

ORDINANCE NO. 1238

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 17, ENTITLED "STREETS AND SIDEWALKS" OF THE CITY'S CODE OF ORDINANCES, BY CREATING ARTICLE IX, ENTITLED, "NEWSRACKS ON PUBLIC RIGHTS-OF-WAY", TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE THROUGH THE REGULATION OF PLACEMENT, TYPE, APPEARANCE, SERVICING, AND INSURING OF NEWSRACKS ON PUBLIC RIGHTS-OF-WAY; PROVIDING FOR CONFLICTS, PROVIDING FOR REPEAL, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council wish to regulate the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way and private property in the City of North Miami, in an effort to promote public health, safety and welfare of the North Miami residents; and

WHEREAS, the Mayor and City Council desire to amend the City's Code of Ordinances to create this regulation.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA THAT:

Section 1. That Chapter 17 of the North Miami Code of Ordinances, entitled "Streets and Sidewalks" is amended to read as follows:

\* \* \* \* \*

**ARTICLE IX. NEWSRACKS ON PUBLIC RIGHTS-OF-WAY**

**Sec. 17-226. Purpose and criteria.**

The purpose of the following is to promote the public health, safety and welfare through the regulation of placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way and private property so as to:

- (1) Provide for pedestrian and driving safety and convenience.

- (2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
- (3) Provide for public and property safety during hurricane conditions.
- (4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
- (5) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned newsracks removed.
- (6) Maintain and protect the values of surrounding properties.
- (7) Reduce unnecessary exposure of the public to personal injury or property damage.
- (8) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication.
- (9) Maintain and preserve freedom of the press.
- (10) Cooperate to the maximum with newspaper distributors.

#### **Sec. 17-227. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned shall mean any newsrack which remains empty for a period of thirty (30) continuous days, whether otherwise in good condition or not, or any newsrack upon which no responsible contact person's name, address and telephone number has been posted. A newsrack identified as abandoned shall be posted as such for a seven (7) working day period. If the abandonment has not been remedied, the newsrack shall be reallocated by the City and disposed of in any manner provided for herein.

Advertisement circular shall mean any publication that contains only advertising and no news reports.

City Manager shall mean the City Manager of the City of North Miami or his/her designee.

Distributor shall mean the person responsible for placing and maintaining a newsrack in a public right-of-way of the City.

Newsracks shall mean any self-service or coin-operated metal box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals or advertising publications. The dimensions for a newsrack shall be Height

forty nine inches by Width nineteen and one-half inches by Depth sixteen inches (H.49" X W. 19 1/2" X D. 16") and shall be a color determined by the City.

Public right-of-way shall mean any strip of land dedicated to public use or otherwise owned by a public agency for public purposes, and shall include, but not be limited to any public street, highway, sidewalk, parkway, alley and bicycle path.

**Sec. 17-228. Prohibited Newsracks.**

- (a) No person shall install, use or maintain any private newsrack which projects onto or into, or which rests, wholly or in part, upon the roadway of any public street.
- (b) No person shall install, use, or maintain any private newsrack which in whole or in part rests upon, in or over any public sidewalk, right-of-way or parkway.

**Sec. 17-229. Permit required.**

It shall be unlawful for any person, firm or corporation to place, affix, erect, construct, maintain or operate, on any public street or sidewalk, or in any other public way or place in the City any private newsrack without first having obtained a permit from the City Manager specifying the exact location of such newsrack. One permit may be issued to include any number of newsracks and shall be signed by the applicant.

**Sec. 17-230. Application for permit; approval of location.**

- (a) Applications. The applicant shall file with the City Manager a written application for a newsrack permit which shall contain the following information:
  - (1) The name, address and telephone number of the applicant who is the owner and/or principal in responsible charge of the newsrack.
  - (2) The name, address and telephone number of a responsible person whom the City may notify or contact at any time concerning the applicant's newsracks.
  - (3) The number of newsracks and the proposed specific location of each newsrack.
  - (4) Names of newspapers or periodicals to be contained in each newsrack.
  - (5) Type or brand of newsracks, including an illustration and description of the newsrack.
- (b) From the application information required by subsection (a) of this section, the City Manager shall approve the locations. The City Manager shall be guided therein solely by the standards and criteria set forth in this article. In any case where the City Manager disapproves of a particular location, such disapproval shall be without prejudice to the applicant designating a different location.
- (c) Issuance of permit. Upon a finding by the City Manager that the applicant is in compliance with the provisions of this article, the City Manager shall issue the permit for installation of the private newsrack. The installation, use or

maintenance thereof shall be conditioned upon observance of the provisions of this article. Such issuance shall be made within five (5) working days of the City's receipt of the completed application.

