

City of Philadelphia



(Bill No. 050420)

AN ORDINANCE

Amending Chapter 9-200 of The Philadelphia Code, entitled “Commercial Activities on Streets,” by amending Section 9-211, entitled “Boxes for the Distribution of Printed Material,” which created a trial period granting the City of Philadelphia regulatory authority over the maintenance, specifications and placement of newspaper boxes on the public sidewalk, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The City of Philadelphia is known as the “cradle of liberty” and one of the most precious liberties is the First Amendment to the Constitution’s protection of “freedom of speech or of the press.” These freedoms are enhanced by the availability of differing opinions through diverse media. The constitutionally guaranteed freedom to distribute information and opinions, however, should not infringe upon the public’s freedom of movement or public safety.

SECTION 2. Given the proliferation of boxes for the distribution of newspapers throughout the City, it became necessary for City Council to take actions to maintain street-worthiness and public safety in a manner that would not overly burden the publishers of these publications.

SECTION 3. The success of Section 9-211 warrants keeping the program on beyond the initial two-year trial, as well as expanding the area in which it is enforced, including to areas of the Old City district of Philadelphia.

SECTION 4. Title 9 of The Philadelphia Code is hereby amended as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

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CHAPTER 9-200. COMMERCIAL ACTIVITIES ON STREETS.

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§ 9-211. Boxes for the Distribution of News and Printed Material.

City of Philadelphia

BILL NO. 050420 continued

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(1) Program Area. The provisions of this Section shall only apply to the public sidewalks within the area bounded by and including the south side [of Spruce street, the east side of Sixth street, the north side of Vine street and the west side of Twenty-first street;] *of Bainbridge Street, the east side of Columbus boulevard, the north side of Vine street and the west side of the Schuylkill river; to the entire length of the Benjamin Franklin Parkway;* and to the 1700 block of Cottman avenue.

[(2) Pilot Program Duration. The provisions of this Section shall expire two years after the Department certifies by regulation that at least fifteen Publishers' Box Corrals are in place and available for operation within the Program Area.]

[(3)] (2) Definitions. In this Section, the following definitions apply:

(a) Publishers' Box. A machine or other enclosed box used for [protecting] *distributing* newspapers or other printed material [from the elements] while offering or displaying the material for sale or free distribution and capable of operation by pedestrians without the assistance of an attendant.

(b) Infrequent Publishers' Box. A publishers' box displaying or offering for sale or distribution a publication or other printed material that is published or distributed less frequently than once every seven days.

(c) Publishers' Box Corral. [A three-sided post and rail structure] *Any device which has been sanctioned by the Department of Licenses and Inspections and which is designed to group publishers' boxes in stable clusters.*

[(4)] (3) Specifications for Publishers' Boxes.

(a) Physical requirements. No person shall place, maintain or operate a publishers' box on the public sidewalk unless such *publishers'* box is in compliance with the following specifications for street-worthiness:

(.1) The *publishers'* box shall have a height of no less than [40] 36 inches and no more than 52 inches; a width of no less than 15 inches and no more than 25 inches; and a depth of no less than 15 inches and no more than 21 inches.

(.2) The *publishers'* box shall be manufactured from 20-gauge zinc grip steel or thicker.

(.3) All hinge rods and springs on the box shall be made from steel.

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

(.4) Coin mechanisms, if any, shall be housed in the body of the *publishers'* box or in armored heads made from 12-gauge steel welded to the body of the *publishers'* box.

(.5) The *publishers'* box shall weigh no less than eighty (80) pounds, when empty of publications [and without added weight].

(.6) The *publishers'* box shall be manufactured from materials that permit easy removal or repair of rust, graffiti, glue and other signs of outdoor abuse, exposure or wear-and-tear, including refurbishing of faded or stained colors.

(.7) The door of the *publishers'* box shall be constructed with a window opening to display the front page of the current edition clearly, and the window opening shall be covered by plastic manufactured from no less than .060" polycarbonated clear plastic material.

(.8) Door handles shall be a loop-style handle with a minimum one-inch clearance, designed to allow pedestrians to slip their hands easily in and out of the handle.

