

ORDINANCE NO. #2006-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, ENTITLED "NEWSRACKS;" PROVIDING FOR DEFINITIONS; PROVIDING THAT AN APPLICATION SHALL BE FILED WITH PROPER CITY AUTHORITIES PRIOR TO THE INSTALLATION OF NEWSRACKS WITHIN THE CITY; PROVIDING THAT NEWSRACKS SHALL BE OF A MODULAR STYLE; PROVIDING THAT NEWSRACKS SHALL BE FLOOR OR PEDESTAL MOUNTED; PROVIDING FOR THE ISSUANCE OF CERTIFICATES OF COMPLIANCE; PROVIDING FOR INSURANCE CERTIFICATES; PROVIDING FOR THE LOCATION OF NEWSRACKS; PROVIDING FOR SPECIFIC COLORS AND THE SIZE OF LETTERS ON NEWSRACKS; PROVIDING FOR SPECIFIC PROHIBITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the substantial growth in numbers of newspaper distributors and private newsracks in the City of Doral has produced a significant increase in the number of private newsracks installed in public rights-of-way, resulting in complaints by citizens and businesses about the adverse impact on the aesthetics and appearance of the City, and concern by the public and City officials with regard to the safety and convenience of private newsracks; and

WHEREAS, the City of Doral recognizes the freedom of the press and the importance of affording one the right to disseminate information to the public through the publication of newspapers; and

WHEREAS, the City Council of the City of Doral has sought to enhance the aesthetics of the City of Doral community; and

WHEREAS, the City Council through the adoption of this ordinance seeks to strike a balance between the adherence to safety and aesthetic values of the City of Doral community and the constitutional guarantee of freedom of the press;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DORAL:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirm as being true and correct and hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. That new ordinance of the City of Doral, entitled, "Newsracks," shall be and it is hereby created to read as follows:

ARTICLE I NEWSRACKS

Sec. 1-1 Definitions.

- (a) "City Owned Newsrack" means a newsrack provided by the City for the display and sale of newspapers and other periodicals.
- (b) "Newsracks" shall mean any type of unmanned device located on public property utilized for the vending or free distribution of newspapers, periodicals or any publications.
- (c) "Public right-of-way" shall mean any public street, highway, sidewalk, parkway or alley.
- (d) "Distributor" shall mean any individual or business entity engaged in the dissemination of any publication utilizing a newsrack located in the City of Doral.
- (e) "Newsrack Compartment" shall mean each compartment within a newsrack designed to contain the newspapers or publications being distributed from that newsrack.
- (f) "Compliance Period" shall mean the time period specified in Section 1-11 of this Ordinance after which non-conforming newsracks are subject to enforcement action by the Special Magistrate.

Section 1-2. Purpose and Criteria.

The purpose of this Chapter 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 so as to:

- (a) Provide for pedestrian and driving safety and convenience;
- (b) 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;

- (c) Provide for public and property safety during severe weather conditions;
- (d) Provide reasonable access for the use and maintenance of poles, posts, traffic signals, hydrants, mailboxes and access to locations used for public transportation purposes;
- (e) 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;
- (f) Maintain and protect the values of surrounding properties and prevent damage to grass right of way areas;
- (g) Reduce unnecessary exposure of the public to personal injury or property damage;
- (h) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication;
- (i) Maintain and preserve freedom of the press;
- (j) Cooperate with newspaper distributors.
- (k) It is a matter of public necessity that the city protect children, handicapped individuals, senior citizens and others on its public streets, sidewalks, transportation facilities and other public rights-of-way from improperly maintained and placed newsracks.

Sec. 1-3. Certificate of Compliance No person shall place, affix, erect, construct or maintain a private newsrack on or within the public right-of-way without first obtaining a one-time only Certificate of Compliance for each private newsrack in accordance with the provisions of this Ordinance. Application for a Certificate of Compliance shall be in writing and shall contain the name, address and telephone number of the applicant and proposed specific location of the newsrack and shall be signed by the applicant. The applicant shall further specify the location of the newsrack portico for the private newsrack or the location of the City-owned newsrack.

Sec. 1-4. Application and issuance of Newsrack ordinance.

