

CHAPTER 41B

NEWSPAPER BOXES ON STATE HIGHWAY RIGHT-OF-WAY

Authority

N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52, 27:7-21 and 27:7-44.1.

Source and Effective Date

R.1990 d.333, effective July 2, 1990.
See: 22 N.J.R. 1346(a), 22 N.J.R. 2032(a).

Executive Order No. 66(1978) Expiration Date

Chapter 41B, Newspaper Boxes on State Highway Right-of-Way, expires on July 2, 1995.

Historical Note

All provisions of this chapter became effective March 4, 1985 as R.1985 d.73. See: 16 N.J.R. 225(a), 17 N.J.R. 608(c).

Public Service petitioned the State of New Jersey to amend N.J.A.C. 16:41B-5.1(a) and was denied petition. See: 17 N.J.R. 2567(a).

1988 Revisions: Effective August 15, 1988 there were amendments to subchapters 1 and 2; subchapters 3 through 10 were repealed and new subchapters 3 through 6 were adopted; as R.1988 d.393. See: 20 N.J.R. 1178(a), 20 N.J.R. 2087(a). Pursuant to Executive Order No. 66(1978), Chapter 41B was readopted as R.1990 d.333. See: Source and Effective Date.

See section levels for further amendments.

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SUBCHAPTER 1. DEFINITIONS

16:41B-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Clear zone” means that roadside border area, starting at the edge of traveled way, available for safe use by errant vehicles. For the purpose of this chapter, the clear zone shall be as follows:

Posted Speed Limit	Clear Zone
45 mph	17.5 feet
50 mph	20 feet
55 mph	25 feet

“Department” means the Department of Transportation of the State of New Jersey.

“Gutterline” means line of demarcation delineated by the presence of a physical curb, a raised berm or a change in surface such as pavement to grass.

“News dispenser” means any self-service or coin operated box, storage unit, or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals.

“Person” means corporation, company, association, society, firm, partnership, or individual.

“Permittee” means the owner of the news dispenser.

“Right-of-way” means the entire width of State highway property. This includes the traveled way and all land on both sides of the traveled way extending to the abutting owner’s property lines.

“Traveled way” means that portion of the highway provided for the movement of vehicles, exclusive of shoulders, acceleration or deceleration lanes.

SUBCHAPTER 2. PERMIT PROVISIONS

16:41B-2.1 General provisions

(a) It shall be unlawful for any person to operate, erect, place or maintain, on any State highway right-of-way, any news dispenser without obtaining a permit from the Department of Transportation, as set forth in this section.

(b) With regard to news dispensers in place as of August 15, 1988, the permitting procedure shall be as follows:

1. The Department shall initiate a State-wide survey of news dispensers located on the right-of-way within 30 days of the enactment of these amendments. This survey shall be conducted on a regional basis with one county per region being surveyed every 30 days until completion. The survey shall identify the locations of news dispensers within the State highway right-of-way and shall develop the information, if available, required by this section. The publisher of the newspaper or periodical being displayed and sold in the news dispenser or the owner of the news dispenser, if different from the publisher and known to the Department, shall be notified within 30 days thereof, as to which news dispensers are found to be in violation of the provisions of this chapter. Notices of non-compliance shall conform with the requirements set forth in N.J.A.C. 16:41B-5.

2. All other news dispensers identified during the initial State-wide survey of news dispensers shall be deemed in compliance with this chapter. The Department shall prepare and provide to the publisher of the newspaper or periodical being displayed and sold in the news dispenser or the owner of the news dispenser, if different from the publisher and known to the Department, a list of those news dispensers deemed in compliance with this chapter within 30 days. Said list shall be incorporated into the format of a single application per publisher, or owner if different from the publisher and known to the Department. A permit shall be issued by the Department immediately upon the return of the application, provided that it bears the owner's signature; includes the information required by this section that was not available to the Department during the State-wide survey; and is accompanied by payment of the appropriate fee(s) established in (e) below. In the event the application, accompanied by the requisite information and fee(s), is not returned to the Department within 30 days, the news dispensers listed thereon shall be deemed in violation of this chapter.

(c) With regard to news dispensers placed on the State right-of-way after August 15, 1988, the owner shall, on the day of the placement of a news dispenser, submit an application for a permit. The application shall include the owner's name, address, telephone number and location of the news dispenser and a certification that such location is in conformity with this chapter. The Department shall issue a permit or a notice of non-compliance within 30 days of receipt of the application. Notices of non-compliance shall conform with the requirements set forth in N.J.A.C. 16:41B-5. In the event no action is taken within the aforesaid 30 day period, the continued use and maintenance of the news dispenser in question shall be permissible until such time as a notice of non-compliance, if any, is issued.

(d) Application forms may be obtained from the regional maintenance offices or from the Department's principal office, Bureau of Maintenance, Construction and Maintenance Unit, 1035 Parkway Avenue, Trenton, New Jersey 08625. Completed forms shall be forwarded to the regional office having jurisdiction over the area in which the news dispenser is located. The regional offices and their jurisdiction are set forth in N.J.A.C. 16:41-1.1(b).

