

ORDINANCE No.

AN ORDINANCE REGULATING NEWSPAPER VENDING MACHINES OR NEWSRACK DISTRIBUTION BOXES IN THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY

WHEREAS, there exists a need to regulate the time, manner and placement of newspaper boxes, newsracks boxes and other such devices which are located in the Borough of Pennington, County of Mercer, State of New Jersey; and

WHEREAS, newspaper vendors enjoy a First Amendment Right to freedom of the press and freedom of speech in the distribution of its newspapers; and

WHEREAS, the Borough of Pennington has a right to and is in need of regulating such as to the place, time and manner of such distribution; and

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council, of the Borough of Pennington, County of Mercer, State of New Jersey, as follows:

SECTION 1 DEFINITIONS

1.1 "NEWSRACK BOX" or "NEWSRACK" a newsrack box is a rectangular cube type box that has a windowed door on its front for the purposes of viewing inside the cube shaped box and also to gain access to the box. Newspapers or other news periodicals are placed in the newsrack box for the purposes of distribution. One gains access to the interior of the newsrack box by opening the front widowed door. The newsrack box may be, but need not be, accessed by inserting coined money to unlock the access door.

1.2 "MODULAR NEWSRACK BOX ASSEMBLY" a modular newsrack box assembly (hereafter MNBA) is a unit that has assembled together two or more newsrack boxes in a housing that is supported by one or more pedestals. The modular newsrack box assembly is then permanently attached to a sidewalk or concrete pad by bolts or other such fasteners. Newspapers are distributed by placing such newspapers in the various newsrack boxes by various newspaper vendors. Two or more newspaper vendors may distribute newspapers from a modular newsrack box assembly. Attached hereto an illustration of a similar MNBA to provide a visual of such a unit. The attached illustration contains four newsrack boxes; however, the unit may be enlarged to up to ten newsrack boxes in one MNBA unit.

1.3 "NEWSPAPER VENDOR" is any person or other legal entity distributing publications by the use of a Newsrack Box in the Borough of Pennington.

SECTION 2 INTENT AND PURPOSE

A. FINDINGS

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

2.2 Newsrack so located as to cause an inconveniences or danger to persons using public rights-of-way and semi-public rights- of-way, and unsightly newsracks located therein, constitute public nuisances.

2.3 These factors constitutes an unreasonable interference with and obstruction of the use of public rights-of-way and semi-public rights-of-way, are injurious to health, offensive to the senses, and constitute such an obstruction of the free use of property as to interfere in the comfortable enjoyment of life and property by the entire community.

2.4 The Borough Council recognizes, however, that the use of such rights-of-way is so historically associated with the sale and distribution of newspapers and publications that access to the areas for such purposes should not be absolutely denied. The Borough Council further finds that these strong and competing interest require a reasonable accommodation which can only be satisfactorily achieved through the means of this Ordinance which is designed to accommodate such interest regulating the time, place and manner of using such newsracks.

B. **PURPOSE** The provisions and prohibitions hereinafter continued and enacted are in pursuance of securing and promoting the general welfare of persons in the Borough in their use of public rights-of-way and semi-public rights-of-way through the regulation of placement, appearance, number size, and servicing of newsracks on such rights-of-way so as to:

1. Provide for pedestrian and driving safety and convenience;
2. Ensure no unreasonable interference with the flow of pedestrian or vehicular traffic including ingress to, or egress from, any place of business or from the street to the sidewalk;
3. Provide reasonable access for the use and maintenance of sidewalks, poles, traffic signs and signals, hydrants, mailboxes, and similar appurtances, and access to locations used for public transportation purposes;
4. Reduce visual blight on the public rights-of-way and semi-public rights-of-way, protect the aesthetics and value of surrounding properties, and protect the quiet of residential areas; and
5. Reduce exposure of the Borough to personal injury or property damage claims and litigation.

SECTION 3 PROHIBITED NEWSRACKS. No person shall install, use or maintain any newsrack within the Borough of Pennington except as specifically provided in this Ordinance.

**SECTION 4 ONLY MODULAR NEWSRACK BOX ASSEMBLIES ("MNBA")
PERMITTED**

4.1 Only MNBA units shall be permitted to be installed on the public sidewalks, public property, and on the exterior of any building on private property in the Borough of Pennington, (hereafter Pennington) within the zones identified as the C-Commercial District in the CBD-Central Business District, and in the O-Office

District. MNBA units, free standing newsrack boxes, and other such newspaper vending units shall not be permitted to be placed in the residential districts R1, P.-2, R-3, R-4, P.-5, R-6. and RO Zones. No other newsrack boxes, MNBA units, or other such newspaper vending units, shall be permitted to be placed anywhere in Pennington, except as is provided in this Ordinance.