(.9) Door springs shall meet the tension requirements of the Americans with Disabilities Act.

(.10) [A] *The publishers'* box [that is to be located within a *publishers'* box corral] shall have one-inch diameter holes in the back of the *publishers'* box to allow for cables to be inserted for the secure installation of the *publishers'* box [to the rails of the corral].

(b) Maintenance requirements. No person shall place, maintain or operate a *publishers'* box on the public sidewalk unless such person:

(.1) Maintains such *publishers'* box in good working order at all times.

(.2) Repairs any malfunctioning, vandalized or otherwise damaged *publishers'* box within seven calendar days of the occurrence of any such damage.

(.3) Keeps such *publishers'* box clean and free of graffiti, broken parts, pasted bills and debris of any description, including ruined or out-dated publications, including any publication with a cover date more than thirteen (13) days past[, or, in the case of infrequent *publishers'* boxes, more than forty-four (44) days past].

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

(.4) Keeps such *publishers'* box free of all advertising, except for information regarding the publication offered or displayed in such *publishers'* box.

(c) Secure and safe placement. No person shall place, maintain or operate a *publishers'* box on the public sidewalk unless such box is in compliance with the following:

(.1) Each *publishers'* box must be sufficiently weighted to be secure in all expected weather conditions.

(.2) No *publishers'* box [may] *shall* be attached to any utility pole, traffic or parking sign or device, trash receptacle, fire hydrant, directional sign, bicycle rack, or other utility pole, [or] fixture *or any piece of street furniture*.

(.3) No *publishers'* box [may] *shall* be placed or maintained within 3 feet of the edge of a driveway, marked pedestrian crosswalk or curb cut; or within 5 feet of a sign designating a regular bus stop.

(.4) No *publishers'* box [may] *shall* be placed or maintained within 3 feet of a fire hydrant.

(.5) No *publishers'* box [may] *shall* be placed or maintained in any space so as to reduce the width of the pedestrian passageway on the sidewalk to less than 4 feet.

(.6) No two *publishers'* boxes displaying or offering the same publication for sale or distribution may be placed or maintained within thirty (30) feet of one another, unless such *publishers'* boxes are across the street from one another; provided, however, that no more than three *publishers'* boxes displaying or offering the same publication for sale or distribution [may] *shall* be placed or maintained at or within thirty (30) feet of any one intersection.

(.7) *If no corral exists at a location where a publishers' box will be placed, all publishers' boxes at that location must be kept a minimum of eighteen (18) inches from, and parallel to, the edge of the curb, with the publishers' box opening facing toward the sidewalk and away from the curb; provided, however, that the Department may permit, by regulation, a different distance from the curb or a different orientation, if consistent with public safety and pedestrian convenience.*

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

(.8) No publishers' box shall be placed on the radius of the curve at the corner of any City block or other sidewalk/street intersection.

[(5) Infrequent Publishers' Boxes.

(a) In addition to compliance with the foregoing, no person shall place, maintain or operate an infrequent publishers' box on the public sidewalk, unless such box is in compliance with the following:

(.1) No box, regardless whether a publishers' box corral is available, may be placed within 75 feet of an intersection or marked pedestrian crosswalk, or within 100 feet of a sign designating a regular bus stop.]

(4) *Rules Regarding South Street, Benjamin Franklin Parkway, Logan Square, Rittenhouse Square, Franklin Square and Washington Square vicinities.*

(a) *South Street. Between Broad street and Front street, no publishers' box shall be placed on South Street; and no publishers' box shall be placed on any street that intersects with South Street if the box is less than twelve (12) feet from such intersection.*

(b) *Benjamin Franklin Parkway. No publishers' box shall be placed on the Benjamin Franklin Parkway; and no publishers' shall be placed on any street that intersects with the Benjamin Franklin Parkway if the box is less than twelve (12) feet from such intersection.*

(c) *No publishers' box shall be placed on the sidewalks abutting Logan Square, Rittenhouse Square, Franklin Square or Washington Square.*

