

CHAPTER 45

NEWSPAPER VENDING DEVICES ON PUBLIC STREETS AND SIDEWALKS

Section 45-101. Intent and Purpose.

The Town Council of the Town of Freeport finds and declares that:

1. Within the Commercial Village area of Freeport, approximately four million visitors a year park and walk to shopping locations;
2. The large number of pedestrians on the public streets and sidewalks create crowded conditions and potential safety problems, especially along Main Street and Bow Street.
3. The uncontrolled placement of newsracks 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.
4. Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located therein, constitute public nuisances.
5. The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety and general welfare of persons in the Town of Freeport in their use of the public right-of-way, including sidewalks open to the public.

Section 45-102. Definitions.

1. Distributor - the person responsible for placing and maintaining a newsrack in a public right-of-way.
2. Newspaper Vending Device or Newsrack - box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals.
3. Esplanade - that grassed, graveled or dirt area between the sidewalk and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway or traveled way and the property line adjacent thereto.

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4. Person - shall include the singular and plural and shall also mean and include any person, firm or corporation.
5. Public Street - that portion of a street improved, designed, or ordinarily used for vehicular travel.
6. Public Sidewalk - that portion of a street designed or ordinarily used for pedestrian travel.

Section 45-103. Permits.

1. Permit Required. It shall be unlawful for any person to install, place or maintain any newspaper vending device or newsrack which projects or rests, wholly or in part, upon, along or over any portion of any public sidewalk or esplanade without first obtaining a permit as provided herein. One permit may be issued to include any number of newsracks.
2. Application. Applicants for a permit must file with the Town Clerk a sworn application, in writing, on a form to be furnished by the Town Clerk, which shall provide the following information:
 - a. Name, address and telephone number of the applicant.
 - b. The total number of newsracks which are to be placed upon the public sidewalks or esplanades of the Town and the specific location of each.
 - c. A description of how each newsrack will be secured so that it will not move from its proposed location.
 - d. A description, in writing and/or drawing, as appropriate, of how the application complies with these Ordinance requirements.
 - e. A permit fee to be determined by the Town Council shall be paid. This fee shall cover the costs of administration of this Ordinance.
 - f. Additional newsracks not listed in the original application shall require an additional permit.

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3. Review Procedure. Before issuing a permit, the Town Clerk shall review the proposed location(s) for conformance with the provisions of this Ordinance and shall issue the permit within ten (10) business days if the locations comply with these regulations.
4. Conditions for Permit.
 - a. As an express condition of the acceptance of such permit, the permittee thereby agrees to indemnify and save harmless the town, its officers, directors, and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use, or maintenance of a newsrack within the Town of Freeport.
 - b. Permits shall be valid for one year and shall be renewable pursuant to the procedure for original applications and upon payment of the permit fee.
 - c. Every person who installs, places or maintains a newsrack under these regulations shall affix to it, in a place easily seen, the name, address and telephone number of such person.

Section 45-104. Standards for Location and Placement.

1. General Standard. The following prohibited locations have been selected in order to effect compliance with this general standard. No newspaper vending device shall be used, installed, placed or maintained which, in whole or in part, rests upon, in or over any public sidewalk or esplanade when such installation, placement or maintenance endangers the safety of persons or property, or when the site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newspaper vending device unreasonably interferes with the use of sidewalk cleaning machinery or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress of any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near said location or where placement interferes with the reasonable use or utility for display purposes of any display window of any building abutting the sidewalk.

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2. Prohibited Locations.

- a. Because of the large number of pedestrians using the sidewalks, no newsracks shall be located on sidewalks or esplanades on Main Street between the railroad bridge and Mallet Drive and on the north side of Bow Street from Main Street to the railroad tracks and on the south side of Bow Street from Main Street to the west side of Depot Street except for the following permitted locations: a maximum of one (1) newsrack immediately north of the pedestrian walkway adjacent to the driveway to the Town Hall and the sidewalk on Main Street; a maximum of one (1) newsrack off Main Street on the right-of-way east of Map 11, Lot 22 and five feet north of the hydrant; a maximum of three (3) newsracks on the east side of Main Street immediately north of and adjacent to CMP Pole #12 and adjacent to the curb of the sidewalk; a maximum of five (5) newsracks on the esplanade in the area between 16' and 37' from the easterly curb of Middle Street at the Middle-Bow intersection; a maximum of five (5) newsracks on Main Street immediately north of and adjacent to CMP Pole #24 1/2 and adjacent to the curb of the sidewalk.

