

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 62, ARTICLE V. OF THE CODE OF ORDINANCES ENTITLED "NEWSRACKS" BY ADJUSTING THE SPELLING TO 'NEWS RACKS' THROUGHOUT THE ORDINANCE; BY AMENDING SECTION 62-151 TO AMEND DEFINITIONS; ADDING SECTION 62-152 TO STATE PURPOSE AND CRITERIA; AMENDING SECTION 62-177 TO SET JULY 15 AS THE APPLICATION FOR LOCATIONS DEADLINE; AMENDING SECTION 62-179 TO ESTABLISH AND ADJUST CERTAIN FEES; AMENDING SECTION 62-181, DENIAL; AMENDING SECTION 62-182 TO AMEND THE REPLACEMENT PROCEDURE; AMENDING SECTION 62-183, TO AMEND LOCATION REQUIREMENTS; ADDING SECTION 62-186 TO ESTABLISH NEWS RACK MOUNTING STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that clarification and improvement of the News Rack ordinance, would ensure a fair process for the distribution of news rack permits, and reduce safety hazards and visual blight created by improperly placed and/or abandoned news racks on city right of way; and

WHEREAS, an amendment to the news rack ordinance will promote the health, safety and welfare of the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 62 of the Code of Ordinances is hereby amended as follows*:

Chapter 62 - Streets and Sidewalks

Article V. - ~~Newsracks~~ News Racks

Sec. 62-151. - 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:

Distributor means any individual or business entity engaged in the dissemination of any publication utilizing a news rack located in the City of Key West, Florida.

Intersection for purposes of this section, the term intersection shall mean that portion of public right of way intended for vehicular travel. Any reference to measurement from an intersection in this section shall be determined from the center of the intersection.

News rack ~~Newsrack~~ means any type of unmanned device, including any online or electronic, self-service or coin-

*(Coding: Added language is underlined; deleted language is ~~struck through~~ for first reading; Added language is double underlined; deleted language is ~~double struck through~~ for second reading.)

operated box, container, storage unit or other dispenser or stand, installed, used or maintained for the display and sale or dissemination of newspapers or other written periodicals or for the vending or free distribution of newspapers or other periodicals.

Public right(s)-of-way means any dedicated or undedicated public street, highway, sidewalk, parkway or alley located in the City of Key West, Florida.

Roadway means that portion of a street improved, designed or ordinarily used for vehicular traffic.

Sidewalk means any service area provided for that part of a public right-of-way designed and ordinarily used for pedestrian travel.

Street means all of that area dedicated to public use for public traffic purposes and shall include but not be limited to roadways, parkways, alleys and sidewalks.

Sec. 62-152. - Purpose and criteria.

The purpose of this chapter is to promote the public health, safety and welfare through the regulation of placement, type, appearance, and servicing of news racks on public rights-of-way 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 severe weather conditions;

(4) Provide reasonable access for the use and maintenance of poles, posts, traffic signals, hydrants, mailboxes and access to locations used for public transportation purposes;

(5) Relocate and/or replace news racks 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 news racks removed;

(6) Maintain and protect the values of surrounding properties and prevent damage to right-of-way areas, greenery and landscaping;

(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 and coordinate with newspaper publishers.

~~(11) Require indemnification of the City of Key West by newspaper publishers, distributors and their agents for any injuries or damages that may occur as a result of news racks being on public property.~~

Sec. 62-176. - Label required.

No person shall install, affix, erect, construct or maintain a news rack ~~newsrack~~ on the public right-of-way without first obtaining a registration label for each news rack ~~newsrack~~.

Sec. 62-177. - Application.

(a) An applicant shall file with the city manager, or designee, a written application for a news rack ~~newsrack~~ registration label which shall contain the following:

(1) The name of the newspaper or periodical to be contained in the news rack ~~newsrack~~.

(2) The names, addresses, and telephone numbers of the publisher, distributor and the agent of either, if any, responsible for the news rack ~~newsrack~~. If an agent is named,

the address and telephone number of the agent shall be supplied.

(3) The total number of news racks ~~newsracks~~ to be registered and their locations (with street address) and the type or brand of news rack ~~newsrack~~.

(4) A photograph of each news rack ~~newsrack~~ at its present site, if it is to be re-registered.

(5) A photograph that shows the sidewalk/streetscape of each proposed site for a new registration.

(b) New permits shall be issued, ~~upon application,~~ each year ~~as of~~ on or before October 1.

(c) Applications for locations will be submitted no later than July 15 each year.

Sec. 62-178. - Indemnification.

Prior to the issuance of a news rack ~~newsrack~~ registration label by the city manager, or designee, the applicant shall furnish to the city manager, or designee, a written statement, in form satisfactory to the city attorney, whereby the distributor of the news rack ~~newsrack~~ 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, maintenance and/or removal of a news rack ~~newsrack~~ within the city.

Sec. 62-179. - Fees.