- (a) Issuing Authority.

The issuing authority and coordinator shall be the City Manager or his or her designee. The City Manager or his or her designee shall oversee the various departments responsible for fairly coordinating and administering the physical placement of private newsracks of the type and location herein specified, and upon compliance with the criteria set forth herein, the City Manager or his or her designee shall be responsible for the issuance of the certificates of compliance.

(b) Applications.

The applicant shall file with the City Manager or his or her designee, a written application for the installation of a private newsrack(s) 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 private newsrack(s).

(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 private newsracks.

(3) The applicant shall identify the location(s) and/or address (es) where the applicant's private newsrack compartment(s) will be located. Such information should be in sufficient detail so as to allow the City to precisely locate the private newsrack so as to ensure that the intended location of the private newsrack containing those newsrack compartments, satisfies their criteria and safety standards set forth in this Chapter.

(4) Names of newspapers or periodicals to be distributed by the applicant at that location.

(c) Issuance of Certificate of Compliance. Upon a finding by the City Manager or his or her designee that the applicant is in compliance with the provisions of this Chapter, a Certificate of Compliance shall be issued for installation by the newspaper distributor in accordance with the application and the provisions of this Chapter. The Certificate of Compliance may contain and be subject to conditions relative to location and duration of time that the private newsrack may be permitted.

(d) Denial of Certificate of Compliance. If a Certificate of Compliance for a private newsrack location(s) applied for shall be denied, the applicant will be notified of the specific cause of such denial. The notice of denial will suggest alternative location(s). The applicant may reapply for substitute alternative location(s) at no additional Certificate of Compliance fee. For purposes of this Chapter, a denial shall be based upon a determination by

the City Manager or his or her designee that the application has failed to comply with either the standards, criteria and/or requirements of this Chapter.

- (e) Additional Newsrack Certificate(s) of Compliance. If at any time after initial application for a Certificate of Compliance, a distributor wishes to install additional private newsracks, then the above Application paragraph is to be repeated in accordance with the provisions of this Chapter. Additional Certificate(s) of Compliance fee(s) shall be in accordance with this Chapter, except that the application fee is waived if previously paid.

Sec. I-5. Insurance.

- (a) Prior to the issuance of a Certificate of Compliance by the City Manager or his/her designee, the applicant shall furnish to the City, a Certificate of Insurance. The Certificate of Insurance shall state that the City of Doral is an additional insured.
- (b) Reasonable evidence of equivalent self-insurance coverage may be substituted by the applicant for the above certificate of insurance, subject to the approval of the City Attorney's Office. Insurance under this Section shall run continuously with the presence of the applicant's private newsrack(s) in City rights-of-way, and any termination or lapse of such insurance shall be violation of this Chapter, subject to appropriate remedy under the applicable sections of the Code of the City of Doral.

Sec. I-6. Fees.

Any publisher who installs or maintains a private newsrack that in whole or in part rests upon, in or over any dedicated sidewalk or parkway within the city shall register the private newsrack with the City Manager or his designee prior to the installation of the private newsrack. There shall be a one-time only application fee as set forth in the "fee schedule" for each applicant plus a fee per private newsrack location or box at a City-owned newsrack selected by each applicant. Failed inspections are subject to a reinspection fee. All of the above fees will be used to defray administrative expenses related to this ordinance only, and any revenues over expenses remaining after the implementation of this ordinance will be returned to the newspaper distributors in proportion to their respective contributions.

Sec. I-7. Appeals.

Any applicant who has been denied a Certificate of Compliance pursuant to the provisions of this Chapter may file an appeal with the Special Magistrate by requesting in writing to an appearance before the Special Magistrate to review such denial. The appeal shall be heard by the Special Magistrate within thirty

(30) days of the filing of the appeal or at the next regularly scheduled Special Magistrate Hearing, whichever is sooner. The decision of the Special Magistrate on appeal is subject to judicial review as provided by the Florida Statutes.

Sec. I-8. Installation and Maintenance.