1. Procedure for assigning spaces to persons wishing to place vending machines in these specific locations:

- a. Applications for these locations shall be filed with the Town Clerk by April 1 of each year. Each application shall specify which location(s) are desired. If the requests for any location equal the spaces available, the location(s) shall be assigned to the applicant(s). If more requests for a specific location are filed than spaces available, the following procedure shall be followed by the Town Clerk to assign spaces to applicants:

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1. The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure. "Disinterested" means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure.
2. For each location, the Clerk shall prepare a list of names of the qualifying applicants; the list need not be in any particular order. Next to each name on the list, the Clerk shall enter a unique three digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color and texture.
3. The Clerk's assistant shall then place all the numbered index cards in a box or other container capable of being closed and sufficiently large that the index cards can be mixed by shaking the container.
4. The Clerk's assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Clerk's eye level, so that the Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.
5. The Clerk shall withdraw the cards one-by-one, reading each number drawn out loud. The Clerk's assistant shall make a list of each of the numbers so drawn in the order in which they are drawn. Then, using the list prepared under subparagraph 2 above, the Clerk shall place the corresponding applicant's name next to each number.

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6. The Clerk shall then assign the available locations to the qualifying applicants. That list shall establish the order of priority for the locations until the next annual procedure under this Ordinance.
 7. The procedure set forth in this Section 6(I) shall be a public proceeding, open to the public pursuant to 1 M.R.S.A., Section 403, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the licenses are issued. The procedure shall be conducted at the Freeport Town Office within fourteen (14) business days of April 1, at a time to be set by the Clerk. The Clerk shall announce the exact time for the procedure by posting a notice in the Freeport Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such notice shall not invalidate the results of the procedure.
- b. No newsrack shall be so located that it projects onto, into or over any part of the roadway of any public street, or which rests wholly or in part upon, along or over any portion of the roadway of any public street.
 - c. No newsrack shall be chained, bolted, or otherwise attached to any fixture, including trees, located in the public right-of-way, except to other newsracks and no newsrack shall be bolted to the sidewalk. Outside of the locations specified in Section 45-104,2.a. above, newsracks may be cabled to CMP or NET poles with the permission of the owner of the pole.
 - d. Newsracks may be placed next to each other, provided that no group of newsracks shall contain more than five (5).

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- e. No newsrack shall be placed, installed, used or maintained:
 - (1) Within three (3) feet of any marked crosswalk.
 - (2) Within twelve (12) feet of the curb return of any unmarked crosswalk measured through the curb grades of intersecting streets within a triangle, two sides of which are the edges of the public ways for twelve (12) feet measured from their point of intersection or in the case of rounded street corners, the point of intersection of their tangents.
 - (3) Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility.
 - (4) Within five (5) feet of any driveway.
 - (5) Within five (5) feet ahead of and fifteen (15) feet to the rear of any sign marking a designated bus stop or loading zone, handicapped parking space or loading zone.
 - (6) At any location where the clear space for the passageway of pedestrians is reduced to six (6) feet or less.
 - (7) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.
 - (8) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.
 - (9) On any handicap access ramp.
 - (10) Within 5' of any area designated for a public peddler as regulated in Chapter 43 of the Town of Freeport Codified Ordinances.

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- (11) On any pedestrian path or vehicle driveway to a property.
- (12) Within three (3) feet of a display window abutting the sidewalk.
- (13) Adjacent to poles, posts, trash barrels, traffic signs or signals, mailboxes or other objects legally permitted so that the placement of the newsracks prevents their normal use and maintenance.

3. Maintenance and Installation.

- a. Each 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 publication paid for is not received. The coin-return mechanisms shall be maintained in good working order.
- b. 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 and address of the distributor and the 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 ordinance.
- c. Each newsrack shall be 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;
 - (2) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas;
 - (3) It is reasonably free of rust and corrosion in the visible metal areas;

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- (4) The clear plastic or glass parts, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
- (5) The paper or cardboard parts or inserts are reasonably free of tears, peeling or fading, and
- (6) The structural parts are not broken or unduly misshapen.

4. Appearance.

- a. No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, and two (2) feet in thickness.
- b. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper or news periodical sold therein.
- c. Newsracks in the Design Review district shall be painted white or green; neon colors are prohibited.

Section 45-105. Enforcement, Penalties and Revocation Procedure.

1. Enforcement Officer.

This Ordinance shall be enforced by the Town of Freeport Codes Enforcement Officer.

2. Penalties for Violation.

- (a) Any distributor who installs, places or maintains any newspaper vending device or newsrack without the permit required by Section 45-103(1) of this Ordinance commits a civil violation and is liable for a civil penalty of up to \$500.00 for each day each such newspaper vending device or newsrack continues without the required permit.

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- (b) Any distributor who installs, places or maintains any newspaper vending device or newsrack which does not comply with the conditions of a permit issued pursuant to Section 45-103 or with the standards of Section 45-104 of this Ordinance commits a civil violation and is liable for civil penalties of up to \$100.00 per violation per day.
- (c) In addition to civil penalties, the Town may enforce the provisions of this Ordinance by seeking injunctive relief, declaratory relief and any other remedy available at law or in equity.

