

# CITY OF SAN DIEGO

## NEWSRACK PERMITS AND ENFORCEMENT

### ***SUMMARY***

The City of San Diego has an ordinance that regulates the location and condition of newsracks on City property. Publishers or distributors must get a City permit and pay an annual fee of \$15 per newsrack. In addition, they must maintain the racks in neat and clean condition. In response to a citizen complaint, the 2011/2012 San Diego County Grand Jury examined the status of newsrack permitting and enforcement.



Newsracks at the San Diego County Courthouse  
(Photo by 2011-2012 Grand Jury, August 15, 2011, at 220 W  
Broadway, San Diego)

The Grand Jury documented the owner, permit status, and condition of 555 newsracks on city property. This research revealed that 39 percent of the newsracks surveyed and one-third of the publications do not have a permit. Further, many of the racks have at least one condition problem, such as graffiti, stickers, or broken windows. The City is missing out on thousands of dollars in permit fees, and the appearance of the racks tarnishes San Diego's image as "America's Finest City."

The City does not have a searchable, sortable database of permitted newsracks. The amount and accuracy of the information on newsrack locations submitted by publishers

varies widely. The inconsistencies and inaccuracies make enforcement difficult. The City should develop a searchable, sortable database, and require publishers to submit their information in a compatible digital format. In addition, the City should issue stickers to be placed on each rack that show annual permit data.

The permit fees collected support only 20 percent of the salary of one City enforcement officer. The City only takes enforcement action on newsracks in response to a complaint. The City should be more proactive in its enforcement, using the additional permit fees collected to support increased enforcement activity.

Neither the Port of San Diego nor the Metropolitan Transit System currently regulates newsracks. Yet racks abound on their properties – many with condition problems. Both should adopt an ordinance as soon as possible and enforce it vigorously.

### ***INTRODUCTION***

The Grand Jury received a citizen complaint about newsracks (newspaper and magazine distribution boxes) in the City of San Diego. The complaint noted that under City law,

publishers must obtain a permit for newsracks on sidewalks, and must maintain the racks in neat and clean condition. The complaint cited examples of abandoned newsracks, broken and filled with trash. It also noted that removal of newsracks that were bolted to the sidewalk can either damage the concrete or leave protruding bolts that are a trip hazard.

The complaint asked the Grand Jury to investigate the City's management of this program. After looking at some racks, the Grand Jury decided to undertake that investigation. The report discusses the City ordinance, how that ordinance is enforced, the permits issued in 2011, and the results of the Grand Jury investigation.

## ***PROCEDURE***

The Grand Jury studied the City of San Diego's newsrack permitting and enforcement program and the condition of racks on the street. The Grand Jury read the City newsrack ordinance and interviewed representatives of:

- City of San Diego, Development Services Department, Neighborhood Code Compliance section (responsible for newsrack permitting and enforcement on City property);
- Metropolitan Transit System, San Diego Trolley, Inc. (has jurisdiction over newsracks on trolley platforms);
- Port of San Diego (responsible for newsracks on Port property, including the Embarcadero along San Diego's downtown harbor);
- Downtown Business Improvement District, Clean and Safe San Diego program; and
- Newspaper and magazine distributors, which own and maintain the racks.

The Grand Jury reviewed the City's permit files for 2011, and documented the owner, permit status, and condition of over 800 newsracks in eight areas: downtown San Diego, the Gaslamp Quarter, North Park and Adams Avenue, central La Jolla, five trolley platforms, sidewalks adjacent to two transit centers, the Embarcadero and Harbor Drive between Marina Park North and the Maritime Museum, and inside the Santa Fe Depot and the Hall of Justice.

## ***DISCUSSION***

In the 1960s and 1970s, the advent of free alternative newspapers and special interest magazines led to uncontrolled proliferation of newsracks in public places. Many cities responded with laws regarding newsracks on public property.

### ***Newsrack Regulation***

The City of San Diego first passed a newsrack ordinance in 1974. Today the City regulates the location, size and condition of newsracks.<sup>1</sup> Publishers or distributors must obtain a yearly permit from the Development Services Department, Neighborhood Code Compliance section, and pay a \$15 per rack fee. Each rack must display information showing the distributor's name, address and phone number. The permittee must maintain a list of all rack locations and document all maintenance inspections.