- (a) All city owned newsracks installed shall be of a uniform color and style. The style shall be floor or pedestal mounted that is approved by the City Manager or his designee.
- (b) City Owned newsracks shall have gloss pedestals, gloss sides and door and gloss coin box, coated per standard specifications. The color of all newsracks being installed pursuant to this Chapter shall be painted in accordance with a color determined by the City Manager or his designee.
- (c) Private newsracks shall carry no advertising except the name of the publication being distributed and cardholders kept in neat and untorn condition describing the publication being distributed.
- (d) Private newsracks for free newspapers may omit the coin box and may have the pull bar welded to the door to produce an "Honor Rack."
- (e) Private newsracks shall be maintained in good working order at all times, freshly painted with unbroken hoods.

The name, address, and telephone number of a responsible person who may be contacted at any time concerning the private newsrack shall be displayed on the hood of the private newsrack in such a manner as to be readily visible and readable to a prospective customer thereof.

- (g) No more than five (5) private newsracks may be placed at any one location; these private newsracks must be placed immediately adjacent to each other in a horizontal line. Individual private newsracks or private newsrack groups placed at locations other than corners shall be located mid-block and at least 60 feet from corners. Private newsracks located at intersections will only be placed on two diagonally opposing corners.
- (h) Private newsracks containing the same publication shall not be placed within 60 feet of each other, or in the same grouping of newsracks at any location.
- (i) Private newsracks shall be placed in approved locations determined by the City Manager or his designee. A city-wide map of all approved locations shall be determined and maintained by the Public Works Department.

Sec. I-9. Private Newsrack mounting standards.

The following standards shall be applicable to the mounting of private newsracks on concrete surfaces in the City of Doral:

- (a) Private Newsracks shall be placed on existing concrete sidewalks no less than a nominal four inch thick.
- (b) In the absence of existing sidewalks, private newsracks shall be placed on new concrete slabs with a minimum nominal thickness of four inches and of sufficient size to counteract the overturning moment due to wind loads. The finished slab color shall be compatible with surrounding sidewalks and the edges of the new slab shall have a one-half inch chamfer. The new slab shall achieve a concrete strength of 2500 psi in 28 days.
- (c) Each newsrack or pedestal shall be anchored to the slab with a minimum of four one-half inch diameter galvanized sleeve or wedge anchor bolt with a minimum embedment of one and half inch and placed a minimum distance of two inches from the slab edge.
- (d) All hardware used shall be painted to match the private newsrack color and finish.
- (e) The installed private newsrack shall be plumb.

Sec. I-10. Placement of private newsracks

No private newsrack shall be placed, installed or maintained:

- a) Within the thirty (30) foot site visibility triangle of a public or private roadway as measured from the intersection from a public or private roadway.
- b) Within thirty (30) feet from the intersection of public or private streets.
- c) Within twenty (20) feet from any marked crosswalk not in an intersection.
- d) Within the twenty (20) foot site visibility triangle of a private driveway, as measured from the intersection of a public roadway and the edge of the private driveway.

- e) Within fifteen (15) feet of any fire hydrant or other emergency facility.
- f) On or within two (2) feet of traffic related signs, street lights or utility poles.
- g) Within a median, which is defined as a landscaped or paved island in the center of the public right-of-way.
- h) 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.
- i) Within five (5) feet of any bus bench or shelter.
- j) At any location whereby the clear space for the passageway of pedestrians would be reduced to less than thirty-six (36") inches.
- k) Facing another private newsrack, divided by the width of a pedestrian walk (sidewalk or bikepath).
- l) Within three (3) feet of or in such a manner as it impedes or interferes with reasonable use of any display window of any building abutting the sidewalk or such window display or access to and from a building entrance
- m) The City Manager shall be guided by the following criteria of priorities in issuing permits whenever more than five (5) newracks are kproposed for any one Cit-owned newrack or newrack portico location:
 - (1) First priority shall be daily publications (published five or more days per week).
 - (2) Second priority shall be publications published two to four days per week.
 - (3) Third priority shall be publications published one day per week.
 - (4) Fourth priority shall be publications published less that one day per week.

Sec.1-11. Enforcement Procedures - Non-Conforming Private Newracks.

Within one hundred and sixty (160) days after this ordinance becomes effective and at the time thereafter, any private newsrack in violation of any provision of this Chapter shall be subject to the remedies afforded and due process under the provisions of Special Magistrate Procedures.