3. Enforcement Procedure.

(a) Notice of Violation.

When the Codes Enforcement Officer determines that any newspaper vending device or newsrack violates any of the provisions of this Ordinance, a written Notice of Violation shall be given to the distributor specifying the nature of the violation, the provision of the Ordinance which is violated, and the action necessary to correct the violation. The Notice of Violation shall include an Order to correct the violation within seven (7) days of the distributor's receipt of the Notice of Violation, shall inform the distributor of the right to appeal pursuant to Section 45-106 of this Ordinance and shall inform the distributor of the consequences of the failure to appeal. The Notice of Violation shall be served on the distributor by certified mail, return receipt requested, or by delivery to the distributor in hand. If the distributor corrects the violation within seven (7) days in compliance with the Notice of Violation, then no civil penalties shall accrue.

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(b) Notice of Civil Penalties.

If the distributor fails to correct the violation in compliance with the Notice of Violation, the Codes Enforcement Officer shall give the distributor a Notice of Civil Penalties served in the same manner as the Notice of Violation. The Notice of Civil Penalties shall specify the maximum amount of penalties calculated from the date of the distributor's receipt of the Notice of Violation until the date of preparation of the Notice of Civil Penalties, and shall state that the distributor can avoid court action by correcting the violation and by paying to the Town Clerk a fee in lieu of civil penalties in the amount of fifty (50) percent of the maximum penalties calculated and specified in the Notice of Civil Penalties, both within five (5) days of the distributor's receipt of the Notice of Civil Penalties. If the distributor corrects the violation and pays the fee in lieu of civil penalties within five days, then no civil penalties shall accrue. Payment of the fee in lieu of penalties shall constitute a waiver of any right to appeal the Notice of Violation under subsection (a).

(c) Enforcement Action in Court.

If the distributor fails to correct the violation and pay the fee in lieu of civil penalties as provided in subsection (b), then the Town may commence a civil action in the courts of the State of Maine to obtain civil penalties, injunctive relief, declaratory relief and such other relief as may be available to the Town at law or in equity.

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4. Revocation of Permits.

The Town Council may revoke all permits issued to a distributor if the Council finds that the distributor has violated the provisions of this Ordinance more than five (5) times in any ninety (90) day period. When the Codes Enforcement Officer determines that any distributor has been served with more than five Notices of Violation pursuant to Section 45-105(3)(a) of this Ordinance within any ninety (90) day period and that such notices were either not appealed or were appealed and affirmed pursuant to Section 45-106, the Codes Enforcement Officer shall notify the Clerk of those Notices of Violation. The Clerk shall then schedule a revocation hearing on the agenda of the next regular meeting of the Freeport Town Council for which the Clerk is able to provide at least fourteen (14) days prior notice to the distributor. The notice of revocation hearing shall be served upon the distributor by certified mail, return receipt requested or by delivery to the distributor in-hand. The Notice shall require the distributor to appear at the revocation hearing and show cause why all permits issued to the distributor pursuant to this Ordinance should not be revoked on account of the distributor's repeated violations of this Ordinance. The burden shall be on the distributor to demonstrate to the Town Council that there was some reasonable excuse for the violations and that the distributor will implement policies and procedures designed to prevent future violations. The Council may revoke the permits issued to the distributor only by a majority vote of those members present and voting. If the Council revokes the permits, such revocation shall take effect at 11:59 p.m. on the seventh day after the date of the Council vote and all the newspaper vending devices and newsracks subject to the revoked permits shall be removed by that time.

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Section 45-106. Appeal to Town Council.

1. Appeal Procedure.

A distributor who wishes to contest a denial of a permit under Section 45-103 or a Notice of Violation under Section 45-105(3)(a) may appeal to the Freeport Town Council. Such appeal must be commenced within fourteen (14) days after the distributor has received notice of the denial or the Notice of Violation by filing a notice of appeal containing a concise summary of the grounds for appeal with the Freeport Town Clerk. Upon receipt of a timely notice of appeal, the Clerk shall place the appeal hearing on the agenda for the next scheduled regular meeting of the Freeport Town Council. At the appeal hearing, the distributor shall have the burden of presenting evidence and of persuading the Town Council that the denial of the permit or the Notice of Violation was in error. The decision appealed from may be reversed or modified only by the majority vote of those Council members present and voting.

2. Effect of Appeal.

The filing of an appeal under this Section shall not stay a Notice of Violation but the Town shall not commence court enforcement action under Section 45-105(3)(c) until after the Town Council has decided the appeal. The filing of an appeal and the pendency of an appeal do not stop the accrual of civil penalties. If the distributor's appeal is denied, the distributor will be liable for civil penalties for each day a violation continued from the distributor's receipt of a Notice of Violation under Section 45-105(3)(a).

