

ORDINANCE NO. 2012-147

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING CHAPTER 33 "ZONING" OF THE TOWN CODE OF ORDINANCES, BY CREATING ARTICLE VI, DIVISION 1, ENTITLED "NEWSRACKS" PROVIDING FOR DEFINITIONS; PROVIDING FOR REGULATIONS RELATING TO NEWSRACKS WITHIN THE TOWN PUBLIC RIGHTS-OF-WAY AND UPON PRIVATE PROPERTY; PROVIDING FOR REGISTRATION OF NEWSRACKS; PROVIDING FOR NON-CONFORMING NEWSRACKS; PROVIDING FOR REMOVAL OF NON-CONFORMING NEWSRACKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council finds that there is a need to establish procedures regarding the installation, placement, and maintenance of newsracks located upon public property and within any private property exterior to any building or structure within the Town; and

WHEREAS, on May 15, 2012 the Planning and Zoning Board as Local Planning Agency (LPA), has reviewed the Ordinance and found it to be consistent with the Town's Comprehensive Plan; and

WHEREAS, the proposed amendments will not be in conflict with the public interest, and are consistent and in harmony with the purpose and intent of the Comprehensive Plan; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

WHEREAS, the Town Council finds that such regulations and procedures governing newsracks will serve to promote the health, safety, and welfare of the citizens of the Town of Miami Lakes, as well as the aesthetics of the Town.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF
THE TOWN OF MIAMI LAKES , FLORIDA, AS FOLLOWS:**

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted and confirmed.

Section 2. Town Code Amended. That the Town Code of the Town of Miami Lakes , Florida, is hereby amended by amending Chapter 33 " Zoning", by creating Article XI.A, "Newsracks", to read as follows:

Sec. 13.1611. - Definitions.

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

If demand warrants or warranted demand means that the measured newspaper stack height needed to meet the newspaper publisher's or distributor's peak annual distribution at the requested newsrack location, as proven by the newspaper publisher or distributor, exceeds 14 inches.

Newsracks means any type of unmanned device for the vending or free distribution of newspapers or news periodicals.

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

Sec. 13.1612. - Purpose and criteria.

The purpose of the following 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 and private property so as to:

- (1) Provide for pedestrian and driving safety and convenience.
- (2) 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.
- (3) Provide for public and property safety during hurricane 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 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.
- (6) Maintain and protect the values of surrounding properties.
- (7) Reduce unnecessary exposure of the public to personal injury or property damage.
- (8) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication.
- (9) Maintain and preserve freedom of the press.
- (10) Cooperate to the maximum extent with newspaper distributors.

Sec. 13.1613. – Installation or Placement of Newsracks, Compliance Required.

No person shall place, affix, erect, construct or maintain a newsrack in the public right-of-way except in compliance with the provisions of this article.

Sec. 13.1614. - Registration - Newsracks in the Public Right –of-Way.

- (a) Authority. The issuing authority and coordinator shall be the Public Works Director. The Public Works Director is responsible for fairly coordinating and administering the physical placement of newsracks in the public right-of-way of the type and location herein specified, and upon compliance herewith.
- (b) Approving authorities. The Public Works Director shall provide review and approval as to compliance with the requirements of this Article.
- (c) Applications. The applicant shall file with the Public Works Director a written Application for Registration that shall contain the following information:
 - (1) The name, address, telephone number and e-mail address of the applicant who is the owner and/or principal in responsible charge of the newsrack.
 - (2) The name, address, telephone number and e-mail address of a responsible person whom the Town may notify or contact at any time concerning the applicant's newsracks.

- (3) The number of newsracks and the proposed location of each shown on a drawing with sufficient information, as determined by the Public Works Director, demonstrating compliance with these requirements.
- (4) Names of newspapers or periodicals to be contained in each newsrack.
- (5) Acknowledgement from the applicant that all newsracks in the Town right of way shall be removed immediately upon issuance of a hurricane watch and authorization for the Town to remove any newsracks not so removed by the applicant, at the applicant's expense. Failure of the Applicant to remove newsracks within 12 hours immediately following the issuance of a hurricane watch, or prior to the issuance of a hurricane warning, whichever occurs sooner, shall constitute a violation of this code and each newsrack not so removed by the Applicant shall constitute a separate violation of the Town's Code.
- (6) Certification that the location of the proposed newsrack complies with the American with Disabilities Act (ADA) or other applicable, regulations, as may be amended, and authorization for the Town to remove any newsrack which conflicts with these requirements, at the applicant's expense.
- (7) Hold Harmless Agreement in a form acceptable to the Town Attorney indicating, at a minimum, that the applicant agrees to indemnify, defend and hold the Town of Miami Lakes, its agents and authorized personnel harmless and relieve them from any responsibility or liability for any claims, legal actions, damage(s), cost or expense (including, but not limited to Attorney's fees), which may arise, as a result of, or relating in any way to, the placement of the newsracks in the Public Right-of Way or the Town's removal of newsracks as authorized in this article.

