

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2704

**ORDINANCE ADOPTING SAN DIEGO UNIFIED
PORT DISTRICT CODE ARTICLE 11 –
REGULATION OF NEWSRACKS ON SAN DIEGO
UNIFIED PORT DISTRICT TIDELANDS**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I, (Port Act); and

WHEREAS, section 21 of the Port Act permits the Board of Port Commissioners (BPC) to pass all necessary ordinances for the regulation of the District; and

WHEREAS, section 35 of the Port Act requires the BPC to make local regulations pertaining to the use of all public services in the District, operated in connection with or for the promotion and accommodation of commerce, navigations, fisheries, navigation and recreation on District Tidelands; and

WHEREAS, the number of visitors to the tidelands requires the maintenance of public safety by preserving ingress and egress for pedestrian, bicyclists, pedicabs, visitors parking their vehicles, traffic circulation and tenant business operations; and

WHEREAS, unregulated placement of newsracks adversely impacts the District as a place to visit and may present public safety risks; and

WHEREAS, District staff has received complaints from the public, District tenants and stakeholders regarding newsracks blocking the sidewalks and access to Tidelands; and

WHEREAS, District staff retained HDR Engineering Inc. to study newsrack ordinances from other jurisdictions and the newsracks on District tidelands; and

WHEREAS, the District also retained outside counsel Deborah Fox of Meyers Nave to analyze the law and issues regarding implementing the ordinance; and

WHEREAS, the District's proposed ordinance is two-tiered and sets out provisions for District owned shared newsracks in an area of the North Embarcadero, and for placement of vendor owned newsracks on the remainder of District Tidelands; and

WHEREAS, staff from Harbor Police, the Port Attorney's Office, Real Estate and Strategy & Business Development conducted two public outreach meetings to discuss and review the draft newsrack ordinance; and

WHEREAS, notices and a draft of the ordinance were sent to all known publishers with newsracks on Tidelands. A news release was also sent to several hundred individuals and businesses including interested parties, media, tenants, member cities and other stakeholders; and

WHEREAS, changes were incorporated into the ordinance based on the feedback from stakeholders; and

WHEREAS, the District's ordinance complies with federal and state law, preserving the right to distribute publications through newsracks.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. Article 11 is added to the San Diego Unified Port District Code to read as follows:

SEC. 11.01 FINDINGS AND PURPOSE

- (a) The San Diego Unified Port District ("the District") makes the following findings:
1. The uncontrolled proliferation, placement and maintenance of Newsracks (as defined in Section 11.02 below) in Public rights-of-way presents an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.
 2. Newsracks which disseminate Publications so located as to cause an inconvenience or danger to persons using Public rights-of-way, and unsightly Newsracks located therein, constitute public nuisances.
 3. Newsracks that are not reasonably maintained in a neat and clean condition threaten the general welfare, including the aesthetic appearance, of the Public rights-of-way. Because the desirability of the District as a place to visit and do business is partly dependent on maintaining high quality views, such blight could have serious

economic consequences.

4. Without regulations, the placement of Newsracks may block pedestrian access to the shoreline and other areas of the District. Unregulated Newsracks may also decrease access to sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes, and locations used for public transportation purposes. This in turn can lead to the deterioration of facilities or higher maintenance costs.
5. Unregulated Newsracks threaten public safety by presenting hazards to both pedestrians and drivers.
6. Additional regulations specific to the North Embarcadero are necessary to protect the public health and safety, general welfare and aesthetics of the District, as well as the District's economic investments. Specifically, the North Embarcadero area of the District is undergoing redevelopment at a cost in excess of \$28 million. The revitalization plan envisions the North Embarcadero as San Diego's "front porch" with a clear pedestrian orientation allowing for visitors to celebrate the Bay. All structures are to be designed to minimize blockage of views to the waterfront and must make provisions for the continuity of public access. The specifics of the plan call for: (1) development of access to the waterfront; (2) further development of the already existing pedestrian promenade and bike path; (3) development of hotels, restaurant and entertainment facilities; and (4) development of a home port cruise ship terminal including customs and immigration facilities. The District has in some years received over 500,000 passengers annually just from cruise ships and has had over 900,000 visitors in total annually. With the redevelopment of the North Embarcadero area, this number is expected to increase.
7. Aesthetics, pedestrian access and safety can be controlled by regulating the number, size, construction, placement, and appearance of the Newsracks without limiting public access to the Publications.
8. The locational requirements contained in these regulations do not unreasonably restrict the dissemination of constitutionally protected speech including Publications. A sufficient and reasonable number of alternative locations for the distribution of Publications are provided for by these regulations. Of important note, these regulations do not serve as a total prohibition on all Newsracks but rather restrict the total number of Newsracks in certain designated areas. Ample locations for Newsracks on District property remain pursuant to these regulations, including in the redeveloped North Embarcadero area. Prior to the enactment of these regulations, many of the Newsracks placed on District property were not in use, further evidencing that setting some limitations on the location and/or numbers of Newsracks still provides for ample locations. Further, Newsracks can be placed on property adjacent to District