~~A fee of \$5.00 shall be charged for each newsrack registration label issued. This fee shall be used to defray administrative expenses relating to the regulation of newsracks.~~

There shall be a one-time only application fee in the amount of twenty-five dollars (\$25.00) for each applicant plus a nonrefundable registration label fee of ten dollars (\$10.00) for each news rack registration label issued. Failed inspections are subject to a re-inspection fee of fifteen dollars (\$15.00). All of the above fees will be used to defray administrative and compliance expenses related to this ordinance.

Sec. 62-180. - Affixing label after issuance.

Upon issuance of a news rack ~~newsrack~~ registration label, the applicant shall permanently affix it to the news rack ~~newsrack~~ in a location that is readily visible either on the door or on the rear of the news rack, ensuring that the label number corresponds to the label number assigned to the news rack ~~newsrack~~ location on the application list.

Sec. 62-181. - Denial.

If an application for a news rack ~~newsrack~~ registration

label shall be denied because of a defect in the application or the location, the applicant shall be notified thereof by the city manager, or designee, and shall be given the opportunity to correct the application or the location. No new or replacement news rack ~~newsrack~~ location shall be approved if four news racks ~~newsracks~~ exist already exist in that location. ~~or within 100 feet thereof.~~

Sec. 62-182. - Replacement procedure.

(1) If it becomes necessary to replace an existing labeled news rack, ~~newsrack~~, the distributor shall comply with the application procedure contained in this division. No news rack ~~newsrack~~ will be able to be put back, once removed, in a location that already has four news racks ~~newsracks~~. In the event of more than four owners/publishers reapplying for the same location at the time of renewal, a lottery shall be held on the first Friday of September for the available locations. The city manager or designee shall devise a lottery system that ensures that all applicants have an equal opportunity to obtain a permit.

(2) If a distributor submits multiple publication applications for the lottery, the publication that is awarded the location in the lottery shall be placed at the location in a publications specific news rack.

~~(3) A distributor shall not submit any applications for location(s) unless the publisher or distributor has an adequate inventory of news racks to place at a location(s) at the time application is made.~~

(3) The lottery shall be conducted on the first Friday in September, or at such date selected by the City Manager or designee that is as soon as practicable after that date. Should a news rack location awarded to a distributor through the lottery become available because the news rack at that location was abandoned, surrendered or was removed by the City pursuant to this ordinance, then a lottery shall be conducted for that location should more than one distributor apply to place a news rack at that location. Otherwise, the location shall be awarded to any distributor who complies with this ordinance.

Sec. 62-183. - Location requirements.

(a) No news rack ~~newsrack~~ shall be placed, installed, used or maintained in the right-of-way:

(1) Within ~~twelve (12) inches of the back of curb without parking, or~~ eighteen (18) inches of the back of curb with parking. For purposes of this subsection, "back of the curb" shall mean that vertical plane of a curb that

abuts the sidewalk, pedestrian right-of-way or private property.

(2) At any location where the clear space for passageway of pedestrians would be reduced by the installation to an area of less than 36 inches.

~~(3) Within a triangle bounded by the curblines adjacent to the corner lot lines and a straight line drawn between points on each curbline 20 feet from the intersection of the curblines or extension thereof.~~

~~(4)~~ (3) On or within two (2) feet of any bike rack, or tree, traffic related signs, street lights or utility poles located on the public right-of-way.

~~(5) In violation of any section of this Code or existing city ordinance.~~

(4) Within thirty (30) feet from any intersection.

~~(5) Within twenty (20) feet from any marked crosswalk not in an intersection.~~ Within ten (10) feet of an active driveway.

~~(6) Within twenty (20) feet of a private driveway.~~

~~(7) Within fifteen (15) feet of any fire hydrant or other emergency facility.~~

(6) Within ten (10) feet of any fire hydrant or other emergency facility.

~~(8)~~ (7) Within a median, except if a sidewalk is installed,
which is defined as a landscaped or paved island in the
center of the public right-of-way.

~~(9)~~ 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.

~~(10)~~ Within two (2) feet of any bus bench or shelter.

~~(11)~~ Within twenty (20) feet of any handicap
ramp/landing.

(8) Within five (5) feet of any handicap ramp/landing.

~~(12)~~ (9) Within a planter with or without vegetation.

~~(13)~~ (10) In violation of any section of this Code or
existing city ordinance.

(b) ~~No news rack newsrack shall be chained, belted or anchored~~
~~in any manner to any object in the right of way.~~

~~(c)~~ No more than four news racks may be placed at any location;
the news racks shall be placed immediately adjacent to each
other in a horizontal line.

~~(d)~~ (c) News racks in groups of Groupings of four (4) news racks
shall not be placed within seventy (70) feet of another grouping
of news racks.

~~(e)~~ (d) News racks found in violation of above requirements shall
be assessed a fifteen dollar (\$15.00) re-inspection fee to

ensure compliance. This fee shall be paid to the City of Key West within ten (10) business days of re-inspection to ensure compliance.

~~(f)~~(e) Failure to achieve compliance of the provisions of this chapter shall result in the violation being forwarded to the Code Compliance Magistrate in accordance with Ch. 2, Article VI of the Code of Ordinances.

Sec. 62-184. - Relocation.

