

BOARD OF SELECTMEN POLICY

PLACEMENT AND MAINTENANCE OF OUTDOOR BOXES IN AREAS OF PUBLIC ACCESS

Date Approved by BOS:

Signature of Chair:

February 12, 2001

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I. PURPOSE

The Placement and Maintenance of Outdoor Boxes in Areas of Public Access Policy is designed to maintain safe and clean sidewalks and streets.

A. Definitions – For the purposes of this section, the following definitions apply:

1. "Director" shall mean the Director of the Department of Public Works.
2. "Outdoor Box" shall mean any box, container or device that is placed in an area of public access on a temporary or permanent basis, including without limitation devices designed to collect, distribute or sell any item, such as private delivery service boxes, boxes for the collection of other items and boxes for newspapers or other literature; provided that the term shall not include those structures or devices erected or placed by authorized public agencies for public safety and/or public welfare purposes. Authorized public safety/public welfare devices include, but are not limited to streetlights, traffic lights, mailboxes, fire hydrants, trees and trash receptacles.
3. "LHDC" shall mean the Lexington Historic District Commission.
4. "Person" shall mean any individual or entity that owns, installs, manages, maintains, leases, controls or uses any Outdoor Box.

B. Scope - All Persons within the Town of Lexington must comply with each of the following regulations with respect to Outdoor Boxes:

1. Any Person may install, use, or maintain an Outdoor Box as long as no portion of the Outdoor Box projects into or over any part of the roadway of any public street or any part of a driveway, entryway or public street point of access for a home, business, or other public or private property;

2. Any Person may install, use, or maintain an Outdoor Box as long as no portion of the Outdoor Box resting in whole or in part upon or over any sidewalk or public path endangers the safety of persons or property, unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, hinders the use of any handicapped access ramps or otherwise interferes with compliance with the Americans with Disabilities Act, interferes with or impedes the ingress or egress from any residence, place of business, or any legally parked or stopped vehicle, impairs the visibility of a motor vehicle entering the roadway, interferes with the cleaning of any sidewalk for the purposes of snow removal or other public maintenance, or interferes with the use of poles, posts, traffic signs or signals, hydrants, parking meters, mailboxes or other public fixtures or utilities;
3. All Outdoor Boxes that are located on public property must be located within specific zones, which zones shall be delineated by the Director. A town map that displays the zones shall be available, upon request, through the Director.
4. No Outdoor Box shall be placed, installed, used or maintained:
 - a. Within 10 feet of the intersection of any two streets;
 - b. Within 5 feet of any marked crosswalk;
 - c. Within 5 feet of any driveway;
 - d. Within 10 feet in front of, and 15 feet to the rear of any sign marking a designated bus stop;
 - e. Within 10 feet of any fire hydrant, fire call box, police call box or other emergency facility;
 - f. At any location whereby the clear passageway of pedestrians is reduced to less than 5 feet.
5. All Outdoor Boxes should be properly maintained in a clean, neat, and attractive condition and in good repair at all times.
6. No two Outdoor Boxes containing identical publications or literature which are printed, distributed, or sold by a single Person or entity may be placed within 300 feet of each other.
7. No Outdoor Box may contain a publication or literature that is harmful to minors as defined by M.G.L. c. 272, § 31.
8. All Persons who wish to place an Outdoor Box on a public walkway or public path or on any public property, must pay a nominal maintenance fee to the Town in order to offset the aggregate increased cost of maintaining public property (grass, curbs, sidewalks, etc.) in the immediate vicinity of the Outdoor Boxes. The maintenance fee shall be established and adjusted from time to time as approved by the Selectmen, with the recommendation of the Director, who will estimate the increased costs of property maintenance near and around Outdoor Boxes.

9. Securing and Anchoring Outdoor Boxes:
 - a. No Outdoor Box shall be chained, anchored, or attached in any manner to public property, including sign posts, parking meters, fences, trash receptacles, or other public fixtures without the explicit approval of the Director in advance. The Director may deny approval to secure an Outdoor Box to public property if, in his or her determination, such action would physically or aesthetically damage public property, create an impediment to pedestrian, bicycle or motor vehicle traffic or otherwise create an unsafe condition. Any denial of such permission shall be accompanied by the Director's statement of the specific reasons for such denial.
 - b. In order to prevent theft, Outdoor Boxes may be anchored or attached to each other or anchored by other theft prevention methods, only so long as all such methods are specifically approved by the Director in advance. The Director may deny such approval pursuant to the guidelines in paragraph 9(a) above, and such denial shall be accompanied by the Director's statement of the specific reasons for such denial.
10. Enforcement - The Director shall have primary authority for enforcing these regulations.

II. APPLICATION

- A. Any Person who intends to install or maintain an Outdoor Box on public property, or who currently maintains and intends to continue to maintain an Outdoor Box on public property after the effective date of these regulations, must submit an application to the Director. Such application should be addressed to the Director, to the attention of ["Outdoor Box Applications,"] and must contain the following information:
 1. the Person's name, address and phone number and the name or title of the publication or literature to be distributed;
 2. the number of Outdoor Boxes proposed to be located on public property;
 3. the precise location at which each Outdoor Box will be located, specifically describing the street or streets, intersections and/or the street address nearest to the proposed location;
 4. if one or more of the Outdoor Boxes will be located within a zoned historic district, a certificate of appropriateness issued for each such Outdoor Box by the LHDC;

- B. If any portion of the application is incomplete, the Director shall deny the application. After the application is submitted, the Director may conduct a site-inspection of the proposed location for each Outdoor Box, or for those Persons already maintaining an Outdoor Box on public property, the Director may conduct a site-inspection of the current location of each existing Outdoor Box. Subject to the provisions of these regulations, and any other applicable regulations or by-laws, the Director will approve or deny the application for any proposed location or locations. If the application is denied, the Director must state the reasons for such denial, specifically referring to the provision or provisions of these regulations (or other law) that the proposed location would contravene, or specifically describing the manner in which the proposed location would physically or aesthetically damage public property, create an impediment to pedestrian, bicycle or motor vehicle traffic or otherwise create an unsafe condition.
- C. If the application is denied, the applicant may appeal in writing within 14 days of the date of the Director's decision to the Town Manager. Within the same 14 day period, the applicant may also request that the Town Manager grant a variance from these regulations on the ground that denial of the application will deprive the applicant of sufficient alternative means of communication, in violation of federal or state constitutional guarantees of free speech or free press. The written appeal or variance request shall fully state all the facts and reasons supporting the claim for relief on appeal. On appeal, the Town Manager shall have the power to grant the application with or without conditions, grant a variance or affirm the Director's denial. The Town Manager shall issue a decision within 14 days of receipt of the written appeal.
- D. If the application is denied, the Director may order the relocation or removal of any Outdoor Boxes which are located on public property as of the effective date of these regulations, with such relocation or removal to be undertaken within ten days of the Director's order (or, if the denial is appealed unsuccessfully, within 10 days after the Town Manager's affirmance of the Director's denial and of the denial of any variance request).
- E. Applications to maintain Outdoor Boxes existing on the date these regulations are adopted must be submitted by January 1, 2001 and, if timely submitted, will serve to authorize continued maintenance of an Outdoor Box at its current location unless and until the application is denied by the Director or, if an appeal is taken, by the Town Manager.
- F. Historic Districts – Outdoor Boxes are not exempt from regulation under the Historic Districts Act. Therefore, in addition to the above general regulations, in order to preserve the unique physical character of the local historic districts, any Person who intends to place an Outdoor Box within one of the four established historic districts of the Town must first receive a certificate of appropriateness from the Lexington Historic Districts Commission (LHDC).

1. The LHDC shall receive applications for certificates of appropriateness from Persons intending to install or continue maintaining an Outdoor Box within a historic district. Upon receipt of an application, the LHDC shall hold a hearing to evaluate the potential impact on the integrity of the historic district taking into account the proposed location of the Outdoor Box, the exterior design, color and signage displayed on the Outdoor Box and the proposed method, if any of anchoring the Outdoor Box. After weighing the above factors, the LHDC must issue or deny the certificate of appropriateness. If the LHDC denies the certificate of appropriateness, it must state the specific reasons for such denial and inform the applicant of what steps can be undertaken to enhance a successful subsequent application.
2. A certificate of appropriateness must accompany each application to the Director for installation of an Outdoor Box in a historic district and must remain on file with the Director. If the Director discovers that an Outdoor Box is located within a historic district without a certificate of appropriateness on file, the Director shall order the removal the Outdoor Box.

III. BACKGROUND

IV. REFERENCE

Approved by Board of Selectmen on February 12, 2001. Effective date: April 1, 2001.
Policy reformatted and approved by Board of Selectmen on October 24, 2005.