property, and while the District encompasses approximately 2,500 acres of waterfront property, its configuration as a narrow band around the water means that Newsracks may be available in adjacent areas just a short distance away. Finally, the Board of Port Commissioners takes note of the proliferation of the news and other information on the Internet, satellite television and direct television, and that these various media also provide alternative avenues of communication. The emergence of the Internet brings with it a virtually unlimited additional source of news, and other information available to interested persons in every community. Publications no longer have to be physically located in a specific jurisdiction to be available in the community.

9. The above findings establish that the unreasonable interference with and obstruction of Public rights-of-way by unregulated Newsracks is injurious to public health, safety and welfare, offensive to the senses, and such an obstruction of the free use of property as to interfere in the comfortable enjoyment of life and property by the entire community. The use of such Public rights-of-way is nevertheless so historically associated with the sale and distribution of Publications that access to those areas for such purposes should not be absolutely prohibited.
 10. Rather, these strong and competing interests require a reasonable accommodation which can be satisfactorily achieved through the means of this Article which is designed to accommodate such interests regulating the time, place and manner of using Newsracks.
 11. The Board of Port Commissioners in enacting this Ordinance does hereby take legislative notice of the various decisions of the United States Supreme Court including but not limited to, *Los Angeles v. Taxpayers For Vincent*, 466 U.S. 789 (1984); *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988); *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993); *Cox v. New Hampshire*, 312 U.S. 569 (1941); decisions of the Ninth Circuit including *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037 (9th Cir. 2002); decisions from other circuits including, *Gold Coast Publications, Inc. v. Corrigan*, 42 F.3d 1336 (11th Cir. 1994); *Sentinel Communications Co. v. Watts*, 936 F.2d 1189 (11th Cir. 1991); *Jacobsen v. Harris*, 869 F.2d 1172 (8th Cir. 1989); *Chicago Observer, Inc v. City of Chicago*, 929 F.2d 325 (7th Cir. 1991); and *Globe Newspaper Co. v. Beacon Hill Architectural Comm'n*, 100 F.3d 175 (1st Cir. 1996); decisions of the California Supreme Court including, *Kash Enterprises v. City of Los Angeles*, 19 Cal.3d 294 (1977); and decisions from district courts including, *Napa Valley Publishing Co. v. City of Calistoga*, 225 F.Supp.2d 1176 (N.D. Cal. 2002).
- (b) The purpose of the Board of Port Commissioners in enacting this

Ordinance is to secure and promote the public health, safety, and welfare of persons within the District in their use of Public rights-of-way through the regulation of placement, appearance, number, size, and servicing of Newsracks on the Public rights-of-way so as to:

1. Provide for pedestrian and driving safety and convenience;
 2. Restrict the unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress to, or egress from, any place of business, the street to the sidewalk, or any legally parked or stopped vehicle;
 3. Provide reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes, and similar appurtenances, and access to locations used for public transportation purposes;
 4. Eliminate Newsracks that may result in a visual blight on the Public rights-of-way, or that may unreasonably detract from the aesthetics of surrounding properties, adjacent businesses, store window displays, adjacent landscaping and other improvements;
 5. Maintain and protect the values of surrounding District tidelands;
 6. Maintain and protect the investment in, and aesthetics of, the revitalization plan for the North Embarcadero area;
 7. Reduce exposure of the District to personal injury or property damage claims and litigation; and
 8. Protect the right to distribute Publications through Newsracks as guaranteed by the United States and California Constitutions.
- (c) It is not the intent of this Article to in any way discriminate against, unduly regulate, or interfere with the publication, circulation, distribution, or dissemination of any material that is constitutionally protected.
- (d) It is not the intent of these provisions to regulate the placement of Newsracks on private property. It shall remain the responsibility of the Permittee to determine the property lines and ensure Newsracks are placed within the Public rights-of-way in compliance with this Article.

SEC. 11.02 DEFINITIONS

For the purpose of this Article, unless the context clearly requires otherwise, the words and phrases used herein shall have the following meanings:

"Class I" means class designation of District land as defined in the Port Master Plan that applies to shoreline areas proposed for or developed by the District for public recreational purposes.

"Class II" means class designation of District land as defined in the Port Master Plan that applies to undeveloped shoreline property.

"Class III" means class designation of District land as defined in the Port Master Plan that applies to leased, developed shoreline areas upon which private or public investment has constructed commercial facilities, as well as the adjacent rights-of-way, including sidewalks.

"Class IV" means class designation of District land as defined in the Port Master Plan that applies to non-recreational areas developed with public or private funds to accommodate industrial activities military bases and sea or air transportation facilities.

"Combination Dispenser" means a common structure housing two or more Newsracks, and is subject to the same standards and regulations as a Newsrack unless otherwise stated in this Article.

"District Owned Shared Newsrack" means a single Newsrack housing more than one publication, and is subject to the same standards and regulations as a Newsrack, unless otherwise stated in this Section. District Owned Shared Newsracks will initially be placed in an area of the North Embarcadero, but may eventually be expanded to other areas of the District.

"District Tidelands" means the tidelands administered by the District, as defined in Harbors & Navigation Code, Appendix I.

"Driveway" means a path for motor vehicles leading from a Street or Road.

"Executive Director" means the Executive Director of the San Diego Unified Port District or his or her designee.

"Hearing Officer" means Vice President of the District or other competent Person with a background in law or the dissemination of Publications, as defined herein, retained by the District to hear disputes on an as needed basis.

"Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser that rests or projects, in whole or in part, in or upon any portion of a Public Right-of-way, and is placed, used, or maintained for the display, distribution, or sale of any Publication listed in the permit granted under this Article. Unless otherwise stated in this Article, the term Newsrack includes Combination Dispenser, Newsrack Cluster, and District Owned Shared Newsrack, and the same standards and regulations shall apply to all Newsracks and any variant thereof.

"Newsstand" means a shop or open booth where any Publications are sold.

"Newsrack Cluster" means any combination Newsracks placed immediately adjacent to each other, and is subject to the same standards and regulations as a Newsrack, unless otherwise stated in this Article.

"North Embarcadero" means the area bordered by Navy Pier on the south, "B" Street Pier on the north; from the Bulkhead line at the "B" Pier, east 195ft. and from the Bulkhead line at Navy Pier east 175ft. (as detailed in the attached exhibit)

"Parkway" means the area between the sidewalk and the curb of any street, and where there is no sidewalk, the area between the edge of the Roadway and the property line adjacent thereto. "Parkway" shall also include any area within a Roadway that is not open to vehicular travel.

"Publications" means any printed work offered for sale or distribution including but not limited to newspapers, news periodicals, magazines, periodicals, booklets, brochures, leaflets, handbills, or other written material.

"Permittee" means the Person or entity who receives a permit to place, use, and maintain a Newsrack on a Public right-of-way.

"Person" means any Person or persons, or entity including, but not limited to, a corporation, partnership, unincorporated association or joint venture.

"Port Master Plan" means the Master Plan adopted by the Board of Port Commissioners in 1980, as modified and certified by the California Coastal Commission in 1981, and as subsequently modified and/or amended.

"Public Right-of-way" means any place of any nature which is dedicated to use by the public for pedestrian and vehicular travel, and includes, but is not limited to, a Street, Sidewalk, curb, gutter, crossing, intersection, Parkway, highway, alley, lane, mall, court, way, avenue, boulevard, road, Roadway, viaduct, subway, tunnel, bridge, thoroughfare, park square, and any other similar public way.

"Roadway" means that part of a Public right-of-way improved, designed, or ordinarily used for vehicular travel.

"Sidewalk" means that part of a Public Right-of-way provided and ordinarily used for the exclusive use of pedestrian travel.

"Street" means that part of a Public right-of-way dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and Sidewalks.

SEC. 11.03 GENERAL PROHIBITIONS

The placement, use, or maintenance of any Newsrack in violation of this Article is prohibited, including all Newsracks that endanger the safety of persons or property, or fail to comply with all permit conditions.