(e) The owner shall include with the application a fee in the amount of \$25.00 per news dispenser. Fees must be in the form of a check or money order made payable to the New Jersey Department of Transportation. Cash will not be accepted.

(f) Permits shall be valid for as long as all of the conditions of this chapter have been observed. In the event of change of ownership of a news dispenser(s), the permit(s) shall remain valid as long as the location(s) remain the same and the Department is notified, in writing, of such change and the new owner accepts the terms and conditions of the permit(s).

SUBCHAPTER 3. INDEMNIFICATION

16:41B-3.1 General requirements

(a) The owner of the news dispenser, upon the placement of a news dispenser within the State highway right-of-way, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by any person or persons or because of any damage received or sustained by any property, irrespective of fault, arising out of the installation, use or maintenance of any news dispenser located on State highway right-of-way, or where such suit, action or claims arise out of such installation, use or maintenance of any news dispenser being a contributing factor to any such injury or damage, or on account of any act, omission, neglect or misconduct by the permittee, its employees, agents, distributors or servants relating to the installation, use or maintenance of any news dispenser within the State highway right-of-way.

(b) The aforesaid indemnification provision shall be contained in each permit issued by the Department pursuant to this chapter.

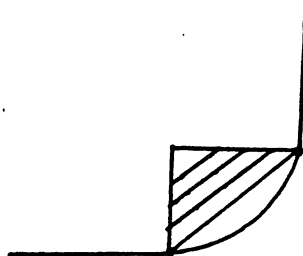
SUBCHAPTER 4. LOCATION, INSTALLATION AND MAINTENANCE OF NEWS DISPENSERS

16:41B-4.1 General requirements

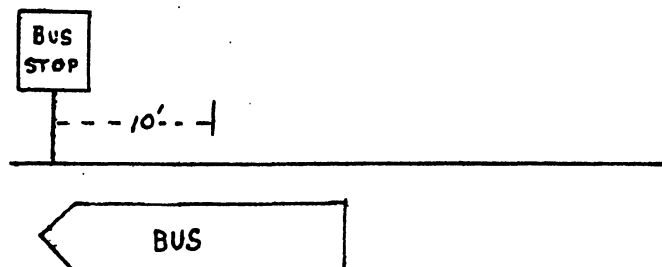
(a) News dispensers may be placed adjacent to the wall of a building but shall not be separated from such wall by more than six inches. Unless otherwise prohibited in this section, news dispensers may be placed within one and one-half feet of a gutterline or within one foot thereof in areas where the distance from the gutterline to the far edge of the sidewalk is less than six and one-half feet wide.

(b) Placement of news dispensers within the State highway right-of-way is prohibited in the following locations:

1. Within the traveled way, shoulders, acceleration or deceleration lanes of any State highway;
2. Within medians, jug handles, channelizing islands and along ramps;
3. Within three feet of any marked crosswalk;
4. Within the curved portion of a curb return (from point of tangency to point of tangency), as illustrated in the diagram below, except that news dispensers may be placed adjacent to the wall of a building as set forth in (a) above notwithstanding this paragraph;



5. Within five feet of any fire hydrant, fire call box, police call box, or other emergency facility;
6. Within three feet of any driveway;
7. Within 10 feet to the rear of any sign or other demarcation marking the beginning of a designated bus stop as illustrated in the diagram below;



8. Within three feet of any bus bench, except where such bench is within a bus shelter, in which event this restriction shall not apply provided that the news dispenser is not placed within such bus shelter; and

9. Where the speed limit is 45 mph or above, placement of news dispensers is prohibited within the clear zone, subject to the following exceptions:

i. News dispensers shall be permitted within the clear zone in close proximity to fixed objects which might operate to impede the safe recovery of errant vehicles to the traveled way, or bus shelters, but shall be no closer to the traveled way than said fixed object or bus shelter. For the limited purpose of this exception, clusters or rows of a maximum of three news dispensers positioned adjacent to one another are permissible, provided that at least one of the aforesaid news dispensers in each row or cluster be at least partially within five feet of the aforesaid object. As to bus shelters only, there shall be no restrictions placed upon the number of news dispensers permitted within close proximity thereto, provided they be positioned adjacent to one another and provided that at least one of the aforesaid news dispensers be within five feet of the bus shelter.

ii. Even where there are no fixed objects which might operate to impede the safe recovery of errant vehicles, news dispensers shall be permitted within the clear zone where there are sidewalks or walkways, but shall be placed on the far side thereof.

iii. News dispensers shall be permitted within the clear zone on the near side of a sidewalk or walkway, or in the grassy area, as close to the sidewalk or walkway as practicable, but only where it is not practicable to be on the far side of the sidewalk or walkway or in close proximity to a fixed object.

iv. News dispensers shall be permitted in areas within the clear zone where there are no fixed objects which might operate to impede the safe recovery of an errant vehicle to the traveled way, sidewalks or walkways but only in areas where pedestrians gather for other purposes. These areas include bus stops and park and ride facilities. Placement of a news dispenser pursuant to this exception shall be at least seven and one half feet away from the gutterline where practicable and shall be placed to service only the area where pedestrians gather.

v. Circumstances referred to in (b)9iii and iv above which will render placement of news dispensers not "practicable" include, for example, where news dispensers would encroach upon private property, block display windows, or where there are unacceptable ground conditions, such as a ditch, which prevent the placement of or access to a news dispenser.

(c) Any news dispenser which in whole or in part rests upon, in, or over the State highway right-of-way shall comply with the following standards:

iv. The structural parts thereof are intact.

1. Unless otherwise agreed to by the Department, news dispensers shall not exceed five feet in height, 36 inches in width, or 30 inches in depth;

2. News dispensers may be chained or otherwise attached to one another; however, no more than three news dispensers may be joined together in this manner, and a space of no less than 18 inches shall separate each group of three news dispensers so attached.

3. No news dispenser shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of a newspaper or periodical sold therein.

4. Every news dispenser placed on the State highway right-of-way shall have affixed thereto in a place where such information may be easily seen, the name, address, and telephone number of the owner and person (if different from the owner) responsible for maintaining the news dispenser.

5. Any news dispenser maintained on any State right-of-way which creates an imminent, unreasonable hazard to pedestrians or traffic or interferes with the response to an emergency situation by a public officer, fire fighter, ambulance corp or medic, may be summarily relocated to the nearest location not presenting said hazard. Any such relocation shall be reported as soon as reasonably possible to the permittee who shall relocate the news dispenser to any location which is in compliance with the terms of this chapter.

6. Unless otherwise approved by the Department, no news dispenser shall be chained, bolted or otherwise attached to any public fixture located within the State highway right-of-way, including, but not limited to, official signs, sign supports, guide rails, traffic signal supports, highway lighting supports, controller boxes, fire hydrants or bus shelters.

7. News dispensers shall be securely placed so as to reasonably prevent personal injury or property damage due to tilting, tipping or overturning.

8. Every news dispenser shall be maintained so that:

- i. It is reasonably free of dirt and grease;
- ii. It is reasonably free of chipped, faded, peeling and cracked paint;
- iii. It is reasonably free of rust and corrosion; and

SUBCHAPTER 5. CONDITIONS, NOTICE OF VIOLATIONS AND APPEALS

16:41B-5.1 General requirements

(a) The continued placement, use and maintenance of news dispensers is conditioned upon compliance with all of the provisions of this chapter. If any of the provisions of this chapter are alleged to have been violated or if the location, installation, or condition of the news dispenser no longer meets with the specifications of this chapter and any amendments thereto, the permittee shall be notified of the non-compliance by registered mail.

(b) The notice shall state the specific provision(s) of this chapter which are alleged to have been violated.

(c) The notice shall further state that, upon request by the permittee within 15 days of the receipt of said notice, the official issuing the notice of violation shall meet with the permittee to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within 30 days of said request. A request for such a meeting shall stay the further enforcement of this chapter, except in emergency situations as set forth in N.J.A.C. 16:41B-4.1(c)5. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.

(d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the meeting referred to in (c) above, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, or the permittee has failed to remove the news dispenser or otherwise correct the violation or reason for non-compliance, the permit shall be revoked and the permittee shall be notified by registered mail that the permit has been revoked.

(e) A permittee or applicant may appeal from a decision to revoke a permit or a decision not to grant a permit within 15 days of the date of receipt of a revocation notice or a notice that a permit has not been granted. The permittee or applicant shall file a letter of appeal from the decision and request either a hearing in accordance with Department procedures or that the letter of appeal be forwarded by the Department to the Office of Administrative Law as a contested case to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In the event an informal Department hearing is requested, any decision therefrom may be referred to the Office of Administrative Law for a de novo hearing. Any appeal shall stay enforcement of this chapter except in emergency situations as set forth in N.J.A.C. 16:41B-4.1(c)5.

(f) If the permittee (or applicant where no permit has been issued) fails to appeal from the revocation of a permit or a decision not to grant a permit, and does not remove or have removed the news dispenser in question within 30 days from the receipt of a revocation notice or a notice that a permit has not been granted, the news dispenser shall be removed by Department of Transportation maintenance personnel and stored at a Department of Transportation maintenance yard. The permittee or applicant shall be notified by registered mail of the location of the news dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the news dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the news dispenser. A charge of \$50.00 shall be levied by the Department. If a permittee

(or applicant where no permit has been issued) is unsuccessful on appeal, the permittee or applicant shall have 30 days within which to remove the news dispenser. If the news dispenser is not removed within 30 days, the Department of Transportation shall remove it in accordance with the procedures set forth in this subsection.

SUBCHAPTER 6. SEVERABILITY

16:41B-6.1 General requirements

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected thereby, and shall remain in full force and effect.