3. No Other Appeals Authorized.

Appeals to the Town Council under this Ordinance may be taken only by a distributor who has applied for a permit and been denied or has been served with a Notice of Violation under Section 45-105(3)(a). No other person may appeal and no other action or non-action is appealable.

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Section 45-107. Abandonment.

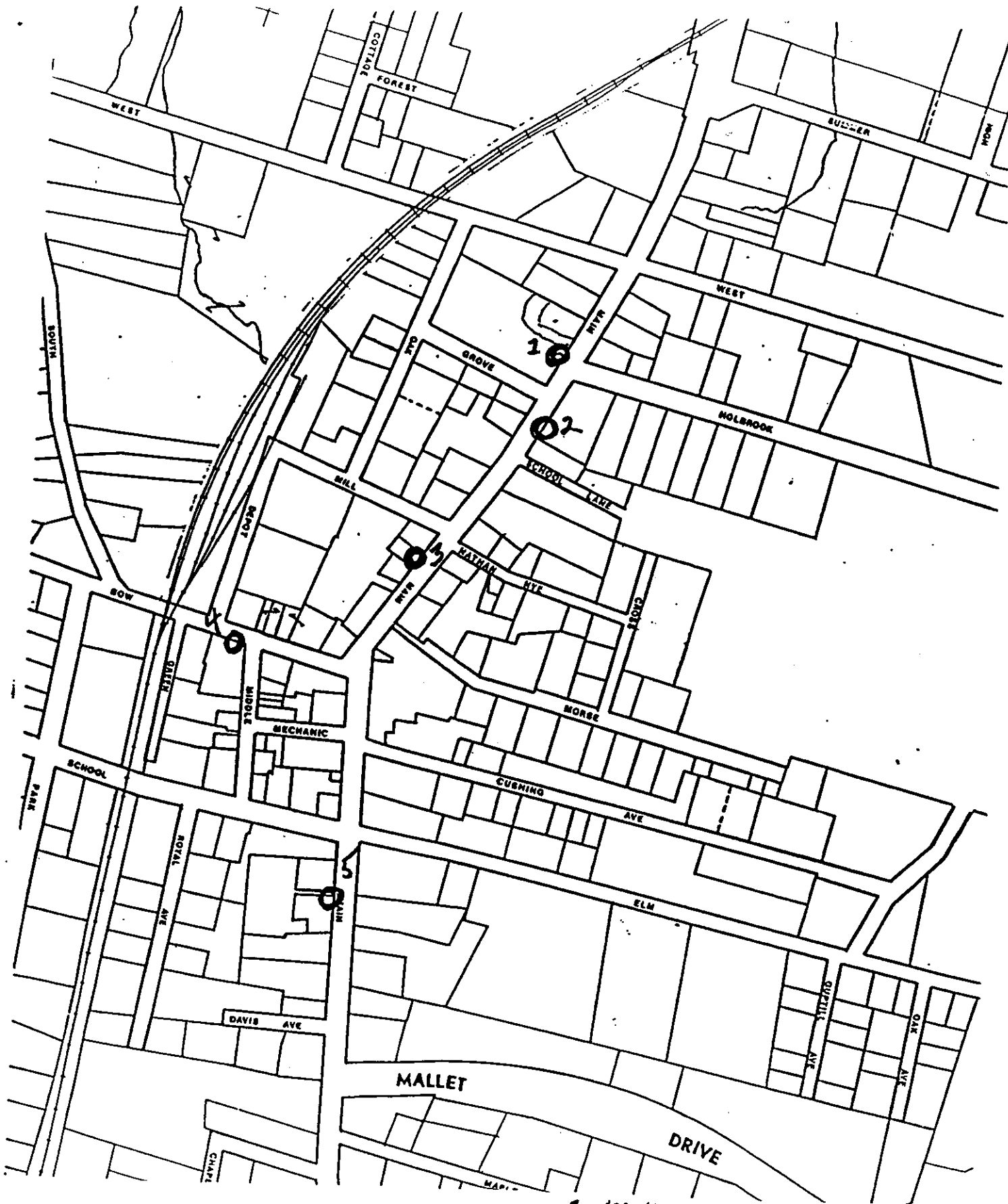
In the event a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 45-105 for newsracks in violation of the provisions of this Ordinance.

Section 45-108. Transfer.

No permit issued under the provisions of this Ordinance shall be used at any time by any person other than the one to whom it was issued.

Section 45-109. Separability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.



Newsrack Vending Locations

1. North of Town Hall Drive
2. Near Gap + Mikasa
3. Between Nautica + Benetton
4. L.L. Bean Parking lot
5. Praxis area

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