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<sup>1</sup> San Diego Municipal Code, Chapter 6, Article 2, Division 10, Newsracks on Public Rights-of-Way.

Neither the Port of San Diego nor the Metropolitan Transit System (MTS) has an ordinance regulating newsracks on their property. Both are now considering such a law. City newsrack permits are not required on private property (e.g., inside buildings, in shopping centers).

Under the San Diego City ordinance, newsracks may not interfere with pedestrian or vehicular traffic, transit operations, or handicapped access. They may not have graffiti or stickers, rust, trash or dirt. They must have a door or other covering to keep the publications in and the elements out. Plastic windows must be transparent and unbroken. A newsrack may not be chained to any other object.



The base of a newsrack chained to a City sign post  
(Photo by 2011-2012 Grand Jury, August 15, 2011, at 109 W F St., San Diego.)

When a distributor removes a rack, it must be done without damage to the sidewalk. If there is damage, the distributor must restore the site to the same condition as the surrounding area.

### ***Enforcement***

When Neighborhood Code Compliance determines a newsrack is abandoned or in violation of the law, they first request the distributor to remedy the problem voluntarily within ten days, or if it is a minor violation,

sometimes up to 30 days. If the distributor does not act, Neighborhood Code Compliance may impose fines ranging from \$100 for the second notice of violation to \$1,000 for the sixth notice. Monetary penalties go to the City's General Fund.

In practice, the enforcement officers do not seem to be imposing fines consistent with the frequency of violations. This may be because they understand that most publications operate on a shoestring, and do not want to force any into bankruptcy with fines.

Neighborhood Code Compliance does not have a systematic plan for periodic inspection of newsracks. They also enforce major code violations that pose imminent health and safety hazards, resulting in a lower priority for newsracks.<sup>2</sup> They usually take enforcement action only when they receive a complaint about a newsrack. They do not keep track of the type of complaint (e.g., broken, graffiti). All enforcement cases are pursued until resolved. Table 1 shows the number of complaints received since 2007:

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<sup>2</sup> <http://www.sandiego.gov/nccd/about/enforcement.shtml>

**Table 1. NEWSRACK COMPLAINTS RECEIVED BY NEIGHBORHOOD  
CODE COMPLIANCE, 2007-2011**

<b>Year</b>	<b># of complaints</b>	<b>Fines recovered</b>
7/1/2007-6/30/2008	81	None
7/1/2008-6/30/2009	166	None
7/1/2009-6/30/2010	94	\$1,000
7/1/2010-6/30/2011	26	\$1,500

Neighborhood Code Compliance may remove a rack immediately if it poses an imminent hazard to the public or vehicles. They also may remove a rack if they cannot locate the owner or get no response to a notice of violation. When the City removes a rack, it may recover all reasonable costs, including case processing, removal and storage, and sidewalk repair (unless the publication has gone out of business and the City cannot find a responsible party). The City uses a contractor to remove racks at \$30/hour plus \$31.50/rack. The average cost of removal is between \$110 and \$150 per site. The racks go to an impound area. If no one claims a rack after 60 days, the City disposes of it as abandoned property (usually recycled).

In Centre City Development Corporation’s (CCDC) downtown territory, including the Gaslamp Quarter, CCDC funds a Neighborhood Code Compliance enforcement officer who investigates violations there.

The Downtown Business Improvement District runs a program called Clean & Safe San Diego that supplements City services. Clean & Safe performs basic maintenance (sidewalk cleaning, trash pick-up, graffiti and sticker removal) in five central San Diego neighborhoods (a 272-block area). They follow a systematic route that enables them to cover their territory regularly, but also respond to complaints. Every call they respond to is entered into a central database through a common handheld device. Clean & Safe removes graffiti and stickers from newsracks when possible; if they are unable to clean a rack they report it to Neighborhood Code Compliance.

***Newsrack Permits***

In 2011, Neighborhood Code Compliance issued permits to 40 publications in 2,363 newsracks. This yielded \$35,445 in application fees. Some publishers filed their applications after the deadline and had to pay late fees, which were \$419.50. Total 2011 program revenue of \$35,864.50 covered the cost of staff processing permit applications plus 20 percent of an enforcement officer.

Neighborhood Code Compliance has a standard printed newsrack permit application form. In addition to basic contact information for the publisher or distributor, the application requests a list showing each newsracks’ location identified by street name and block number, cross street, and side of the street (N, S, E, W). In 2011, roughly half the distributors used the City’s location data format, and the remainder submitted print-outs of their own database.