SEC. 11.03.5 PERMIT ISSUANCE, DENIAL, AND APPEAL

- (a) A Person who proposes to place, use, or maintain a Newsrack in the Public Right-of-way shall first obtain a permit for such Newsrack from the Executive Director or his designee. The Executive Director shall charge a Newsrack permit fee as necessary to offset the costs of the District for establishing and administering the provisions of the ordinance. Any permit issued shall be valid for up to one year and shall be renewable. Each Newsrack, Newsrack Cluster in one location, or each placement of a Publication in a District Owned Shared Newsrack shall require a separate permit.
- (b) Upon a finding by the Executive Director that an application is complete, accurate, and in compliance with this Article, a permit shall be issued. The Executive Director shall decide to grant or deny a permit application within seven (7) business days of receipt of a complete application as set forth in Section 11.04. The Executive Director shall only grant a permit if he or she finds that the application complies with each provision of this Article.
- (c) A permit may be denied for noncompliance with this Article or for failure to provide accurate and complete information. If a permit is denied, the Executive Director shall give the applicant written notice by U.S. mail of the specific cause for denial.
- (d) Any Person affected by the Executive Director's decision to approve or

deny a permit application may appeal that decision to a Hearing Officer, which shall hear the appeal. The Hearing Officer's review of the Executive Director's decision shall be limited to the record before the Executive Director and no new evidence may be submitted. The Hearing Officer's decision is final.

- (e) Permits may not be transferred.

SEC. 11.04 PERMIT APPLICATION

A Person seeking issuance of a permit pursuant to this Article shall file with the Executive Director a written application on a form supplied by the District. The application shall include:

- (a) The name, address, and telephone number of the applicant;
- (b) The name, address, and telephone number of the applicant or other responsible Person whom the District may contact regarding the applicant's Newsrack and to whom notices may be sent;
- (c) The proposed specific location of the Newsrack by provision of a diagram or site map, drawn to scale, showing the proposed location of the Newsrack and the Sidewalk, Streets, and other adjacent improvements within twenty-five (25) feet, including, but not limited to, buildings, building entrances, Driveways, marked and unmarked crosswalks, traffic signals, street light poles, fire hydrants, bus stops and bus benches, utility poles, telephones, and existing Newsracks;
- (d) The name of the Publication, the name of the distributor/publisher, and the proposed frequency of publication;
- (e) A fee as determined by the Executive Director to cover costs;
- (f) A hold harmless agreement as detailed in Section 11.09; and
- (g) Proof of Insurance as specified in Section 11.10.

The District will develop and set up a searchable, sortable database of information about each Newsrack listed in a permit application. This information is necessary to contact Permittees, conduct hearings, and ensure compliance with the provisions of this Ordinance. Permittees are required to update information supplied on their permit application within thirty (30) calendar days of any changes thereto. The granting of permits shall not be based in any way on the content of constitutionally-protected speech.

SEC. 11.05 LOCATION RESTRICTIONS ON NEWSRACKS

Any Newsrack that rests or projects in whole or in part, in, on or over any portion of a Public Right-of-way shall be located in accordance with the following provisions:

- (a) No Newsrack shall be placed, used, or maintained such that it rests or projects in whole or in part in, on, or over any portion of any Roadway or Street.
- (b) No Newsrack shall be placed, used, or maintained such that it rests or projects in whole or in part, in, on, or over any portion of a public Sidewalk or Parkway, where such placement, use, or maintenance endangers the

safety of persons or property, or when such site or location is used for public utility, public transportation purposes, or other governmental use, or when such Newsrack unreasonably interferes with or impedes the flow of pedestrian, wheelchair, or vehicular traffic, including any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, fire hydrants, mailboxes, or other objects permitted at or near such location, or when such Newsrack interferes with the cleaning of any Sidewalk by the use of mechanical sidewalk cleaning.

- (c) No Newsrack shall be placed, used, or maintained at or within:
1. Five (5) feet of any marked or unmarked crosswalk; the outer edge of any bus bench; fire hydrant, fire sprinklers connection, fire call box, police call box, or other emergency facility; any ramp intended for use by disabled persons; any curb painted blue pursuant to provisions of California Vehicle Code § 21458; any Sidewalk obstruction, which includes but is not limited to traffic signals, street lights, trees, sign posts, and telephone or utility poles.
 2. One (1) foot of any area improved with lawn, flowers, shrubs, trees, or other landscaping.
 3. Five (5) feet ahead of or forty-five (45) feet to the rear of any sign marking a designated bus stop.
 4. Ten (10) feet of any Driveway.
 5. One hundred (100) feet of any other Newsrack on the same side of the Street containing the same issue or edition of the same Publication.
 6. Five (5) feet of the entrance or exit to any building.
 7. Five (5) feet of any window that abuts a Sidewalk, or otherwise located so as to interfere or impede the reasonable use of such window for display purposes.
 8. One hundred (100) feet of the entrance to any public gathering place where queuing of pedestrian traffic regularly occurs. Such locations shall include but are not limited to ticket booths and theater entrances.
- (d) No Newsrack shall be chained, bolted, or otherwise affixed to any property or permanently fixed object not owned by the owner of the Newsrack without the written permission of the Executive Director.
- (e) All Newsracks should be placed, used, or maintained at the edge of the Sidewalk farthest from the curb or Roadway (if any).
- (f) No Newsrack shall be located more than twelve (12) inches from the edge of the Sidewalk. Newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall. For Newsracks that must be placed at the edge of the Sidewalk closest to the road due to an impossibility to comply with (e) above, they shall be placed not less than twelve (12) inches nor more than twenty-four (24) inches from the edge.
- (g) No Newsrack shall be placed or maintained on a Sidewalk opposite a

