

**TOWN OF KEARNY
COUNTY OF HUDSON
2006 - (O) -**

**AN ORDINANCE AMENDING CHAPTER 38 "ZONING"
OF THE REVISED GENERAL ORDINANCES OF THE
TOWN OF KEARNY**

BE IT ORDAINED by the Mayor and Council of the Town of Kearny, Hudson County, New Jersey, that:

Section 38-6 is amended and supplemented with the addition of Section 38-6.11 which shall read as follows:

1. Findings, purpose and intent.

a) The uncontrolled placement of newsracks in public rights-of-way presents an inconvenience and danger to the health, safety and welfare of persons using such public rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

b) The uncontrolled placement of newsracks is also detrimental to the aesthetic characteristics of the Town and unsightly newsracks located in the public rights-of-way constitute public nuisances and cause visual blight.

c) It is the purpose and intent of this section, in the interest of public safety, aesthetics and the general welfare of the Town, to reasonably regulate the placement, maintenance and operation of newsracks within the Town of Kearny.

2. Definitions.

As used herein, the following terms shall have the meanings indicated:

Distributor, The person, corporation, employee or agent who places and maintains or operates a newsrack in a public right of way as herein defined.

Driveway, That surface, whether improved or not, over and by which ingress and egress is made by private or public property or by which vehicles move from private or public property onto a street.

Newspaper, News Periodicals, News Magazine, Any newspaper, periodical or magazine of general circulation as defined by general law; any newspaper duly entered with the Post Office Department of the United States, in accordance with federal statute or regulation; and any newspaper filed and recorded with any recording officer, as provided by general law.

Newsrack. Any self-service or coin-operated box, container, storage unit or other dispenser erected, installed, maintained or operated for the display, distribution and/or sale of newspapers, circulars, pamphlets, news periodicals, magazines, or other similar publications.

Public Right of Way. A street, sidewalk or roadway.

Roadway. That portion of a street improved, designated or ordinarily used for vehicle travel.

Sidewalk. Any public surface or area provided for the use of pedestrians, including the area between the curb of any street and the sidewalk, or, if there is no sidewalk, the area between the edge of the street and the property line adjacent thereto.

Street. All that area dedicated to public use for public street purposes and shall include but not be limited to roadways, parkways, alleys and sidewalks.

3. Compliance and permit required.

a) It shall be unlawful for any person, firm, corporation or distributor to erect, place, maintain or operate a newsrack on any public right-of-way within the Town of Kearny, without first having obtained a permit from the *Zoning Official*. The permit shall specify the exact location of each newsrack. One permit may be issued to include any number of newsracks and shall be signed by the applicant.

b) An application for such permit shall be made, in writing, to the office of the *Zoning Official* of the Town of Kearny upon such form as shall be provided and shall contain the name and address of the applicant and the proposed specific location of said newsrack or newsracks and shall be signed by the applicant. The application must be accompanied by a color sketch or color drawing, *to scale*, and specifications of the proposed newsrack depicting compliance with the requirements for dimensions, color and lettering, and the application shall be signed by the applicant.

c) If the applicant meets all the requirements of the provisions of this section, the permit shall be issued within 10 business days.

d) If the application is denied, the *Zoning Official*, within 10 business days and by regular mail, shall set forth in writing the reasons for the denial. For each requested location, the *Zoning Official* shall have an additional 2 business days to Act.

e) Such denial by the *Zoning Official* may be appealed within 30 days to the *Construction Board Of Appeals* who shall render a decision within 30 days.

4. Conditions for permit; fee; term; liability insurance.

a) Permits may be issued for the installation of a newsrack or newsracks, but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon compliance with the provisions of this section.

b) The application for a permit shall require the payment of an application fee of \$100.00

c) There shall be a registration fee of \$50.00 per newsrack payable after the time the application for a permit is approved.

d) The permit shall be valid for a period of one year, on a fiscal-year basis, commencing on January 1, and shall be renewable on January of the subsequent year. Permits shall be renewable pursuant to the procedure for original applications, upon payment of the \$50.00 registration fee per newsrack which shall be used to defray the cost of inspection. The registration fee shall be prorated if the permit issued is effective subsequent to January 1.

e) No permit shall be issued or continued in operation unless the applicant and any other persons, organizations, firms or corporations on whose behalf the application is made for filing such application do represent, stipulate, contract and agree that they will jointly and severally defend, indemnify and hold the Town of Kearny harmless against liability for any and all claims for damage to property or injury to or death of persons arising out of or resulting from the issuance of the permit or the control, maintenance or ownership of the newsracks permitted.

f) No permit shall be issued or continued in operation unless the applicant shall file with the Zoning Officer an insurance policy or policies of a company duly licensed to transact business under the insurance laws of this State, with coverage limits of at least \$100,000 per person and \$1,000,000 per accident, insuring against loss from liability imposed by law upon the distributor for damages on account of bodily injury or death suffered, and in the sum of \$50,000 against loss on account of property damage suffered by any person or persons as a result of an accident occurring by reason of the ownership, control or maintenance of a newsrack, and no permit shall continue effective unless such insurance shall remain in full force and effect, during the entire term of the permit. Such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and control of such newsrack, or any fault in respect thereto, and shall be for the benefit of any person suffering loss, damage or injury as aforesaid.

Each insurance policy shall provide that neither the distributor, nor its insurer, shall have any right to subrogation against the Town of Kearny. Each insurance policy shall provide primary coverage for any and all losses and shall be drafted so as to protect all parties.

The distributor shall have the Town of Kearny added as an additional insured on the insurance policies required by this Section.

5. Maintenance; installation.

a) Any newsrack which in whole or in part rests upon or over any public sidewalk, roadway or street and which is so permitted in a location under the terms of this section shall comply with the following standards:

b) No newsrack shall exceed 49 inches in height, 20 inches in width or 18 inches in depth. Newsracks shall be manufactured of sturdy metal housing, using 12 gauge sheet metal or better, finished with a prime coat and baked powder coat finish.

c) Newsracks shall be green with white lettering, but lettering shall not exceed three inches (3") in height and shall not cover more than ten percent (10%) of the surface area of the newsrack.

d) Notwithstanding any provision in this Ordinance to the contrary, any newsrack located in a streetscape design area shall conform to the aesthetic characteristics of the streetscape plan.

e) No newsrack shall be used for advertising signs or publicity purposes other than those dealing with the display, sale or purchase of the news materials sold therein.

f) Each newsrack wherein a consideration is charged for the dispensing of its product shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event that he is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order.

g) Each newsrack shall have affixed to it, in a readily visible place so as to be seen by anyone using the newsrack, a notice setting forth the name and address of the distributor and the telephone number of a working telephone service to report a malfunction or to secure a refund in the event of a malfunction of the coin-return mechanism or to give the notices provided for in this section.

h) Each newsrack shall be maintained in a neat and 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:

1. It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.

2. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon.

3. The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents or blemishes and discolorations.

4. The paper or cardboard parts or inserts thereof, if any, are reasonably free of tears, peeling or fading.

5. The structural parts thereof are not broken or unduly misshapen.

6. It is free from all graffiti.

i) It shall be unlawful for any person or place to maintain any publication or material in newsracks which is obscene as defined by the United States Supreme Court and/or as set forth in N.J.S.A. 2C:34-2 or -3 or which exposes to public view any pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.

j) Each newsrack shall be maintained to prevent the newspapers or magazines from being scattered about the area.

k) Each newsrack not located on an existing sidewalk or other hard surface area shall be placed on a precast concrete base. Installation, maintenance and removal of the base shall be the responsibility of the distributor.

6. Location and placement.

a) No newsrack shall be placed or permitted except in conformity with the provisions of this section and upon permit application to the office of the *Zoning Official*. Any newsrack which rests in whole or in part upon or on any portion of a public street or sidewalk or projects onto, into or over any part of a public street or sidewalk shall be located in accordance with the provisions of the following:

1) No newsrack shall be used or maintained which projects onto, into or over any part of the roadway of any public street or which rests wholly or in part upon or over any portion of the roadway of any public street.

2) No newsrack shall be permitted to rest upon, in or over any public street or sidewalk when such installation, use or maintenance:

a. endangers the safety of persons or property.

b. Unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic.

c. Unreasonably interferes with access to or exit from any legally parked vehicle.

d. Unreasonably interferes with the ingress or egress from any residence or place of business.

e. Unreasonably interferes with the use of traffic signs or signals, hydrants or mailboxes permitted at or near said location.

f. Unreasonably interferes with or impedes the operation of any bus stop.

3) A newsrack or newsracks shall be placed or otherwise secured so as to prevent their being blown down or around the public street or sidewalk but shall not be chained or otherwise secured to any traffic or street signs, signals, hydrants, trees or mailboxes.

4) No newsracks shall be placed, installed, used or maintained:

a. Within 3e feet of any marked crosswalk or handicap curb ramp.

b. Within 15 feet of any fire hydrant, fire call box, police box or other emergency facility.

c. Within 18 inches of a curb.

d. At any location whereby the clear space for the passageway of pedestrians is reduced to less than 6 feet.

e. Within 10 feet of any standby or sprinkler connection or related safety or fire equipment.

f. Within five feet of any building, showroom or display window, unless written permission from the owner is secured and same is submitted with the application.

g. At any location whereby the clear space for the passageway for pedestrians is reduced by the newsrack to less than 6 feet.

h. Within 3 feet of or on any public area improved with lawn, flowers, shrubs, trees or landscaping.

i. Within 300 feet of any other newsrack containing the same issue or edition of the same publication.

j. In front of a single family or two family residence.

k. In any district other than the C1, C2 and C3 zones.

l. To cause a sight line obstruction at any intersection or driveway.

m. No newsracks shall be permitted in any location zoned as residential.

n. No more than two (2) newsracks may be placed adjacent to each other at any location that complies with this Ordinance. After a newsrack, or pair of newsracks, is permitted for a specific location, no additional newsracks shall be placed less than one city block from the permitted newsrack.

7. Abandonment/ Removal of Newsracks.

a) In the event that a newsrack remains empty for a period of 10 continuous days or does not contain the publication specified in the application therefore within 96 hours after the release of the current issue, the *Zoning Official* may deem the newsrack abandoned and may, after

having given 30 days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack from the public right-of-way and/or impound said newsrack.

b) In the event that a newsrack does not conform to any of the provisions of this section, the *Zoning Official* may deem the newsrack a nonconforming newsrack and may, after giving 30 days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack and all supporting structures from the public right-of-way or impound said newsrack. Newsracks that do not contain proper owner/operator identification permanently attached thereto may be removed by the Town at any time without notice.

c) Storage after removal. For any newsrack that is removed or impounded in accordance with this section and then stored by the township, the township shall charge a storage fee of \$25.00_per day.

8. Violations and penalties.

a) In addition to all enforcement procedures provided herein, any violation of the provisions of this section shall be subject to prosecution as a violation and, upon conviction, shall subject the violator to a penalty of not less than \$100 nor more than \$500, to confinement of not more than ninety (90) days in jail, or both. Each day that a violation of this section continues after due notice from the office of the *Zoning Official* to the violator shall be deemed a separate and distinct violation for each separate newsrack.

9. Suspension or Revocation of Permit.

In addition to the penalties provided herein, it shall be within the power and discretion of the *Zoning Official* to suspend or revoke a permit for continued or repeated violations or infractions of any provision of this Ordinance, or of any rule, direction or regulation of the *Zoning Official*. Suspension or revocation of a permit shall be mandatory for the third violation of this Ordinance.

10. Permits Not to Be Assigned.

The permits issued pursuant to this Ordinance shall not be assigned or transferred.

Repealer: All Ordinances and parts thereof conflicting herewith be, and the same hereby are, repealed.

Severability: If any section, paragraph subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this Ordinance shall be deemed to be valid and effective.

Effective Date: This Ordinance shall be effective upon passage and publication as required by law.

I certify that the foregoing ordinance was introduced by the Council on first reading on March 14, 2006 duly published according to law, and passed on second reading and final passage on _____, 2006.

TOWN CLERK

I hereby approve the foregoing Ordinance this ____ day of _____, 2006.

ALBERTO G. SANTOS, MAYOR

Reviewed

Town Attorney