4.2 The newspaper vendors shall be obligated to purchase at its expense its own newsrack boxes and also to share in the cost of the purchase of the MNBA unit with other newspaper vendors sharing the MNBA unit in question. In the event Pennington purchases either the newsrack box and/or the MNBA unit for and on behalf of a newspaper vendor or vendors, such newspaper vendor or vendors shall reimburse Pennington, its out-of-pocket expense for such purchases wherein each vendor shall pay its proportionate share of such out-of-pocket expenses. Pennington shall not receive any additional money above and beyond that which it expended for the newsrack boxes and/or the MNBA unit. Pennington prefers that the newspaper vendors purchase the newsrack boxes and the MNBA units.

4.3 Maintenance, repair, and service of each newsrack box and MNBA unit shall be the obligation of the newspaper vendors respectively. In the event the Borough of Pennington expends any moneys for such, the Borough of Pennington shall be reimbursed its expenditures, by the newspaper vendors who were obligated to make such expenditures. Prior to Pennington performing any maintenance, repairs or service to the newsrack boxes and/or MNBA units, Pennington will take reasonable steps and efforts to cause the responsible newspaper vendors to perform such maintenance, repair and/or service.

4.4 The style, color, size, material, and design of the newsrack box and the MNBA unit as well as its location, shall be determined by Pennington.

4.5 The installation locations of the MBNA units on the public property or public sidewalks within Pennington shall be selected by Pennington as described in more detail herein. The newspaper vendors shall be obligated to arrange for the installation work for each MNBA unit installed on the public sidewalks or public property, at the newspaper vendor's own expense.

4.6 The MNBA units can accommodate from two to six single newsrack boxes. There is no limit on the reasonable number of MNBA units that can be located in the Borough of Pennington in compliance with this Ordinance. .

4.7 There is no limit to the reasonable number of newsrack boxes that a particular newspaper vendor can utilize, except that a newspaper vendor is permitted to have only one newsrack box per MNBA unit whenever other newspaper vendors wish to utilize a newsrack box in such MNBA unit. For the purposes of this Ordinance, a double newsrack box is considered as one newsrack box.

4.8 There are no time restrictions as to when the public may access the newsracks to obtain newspapers, that is, such access may occur 24 hours per day, seven days per week, since the MNBA's are not located in the residential districts.

4.9 Any other type of individual freestanding newspaper vending machines, boxes, newsracks, etc. whether coin operated or otherwise, are prohibited in the Borough of Pennington. Any such prohibited units existing after the adoption of this Ordinance shall be removed by the particular owner of such unit no later than Ninety (90) days after the effective date of this Ordinance or at an earlier date when such newspaper vendor has been afforded the opportunity of replacement distribution by

utilization of a newsrack box in an MNBA unit or units from which to distribute newspapers in accordance with this Ordinance.

4.10 After the adoption of this Ordinance, newspaper vendors shall take timely action to comply with the terms of this Ordinance. A newspaper vendor may seek in writing, an extension of the 90 day removal time limit, for just cause, stating the newspaper vendor's reasons why such extension should be granted; provided that such newspaper vendor had taken timely action to comply with this Ordinance and its reasons for non-compliance are due to reasons other than the actions or inactions of the newspaper vendor requesting the extension Pennington will not unreasonably deny such requests for an extension.

SECTION 5 LOCATION OF NEWSRACK BOXES AND MODULAR NEWSRACK BOX ASSEMBLIES.

5.1 A newspaper vendor desiring a general location for a newsrack box within a MNBA unit, shall submit such request in writing to Pennington, as required in this Ordinance. Pennington shall make available a location or locations to each newspaper vendor who request a location or locations. Pennington will seek to identify a location as close as practicable to that which had been requested by the newspaper vendor, taking into account the criteria of this Ordinance. In the event the Borough of Pennington is unable to grant the vendor's request for a specific location, the Borough of Pennington will identify its reasons for such a decision based on the criteria of this Ordinance and in such event the Borough of Pennington will identify an alternative location or locations that is available to the applying newspaper vendor. In no event shall the newspaper vendor be denied the right to distribute its papers. The newspaper vendors right to distribute shall not be abridged by Pennington in that the Borough of Pennington shall make available a location or locations to each newspaper vendor who request a location or locations.

5.2 Pennington, in its discretion, shall determine the specific location of each MNBA unit. The determination of the place and manner of installation of such MNBA units shall be made by the Borough of Pennington in its discretion wherein its discretion. shall not be exercised unreasonably, capriciously or arbitrarily, and shall be made in accordance with the criteria of this Ordinance, as governed by federal and state law.

SECTION 6 CRITERIA FOR DETERMINING LOCATION OF A MODULAR NEWSRACK BOX ASSEMBLY

6.1 The MNBA units located on public sidewalks, public property, and on the exterior of any building on private property shall be installed in accordance with the following criteria:

- A) No MNBA unit shall be installed wherein it impedes the flow of pedestrian or vehicular traffic.
- B) No MNBA unit shall be installed wherein it endangers the public safety of persons or property.
- C) No MNBA unit shall be installed where it interferes with the ingress and egress from any residence or place of business.
- D) No MNBA unit shall be located wherein its location interferes with the use of traffic signs, traffic signals, fire hydrants utility poles, mailboxes, and other such police, fire, and/or traffic control devices.

E) The content of the newspaper publication shall not be considered in determining the manner of and place of location of the MNBA unit.

F) The newspaper vendor does not need a license, permit or other such approval to distribute its newspaper Pennington.

G) The MNBA unit shall be placed in a location in keeping with the character and zoning in Pennington so as to minimize the visual appearance and clutter of newsracks, but not at the expense of the newspaper vendor's First Amendment Right to distribute its newspaper.

U) No MNBA unit shall be installed above, or within a proximity to interfere with the use, maintenance, and/or repair of any gas line, water line, sewer line or other such utility line.

I) No MNBA unit shall be located so as to impede the lawful use of any buildings or access thereto.

J) No MNBA unit shall be located so as to interfere with the growth of any municipally owned shade trees, plants, and shrubs existing in the right-of-way sidewalk area.

K) No MNBA unit shall be located to interfere with the use of municipally installed public benches and seating.

SECTION 7 REQUEST FOR LOCATIONS

7.1 A newspaper vendor seeking to distribute its newspapers in Pennington, in accordance with this ordinance, shall make a request in writing to the Borough of Pennington for a location or locations within Pennington.

7.2 The newspaper vendor is to identify the location by designating a corner of a particular intersection and/or by reciting dimensions from some fixed identifiable structure or object, and/or by some other method of identifying the location so as to clearly inform Pennington of the location requested.

7.3 Pennington shall review the request and shall make the final determination as to the location of the MNBA unit. Pennington must take into account the requests of other newspaper vendors, in an effort to coordinate the location of the MNBA units with the requests of all newspaper vendors, in an effort to establish the necessary number of two or more newsrack boxes in MNBA units. In the event several newspaper vendors select a particular intersection and/or location and identify different corners and/or locations. Pennington will consolidate those requests into the MNBA unit and identify the specific location where the MNBA should be placed in accordance with the criteria in this Ordinance.

7.4 Pennington shall inform the newspaper vendor no later than twenty business days of receipt of its request as to the location of the MNBA unit wherein such vendor may place its papers for distribution from a newsrack box. In the event Pennington selects an alternative location or locations to the one requested by the vendor, Pennington will recite its reasons as to why the alternate location or locations in question had been selected.

7.5 A newspaper vendor is permitted to make as many requests as is reasonably necessary for the distribution of its newspapers in the Borough of Pennington.

There is no limitation on the reasonable number of requests or on the reasonable number of locations that a particular newspaper vendor may utilize in accordance with this Ordinance.

7.6 At the adoption of this Ordinance, free standing newsracks exist at various locations in the Borough of Pennington. In the event one or more of such locations are requested by newspaper vendors who presently have a free standing newsrack at such locations) such newspaper vendor's request shall receive preference as to a newsrack box in an MNBA unit at such location or the alternative to such location.

7.7 The earliest received location request shall have a preference over subsequent requests for the same location or alternate to that location.

7.8 In the event the newspaper vendor disagrees with Pennington's decision concerning its request for a location or any other decision related to this Ordinance, such newspaper vendor may request to Pennington in writing, a reconsideration of Pennington's decision, stating its position concerning its request for reconsideration. Pennington shall respond to such requests for reconsideration within 30 days of its receipt by Pennington.

SECTION 8 LOCATIONS THAT HAVE BEEN SELECTED

8.1 Pennington has selected the general locations recited herein below as locations for the MNBA units to be installed in accordance with this Ordinance. The below listed locations are not exhaustive or exclusive. Others may be added by the borough of Pennington on its own and/or at the request of newspaper vendors by resolution without the need to amend this Ordinance.

8.2 The following locations as shown on the plan entitled NEWSRACK VENDING MACHINE PROGRAM MAP are permissible general locations for the installation of MNBA units, wherein the specific location shall be determined by Pennington in accordance with this Ordinance:

- (a) Broemel Place, Photo Location No. 2
- (b) West Delaware Avenue, Photo Location No. 3
- c) Borough Hall, Photo Location No. 7

SECTION 9 PENALTIES

9.1 Any person or entity who violates any provision of this Ordinance, shall be notified in writing of such violation and shall have 15 days from the date of the notice to correct the violation

9.2 Any person or entity who violates any provision of this Ordinance and continues such violation for more than 15 days after having received the above notice, shall, upon conviction, be subject to a fine of not more than \$250.00; each day may be considered a separate offense.

SECTION 10 SEVERABILITY

10.1 If any portion of this Ordinance is declared to be invalid by a court of competent jurisdiction, it shall not effect the remaining portions of the Ordinance, which shall remain in full force and effect.

SECTION 11 REPEALER

All prior Ordinances inconsistent with the provision of this Ordinance, are hereby repealed as to such inconsistency.

SECTION 12 EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication according to law.