

**AMENDING CHAPTER 16-38 OF THE CITY OF BOSTON CODE – ORDINANCES,
REGULATING PLACEMENT AND MAINTENANCE OF NEWSRACKS**

City of Boston Code, Ordinances, Chapter 16-38 is hereby amended by striking the section in its entirety and inserting in place thereof the following:

16-38.1 Definitions

When used in this section the following terms shall have the following meanings:

Certificate holder means the holder of a Certificate of Compliance issued by the Commissioner in accordance with the provisions of this section.

Certificate of Compliance means the certificate issued by the Commissioner on a yearly basis to the certificate holder upon successful completion of the application process each year.

Commissioner means the Commissioner of Public Works of the City of Boston, or such person as said Commissioner may delegate.

Corral means a structure which allows for the appropriate placement of newsracks within designated high traffic areas.

Newsrack means any type of unmanned device for the vending or free distribution of newspapers, periodicals or printed material of whatever nature located in or on a public way.

Newsrack sticker means a sequentially numbered sticker issued by the Commissioner for placement on individual newsracks in accordance with the provisions of this section.

Operator means any natural person or other legal entity including, but not limited to, corporations, partnerships, joint ventures and the like who either own, operate or are otherwise in control of a newsrack located in or on a public way in the City of Boston.

Public way means any public highway, private way laid out under authority of statute, way dedicated to public use, or way under control of the park commissioner or other body having like power.

16-38.2 Certificate of Compliance

a. Requirement. No person shall affix, erect, construct or maintain a newsrack in or on any part of a public way without first obtaining a yearly Certificate of Compliance from the Commissioner in accordance with the provisions of this section. Only one annual Certificate of Compliance per publication shall be required.

b. Application process. Each operator of newsracks who intends to place newsracks in any part of the public way must complete a written application on a yearly basis on a form provided by the Commissioner.

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c. *Application.* The application shall describe in detail the location of each newsrack and be accompanied by a sketch or photograph of each newsrack location showing compliance with the standards set forth in 16-38.3(c) and indicating the distance, in feet, of the newsrack from curbs, crosswalks, fire hydrants, street lights, trash receptacles, traffic signal equipment, bike racks, and mail boxes within a twenty-foot radius of the newsrack. The application sketch or photograph must also demonstrate that the placement of the newsrack is in compliance with the regulations of the State Architectural Access Board, 521 CMR, and will not reduce the clear space for the passage of pedestrians to less than four (4') feet. The application shall also include:

1. The name, address, telephone number, and email address, of the applicant who is the operator of the newsrack(s);
2. The name, address, telephone number and email address of a natural person (if different from the applicant) who the City may notify and/or contact at any time concerning the operator/applicant's newsrack(s);
3. A certificate of insurance naming the City of Boston as an additional insured in an amount approved by the Commissioner as sufficient to indemnify the City and hold it harmless from any and all claims or judgments for personal injury, including death, or property damage and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the design, placement, installation, operation or maintenance of any of the applicant/operator's newsrack(s).
4. A signed statement holding the City harmless for any damage to the newsracks as the result of routine City maintenance, including but not limited to snowplowing and street cleaning, or as the result of reasonable enforcement of these provisions.
5. A signed statement indicating whether notice regarding newsracks may be sent by electronic mail.

d. *Issuance of Certificate of Compliance.* Each year, within thirty (30) days of the submission of a completed application, upon a finding that the applicant is in compliance with the provisions of the section, the Commissioner shall issue a Certificate of Compliance. Included with the Certificate of Compliance shall be an appropriate number of sequentially numbered newsrack stickers. Each sticker shall correspond with a specific newsrack, the location of which had been approved as part of the application process. Only those newsrack(s) that have been issued a newsrack sticker in conjunction with the issuance of a Certificate of Compliance shall be deemed approved. The Commissioner shall approve proposed locations on a first come, first serve basis. No preference shall be given to operators who may have had newsracks in a particular location prior to the effective date of this section. No publication shall be approved for more than one newsrack at any particular location.