[(6)] (5) Permits and Fees. No person shall place, maintain or operate a publishers' box on the public sidewalk unless such person procures an annual permit from the Department for each *publishers'* box owned and affixes such permit to such *publishers'* box. The owner or operator of a *publishers'* box that is taken out of service may remove the *proof-of-permit* from such *publishers'* box and affix such *proof-of-permit* to a comparable, replacement *publishers'* box, until the expiration of such permit. *The proof-of-permit shall be affixed to the top of the publishers' box, so that it may be viewed and read while standing in front of the publishers' box.* The Department shall issue a *proof-of-permit* to any applicant who:

(a) Provides the Department, on forms approved by the Department, with the name, business address, telephone number and facsimile number of the person

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

designated by the owner or operator as responsible for the maintenance of the *publishers' box*.

(b) Pays the applicable annual fee[,][as follows:] *of \$10 per publishers' box; provided, however, that the Department may establish a different fee, from time, to recover any costs of administering or enforcing this Section.*

[(.1) For persons owning or operating fewer than 50 boxes on the public sidewalk in the Pilot Program Area: \$10 per box.

(.2) For persons owning or operating 50 to 100 boxes on the public sidewalk in the Pilot Program Area: a flat fee of \$750.

(.3) For persons owning or operating 101 to 200 boxes on the public sidewalk in the Pilot Program Area: a flat fee of \$1,250.

(.4) For persons owning or operating more than 200 boxes on the public sidewalk in the Pilot Program Area: a flat fee of \$1,500.

(.5) If the Department establishes a uniform permit year, the Department may pro-rate the permit fee for partial year applicants.]

[(7)] (6) Publishers' Box Corrals.

(a) Publishers' box corrals may be placed and maintained on the public sidewalks by any City agency or by [the] *any authority designated by the Department* [Center City District,] at locations acceptable to the [Streets] Department. The [Streets] Department shall approve any proposed location where, as determined by the Streets Department, substantial pedestrian traffic, sidewalk congestion or the presence of a significant number of publishers' boxes within close proximity of one another suggests the need for certain limits on the number and placement of publishers' boxes.

(b) Subject to the limitations set forth elsewhere in this Section, [including subsection 9-211(5),] the Department *or any authority designated by the Department* shall develop equitable criteria to allocate space within a publishers' box corral, where necessary, giving first priority to boxes displaying publications that are then currently displayed within thirty (30) feet of such corral.

[(c) Prior to approving any locations or making any determinations, as set forth in subsection 9-211(7)(a) above, prior to developing any criteria for allocating space, as set forth in subsection 9-211(7)(b) above, and prior to promulgating any regulations or making any determinations relating to this Section, including any determinations concerning the appropriate size of corrals at

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

particular locations, the Department or the Streets Department shall consult with representatives of relevant City agencies, City Council, the Center City District and entities which issue regular editions of publications intended for distribution on the sidewalks and other public areas of the City, including publishers of daily, weekly and infrequent publications. Notwithstanding any later effective date of this Section, the above-mentioned representatives of the affected agencies and industry shall submit to the Department and to the Streets Department within ninety days of the enactment of this Section any proposals regarding appropriate size and locations of corrals and proposed criteria for allocation of space within the corrals.]

(c) Nothing in this subsection 9-211(6) shall be interpreted to require that the City or any authority designated by the Department erect, maintain, repair or replace such Corrals. The Department or its designee may negotiate with Publishers or third parties to pay for the costs of erecting, maintaining, repairing or replacing such Corrals.

(d) Subject to the criteria established pursuant to subsection (b) above, the Department shall allow any person to place or maintain a publishers' box within a publishers' box corral, so long as such person maintains such box in conformity with all requirements of this Section and so long as [such person is not prohibited from placing such box at the location of such corral by any provision of this Section.] *no other reason or condition exists which would prohibit the placement of a publishers' box at that location.*

[(e)] (d) No person shall place or maintain any advertising on any publishers' box corral.

[(f)] (e) No person shall place or maintain a publishers' box within a publishers' box corral unless the *publishers'* box is unobtrusively attached by cables, chains or otherwise to the corral so as to ensure stability of the *publishers'* box.