Newsstand or another Newsrack.

- (h) All Newsracks shall be located and maintained facing inward toward the centerline of the Public Right-of-way.

SEC. 11.06 NEWSRACK CLUSTERS

- (a) Not more than three (3) Newsracks shall be placed immediately adjacent to each other, so as to constitute a Newsrack Cluster, whether chained, otherwise attached, or freestanding. Any such Newsrack Cluster of up to three (3) Newsracks shall be separated by a space of not less than 36 inches from any other individual Newsrack or Newsrack Cluster.
- (b) Notwithstanding Section 11.06(a), the Executive Director may issue a Newsrack permit allowing the placement of in excess of three (3) immediately adjacent Newsracks following written findings that:
 1. The extended Newsrack Cluster will preserve adequate space in the Public rights-of-way for the safe flow of pedestrian traffic.
 2. The extended Newsrack Cluster will otherwise comply with all provisions of this Article.

SEC. 11.07 STANDARDS FOR MAINTENANCE AND PLACEMENT

Any Newsrack that rests or projects in whole or in part, in, on, or over any portion of a Public Right-of-way shall be located in accordance with the following provisions:

- (a) No Newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width, or twenty-four (24) inches in depth overall including any pedestal or base and any coin mechanism.
- (b) No Newsrack or Combination Dispenser shall weigh, in the aggregate, in excess of one hundred twenty-five (125) pounds when empty.
- (c) No exterior or interior component of any Newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the Publication distributed or sold therein.
- (d) Each coin-operated Newsrack shall be equipped with a coin-return mechanism to permit a Person using the machine to secure an immediate refund in the event the Person is unable to receive the paid for Publication. The coin-return mechanism shall be maintained in good working order.
- (e) Each Newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the Newsrack, a notice setting forth the name, address, and permit number of the Permittee or responsible Person and the current working telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this Article.
- (f) Each Newsrack shall only contain current editions of the Publication(s) for which the permit was issued.
- (g) Each Newsrack shall have a door, covering, and/or other appropriate

device(s) preventing the Publications therein from getting wet and/or falling out due to rain, wind, or similar environmental conditions.

- (h) Each Newsrack shall be placed so as to be stable and maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each Newsrack shall be serviced and maintained so that:
1. It is reasonably free of dirt and grease; chipped, faded, peeling and cracked paint in the visible painted areas thereon; and rust and corrosion in the visible unpainted metal areas thereon.
 2. It is reasonably free of graffiti. The Permittee shall be required to remove graffiti on any Newsrack within a reasonable period of time, but not to exceed three (3) business days, of oral or written notification by the District of the existence of the graffiti. If the graffiti is not removed within that time, the distributor is deemed to have given the District authority to remove the graffiti at the Permittee's expense.
 3. The clear plastic or glass parts thereof, if any, through which the Publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration.
 4. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading.
 5. The structural parts thereof are not broken or unduly misshapen. A maintenance log documenting the Permittee's inspection of each Newsrack shall be maintained by the Permittee and be available for inspection upon request of the District.
- (i) Drop-in type anchor bolts may be used to secure Newsracks to the Public Rights-of-way in exceptional circumstances as an exception to section 11.05(d), at the discretion of the Executive Director.