- (d) Denial of permit. If a permit for a newsrack location is denied, the applicant shall be notified within five (5) working days of the City's receipt of the completed application. The applicant shall be advised of the specific cause of such denial by the City Manager, who will suggest alternative locations therefor. The applicant may reapply for substitute alternative location at no additional permit fee.
- (e) Additional permits. If at any time after initial application for a newsrack permit, a publisher wishes to install additional newsracks, then applicant shall first comply with subsections (a) and (b) above in accordance with the provisions of this article. Under section 17-231, any additional returnable bond deposit required will credit any outstanding account balance. Additional permit fees shall be in accordance with section 17-232, except that the fifty-dollar publisher's fee is waived if previously paid.

#### **Sec. 17-231. Allocation of newsracks.**

Allocation of newsrack locations on the public rights-of-way shall be based on the following priority criteria:

- (a) First priority shall be given to newspapers of general circulation that are published at least five (5) times per week.
- (b) Second priority shall be given to publications published less frequently than five (5) times per week, with news and editorial content as a primary purpose of the publication.
- (c) Third priority shall be given to commercial racks.
- (d) Fourth priority shall be given to publications that have had difficulty obtaining a site within three (3) city blocks due to the unavailability of space.
- (e) Fifth priority shall be given to any second rack of a publication that already has a first rack within a group of six (6) subject to available space.

#### **Sec. 17-232. Insurance and indemnification.**

- (a) Insurance. Prior to the issuance of a permit by the City Manager, every publisher, distributor or responsible entity who places or maintains a newsrack on a public right-of-way or public property shall provide to the City's Risk Manager a current certificate of insurance, naming the City as an additional insured within thirty (30) days of the effective date of this article and subsequently on October 1<sup>st</sup> of each year. Such insurance shall be comprehensive general liability or commercial general liability coverage. Minimum limits of total coverage shall be three hundred thousand dollars (\$300,000.00) per occurrence combined single limit for

bodily injury liability and property damage liability. The insurance required herein shall run continuously with the presence of the publisher or distributor's newsrack(s) in the City's right-of-way. Any termination or lapse of such insurance shall be a violation of this section.

Reasonable evidence of equivalent self-insurance coverage may be substituted by the applicant for the above certificate of insurance

- (b) Indemnification. Every publisher, distributor or responsible entity who places or maintains a private newsrack shall file a written agreement with the City in a form satisfactory to the City Attorney, whereby such owner or person agrees to indemnify and hold harmless the City, its officers, and employees, from any loss, liability, or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use and/or maintenance of a private newsrack within the City. This shall not be construed to affect in any way the City's rights, privileges and immunities as set forth in Section 768.28 of the Florida Statutes.

#### **Sec. 17-233. Fees.**

There shall be a one-time only permit fee in the amount of fifty dollars (\$50.00) for each newspaper publisher plus twenty dollars (\$20.00) per newsrack. Failed inspections are subject to a reinspection fee of ten dollars (\$10.00). All of the above fees will be used to defray administrative expenses relating to this article only, and any revenues over expenses remaining after the implementation of this article will be returned to the newspaper publishers in proportion to their respective contributions.

#### **Sec. 17-234. Appeals.**

Any applicant who has been denied a permit pursuant to the provisions of this article may file an appeal with the city council by submitting a written request to the City Manager for appearance before the council to review such denial. The appeal shall be heard by the council within thirty (30) days of the filing of the appeal or at the next regularly scheduled agenda, whichever is sooner. The decision of the council on appeal is subject to judicial review as provided by the laws of the state.

