

INTRODUCED BY _____ INTRODUCTION _____
SECONDED BY _____ HEARING _____
ADOPTION _____

**BOROUGH OF CLIFFSIDE PARK
COUNTY OF BERGEN, STATE OF NEW JERSEY**

ORDINANCE 2009-14

**ORDINANCE OF THE BOROUGH OF CLIFFSIDE PARK
ADDRESSING THE LICENSING, LOCATION AND NUMBER
OF NEWSRACKS IN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, 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, person entering and leaving vehicles and buildings, and person performing essential utility, traffic control and emergency services; and

WHEREAS, the uncontrolled placement of newsracks is also detrimental to the aesthetic characteristics of the Borough of Cliffside Park and unsightly newsracks located in the public rights-of-way constitute public nuisances and cause visual blight.

NOW, THEREFORE, BE IT ORDAINED, that the Council of Cliffside Park does hereby obtain the following.

**Section 1.
Definitions**

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

BUILDING DEPARTMENT– The Borough of Cliffside Park Building Department.

DISTRIBUTOR – The person, corporation, employee, servant or agent who erects, places, maintains or operates a newsrack in the public right-of-way.

NEWSRACK– Any self-service or coin-operated box, container, storage unit or other dispenser erected, placed, maintained or operated for the display, distribution and/or sale of newspapers, circulars, pamphlets, news periodicals, magazines, announcements advertisements, leaflets 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.

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.

**Section 2.
Permit required.**

2.01 It shall be unlawful for a distributor to erect, place, maintain or operate a newsrack on any public right-of-way in the Borough of Cliffside Park without first having obtained a permit from the Building Department, signed by the Construction Official. The permit shall specify the exact location of each newsrack. One permit may be issued for multiple newsracks.

2.02 Application for permit.

2.02.01 An application for a permit shall be made, in writing, to the Building Department, attention Construction Official. The application shall be on forms promulgated by the Building Department. The application shall contain the name and address of the applicant, the proposed specific location of the newsrack(s), a drawing and specification of the proposed newsrack(s) depicting compliance with requirements for dimensions, color and lettering, insurance certificate, the application shall be signed by the applicant and notarized.

2.02.02 The Borough shall limit the number of newsrack permits to twenty (20) per calendar year. Permits shall be issued on a race listing schedule with no distributor permitted to have more than two (2) newsracks in the municipality.

2.03 Conditions for permit.

2.03.01 Permits shall be issued by the Building Department to a distributor to erect, place, maintain or operate a newsrack on the public right-of-way, provided said placement, maintenance and operation complies with the provisions of this chapter.

2.03.02 An annual permit fee of \$200 per newsrack is required.

2.03.03 Applications shall be either granted or denied within 20 business days after the filing of a completed application, as required by this chapter. For each requested location in excess of 1 location, the Building Department shall have an additional ten business days to act on the application. Separate applications by the same distributor will be deemed to be one application for purposes of this ordinance.

2.03.04 The permit shall be valid for a period of one year on a calendar-year basis, commencing January 1, and shall be renewable on January 1 of any subsequent year. The annual fee shall not be prorated if the permit is issued subsequent to January 1.

2.03.05 Before the Building Department may issue a newsrack permit to any person; the person must execute an indemnification agreement which shall read as follows:

“The applicant and any other person, organizations, firms or corporations on whose behalf the application is made represent, stipulate, contract and agree that they will jointly and severally defend, indemnify and hold the Borough of Cliffside Park 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 newsrack, the issuance of the permit for the newsrack, or the control, maintenance or ownership of the newsrack.”

2.04 Insurance.

2.04.01 Before the Building Department may issue a newsrack permit to any person, that person shall file with the Building Department 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 for one person, and for more than one person, \$1,000,000, 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 person suffering loss, damage or injury as aforesaid.

- 2.04.02 Each insurance policy shall provide that neither the distributor, nor its insurer, shall have any right to subrogation against the Borough of Cliffside Park. Each insurance policy shall provide primary coverage for any and all losses and shall be drafted so as to protect all parties.
- 2.04.03 Within 10 days of the issuance of the permit, the distributor shall have the Borough of Cliffside Park added as an additional insured on the insurance policies required by this section.