Sec. 13.1615. - Insurance.

- (a) Prior to the placement of a newsrack(s) in the Public Right-of-way, which placement does not require alteration of the Right-of-way or improvements therein, the applicant shall furnish to the Public Works Director a certificate of insurance (in accordance with Section C below) and a one-time only returnable bond deposit, except that returnable bonding amounts for newsrack installations (not requiring alteration of the right-of-way or improvements therein) shall be fifty (\$50.00) dollars per newsrack but in no case it will exceed \$200.00 per applicant. All bond funds from all newsracks placed by an applicant may be comingled to off-set costs associated with the removal of any abandoned newsracks, or any newsracks removed by the Town pursuant to other sections of this Code from any individual applicant. Upon expenditure of Bond Funds to off-set costs incurred as a result of applicant's failure to comply with the Town's Code the Town Shall notify the applicant in writing and the applicant shall

replenish the bond amount to insure that the minimum of \$50.00 per newsrack is maintained.

- (b) Before any permanent installation of newsracks in the public right-of-way, which installation requires any alteration of the right-of-way or improvements therein, in any fashion, the applicant shall, apply for and receive approval of a permit from the Public Works Department in accordance with all applicable requirements. Said permit fees and permit requirements are in addition to the requirements for registration and bonding contained herein. No work shall be performed by any applicant or other person within or on, or cut into, the public right-of-way, or improvements located therein, until a bond deposit has been made in sufficient amount to provide for the restoration of the right of way upon removal of the newsracks (by the Applicant or by the Town) and/or to provide for removal of the newsracks by the Town, if necessary pursuant to other portions of this code. The bond amount shall be determined by the Director of Public Works; but in any event the minimum amount of such bond shall be \$150.00 per newsrack, and maximum amount of such bond shall be 125 percent of the cost of proper restoration of the public right-of-way, the bond being to guarantee compliance with terms of the registration and permit shall be in place for as long as the applicant shall maintain the newsracks in the public right-of-way.
- (c) Before any permanent installation of newsracks in the public right-of-way, whether or not said installation requires any alteration of the right-of-way or improvements therein, the applicant shall furnish to the Town evidence that the applicant is carrying liability insurance, with the Town named as an additional insured, with bodily injury liability limits of \$500,000.00, each person; \$500,000.00, each occurrence, and property damage liability limits of \$250,000.00, each occurrence, or bodily injury liability and/or property damage liability, single limit of \$500,000.00, each occurrence.

Sec. 13.1616. - Fees.

There shall be a one-time only registration fee of twenty five (\$25.00) (per each location) paid by the Applicant prior to the issuance of the registration. The amount of this fee may be modified by Resolution of the Town Council.

Sec. 13.1617. - Appeals.

Any applicant who has been denied registration, or informed that a newsrack is in violation of this Ordinance, pursuant to the provisions of this article, may file an appeal with the Town Manager by requesting, in writing, appearance before the Town Manager to review such notice or denial. The appeal shall be heard by the Town Manager within thirty (30) days of the filing of the appeal. The decision of the Town Manager is subject to appeal pursuant to the requirements for such appeals contained elsewhere in the Town's Code.

Sec. 13.1618. - Placement generally.

Subject to the prohibitions set forth in 33-149.12, newsracks shall be placed parallel to and not less than 18 inches nor more than 24 inches from the edge of the curb. Newsracks placed near the wall of a building must be placed parallel to and not more than six inches from the wall.

Sec. 13.1619. - Installation and maintenance.

- (a) Newsracks shall be green, blue green (turquoise) or yellow in color.
- (b) Newsracks shall carry no cardholders or advertising, but may display the name, with lettering and background of any colors, of the newspaper being dispensed, in spaces in the locations and sizes set forth below:
- (c) Newsracks shall be maintained in clean good working order at all times, freshly painted and with unbroken hoods.

Sec. 13.1620. - Specific prohibitions.