[(g)] (f) No person shall place or maintain a publishers' box within thirty (30) feet of a publishers' box corral, unless such publishers' box is lawfully placed within such corral [at such location].

[(8)] (7) Removal of Damaged, Unused or Obsolete Publishers' Boxes.

(a) The Department or its designee may remove or cause to be removed from the sidewalk any publishers' box that:

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

(.1) Has remained damaged, [or] vandalized *or otherwise abused* for ten (10) or more consecutive days so as to render it inoperative or a hazard to public safety and health;

(.2) Has been unused by a vendor, in times other than during work stoppages, for a period of fourteen (14) or more consecutive days; [or]

(.3) *Is* [Otherwise] *otherwise* [is] in violation of this Section.

(b) Except where the Department, [or] the Department of Streets, *or other City agency* determines that immediate removal is necessary to remediate a clear and present danger to the public health or safety, prior to removal of any publishers' box by the Department or its designee, the Department or its designee shall first give seven (7) days notice, by facsimile followed by first class U.S. mail, directing the owner or operator to remove the box or otherwise remediate the violation. The notice shall include:

(.1) the [address where] *location of* the violation [has been found];

(.2) the date when the violation was first noted;

(.3) a clear description of the violation;

(.4) the means to cure the violation and the date by which such cure must be completed;

(.5) a statement that the violation and notice of intent to remove may be appealed to the *Department* Commissioner or his or her designee, who shall decide such appeal within five days of receipt; and

(.6) a statement that the *publishers'* box will be removed by the Department or its designee, [at] *with the costs of the removal to be charged* to the owner or operator, if [a cure is not made] *the stated violations are not corrected* or an appeal is not [noticed] *taken* within the required time period.

(c) Upon removal by the Department or its designee of any publishers' box pursuant to this subsection, the Department shall:

(.1) Send notice by first class U.S. mail to the owner or operator of [such] *the publishers'* box, describing the violation, the date on which the removal took place, where and how the *publishers'* box may be retrieved by the owner or operator, and the fees due for removal and storage.

City of Philadelphia

BILL NO. 050420 continued

Certified Copy

(.2) Allow the owner or operator to retrieve the box upon payment of a removal fee of twenty-five dollars (\$25) plus a storage fee of five dollars (\$5) per day, up to a maximum combined removal and storage fee of seventy-five dollars (\$75).

[(9)] (8) Agreement with [Center City District (“CCD”)] *Service District Agency*.

(a) The Department is hereby authorized to enter into an agreement (“Agreement”) with the CCD *or other authority*, on such terms as may be determined by the Department, including reimbursement to [CCD] *the authority* of its direct costs and overhead costs incurred in connection with services under the Agreement, in form satisfactory to the Law Department, for the [CCD] *the authority* to provide consulting, design coordination, construction management and administrative management services assisting the Department in carrying out activities required by, or appropriate under, this Section, including, without limitation: conduct of periodic surveying of the Program Area to determine compliance with this Section[:]; notification of non-complying publishers; site inspection to determine if compliance has been achieved; removal and storage of non-complying Publishers’ Boxes; renegotiating locations upon the entry of a new [“frequent”] publisher into the marketplace; periodic maintenance, graffiti removal and painting of Publishers’ Box Corrals.

(9) *Conflict with Fairmount Park Commission Rules and Regulations.*

(a) *Except as otherwise specifically provided, nothing in this Section shall supersede any statutes, rules or regulations promulgated by the Fairmount Park Commission, Historic Commission, or any other regulatory or governmental agency. Nothing in this Section shall create any rights to place, maintain or operate publishers’ boxes on any property owned or operated by the Fairmount Park Commission. The issuance of a permit or proof-of-permit by the Department shall not be construed as permission by the City to place, maintain or operate publishers’ boxes at the requested location.*

SECTION 5. This Ordinance shall take effect immediately.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.

City of Philadelphia

BILL NO. 050420 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 16, 2005. The Bill was Signed by the Mayor on July 8, 2005.

A handwritten signature in cursive script that reads "Patricia Rafferty".

Patricia Rafferty
Chief Clerk of the City Council