Once a news rack ~~newsrack~~ is registered to a location, the news rack ~~newsrack~~ shall not be relocated on the public right-of-way without the publisher, distributor or their agent(s) submitting in writing to ~~written consent of~~ the city manager, or designee, the new location of the news rack on the public right-of-way. ~~in which event the news rack newsrack must be re-registered in accordance with Sec. 62-177 of this division.~~

Sec. 62-185. - Installation, maintenance or use of news racks ~~newsracks~~ in violation of division.

(a) Upon determination by the city manager, or designee, that a news rack ~~newsrack~~ has been installed, used or maintained in violation of this division, an order to correct the offending condition shall be issued to the publisher, distributor or agent

of the news rack ~~newsrack~~. The order shall state the grounds for the violation. Such order shall be sent certified mail or by e-mail to the publisher, distributor or agent (confirmed by a read receipt if the order is emailed). Failure to correct the offending condition or to appeal the order within five days, excluding Saturday, Sunday, and a legal holiday, after its receipt shall result in the city removing the news rack, pending a hearing before the Code Compliance Magistrate in accordance with Ch. 2, Article VI and Sec. 62-183(f) ~~newsrack~~ and processing it as surplus as provided in section 62-212 if a violation is sustained by the Code Compliance Magistrate. ~~If an appeal is made, the city manager shall conduct a hearing at which the appellant shall have an opportunity to be heard. Additionally or alternatively, the city may cite the owner or distributor or agent for violation of this article pursuant to article VI of chapter 2~~ An appeal of such a determination can be made pursuant to F.S. 162.11.

(b) If the location or condition of a news rack ~~newsrack~~ constitutes an imminent and serious danger to the public health, safety or welfare, the city manager, or designee, may immediately remove the news rack ~~newsrack~~ from its location. The city shall provide immediate written notice of such action to the distributor or its agent and deem the news rack ~~newsrack~~ as

surplus as provided in section 62-212

~~(c) Notwithstanding any other provision of this chapter, in the event that a hurricane warning watch is issued by the National Weather Service, the publisher, distributor, or agent shall remove immediately all news racks newsracks from the rights of way within five (5) hours of the issuance of said hurricane watch. If a responsible agent fails to pick up a news rack newsrack, the city manager or designee may remove the news rack newsrack from its location. The city need not provide subsequent notice of such action to the distributor or its agent. The distributor must contact the city as soon as possible, but not later than 30 ten (10) days after the hurricane warning is lifted, in order to retrieve a news rack newsrack(s). The city may impose a fee of Fifty Dollars (\$50.00) for each news rack newsrack picked up by the city pursuant to this subsection. After 45 thirty (30) days, any unclaimed news racks newsracks obtained by the City of Key West pursuant to this section shall be deemed abandoned as provided in section 62-211. News racks Newsracks picked up by the city and then released to the publisher, distributor, or agent may be placed only in locations permitted and permit numbers must correspond with existing permit locations on file with the city of Key~~

~~West.~~

(d) The city is not responsible for any loss or damage to any news rack ~~newsrack~~.

Sec. 62-186. News rack mounting standards.

A news rack shall be attached to a concrete base or concrete base and pedestal, with a net weight of not less than eighty (80) pounds, and the concrete base shall be twenty-four (24) inches by twenty-four (24) inches, with a height of three inches, and shall not be decorated or colored.

Sec. 62-211. - Determination of abandonment.

If a news rack ~~newsrack~~ remains empty or has been picked up and stored by the city of Key West for a period of ~~45~~ thirty (30) days, it shall be deemed abandoned. The city manager, or designee, shall determine whether a news rack ~~newsrack~~ is abandoned and shall maintain a public record thereof.

Sec. 62-212. - Notice to publisher or owner; removal by city.

If a news rack ~~newsrack~~ is deemed abandoned as provided in section 62-211 or section 62-185, the city shall notify the publisher in writing by certified mail, providing five days from receipt of the notice to remove the identified news rack

~~newsrack~~. If the publisher or owner is unknown, the city shall place an adhesive notice on the news rack ~~newsrack~~ providing notice of its abandonment, if on public property. If the publisher or owner does not remove the news rack ~~newsrack~~ within the prescribed time, the city may remove and temporarily store the news rack ~~newsrack~~, including all materials used to ~~either~~ ~~or~~ anchor the news rack ~~newsrack~~. The publisher or owner of the news rack ~~newsrack~~ shall be responsible to pay the city its costs associated with removal and storage. If the publisher or owner does not take possession of the news rack ~~newsrack~~ within ~~90~~ thirty (30) days of issuance of the original notice of abandonment, the city shall consider the news rack ~~newsrack~~ as surplus property and sell or otherwise dispose of it, and no other permits will be issued for new news racks ~~newsracks~~ so long as existing news racks ~~newsracks~~ of the same publisher or distributor remain in city storage.

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2014.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2014.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2014.

Filed with the Clerk _____, 2014.

Mayor Craig Cates _____
Vice Mayor Mark Rossi _____
Commissioner Teri Johnston _____
Commissioner Clayton Lopez _____
Commissioner Billy Wardlow _____
Commissioner Jimmy Weekley _____
Commissioner Tony Yaniz _____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK