

ORDINANCE No. 2005-35-73

AN ORDINANCE ESTABLISHING REGULATIONS FOR NEWSRACKS; ESTABLISHING A PURPOSE AND CRITERIA; PROVIDING FOR DEFINITIONS; PROVIDING FOR NOTIFICATION; PROVIDING FOR PLACEMENT OF NEWSRACKS; PROVIDING FOR SIZE AND INSTALLATION REQUIREMENTS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING REGULATIONS FOR ABANDONED NEWSRACKS; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is a proliferation of newsracks within the City, many of which are not maintained in good condition, and many of which appear to be abandoned, and

WHEREAS, the City Council deems it necessary and appropriate to provide for uniform regulations for all newsracks located within the City,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION OF NEWSRACK ORDINANCE: There is hereby created an ordinance to regulate newsracks in the City as follows:

**Section 1. Purpose and criteria.**

The purpose of newsrack regulations in this ordinance 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:

1. Provide for pedestrian and driving safety and convenience;

2. Restrict unreasonable interference with the flow of pedestrian and vehicular traffic, including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons existing or entering parked or standing vehicles;
3. Provide for the safety of persons and property during severe windstorm 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 cause 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;
6. Remove abandoned newsracks;
7. Maintain and protect the value of surrounding properties;
8. Reduce unnecessary exposure of the public to personal injury or property damage;
9. Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication,
10. Maintain and preserve freedom of the press; and
11. Cooperate to the maximum with newspaper distributors.

## **Section 2. Definitions.**

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

*Block* means the surface on a sidewalk or swale of a public right-of-way between two consecutive corners on the same side of that public right-of-way.

*Decal* means the self-adhesive stamp issued by the city to be placed within the visible window of a newsrack to illustrate compliance with the provisions of this

ordinance. The face of the decal will contain the effective date, the designated specific location where the newsrack is permitted to be located, and the name, address, and phone number of the party responsible for the newsrack.

*Newsrack* means any type of unmanned device, including any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other written periodicals, or for the vending or free distribution of newspapers or written periodicals.

*Public right-of-way* means any public street, public highway, public sidewalk, public swale or public alley.

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

*Sidewalk* means any surface provided primarily for the use of pedestrians on any public rights-of-way under the jurisdiction of the city.

*Street* means all that area dedicated to public use for public transportation purposes and shall include, but not be limited to, roadways, pathways, alleys and sidewalks.

*Swale* means that area between the sidewalks and the curb of any roadway, and, where there is no sidewalk, that area between the edge of the roadway and property line adjacent thereto. The term "swale" shall include any area within a street that is not open to vehicular travel.

**Section 3. Notification; new locations or change of location of newsracks; fees.**

- (a) Within 15 days of the effective date of the ordinance, the owner of any newsrack, publisher or distributor of any newspaper or publication distributed from any newsrack location within a city right-of-way shall notify the city manager or his designee, in writing, of the location of every newsrack that is located on or partly on a city right-of-way. Such notice shall include the name, address and telephone number where the person responsible for the newsrack may be reached and the location, specifying the street address or closest streets and a description of where the newsrack will be placed (the "required information.") The owner of any newsrack within the city shall update the required information annually by October 1st of every year. The city shall issue a decal for every newsrack that complies with the requirements of this subsection. Such decal will be placed on the inside of the visible window of the newsrack. The decal will contain the permitted location of the newsrack and the name, number and

address of the party responsible for the newsrack. The absence of a city decal will be considered proof of noncompliance with this ordinance and grounds for removal.

- (1) Thirty days prior to abandoning a location where a newsrack has been placed, the owner of the newsrack shall notify the city manager or his designee, by certified mail, return receipt requested, of its intent to abandon a newsrack location including a description of the location that it seeks to abandon.
- (2) Prior to changing the location of one or more of its newsracks or establishing new locations for newsracks, the owner of such newsrack shall request such change or addition in writing by certified mail, return receipt requested, to the city manager or his designee, specifying the locations it wishes to change, establish or occupy.

- a. Such request shall be processed by the city manager or his designee within 30 days of receipt of such request.
- b. If the request is approved, notice shall be provided to the requesting newsrack owner.
- c. If the request is denied, notice shall be provided to the newsrack owner by certified mail, return receipt requested. The denial of a request to change a newsrack to a new location or establish a new location may be based on factors such as those set forth in section 4, as well as reasonable concerns for aesthetics, or pedestrian and vehicular traffic.
- d. The denial of such request shall be appealable to a special master of the city by notifying the city manager or his designee, in writing, within 30 days of the date of the notice. The decision of the special master shall be appealable to the circuit court of the Eleventh Judicial Circuit in and for the state by filing a notice of appeal with the clerk of the circuit court within 30 days of the date of the special masters' decision.

(b) Fees.

- (1) The owner of any newsrack located on or partly on any city right-of-way shall pay the following fees: an annual administrative fee as established by resolution of the city council and on file in the city clerk's office without regard to the number of newsracks for which

the owner of the newsrack is responsible.

- (2) The administrative fees payable under this section are intended to defray the costs of administering this ordinance and of inspection of newsracks located in the city.

**Section 4. Placement of newsracks; prohibitions.**

- (a) Placement generally. Subject to the prohibitions of subsection (b) of this section, newsracks shall be placed as follows:
  - (1) In areas where the sidewalks abut the curb, newsracks shall be placed so that the leading edge or face of the newsrack is parallel to and no less than 18 inches, nor more than 24 inches from the edge of the traveled roadway or paved parking lane; (See: Section 4(b)(1)g below).
  - (2) In areas where there is a grassed swale, newsracks must be placed on the swale six inches from the front of the sidewalk. If such swale is less than five feet in width, the newsrack may be placed on the edge of the sidewalk closest to the street, but must lie entirely on the swale; or
  - (3) The newsrack may be placed on the part of the sidewalk furthest from the roadway, if such newsrack is placed parallel to and not more than six inches from the wall of the building or the back of the sidewalk. (See: Section 4(b)(1)g below).
- (b) Prohibitions.
  - (1) No newsracks shall be placed, installed or maintained as follows:
    - a. Within ten feet of any marked crosswalk;
    - b. Within ten feet of any fire hydrant, fire call box, police call box or other emergency facility;
    - c. Within five feet of any driveway;
    - d. Within five feet ahead of, and 15 feet of the rear of, any sign marking a designated bus stop, measured along the edge of pavement;

- e. Within two feet of any bus bench, or plaza bench;
  - f. Within the visibility triangle as defined in chapter 94;
  - g. At any location that does not provide a clear width of continuous passage of at least 36 inches in accordance with the Americans With Disabilities Act;
  - h. In areas zoned residential, where a vertical surface of the newsrack is on or within 12 inches of any area improved with lawn, hedges, flowers or trees, where such improved area is not on a swale;
  - i. In areas not zoned residential, where a vertical surface of the newsrack is on or within six inches of any area improved with lawn, hedges, flowers or trees where such improved area is not on a swale;
  - j. In the median of a divided street;
  - k. Within three feet of any display window of any building abutting the sidewalk or swale or in such a manner as to impede or interfere with the reasonable use of such window for display purposes;
  - l. Within five feet of a building entrance;
  - m. Within 150 feet of another newsrack containing the same publication except where separated by a street corner. Where warranted by the quantity of newspaper sales, the city manager or his designee may allow a double newsrack or additional newsracks that otherwise complies in every respect with the provisions of this ordinance;
  - n. On or within two feet of signs, parking meters, street lights or utility poles; or
  - o. Without a city decal placed on the inside window, facing outward, and clearly visible from the front of the newsrack. The absence of a city decal will be considered proof of noncompliance with the requirements of the newsrack regulations and grounds for removal.
- (c) Limitation of newsracks on one block. No more than eight newsracks shall

be permitted on any one city block.

- (d) Grouping of newsracks. Newsracks may be placed next to each other, provided that no group of newsracks shall contain more than four newsracks within 20 feet of space on any city block and further provided that one newsrack spot per such group shall be reserved for a module newsrack that otherwise complies with the provisions of this ordinance. Such 20 feet of space shall be measured from an edge of any newsrack within such group to an edge of any other newsrack within such group. In determining which newsracks shall be permitted to be located or to remain if already in place:
  - (1) First priority shall be given to newsracks used for sale of publications that are newspapers of general circulation.
  - (2) Second priority shall be given to newsracks used for the sale of daily publications.
  - (3) Third priority shall be given to all other newsracks.
  - (4) The priorities set forth in this subsection (d) shall be subject to the requirements, as set forth in this subsection (d), that one spot per group of four newsracks be reserved for a module newsrack.
- (e) Enforcement. If more than one placement requirement or restriction, or if more than one prohibition or enforcement provision applies, the more restrictive requirement, restriction, enforcement provision, or prohibition is the one that applies.

**Section 5. Size, installation, securing, and maintenance.**

- (a) *Size of newsracks.*
  - (1) Newsracks may be of a freestanding rectangular type both vertically and horizontally with external dimensions (except for double newsracks) of not more than 48 inches in height, 24 inches in width and 18 inches in depth;
  - (2) Newsracks may be of a pedestal type that has external dimensions (except for double newsracks) that do not exceed 48 inches in height, 24 inches in width and 18 inches in depth on a pedestal of not more than 28 inches in height; pedestal mounted newsracks shall be designed to comply with section 4.4 of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities;

or

- (3) Newsracks may be of a modular type whose size and construction design are of accepted industry standards.
- (b) *Installation and securing standards.* Any newsrack being installed, placed, secured, and maintained on a public right-of-way, street, or sidewalk shall comply with the following securing standards:
- (1) The newsrack shall be installed in a safe and secure manner so as to prevent the newsrack from being stolen or becoming a hazard in severe weather. This can be accomplished by either weighting of the newsrack or bolting the newsrack to an independent concrete base. The total weight of the newsrack and any weighting device shall not be less than 125 pounds.
  - (2) Newsracks shall not be chained or tied to any tree, traffic-control device, sign, bench, bus shelter or pole or secured by chaining or tying in any manner whatsoever.
  - (3) Regardless of the weight of the newsrack, in the event of the issuance of a hurricane warning by an entity with jurisdiction to issue such a warning, the newsrack shall be removed or laid down with its shortest edge perpendicular to the ground.
- (c) *Maintenance of newsracks.* Each newsrack shall be maintained in a neat, clean condition and shall be in good repair and working order at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that:
- (1) It is reasonably free of graffiti;
  - (2) It is reasonably free of dirt and grease;
  - (3) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;
  - (4) It is reasonably free of rust and corrosion in the visible metal areas thereon;
  - (5) The clear plastic or glass parts thereon, if any, through which the publications are viewed are unbroken and reasonably free of cracks, dents, blemishes and discolorations;

- (6) The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
- (7) The structural parts are not broken or unduly misshapen; and
- (8) The surrounding area upon which the newsrack is placed will also be maintained in a neat and orderly condition.

**Section 6. General provisions.**

- (a) Newsracks shall carry no advertising except for the name of the publication being distributed and the sections and features of the publications contained therein.
- (b) Newsracks shall be of a type and make designed to withstand the stresses, wear and tear associated with the sale and/or distribution of the publication using the newsrack as well as the environmental elements to which they could be exposed to.
- (c) Each publication, distributor and newsrack owner that owns or uses a newsrack shall provide the name, address and telephone number of the newsrack owner as well as the person who is responsible for their respective compliance with this ordinance; each such publication, distributor, and newsrack owner shall also provide the name, address and telephone number of his registered agent for service or other person designated to accept service in the state.

**Section 7. Insurance, indemnification and hold harmless.**

- (a) *Insurance.* Every publisher, distributor and newsrack owner who places or maintains a newsrack on a public right-of-way, public sidewalk, street or swale in the city shall furnish to the city manager or his designee a current certificate of insurance on October 1st of every year. Insurance under this section shall run continuously with the presence of newsracks on city rights-of-way, and any termination or lapse of such insurance shall be a violation of this ordinance, subject to appropriate enforcement procedures under the law.
- (b) *Indemnification/hold harmless.* Every publisher or distributor or owner of a newsrack who places or maintains a 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 its newsrack within the city. The requirements contained in this section shall not be construed to affect in any way the city's rights, privileges, and immunities as set forth in F.S. § 768.28.

**Section 8. Abandoned newsracks.**

- (a) If any newsrack installed pursuant to this ordinance or covered by this ordinance does not contain the publication specified therefore within a period of ten days after release of the current issue, the police department may deem the newsrack abandoned and take appropriate action under F.S. §705.103. In addition, a newsrack shall be deemed abandoned when no publication is in the newsrack for a period of more than seven consecutive days.
- (b) If a publication's publisher or its distributor desires to voluntarily abandon a newsrack location, the distributor or publisher shall notify the city manager or his designee, completely remove the newsrack, and restore the public right-of-way to a safe condition, leaving no holes or projections in the surface on which the newsrack stood.

**Section 9. Violations; enforcement; fines; removal.**

- (a) Violations of this ordinance shall be enforceable pursuant to F.S. §162.21 subject to the following provisions:
  - (1) A violation of this ordinance shall be considered a civil infraction that carries a maximum civil penalty not to exceed \$250.00 plus court costs;
  - (2) A citation for an alleged violation of this ordinance shall be issued by a code enforcement officer, code inspector or law enforcement officer if he or she has reasonable cause to believe that a person has committed an act in violation of this ordinance;
  - (3) A person who has committed a civil infraction that constitutes a violation of this ordinance and who does not contest the citation shall pay a civil penalty of \$100.00 plus court costs; and
  - (4) A person who has been issued a citation for violating this ordinance may contest the citation by appearing in county court at such date, time and place as is fixed by the county clerk's office, or by requesting a hearing before the special master in accordance with

the procedures set forth in the City's Code Enforcement Ordinance. A hearing may be initiated within ten calendar days of the effective date of the citation by filing a written notice of request for hearing before the special master with the code enforcement office. The hearing shall be placed on the next regularly scheduled special master's hearing. Appeals from the decisions of the special master shall be to a court of competent jurisdiction by a writ of certiorari.

- (b) A newsrack found to be in violation of this ordinance, in county court, by the special master, or by its owner not contesting the citation, may also be removed by the city. Upon such removal, the city shall store such newsrack and may release the newsrack back to its owner upon payment of an administrative charge and a storage charge of \$10.00 per day. The City shall not be under any obligation to store any newsrack that has been removed pursuant to this ordinance for longer than ninety (90) days.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

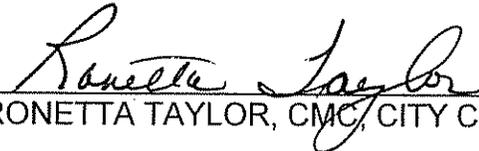
SECTION 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 14th DAY OF SEPTEMBER, 2005.  
PASSED ON SECOND READING ON THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2005.

ATTEST:

  
SHIRLEY GIBSON, MAYOR

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA K. KNIGHTON, ESQ.  
City Attorney

MOVED BY: Councilwoman Watson

SECONDED BY: Vice Mayor Braynon

SPONSORED BY: Councilwoman Barbara Watson

VOTE: 6-0

Mayor Shirley Gibson	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
Vice Mayor Oscar Braynon, II	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
Councilman Aaron Campbell Jr.	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
Councilwoman Audrey J. King	<input type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No) Not present
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
Councilwoman Barbara Watson	<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)