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

- (1) In conflict with Americans With Disabilities Act (ADA) and/or other applicable State and Federal accessibility related laws and regulations.
- (2) Within five feet of any marked crosswalk.
- (3) Within ten feet of any unmarked crosswalk.
- (4) Within ten feet of any fire hydrant, fire callbox, police callbox or other emergency facility.
- (5) Within ten feet of any driveway.
- (6) Within five feet in front of, and 15 feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.
- (7) Within two feet of any bus bench, or plaza bench.
- (8) At any location whereby the clear space for passageway of pedestrians is reduced to less than four (4) feet.
- (9) Where a vertically protruding member of the newsracks is on or within 12 inches of any area improved with lawn or hedges or within three feet of flowers or trees.
- (10) Within three feet of any display window of any building abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window display purpose, or within five feet of a building entrance.

- (11) On or within two feet of signs, parking meters, street lights or utility poles.
- (12) In any location deemed, unsafe, unsanitary or unsatisfactory in any way, as determined by the Director of Public Works, in his sole discretion.

Sec. 13.1621. - Enforcement procedures—Nonconforming newsracks.

In addition to other remedies authorized herein (including but not limited to removal of the newsracks by Town Staff or designated agents), within 150 days of the effective date of the ordinance from which this article is derived, and at any time thereafter, any newsracks in violation of any provision of this article shall be subject to remedy and due process under the code enforcement procedures or as otherwise authorized herein. A violation of this Article shall carry a penalty of \$100.00 per each newsrack found in violation of the Town's Code.

Sec. 13.1622 - Same-Abandoned newsracks.

- (a) If any newsracks installed pursuant to this article does not contain the publication specified therefor within a period of thirty (30) days after release of the current issue, the code enforcement division may deem the newsrack abandoned and take appropriate action for an ordinance violation. In addition, a newsrack shall be deemed abandoned when no publication is in the newsrack for a period of more than thirty (30) consecutive days. At the Town's option, the Town may remove of and dispose of the abandoned newsrack at the Applicant's expense. The cost of the removal and disposal of the newsrack shall be taken from bond funds posted by the applicant for all newsracks located in the Town.
- (b) In the event a newspaper publishing company or its distributor desires to voluntarily abandon a newsrack location, the distributor shall notify the Public Works Director, completely remove the newsrack and mount, and restore the public right-of-way to a safe condition, leaving no holes or projections in the mounting surface.

Section 3. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,

sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Mayor Michael Pizzi, who moved its adoption on first reading. The motion was seconded by Councilmember Mary Collins and upon being put to a vote, the vote was as follows:

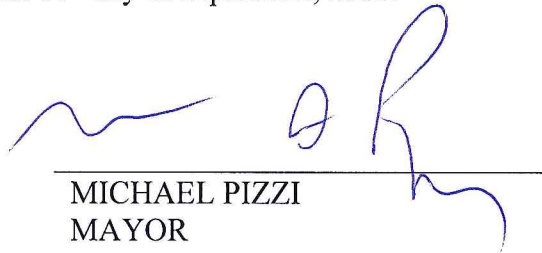
Mayor Michael Pizzi	Yes
Vice-Mayor Ceasar Mestre	Yes
Councilmember Nick Perdomo	Yes
Councilmember Mary Collins	Yes
Councilmember Tim Daubert	Yes
Councilmember Nelson Hernandez	Yes
Councilmember Richard Pulido	Yes

PASSED AND ADOPTED on first reading this 13th day of December, 2011.

The foregoing Ordinance was offered by Councilmember Ceasar Mestre, who moved its adoption on second reading. The motion was seconded by Councilmember Tim Daubert, and upon being put to a vote, the vote was as follows:

Mayor Michael Pizzi	Yes
Vice-Mayor Ceasar Mestre	Yes
Councilmember Nick Perdomo	Absent
Councilmember Mary Collins	Yes
Councilmember Tim Daubert	Yes
Councilmember Nelson Hernandez	Yes
Councilmember Richard Pulido	Yes

PASSED AND ADOPTED on second reading this 11th day of September, 2011.



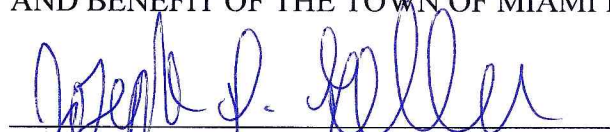
MICHAEL PIZZI
MAYOR

ATTEST:



MARJORIE TEJEDA
TOWN CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF MIAMI LAKES ONLY:



JOSEPH S. GELLER
GREENSPOON MARDER PA
TOWN ATTORNEY