Newsracks in a corral in the Gaslamp Quarter

(Photo taken by the 2011-2012 Grand Jury, November 18, 2011, at 411 5<sup>th</sup> Avenue, San Diego)

The application has a separate page for newsracks in the Gaslamp Quarter, which are required to be in a corral (U-shaped cast iron fence). The corrals limit the number of rack spots available and keep the row of racks tidier. There are ten corrals, which usually are identified only by number, rather than street address. In November 2011, the Grand Jury found five newsracks outside of corrals in the Gaslamp Quarter.

The quality of information on permit applications varies widely. Some are typed, some are handwritten, and some are computer print-outs in 10 point fonts. Some newsrack lists are organized by

neighborhood, some are alphabetical by street name or adjacent storefront, one is numerical by street number (e.g., 995 Broadway downtown might be followed by 996 Prospect in La Jolla), and several have no apparent organization. Some show block number, some street number. The inconsistency in format and level of detail makes these paper files difficult to work with.

In comparing street and block numbers on permits with actual newsracks, the Grand Jury found many inaccurate locations. For example, several racks listed as 2477 El Cajon Boulevard are actually around the corner at 4286 Arizona Street. Similarly, a rack in La Jolla listed as in the 900 block of Prospect Street is actually in the 1000 block. The Grand Jury also found several instances in which a permit shows a rack at a particular address, but none exists at that or any nearby location. It is unclear whether someone removed these racks or the address was wrong.

When Neighborhood Code Compliance receives a permit application, they check completeness of the contact information and count the number of newsracks listed. They do not verify the locations as appropriate for a newsrack (e.g., required number of feet away from a bus stop), or even as being within the City of San Diego. In 2011, Neighborhood Code Compliance issued 59 permits for newsracks in other cities. In addition, the Grand Jury found 70 racks on Port of San Diego property with City permits, 12 racks on MTS trolley platforms with City permits, two inside the Santa Fe Depot, and one inside the Hall of Justice.

The City's newsrack "database" contains only the information necessary for accounting, such as the name of the publisher and periodical, the number of newsracks, the check number and amount, and the date payment was received. Neighborhood Code Compliance does not have a searchable, sortable database of all permitted newsrack locations, or of enforcement information. Nor is the newsrack required to display any permit information.

As a result, it is difficult to check the permit status of an individual rack. The Neighborhood Code Compliance officer has to photograph or otherwise document a rack on the street, then try to match that information with an address or block number in the paper file. Enforcement of unpermitted newsracks would be much simpler if Neighborhood Code Compliance had a

searchable, sortable database of all newsrack locations. They could require distributors to submit electronic lists in a compatible software format.<sup>3</sup> Ideally, they could link to this database from the field through a hand-held device similar to that used by Clean & Safe San Diego.

Enforcement also would be easier if the racks were required to display current permit information. This data could be on a sticker issued with each permit. It might be a simple permit number, year, rack number and location, or in an electronically readable form such as a barcode. Neighborhood Code Compliance currently does not have the hand-held technology to read any type of electronic identifier.

### ***Grand Jury Investigation***

In Fall 2011, the Grand Jury documented the location and condition of 815 newsracks, 555 on City of San Diego sidewalks, 162 on the Embarcadero and Harbor Drive between Marina Park North and the Maritime Museum (Port of San Diego property), 66 on five MTS trolley platforms<sup>4</sup>, 22 inside the Hall of Justice, and 10 inside the Santa Fe Depot. The newsracks on City sidewalks displayed 62 different publications, only 40 of which have a City permit. The periodicals with no permit at all were in 72 (13 percent) of the 555 City racks surveyed.

The Grand Jury compared the newsracks examined with City permit files and found that, for the 40 permitted publications, 326 of the 555 newsracks had a permit for the stated location (or one near enough to count). That is a compliance rate of only 59 percent. If that compliance rate were similar city-wide, then there are potentially over 1,600 newsracks without permits. If those racks were permitted (minus those that were issued a permit when they didn't need one), it could add around \$23,000 in permit fees alone to the City's coffers. Late fees and fines could bring in additional dollars. Tables 2 and 3 summarize the Grand Jury findings.

