

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF ORDINANCES ENTITLED "STREETS AND SIDEWALKS" BY AMENDING ARTICLE V ENTITLED "NEWSRACKS" AMENDING THE AMOUNT OF PERMITTED NEWSRACKS ON SIDEWALKS ADJACENT TO DUVAL STREET; AMENDING SECTION 62-178 TO AMEND THE APPLICATION DEADLINE; AMENDING SEC. 62-179 TO ADJUST FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West finds that the proliferation of commercial street furniture such as news racks present a danger to pedestrians in heavily congested areas of the historic district, and;

WHEREAS, The City Commission for The City of Key West further finds that commercial street furniture such as news racks are not consistent with the historic fabric of the City of Key West, and;

WHEREAS, The City Commission for The City of Key West finds that Duval Street is both the most historically significant street within the city, and that it is also the most congested street with pedestrians within the city, and;

WHEREAS, The City Commission recognizes Exhibit A to this ordinance establishes that there are 906 locations where licensed news racks are located and 255 recognized locations for news racks that are vacant, and;

WHEREAS, The City Commission for the City of Key West has taken testimony from its Historic Preservation Planner, its Risk Manager, its head of Code Compliance, and its Police Chief to establish the city's legitimate governmental concerns of congestion, public safety, and historic preservation, and;

WHEREAS, The City Commission for the City of Key West finds that the reduction of news racks from the most congested sidewalks abutting Duval Street, in the historic district is a narrowly tailored method to address the city's legitimate concerns that still leaves ample alternatives for dissemination of periodicals, and;

WHEREAS, The City Commission for the City of Key West finds that this ordinance revision is a constitutionally permissible revision to address the city's concerns pursuant to *Globe Newspaper Company v. Beacon Hill Architectural Commission*, 100 F.3d 175 (1st Cir. 1996); and *Gold Coast Publications, Inc. v City of Coral Gables*, et al 42 F.3d 1336 (11th Cir. 1994) as a valid time, place and manner regulation of the press and speech.

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

Section 1: That Chapter 62 of the Code of Ordinances for the City of Key West, is amended as follows*:

Sec. 62-183. - Location requirements.

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

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

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

(5) Within ten (10) feet of an active driveway.

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

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

(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.

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

(9) Within a planter with or without vegetation.

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

(b) ~~Except on the sidewalks adjacent to Duval Street, 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. No more than one news rack may be placed on the sidewalks adjacent to Duval Street in any given location and shall not be placed within seventy (70) feet of each other. All other restrictions of this section shall also be applicable.

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

(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.

(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 chapter 2, article VI of the Code of Ordinances.

Section 2: **That Chapter 62 of the Code of Ordinances for the City of Key West, is amended as follows*:**

Sec. 62-177. - Application.

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

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

(2) The names, addresses, and telephone numbers of the publisher, distributor and the agent of either, if any, responsible for the news rack. If an agent is named, the address and telephone number of the agent shall be supplied.

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

(4) A photograph of each news rack 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 each year on or before October ~~±~~ 12.

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

Section 3: That Chapter 62 of the Code of Ordinances for the City of Key West, is amended as follows*:

Sec. 62-179. - Fees.

There shall be a one-time only application fee in the amount of ~~twenty five~~ fifty dollars (~~\$25.00~~ \$50.00) for each applicant plus a nonrefundable annual registration label fee of ~~ten~~ twenty dollars (~~\$10.00~~ \$20.00) 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 [Ord. No. 14-02].

Section 4: 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 5: 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 6: 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 _____, 2020.

Read and passed on final reading at a regular meeting held
this _____ day of _____, 2020.

Authenticated by the presiding officer and Clerk of the
Commission on _____ day of _____, 2020.

Filed with the Clerk _____, 2020.

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|------------------------------|-------|
| Mayor Teri Johnston | _____ |
| Commissioner Gregory Davila | _____ |
| Commissioner Mary Lou Hoover | _____ |
| Commissioner Sam Kaufman | _____ |
| Commissioner Clayton Lopez | _____ |
| Commissioner Billy Wardlow | _____ |
| Commissioner Jimmy Weekley | _____ |

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK