a vendor contract authorizes any publication to perform or to receive
2 reimbursement from the vendor for any repair, maintenance, or replacement of any part of a
3 fixed pedestal unit, each publication exercising such authority shall comply with all conditions
4 or restrictions on such authority as may be stated in this section, the guidelines, and the
5 vendor contract. Except as otherwise provided in the vendor contract, each publication shall
6 use only vendor-approved parts, cleaning products, and methods to perform any repair,
7 maintenance or replacement of any part of a fixed pedestal unit authorized by that vendor
8 contract.

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

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

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

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

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

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

24 (j) ENFORCEMENT; VIOLATIONS; HEARINGS.
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1 (1) Newsracks posing an immediate danger to persons, vehicles or property. The
2 Director is authorized to remove and impound without prior notice any newsrack that poses an
3 immediate danger to persons, vehicles or property. Such removal and impoundment shall be
4 in accordance with the notice and hearing procedures set forth below.

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

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

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

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

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

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1 (B) Meeting and Decision. Upon timely request, the Director shall provide such a
2 meeting by the close of the next business day following receipt of the request, unless the
3 owner agrees to a later date. The proceeding shall be informal, but oral and written evidence
4 may be offered. The Director shall give his or her decision in writing to the owner within three
5 (3) business days after such meeting. If no meeting has been requested, and/or the Director
6 finds that the impoundment was proper, the Director shall notify the owner that the impounded
7 newsrack may be recovered following payment of a \$200.00 administrative penalty pursuant
8 to subsection 184.12(k). The owner of an unauthorized fixed pedestal unit shall also be
9 responsible for restoring the sidewalk to its original condition pursuant to subsection
10 184.12(f)(1). If the Director finds that the impoundment was improper and/or that placement of
11 the fixed pedestal unit or freestanding newsrack was lawful, the Director shall order the
12 immediate release to the owner and reinstallation by the City at its expense of the fixed
13 pedestal unit or freestanding newsrack without charge.

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

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

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

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

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

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

22 (k) ADMINISTRATIVE PENALTIES; OTHER REMEDIES.

23 (1) Administrative Penalties.

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

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

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

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

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

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

13 (I) IMPLEMENTATION AND APPLICATION TO EXISTING NEWSRACKS. The
14 Director is instructed to promptly phase in the implementation of this section in consultation
15 with the Newsrack Advisory Committee. In order to accomplish this purpose, the Director is
16 authorized to establish implementation areas within fixed pedestal zones and to establish
17 dates by which all fixed pedestal units in the implementation areas shall be in compliance with
18 the requirements of this subsection, and by which all freestanding newsracks and
19 unauthorized fixed pedestal units shall be removed. The deadlines for compliance with this
20 section and the Director's guidelines shall be prominently posted in the implementation areas
21 not less than thirty (30) days prior to the date for initial implementation specified in the
22 guidelines. Publications shall have ninety (90) days from the initial date specified in the
23 guidelines to come into compliance with the provisions of this section and the guidelines

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1 promulgated under this section. Deadlines for compliance with these requirements shall be
2 published in the City's official newspaper.

3 (m) APPEALS.

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

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

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

14 (3) The Board of Appeals shall determine whether the action taken by the Director was
15 proper solely based on the provisions of this section and the Director's guidelines. If the
16 determination of the Board differs from that of the Director, the Board shall, in a written
17 decision, specify wherein there was error in interpretation of this section or the guidelines
18 promulgated under this section, or abuse of discretion on the part of the Director, and shall
19 specify in its findings, as part of such written decision, the facts relied upon in arriving at its
20 determination. The determination of the Board shall be final and conclusive.

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

8 (n) NOTICE PROCEDURES.

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

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

19 (3) All notices and other communications shall be deemed to have been rendered or
20 given (i) if sent by registered or certified mail, on the date it is officially recorded as delivered
21 to the intended recipient by return receipt or equivalent, and in the absence of such record of
22 delivery, the effective date shall be presumed to have been on the fifth business day after the
23 date when it shall have been deposited in the mail; (ii) if sent by expedited messenger service,
24 on the date it is officially recorded by the messenger service carrier as delivered to the
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1 intended recipient; (iii) if personally delivered, upon receipt by an authorized representative;
2 (iv) if by facsimile, one (1) hour after its transmission, if such time is during the hours of 9:00
3 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
4 succeeding business day in place of the receipt, subject to having in fact been received in
5 legible form; and (v) if sent by air courier, one (1) business day after delivery to an air courier
6 for overnight expedited delivery.

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

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

17 (q) SEVERABILITY. If any provision, subdivision, paragraph, phrase or clause of this
18 section or the application of this section is for any reason held to be invalid or unconstitutional
19 by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness
20 of the remaining portions of this section. The Board of Supervisors declares that it would have
21 passed each section, paragraph, sentence, clause or phrase of this section irrespective of the
22 fact that any portion of this section could be declared unconstitutional, invalid or ineffective.

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1 This subsection shall not affect the terms of any vendor contract or the rights or obligations of
2 any party to such a contract under such a contract.

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

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6 By: _____
7 WAYNE SNODGRASS
8 Deputy City Attorney

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