Sec.1-12. Maintenance/Abandonment.

- a) In the event any private newsrack installed pursuant to this Chapter is not maintained in conformity with this Chapter, it shall be subject to appropriate action under the applicable chapters of the Code of Ordinances and referred to the Special Magistrate for enforcement purposes. The Special Magistrate is hereby empowered to levy a fine if it is not properly maintained as required by this Chapter.
- b) Private newsracks for which a Certificate of Compliance has not been issued under this Ordinance shall be subject to removal as ordered by the Special Magistrate.

Sec. 1-13 Removal and Storage of Private Newsrack.

- a) Any private newsracks installed, used or maintained in violation of this section may upon an order from the Special Magistrate be removed after a hearing has been concluded and a violation has been confirmed. The private newsrack may be returned upon payment of any penalty imposed by the Special Magistrate including removal and storage fees. Any private newsrack that is unclaimed by its publisher within 60 days from the date of the Special Magistrate hearing shall be regarded as abandoned property and may be disposed of as provided by law.
- b) Notwithstanding any other provision of this section, when any private newsrack poses an imminent or immediate hazard to pedestrians, vehicles or property, the city manager, or designee shall remove or otherwise relocate the private newsrack. Where telephone notice is not feasible or where the publisher fails to remove or relocate the private newsrack following the notice, the city manager or his designee may relocate or remove the private newsrack immediately. A newsrack shall be deemed a hazard when its installation, use or maintenance endangers the safety of persons or property.

Sec. 1-14. Insurance and Indemnification.

- a) Insurance. Every publisher or distributor who places or maintains a private newsrack on public property and/or in a right-of-way in the City shall furnish to the City Manager or his/her designee a Certificate of Insurance, which shall be kept current and renewed as long as such distributor maintains a private newsrack on public property within the City. Such insurance shall be Comprehensive General Liability insurance on an occurrence basis with limits of liability not less than one million (\$1,000,000.00) dollars per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.

Coverage shall include the following extensions (a) contractual liability; (b) products and completed operations; (c) independent contractor's coverage; (d) broad form general liability extensions or equivalent.

The following shall be additional insured: The City of Doral, including all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and their board members, employees and volunteers. This coverage should be primary to the additional insurers and not contributing with any other insurance or similar protection available to the additional insurers, whether available coverage is primary, contributing or excess.

Cancellation Notice. Comprehensive General Liability insurance as described above, shall include an endorsement stating the following: "sixty (60) days advance written notice of cancellation or non-renewal shall be sent to the, City of Doral, Public Work Department, 8300 NW 53 St, City of Doral, Florida 33166."

- b) Indemnification/hold harmless. Every distributor who places or maintains a private newsrack on a public right-of-way, public sidewalk, street or swale in the city, shall execute and deliver a written agreement under which it agrees to indemnify, hold harmless and defend the city, its officers, agents 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 right's, privileges, and immunities as set forth in Section 768.28 of the Florida Statutes.

Section 3. Severability. That if any section, subsection, sentence, clause, Phrase, work or amount of this ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 4. Repeal of Conflicting Provisions. That all ordinances or parts of ordinances or resolutions of the County Code made inconsistent or in conflict herewith shall be and they are hereby repealed in their entirety as there is conflict or inconsistency.

Section 5. Inclusion in Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Doral Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section " or other appropriate word.


Section 6. Effective Date. This Ordinance shall become upon adoption on second reading.

The foregoing Ordinance was offered by Councilwoman Ruiz who moved its adoption. The motion was seconded by Vice Mayor Cabrera and upon being put to a vote, the vote was as follows:

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|--------------------------------|-----|
| Mayor Juan Carlos Bermudez | Yes |
| Vice Mayor Peter Cabrera | Yes |
| Councilmember Michael DiPietro | Yes |
| Councilwoman Sandra Ruiz | Yes |
| Councilmember Robert Van Name | Yes |

PASSED AND ADOPTED upon first reading the 8th day of March, 2006.

PASSED AND ADOPTED upon second reading the 14th day of June, 2006.




JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA-HILL, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL:



JOHN J. HEARN, CITY ATTORNEY
Jacob G. Horowitz