#### **Sec. 17-235. Placement generally.**

Subject to the prohibitions set forth in section 17-236, newsracks shall be placed parallel to and not less than eighteen (18) inches nor more than twenty-four (24) inches from the edge of the curb. Newsracks placed near the wall of a building must be placed parallel to and not more than six (6) inches from the wall.

#### **Sec. 17-236. Installation and maintenance.**

Newsracks, which in whole or in part rest upon, in or over any public sidewalk or any public pedestrian path, shall comply with the following standards:

- (a) The City shall inspect the installation of all newsracks placed or maintained on the public right-of-way, sidewalk, pedestrian path or any other public property. The publishing entity shall be responsible for installing and maintaining newsracks located on private property. Newsracks located on the public right-of-way, public property or private property shall meet the following criteria:
- (1) No stand alone individual newsrack unit shall exceed forty-nine (49) inches in height, nineteen and one-half (19½) inches in width, and sixteen (16) inches in depth.
  - (2) Sides, door and coin boxes of the individual newsracks shall be a color consistent with the streetscape colors approved by the City.
  - (3) Newsracks shall carry no card holders or advertising, but may display the name, with lettering and background of any colors, of the newspaper being dispensed, in spaces in the locations and sizes set forth below:
    - (a) On the front of the newsrack, the lettering size shall not exceed one and three-quarters (1¾) inches height. The lettering shall be placed within a colored-band space not exceeding two and one-half (2½) inches in height above the door hinge.
    - (b) On the sides and back of the newsrack, the lettering size shall not exceed two and one-half (2½) inches in height. The lettering shall be placed within a colored-band space not exceeding four and one-half (4½) inches in height and beginning one (1) inch from the top of the newsrack.
- (b) Newsracks for free newspapers may omit the coin box and may have the pull bar welded to the door to produce an "honor rack".
- (c) The Publishing entity shall be responsible for maintaining the newsracks that it has installed on the public rights-of-way. Newsracks shall be maintained in the following manner:
- (1) Coin-operated newsracks shall be equipped with a coin-return mechanism, maintained in good working order at all times, to permit customers to secure an immediate refund if newsrack is not operational.
  - (2) Each newsrack shall be maintained in a neat, 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 it is reasonably free of dirt; grease; rust; chipped, peeling or faded paint; or unbroken glass or hoods.
  - (3) The surrounding area upon which the newsrack is placed shall also be maintained in a neat and orderly condition.
- (d) Mounts shall be bolted in place through four (4) standard holes in the base place in accordance with standards provided in section 17-226. Newsrack cabinet tops

shall be installed and checked for level; a water-soluble, paintable, ten-year caulk shall be applied and wiped to seal around the base plate and the mounting surface.

**Sec. 17-237. Newsrack mounting standards.**

Every newsrack located on public and private rights-of-way, publicly owned property, or within the twenty-five foot setback on private property shall be installed level and plumb on a hard surface as set forth in the following standards:

- (1) Foundation four-inch minimum concrete, twenty-five hundred (2500) psi (twenty-eight-day strength), Class I.
- (2) Two (2) inch minimum concrete edge distance for bolts.
- (3) One-half (1/2) inch chamfer all concrete edges.
- (4) Three-eighths (3/8) inch diameter hot-dipped galvanized hex bolt mounts, three-inch minimum imbedment, threads down, through four (4) corners of the pedestal base.
- (5) In the event installation and/or removal is made by the publishing entity, any damage to public property or public right-of-way at the time of installation or removal shall be the responsibility of the newspaper publisher. Upon removal of the newsrack, the publishing entity shall be responsible for restoring the property surface to its preinstallation condition, subject to reasonable wear and tear.
- (6) With the approval of the City Manager or his/her designee, newspaper publishers may use other methods to secure the newsrack to the concrete base set in the ground.
- (7) The City may elect to provide or require a modular type cabinet for the grouping of otherwise stand alone newsracks.

**Sec. 17-238. Specific prohibitions.**

Newsracks shall not be placed, installed, used or maintained:

- (1) Within five (5) feet of any marked or unmarked crosswalk.
- (2) Within ten (10) feet of any fire hydrant, fire call box, police call box or other emergency facility.
- (3) Within five (5) feet of any driveway.
- (4) Within five (5) feet ahead of, and fifteen (15) feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.
- (5) Within two (2) feet of any bus bench, or plaza bench.
- (6) At any location whereby the clear space for passageway of pedestrians is reduced to less than six (6) feet.

- (7) Where a vertically protruding member of the newsracks is on or within twelve (12) inches of any area improved with lawn or hedges or within three (3) feet of flowers or trees.
- (8) Within three (3) feet of any display window of any building abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window display purpose, or within five (5) feet of a building entrance.
- (9) On or within two (2) feet of signs, parking meters, street lights or utility poles.
- (10) Within the site visibility triangle as set forth in the Code of Ordinances of the City.

**Sec. 17-239. Enforcement procedures-Nonconforming newsracks.**

- (a) Within one hundred fifty (150) days of the effective date of this Ordinance and at any time thereafter, any newsrack in violation of any provision of this article shall be subject to remedy and due process under the provisions of Chapter 2, Article III of this Code pertaining to the Code Enforcement Board.
- (b) In the event that the City Manager or his/her designee determines that a publishing entity is not in compliance with this chapter, a letter or a written statement shall promptly be provided to the publishing entity specifying the reasons for noncompliance. The publishing entity shall have thirty (30) days to comply with this chapter. Failure to comply shall result in the revocation of the permit issued for the noncompliant newsrack.

**Sec. 17-240. Same-Abandoned newsracks.**

- (a) If any newsrack installed pursuant to this article does not contain the publication specified therefore within a period of thirty (30) consecutive days after release of the current issue, the newsrack shall be deemed abandoned and the City shall allocate the abandoned newsrack in accordance with provisions of this chapter.
- (b) In the event a newspaper publishing company or its distributor desires to voluntarily abandon a newsrack location, the distributor shall notify the City Manager, in writing of the intent to abandon the location.

**Secs. 17-241 - 17-250. Reserved.**

**Section 2. Conflict.** All Ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

**Section 3. Repeal.** All Ordinances or parts of Ordinances in conflict or inconsistent are repealed.



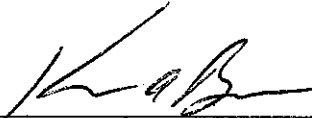
**Section 4. Severability.** If any word, clause, phrase, sentence, paragraph or section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this ordinance.

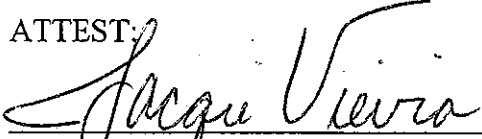
**Section 5. Codification.** The provisions of this Ordinance may become and be made a part of the code of ordinances of the City of North Miami, Florida. The sections of the ordinance may be re-numbered and re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

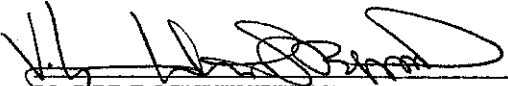
**Section 6. Effective Date.** This Ordinance shall be effective ten (10) days after the passage by the Mayor and City Council on second reading.

**PASSED AND ADOPTED** by 5-0 vote of the Mayor and City Council on first reading this 28 day of August, 2007.

**PASSED AND ADOPTED** by 5-0 vote of the Mayor and City Council on second reading this 11 day of September, 2007.

  
\_\_\_\_\_  
KEVIN A. BURNS  
MAYOR

ATTEST:  
  
\_\_\_\_\_  
Deputy for  
FRANK WOILAND  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:  
  
\_\_\_\_\_  
V. LYNN WHITFIELD  
CITY ATTORNEY

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: Councilman Galvin

Seconded by: Councilwoman Steril

**Vote:**

Mayor Kevin A. Burns	<u>X</u>	(Yes)	_____	(No)
Vice Mayor Marie Erlande Steril	<u>x</u>	(Yes)	_____	(No)
Councilperson Michael R. Blynn	<u>x</u>	(Yes)	_____	(No)
Councilperson Scott Galvin	<u>X</u>	(Yes)	_____	(No)
Councilperson Jacques A. Despinosse	<u>X</u>	(Yes)	_____	(No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.