**Table 2. PERMIT STATUS AND CONDITION OF NEWSRACKS OBSERVED ON CITY STREETS\***

<b>Location</b>	<b># of Racks Examined</b>	<b># With a Permit</b>	<b># With Graffiti and/or stickers</b>	<b># With Broken Window</b>	<b># With Opaque Window</b>	<b># With Trash Inside</b>	<b># Rusty</b>	<b># Chained to Something</b>
Downtown	140	79	45	13	7	9	7	2
North Park	88	51	50	1	4	0	1	4
La Jolla	204	127	22	2	4	1	2	1
Gaslamp	78	56	25	4	3	5	0	0
Adjacent to transit center	45	13	12	1	0	0	1	0
<b>Totals:</b>	<b>555</b>	<b>326</b>	<b>154</b>	<b>21</b>	<b>18</b>	<b>15</b>	<b>11</b>	<b>7</b>

\* Note that some newsracks have multiple condition problems.

<sup>3</sup> Software compatible with the most common database programs may be downloaded from the Internet at no cost.

<sup>4</sup> The Civic Center, Convention Center, Gaslamp, Seaport Village, and Harborside Trolley stations.

In the neighborhoods surveyed, the permit rate was highest (72 percent of racks with permits) in the Gaslamp Quarter, followed by 62 percent in central La Jolla, 58 percent in North Park-Adams Avenue, and 56 percent in downtown San Diego.

There are two areas where City jurisdiction seems unclear. First, City sidewalks adjacent to the Old Town and the 12<sup>th</sup> & Imperial transit centers had only 29 percent compliance with the permit requirement. Second, one periodical, with many racks and a generally high rate of compliance elsewhere, did not list any of its La Jolla racks on its permit. Apparently, the distributor does not know La Jolla is part of the City of San Diego.



A newsrack defaced with graffiti and stickers  
(Photo by 2011/12 Grand Jury, Dec. 8, 2011, at 1200 3<sup>rd</sup> Ave. San Diego)

As shown in Tables 2 and 3, the Grand Jury also checked the condition of the newsracks. Graffiti and/or stickers on newsracks, usually on the windows, are the largest problem. Twenty-one racks had broken windows. This is a safety issue because people could hurt their hands if they tried to reach in without opening the door. Other racks were rusty (especially along the waterfront); the windows on some were opaque with grime or age. A few were chained to something.

To avoid the condition problems associated with rack windows, some periodicals have installed boxes without a door/window, or switched to open wire racks like those seen inside stores. Neither of these racks is allowed under City code – the publications in them often are wet and warped from rain or fog, and have been soiled by birds.

**Table 3. CONDITION OF NEWSRACKS ON THE EMBARCADERO AND TROLLEY PLATFORMS**

Location	# of Racks Examined	# With a Permit	# With Graffiti and/or stickers	# With Broken Window	# With Opaque Window	# With Trash Inside	# Rusty	# Chained to Something
Embarcadero/ Harbor Drive	162	70	41	5	5	6	16	0
Trolley Platforms	66	12	16	4	1	3	1	0



A newsrack with the window missing and trash inside

(Photo by 2011/12 Grand Jury, 11/17/2011, at 2<sup>nd</sup> and C Streets, San Diego)

For daily periodicals, trash (e.g., drink cups, snack wrappers) put inside the box is not usually a problem; those published less frequently may accumulate trash that remains for days or weeks. Other condition problems with racks distributed quarterly, semi-annually, or even annually, also are more common since the distributor does not visit them as often.

As noted above, the City requires each permittee to document all maintenance inspections. However, the City does not view or verify those records.

Occasionally, in a row of newsracks, there will be obvious signs a rack has been removed – bolts protruding from the sidewalk, broken concrete where the bolts were taken out, or an empty saddle (metal pedestal). All of these are trip hazards as well as unattractive.



An empty newsrack saddle, with graffiti

(Photo by the 2011/12 Grand Jury, November 22, 2011, at Broadway and Harbor Drive, San Diego)

## ***FACTS AND FINDINGS***

***Fact:*** The City of San Diego regulates the location, size and condition of newsracks on City property.

***Fact:*** Publishers must obtain a City permit to place newsracks on City property.

***Fact:*** In 2011, forty publications had a City newsrack permit.

***Fact:*** Those permits covered 2,363 newsracks.

***Finding 01:*** Of the 555 newsracks on City property surveyed by the Grand Jury in 2011, only 326 (59 percent) were covered by a permit.

***Finding 02:*** The 555 newsracks surveyed contained 62 publications, 22 of which had no City permit.

***Finding 03:*** If that compliance rate held city-wide, there are potentially around 1,600 newsracks without a City permit.

*Fact:* The City permit fee is \$15 per newsrack.

**Finding 04:** The City is failing to collect thousands of dollars in permit fees.

*Fact:* Neighborhood Code Compliance has a standard permit application that requests specific location information about each newsrack.

*Fact:* Not all permittees provide the required information.

*Fact:* The information provided by some permittees is incorrect.

**Finding 05:** The quantity and quality of information provided on permit applications vary widely.

**Finding 06:** The inconsistency in format and level of detail makes the permit files difficult to work with.

*Fact:* Neighborhood Code Compliance does not have a searchable, sortable database of all newsrack permit information.

*Fact:* Permittees are not required to post current permit information on their newsracks.

**Finding 07:** It is difficult to check the permit status of a newsrack.

*Fact:* Neighborhood Code Compliance takes enforcement action only in response to a complaint.

*Fact:* Many newsracks on City property have condition problems, including graffiti, stickers, and broken windows.

**Finding 08:** The condition problems are unattractive and detract from San Diego's image as "America's Finest City."

*Fact:* The Port of San Diego and the Metropolitan Transit System are considering newsrack ordinances.

*Fact:* There are many newsracks on Port and MTS property.

*Fact:* Those racks have graffiti and other condition issues.

**Finding 09:** Enforcement of Port and MTS permit and condition requirements should bring in additional revenue and improve the appearance of their properties.

## ***RECOMMENDATIONS***

**The 2011/2012 San Diego County Grand Jury recommends that the San Diego City Mayor direct the Development Services Department, Neighborhood Code Compliance section to:**

**12-01: Issue a sticker for each permitted newsrack showing the current permit information (publication, distributor, year, rack number and location), either**

**in print or digital form, and require those stickers to be displayed on all newsracks.**

- 12-02: Develop a searchable, sortable database of information about each newsrack listed in a permit application. Require permit applicants to submit their newsrack information in a digital format compatible with that database.**
- 12-03: As funds allow, acquire hand-held devices that will link to that database from the field.**
- 12-04: Develop a systematic field enforcement program that regularly reviews newsrack permit status and condition.**
- 12-05: Be more aggressive in following up on complaints and Notices of Violation, so that problems are corrected quickly.**
- 12-06: Periodically review distributors' maintenance logs, especially in light of a documented condition violation.**

**The 2011/2012 San Diego County Grand Jury recommends that the Board of Commissioners, Port of San Diego:**

- 12-07: Adopt an ordinance regulating the location, number and condition of newsracks on Port property.**
- 12-08: Issue a sticker for each permitted newsrack showing the current permit information (publication, distributor, year, rack number and location), either in print or digital form, and require those stickers to be displayed on all newsracks.**
- 12-09: Develop a searchable, sortable database of information about each newsrack listed in a permit application. Require permit applicants to submit their newsrack information in a digital format compatible with that database.**
- 12-10: Develop a systematic field enforcement program that reviews the permit status and condition of newsracks.**

**The 2011/2012 San Diego County Grand Jury recommends that the Board of Directors, San Diego Metropolitan Transit System:**

- 12-11: Adopt an ordinance regulating the location, number and condition of newsracks on MTS property.**
- 12-12: Issue a sticker for each permitted newsrack showing the current permit information (publication, distributor, year, rack number and location), either in print or digital form, and require those stickers to be displayed on all newsracks.**

**12-13: Develop a searchable, sortable database of information about each newsrack listed in a permit application. Require permit applicants to submit their newsrack information in a digital format compatible with that database.**

**12-14: Develop a systematic field enforcement program that reviews the permit status and condition of newsracks.**

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head

shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b><u>Responding Agency</u></b>	<b><u>Recommendations</u></b>	<b><u>Date</u></b>
<b>San Diego City Mayor</b>	<b>12-01 through 12-06</b>	<b>7/23/12</b>
<b>Board of Commissioners, Port of San Diego</b>	<b>12-07 through 12-10</b>	<b>7/23/12</b>
<b>Board of Directors, Metropolitan Transit District</b>	<b>12-11 through 12-14</b>	<b>7/23/12</b>