e. *Denial of Certificate of Compliance.* If an application for a Certificate of Compliance is denied in whole or in part, the Commissioner shall state the specific reasons for denial. The Commissioner shall assist the applicant in determining reasonable alternative locations to those which were denied. Any applicant who has been denied a Certificate of Compliance may appeal such denial to the Public Improvement Commission

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(PIC) by submitting a written request for such a hearing to the Commissioner. Such hearing shall be heard at the next regularly scheduled hearing or within thirty (30) days. The PIC shall issue a decision within ten (10) days and any decision shall be subject to M.G.L. c. 30A.

f. Fees for Certificate of Compliance. The application fee for each yearly Certificate of Compliance shall be three hundred (\$300.00) dollars to cover the administrative costs of processing the application plus an annual fee of twenty-five (\$25.00) dollars per newsrack to cover the administrative costs of monitoring compliance with these provisions.

g. Amending Certificate of Compliance. If within the applicable year after the Commissioner has issued a Certificate of Compliance the certificate holder wishes to install additional newsracks, beyond those which have been approved under 16-38.2(d), the certificate holder must submit an application to amend the Certificate of Compliance. Only the twenty-five (\$25) dollars per newsrack fee shall apply to such amendments.

16-38.3 Installation

a. Stickers. Each newsrack shall prominently display the newsrack sticker issued by the Commissioner pursuant to the provisions of 16-38.2(d). The sticker must be adhered to the specifically designated newsrack.

b. Standards. Any newsrack placed in any part of the public way shall be:

1. Made of metal, plastic or an equivalent sturdy material approved by the Commissioner, with a clear plastic window through which the printed material is dispensed, and shall not be more than 50 inches in height and not more than 32 inches in length and width;
2. Sufficiently weighted and secure so as not to be easily moved or tipped over; and
3. Completely enclosed, with a self-closing door that is either self-latching or otherwise requires manual or mechanical release at each use.

c. Placement. Placement of any newsracks must be done in accordance with 16-38.2 (c) & (d) and 16-38.3(d), the regulations of the Architectural Access Board, 521 CMR, and subject to the following prohibitions. Newsracks shall be placed parallel to and not less than eighteen (18") inches nor more than twenty-four (24") inches from the edge of the curb. No newsrack shall be placed within one hundred fifty (150') feet of another newsrack containing the same newspaper or periodical unless approved by the Commissioner after a demonstration that the placement of two such newsracks would not impair traffic, affect accessibility or otherwise create a hazardous situation. Newsracks placed near a building or structure must be placed parallel to and not more than six (6") inches from the wall and shall **not** be placed:

1. At any location whereby the clear space for pedestrian passage is reduced to less than four (4') feet;
2. Within five (5') feet of any marked or unmarked crosswalk;

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3. Within five (5') feet of any fire hydrant, fire lane, fire call box, or other emergency facility;
4. Within five (5') feet of any traffic control signal or traffic sign;
5. Within five (5') feet of any mailbox, bicycle rack, City trash receptacle: telephone booth or stand;
6. Within five (5') feet of any part of a curb return of a curb ramp or driveway, or in the case of a curb ramp or driveway without a curb return, within five (5') feet of the point where the curb edgestone or edging begins a change in grade toward the driveway or ramp on each side thereof, or in the case of a termination of the curb, edgestone or edging without a change in grade or a turn, within five (5') feet of the point of the same terminates on each side of the ramp or driveway;
7. Within five (5') feet ahead or fifteen (15') feet to the rear of any designated bus stop, taxi stand, valet parking area, loading zone or fire lane; and
8. Which in any way protrudes onto a street or interferes or hinders city removal of snow, ice, and debris from the streets and sidewalks.