SEC 11.75 STANDARDS FOR REMOVAL OF NEWSRACKS

If a Newsrack is found in violation of any provisions of Section 11.07 above notice will be given to the Permittee or responsible Person to correct the violation within ten (10) business days. Failure to conform to the provisions of Section 11.07, above, shall be cause for removal of a Newsrack. If the Executive Director or their designee concludes that the Newsrack poses an immediate threat to the safety or welfare of the public, or correction of the violation has not occurred within ten (10) business days of notice, the Newsrack may be immediately removed by the District. Upon removal of any Newsrack, the Permittee or responsible Person shall eliminate any potential hazards to the public, such as bolts, brackets, or holes, and shall restore any disturbed area of the Public Right-of-way to the same or reasonably similar condition as any adjoining Public Right-of-way by removing any protrusions, cleaning the cavity of debris, filling the cavity with high strength epoxy or grout to meet the elevation of the adjoining Public Right-of-way, and avoiding potential depressions by taking into account shrinkage and settlement of the new material. The Public Right-of-way shall be level and free of protrusions or depressions. The Permittee or

responsible Person shall match as closely as reasonably possible the color, texture, and material of any adjoining Public Right-of-way surface. Permittee shall also reimburse District for all reasonable costs associated with removal of non-conforming Newsracks.

SEC. 11.08 ADDITIONAL STANDARDS FOR THE NORTH EMBARCADERO AREA

The following additional standards apply to the North Embarcadero area:

- (a) Only District Owned Shared Newsracks shall be placed in the North Embarcadero. The size, number, composition, and location standards shall be posted on the District's website and available in the District Clerk's Office.
- (b) Space within the Newsracks shall be allocated in accordance with this section as follows:
 1. An interested Publication or distributor of multiple Publications can apply for one opening in District Owned Shared Newsrack.
 2. Limited space within the District Owned Shared Newsrack shall be allocated by frequency of Publication and each District Owned Shared Newsrack will be partitioned as follows. As determined by the Executive Director, a certain amount of spaces will be allocated to daily Publications, to weekly Publications, and to less frequent Publications. For purposes of this Article, "Daily" means a Publication of approximately five (5) new editions per week; "Weekly" means no fewer than four new editions per month; "Monthly" means no fewer than one new edition per month; "Quarterly" means no fewer than four new editions per year; "Semi-annual" means no fewer than two new editions per year; and "Annual" means no fewer than one new edition per year. District Owned Shared Newsracks shall be categorized by the lowest frequency of any Publication therein.
 3. If the number of applications for a particular frequency is less than the spaces available, the Executive Director will allow the next highest frequency to apply for that space. If space still remains, an interested party may apply for more than one space within a specified District Owned Shared Newsrack.
 4. If the number of applications exceeds the number of spaces available, the Executive Director will hold a lottery to allocate the available spaces within each frequency of Publication category.
 5. The District will adopt this lottery policy as deemed necessary by the Executive Director. The policy will be based on a lottery consisting of a random drawing or drawings awarding spaces to interested applicants within a Daily, Weekly, Monthly, Quarterly, Semi-annual, or Annual frequency of Publication category as defined above.

6. If a Person or Permittee believes the result of a lottery or the Executive Director's decision on a matter is contrary to the provisions of this Ordinance, they may request a hearing pursuant to Section 11.13

SEC 11.085 LOCATION OF NEWSRACKS IN CLASS AREAS I- IV

The Port Master Plan provides Class Areas I through IV designation for all land within its jurisdiction and in addition to the location and placement standards discussed in this Article the following requirements by Class area shall apply:

- (a) Newsracks may be located in Class I, III and IV areas so long as the location and placement of the Newsracks comply with all other provisions of this Article.
- (b) No Newsracks shall be located in areas designated as a Class II area. Newsracks in these areas would introduce foreign objects into undeveloped open space as well as encourage people to enter protected areas that may carry restricted access.

SEC 11.09 INDEMNIFICATION REQUIREMENT

An application for a permit shall include a hold harmless agreement in substantial compliance with this Section which must be executed by the Permittee prior to the issuance of any permit under this Article. The Permittee shall, in a written statement in a form approved by the Port Attorney, agree to the fullest extent provided by law to defend, indemnify, and hold harmless the District, its officers, employees, agents, and representatives, for any and all loss, claim, demand, liability, or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any Person as a result of the placement, use, placement and/or maintenance of a Newsrack within the District, except for acts by third parties out of the control of Permittee or for claims or litigation arising through the sole negligence or willful misconduct of the District. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue the District for liabilities arising out of Permittee's placement, use, and maintenance of Newsracks pursuant to this Article.

SEC. 11.10 INSURANCE REQUIREMENTS

- (a) As a condition of any permit under this Article, the Permittee shall within ten (10) business days of the approval of the permit, but prior to the placement, use, or maintenance of any Newsrack, obtain and maintain at all times during the term of any permit approved under this Article, and at all times Permittee's Newsrack remains on any portion of the Rights-of-way, the following: Commercial Liability Insurance subject to the reasonable requirements of the District's Risk Management Department and approval by the Port Attorney and in substantial conformance with this section covering any liability arising from or connected with, or caused or

claimed to be caused by, any Newsrack for which the Permittee is responsible and any Newsrack owned by or attributable to Permittee in a reasonable and sufficient amount as determined by the District's Risk Management Department to cover the risks associated with the Newsrack(s). No Newsrack may be placed, used, or maintained until Permittee provides the Executive Director with proof of the requisite insurance, including any endorsements. The policies required by Section 11.10(a) shall be endorsed to include the District as an additional insured.

- (b) If any of the insurance policies required by this Section are written on a "claims made" basis, then at the termination, Permittee shall at its own expense, obtain "tail" or continuing coverage as to such policies for a period of not less than four (4) years.
- (c) The insurance policies required by this Section and filed with the District shall include a statement by the insurance carrier(s) that such carrier(s) will give the District thirty (30) calendar days' notice before canceling any insurance policy.
- (d) All coverages under this Section shall be effective as of the effective date of placement.

SEC. 11.11 DAMAGE TO DISTRICT PROPERTY

Damage to public property resulting from the placement, use, or maintenance of a Newsrack shall be repaired immediately by and at the expense of the Persons directing, managing, or accomplishing the placement, use, or maintenance. Failure of the Permittee or responsible Person to make the required repairs shall result in the District's forced undertaking to make such repairs. The cost of forced repairs undertaken by the District shall be chargeable as a civil debt to the Permittee or responsible Person, and may be collected by the District in the same manner as it collects any other civil debt or obligation.

SEC 11.12 NONCONFORMING NEWSRACKS

Commencing one hundred twenty (120) calendar days after Article 11 regulating Newsracks on District Tidelands becomes effective, any Newsrack in violation of any provision of this Article will be deemed a nonconforming Newsrack and subject to the enforcement procedures set forth in these regulations, including seizure and removal.

SEC. 11.13 ENFORCEMENT; VIOLATIONS; HEARINGS

- (a) The District will implement a systematic field enforcement program to ensure compliance with the provisions of the Ordinance.
- (b) Any Newsrack in violation of this Article may be seized and removed pursuant to Section 11.13(b). Before any Newsrack is seized (except under the circumstances set forth in Section 11.3(d) below) the Permittee and/or Person responsible for its placement and maintenance shall be given a notice of violation which provides ten (10) business days in which to remedy the violation or to request a hearing to contest the seizure and removal. Notice to the party responsible for the Newsrack shall be given

by written notice sent to the address provided in the permit application, and an additional notice tag shall be affixed to the Newsrack on the date of notice. The latter notice shall be sufficient if no identification is shown on the Newsrack and no permit application has been filed. Both the notice sent to the address stated on the permit application and the additional notice tag affixed to the Newsrack shall state the place to request a hearing to contest the seizure removal pursuant to this Section.

- (c) Any Permittee or responsible Person notified under Section 11.13(a) above may request a hearing. The hearing shall take place within thirty (30) calendar days of the request and shall be conducted by a Hearing Officer selected by the District. The hearing shall be informal, but oral and written evidence may be given by both sides. Any action by the District with respect to the alleged violation shall be stayed pending the Hearing Officer's decision following the hearing, which decision shall be rendered no later than ten (10) business days after the hearing. The Hearing Officer may give oral notice of the decision at the close of the hearing, but shall give written notice of all decisions as well. Failure to render the decision within ten (10) business days shall not affect the validity of such decision. If the notice of violation is not vacated, the Permittee or Person or entity responsible for the Newsrack shall comply with the notice within ten (10) business days of issuance of the written decision. Failure to comply shall result in seizure and removal of the Newsrack.
- (d) The District may seize and remove a Newsrack if the Permittee or Person responsible for such Newsrack has: (i) neither requested a hearing before the Hearing Officer nor remedied the violation within ten (10) business days following the date of notice; or (ii) has failed to remedy the violation within ten (10) business days after receiving a copy of the written decision that the Newsrack is in violation of this Article following a hearing conducted pursuant to Sections 11.13(b) & (c). Such Permittee or responsible Person shall be notified of the seizure. Seized Newsracks shall be retained by the District and may be recovered by the responsible party for a period of at least ten (10) business days following the seizure.
- (e) Notwithstanding the provisions of Section 11.13(a)-(c), if a Newsrack is located, placed or maintained in such a place or manner as to pose an immediate and serious threat to the health safety or welfare of the public, the District may seize and remove such Newsracks without prior notice to the party responsible for such Newsrack. Notice shall be given to the responsible party within ten (10) business days of seizing the Newsrack. Such notice shall state the reasons for removal, the location and procedure for claiming the Newsrack, and the procedure for obtaining a post-removal hearing. If the party responsible for the Newsrack chooses to forego a post-removal hearing, he or she may take possession of the seized Newsrack upon payment of all costs incurred by the District for removal and storage of the Newsrack, and a civil penalty in the amount necessary to cover administrative costs involved in the removal and storage of the Newsrack. If the Permittee or responsible Person fails to