Should circumstances require relief from a placement provision set forth above, the Commissioner shall have the discretion to grant relief upon a sufficient demonstration of actual hardship by the certificate holder.

d. Placement at designated high traffic areas. In the interest of maintaining safe, accessible and unobstructed pedestrian flow, the Commissioner may designate certain areas of the City as high pedestrian traffic areas. Freestanding newsracks shall not be allowed in such designated areas. The Commissioner shall determine the appropriate placement of newsracks, through the use of corrals or other similar devices as the Commissioner deems necessary. The Commissioner is authorized to establish high pedestrian traffic areas subject to the following requirements:

1. The Commissioner shall determine the location of the corrals or other similar devices consistent with the purpose and intent of this section based on the following criteria: (i) whether the area has a large amount of pedestrian traffic; (ii) whether limited space is available for freestanding newsracks; and (iii) whether said designation is consistent with the goal of eliminating pedestrian congestion and enhancing pedestrian safety in the area.
2. Within five (5) days of designating a high pedestrian traffic area, the Commissioner shall send written notice by certified mail to all operators. The notice shall contain the following information: (i) the precise area being designated; (ii) the date the designated area regulations will go into effect, which shall be at least thirty (30) days after sending the notice; and (iii) the procedure for obtaining a slot in the area corral or other similar device.

Under no circumstances shall a corral or other similar device impede visibility of an operator's location contained therein when viewed from the front of such device. Under no

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circumstances shall the corral or other similar device impede visibility of an operator's location by more than fifty percent (50%) when viewed from the rear of the device.

The Commissioner shall approve high traffic area locations on a first come, first serve basis. No preference shall be given to operators who may have had newsracks in a particular location prior to the effective date of this section. No publication shall be approved for more than one location at any particular high traffic area.

e. Attachment to Property. No operator shall chain or otherwise attach any newsrack to any other newsrack, tree, street light post, traffic signal or sign, or other city infrastructure in the public way.

f. Groupings of newsracks. Newsracks may be grouped together side-by-side, provided that no group of newsracks extends beyond ten (10') feet along a curb, and a space of not less than five (5') feet separates each group of newsracks. Notwithstanding this permissible grouping, no newsrack may be grouped with any other newsrack unless such location has been approved pursuant to 16-38.2(c) & (d).

g. Advertising prohibited. It shall be unlawful for any person to use a newsrack for advertising or publicity purposes other than dealing with the display, sale or purchase of the publications dispensed therein.

16-38.4 Maintenance

a. Condition. Each newsrack shall be maintained in a state of good repair and in a neat and clean condition, and free of accumulations of outdated printed materials, trash, rubbish, or debris.

b. Service. Each newsrack shall be regularly serviced so that:

1. It is kept reasonably free of graffiti;
2. It is kept reasonably free of chipped, faded, peeling and cracked paint or rust and corrosion;
3. The clear plastic window through which the printed material is dispensed is not broken and is kept reasonably free of tears, peeling or fading; and
4. The structural parts of the newsrack are not broken or unduly misshapen.

16-38.5 Enforcement

a. Nonconforming Newsracks. Any newsrack found not to be in compliance with this section shall be subject to the enforcement provisions contained herein.

b. Enforcement. The Commissioner shall enforce the provisions of this chapter and shall have the authority to issue regulations for the purpose of enforcement.

1. Upon a determination that a newsrack placed in any part of a public way is in violation of section 16-38.2(d) and the Commissioner has no record on file of a Certificate of

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Compliance for said newsrack, such newsrack shall be removed immediately and notice of such removal shall be sent within three (3) days, by certified mail, to the individual provided pursuant to 16-38.2(c) (1) or (2). If the certificate holder has agreed, such notice shall be sent by electronic mail. If no such application or individual exists pursuant to 16-38.2(c)(1) or (2), notice of such removal shall be sent within three days, by certified mail, to the operator. Such notice shall include:

- (a) The location of the newsrack and sticker, if any;
- (b) The date of the incident or other cause giving rise to the violation;
- (c) A brief and concise statement of the facts causing the violation; and
- (d) The location where the newsrack has been stored.

2. Upon a determination that a newsrack properly installed pursuant to this section is in violation of sections 16-38.3 or 16-38.4, the Commissioner shall send, by certified mail, notice to the individual provided pursuant to 16-38.2(c)(1) or (2). If the certificate holder has agreed, such notice shall be sent by electronic mail. Such notice shall include:

- (a) The newsrack sticker number and location;
- (b) The date of the incident or other cause giving rise to the violation;
- (c) A brief and concise statement of the facts causing the violation; and
- (d) A statement informing the certificate holder that at the expiration of ten (10) days from the date the notice is received the newsrack will be removed by the Commissioner, unless the violation is corrected.

3. Upon removal of any newsrack pursuant to 16-38.5(b)(2)(d) the Commissioner shall send written notice, within ten (10) days to the individual provided pursuant to 16-38.2(c)(1) or (2). If the certificate holder has agreed, such notice shall be sent by electronic mail, otherwise such notice shall be sent by certified mail.

4. Any person aggrieved by 16-38.5(2) and/or (3) may appeal such action to the PIC by submitting a written request for such a hearing to the Commissioner. Such hearing shall be heard at the next regularly scheduled hearing or within thirty (30) days. The PIC shall issue a decision within ten (10) days and any decision shall be subject to M.G.L. c. 30A.

5. When the Commissioner determines that removal of a newsrack is required to prevent an imminent threat to public safety, the Commissioner shall remove such newsrack immediately and shall notify the certificate holder of such removal as soon as practicable.

6. Any newsrack removed pursuant to this subsection shall be stored for at least thirty (30) days. Any newsrack without a sticker and corresponding Certificate of Compliance may be disposed of after thirty (30) days. All other newsracks may be disposed of after sixty (60) days.

16-38.6 Abandonment

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a. *Abandonment.* The following newsracks properly installed pursuant to this section shall be deemed abandoned:

1. Any newsrack which does not contain the printed material being dispensed therein for a period of seventy-two (72) hours after the release of the current issue; or
2. Any newsrack in which no printed material is found for a period of more than fifteen (15) days.

b. *Notice and Removal.* Upon a determination that a newsrack is abandoned, the Commissioner shall send notice to the individual provided pursuant to 16-38.2(c)(1) or (2), informing the certificate holder that the newsrack shall be removed in ten (10) days, unless the certificate holder informs the Commissioner that the newsrack is not abandoned and stocks the newsrack with material to be dispensed therein.

c. *Voluntary abandonment.* In the event that a certificate holder voluntarily abandons a newsrack location, the certificate holder shall so notify the Commissioner, completely remove the newsrack and restore the public way to a safe condition.

16-38.7 Fees

a. A newsrack removed pursuant to this section may be retrieved by the certificate holder at any time within thirty (30) days of its removal upon payment of a removal fee of fifty (\$50.00) dollars plus a storage fee of ten (\$10.00) dollars per day, to a maximum combined removal and storage fee of two hundred (\$200.00) dollars per newsrack.

b. After thirty (30) days, any newsracks removed by the Commissioner pursuant to this section shall be deemed "abandoned property" and become property of the City of Boston.

c. Failure of a certificate holder to retrieve a newsrack within the specified thirty (30) day period shall not operate to dismiss any fees owed to the City of Boston for removal and storage of such newsrack. Unpaid fees accrued pursuant to this subsection shall be considered a debt payable to the City of Boston.

16-38.8 Effect on Other Laws

Nothing in this section shall affect the adoption of regulations affecting newsracks by other government bodies, such as historic district commissions, to the extent such bodies are authorized to adopt such regulations.

16-38.9 Severability

The provisions of this section shall be severable and if any section, part, or portion hereof shall be held invalid for any purpose by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining section, part or portion thereof.

16-38.10 Initial Application Acceptance Date

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The Commissioner shall send written notice to all operators affected by this section informing them of the date when the Commissioner will accept the first applications for Certificates of Compliance. The Commissioner shall send said notice at least thirty (30) days prior to the initial application acceptance date.

16-38.11 Effective Date

This section shall take effect one hundred fifty (150) days from the date of approval.