pay such penalty, the Newsrack in question shall be deemed to be unclaimed property, and may be disposed of accordingly. If the responsible party for the Newsrack requests a post-removal hearing, it shall be conducted pursuant to the procedures set forth in Section 11.13(b). If the decision upholds the seizure, the Permittee or responsible Person may take possession of the seized Newsrack upon payment of all costs incurred by the District for removal and storage of the Newsrack and a civil penalty in the amount necessary to cover all administrative costs involved in the removal and storage of the Newsrack and the hearing process. If a Permittee or responsible Person fails to pay such penalty, the Newsrack in question shall be deemed to be unclaimed property, and may be disposed of accordingly. If the decision determines that the seizure was not in accordance with the provisions of this Section, the Executive Director shall provide for the return of the Newsrack to the location from which it was seized.

SEC. 11.14 ABANDONMENT

In the event that a Newsrack is unused for a period of sixty (60) continuous calendar days, notice shall be given to the Permittee or responsible Person. The Permittee shall inform the District in writing within ten (10) business days of reviewing notice that they intend to continue use of the Newsrack, and the Newsrack will not be considered abandoned. If the Permittee or responsible person no longer wishes to use the Newsrack, it shall be considered abandoned, and the District may thereupon give notice to the Permittee or responsible Person to remove the Newsrack. Such notice shall inform the Permittee or responsible Person for the Newsrack that if the Newsrack is not removed or again placed in use as a Newsrack within ten (10) business days of the notice, the District may remove and impound the Newsrack. The Permittee or responsible Person may take possession of an impounded Newsrack upon payment of all costs incurred by the District, and a civil penalty in the amount necessary to cover all administrative costs involved in the removal and storage of the Newsrack within ten (10) business days of impoundment by the District. If the Permittee or responsible Person for the Newsrack fails to make such payment within ten (10) business days, the Newsrack in question shall be deemed to be unclaimed property and may be disposed of accordingly.

SEC. 11.15 PERMIT FEES

All Newsracks require the timely payment of an annual permit fee charged by the District Executive Director as set forth by the District Executive Director.

- (a) The permit fee shall be sufficient to recover the costs of processing the permit application and enforcing permit requirements.
- (b) A separate permit fee applies to Newsracks located in the North Embarcadero area. This fee shall be sufficient to recover costs associated with processing the permit application, enforcing permit

- requirements, and administering the lottery.
- (c) Permit fees shall not exceed the amount needed to cover administrative costs.

SEC 11.16 SALE OR TRANSFER OF PERMIT

A permit shall not be sold or transferred except as a part of the sale of a majority of the related business assets of the Permittee. The proposed new Permittee shall notify the Executive Director in writing within ten (10) business days that the permit has been transferred pursuant to a sale of business assets of a Permittee. The notification shall include the name and contact information for the proposed new Permittee. No transfer or sale shall be effective until the proposed new Permittee executes a Hold Harmless Agreement and obtains the requisite insurance coverage. Until such time, the existing Permittee shall maintain the required insurance coverage and shall remain liable for any personal injury or property damage caused by or related to the Newsrack.

SEC. 11.17 SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The District hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional. The Executive Director or his designated representative is hereby directed to adopt Ordinance San Diego Unified Port District Code Article 11 – Regulation of Newsracks on San Diego Unified Port District Tidelands.

Section 2. This ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of February, 2013, by the following vote:

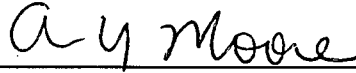
AYES: Malcolm, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

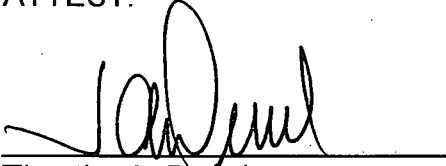
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)