2.05 Standards for maintenance and installation.

Any newsrack which, in whole or part, rests upon, in or over any public right-of-way shall comply with the following standards:

- 2.05.01 No newsrack shall exceed 49 inches in height, 20 inches in width or 18 inches in depth. Newsrack shall be manufactured of sturdy metal housing, using twelve-gauge sheet metal or better, finished with a prime coat and baked powder coat finish.
- 2.05.02 Newsracks shall be green, with white lettering, but lettering shall not exceed three inches in height and shall not cover more than 10% of the surface area of the newsrack.
- 2.05.03 Notwithstanding any provision in this chapter to the contrary, any newsrack located in a streetscape designated area shall conform to the aesthetic characteristics of the streetscape plan.
- 2.05.04. No newsrack shall be used for advertising signs or for publicity purposes other than that dealing with the display, sale or purchase of the newspapers or news periodicals sold therein.
- 2.05.05 Unless publications are made at no cost, each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanisms shall be maintained in good working order.
- 2.05.06 Each newsrack shall have affixed to, 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 of the coin-return mechanism or to give the notices provided for in this chapter.
- 2.05.07 Each newsrack shall be maintained by the distributor 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 free of chipped, faded, peeling and cracked paint in the visible painted area thereof;
 - (2) It is free of rust and corrosion;

- (3) The clear plastic or glass parts thereof, if any through which the publications therein are viewed, are unbroken and free of cracks, dents, blemishes and discolorations;
- (4) The paper or cardboard parts or inserts thereof, if any, are free of tears, peeling or fading;
- (5) It shall not have any structural parts which are broken, duly misshapen or otherwise dangerous; and
- (6) It is free of garbage and litter.

2.05.08 It shall be unlawful for any distributor to place or maintain any publication or material in a newsrack 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 2C:34-3.

2.05.09 Each newsrack shall be maintained to prevent their contents from being scattered about the area.

2.06 Placement of newsracks.

2.06.01 Any newsrack which, in whole or in part, rests upon, on or over any portion of the public right-of-way shall be located in accordance with the provisions of this section.

2.06.02 No newsrack shall be used or maintained which projects onto, into or over any part of the roadway.

2.06.03 Newsracks shall be placed and secured using a cement tray or equivalent means so as to prevent their being blown down or around the public right-of-way. Newsracks shall not be chained or otherwise affixed or secured to any traffic or street signs or signals, hydrants, mailboxes, sidewalks or other public property.

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

2.06.05 No newsrack shall be permitted which:

- (1) Endangers the safety of the person or property;
- (2) Unreasonably interferes with or impedes the flow of pedestrians or vehicular traffic, including any legally parked or stopped vehicle;
- (3) Unreasonably interferes with the ingress to or egress from any residence or place of business;
- (4) Unreasonably interferes with passengers boarding or exiting from buses at designated bus stops;
- (5) Unreasonably interferes with the use of traffic signs or signals, fire hydrants or mailboxes located or permitted at or near said location.

2.06.06 No newsrack shall be placed, installed, used or maintained:

- (1) Within three feet of any marked crosswalk;
- (2) Within 18 inches of a curb;

- (3) Within 15 feet of any fire hydrant, fire call box, police call box or other emergency facility;
- (4) Within five feet of any driveway;
- (5) At any location whereby the clear space for the passageway for pedestrians is reduced by the newsrack to less than six feet;
- (6) Within three feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping;
- (7) Within 300 feet of any other newsrack containing the same issue or edition of the same publication;
- (8) Within 10 feet of any standby or sprinkler connection or related safety of fire equipment;
- (9) Within five feet of any building, unless written permission is secured from the property owner, and same is filed with the application;
- (10) In front of a single family or two-family residence.

2.06.07 Notwithstanding anything to the contrary contained in this chapter, if the Borough of Cliffside Park designates certain areas (known as “convenience nodes”) for the placement of newsracks as part of a streetscape or redevelopment project, newsracks shall only be placed within the convenience nodes. Except as provided in this subsection, no newsracks shall be placed within 30 feet from the curb of a streetscape or redevelopment project.

2.06.08 No newsrack shall be permitted in any location zoned as residential.

2.06.09 Upon removal of any newsrack, the distributor shall promptly eliminate any potential hazards to the public, such as bolts, brackets or holes, and otherwise repair and restore the public right-of-way and public property.

2.07 Locations permitted.

2.07.01 Notwithstanding anything contained in this chapter to the contrary, the following shall constitute the only locations at which newsracks may be installed/placed:

- A. 700 block of Anderson Avenue.
- B. Winston Drive and Palisade Avenue.
- C. Lafayette Avenue and Palisade Avenue.
- D. Washington Avenue and Anderson Avenue.
- E. Prospect Avenue and Palisade Avenue.

2.08 Appeals process.

Any potential distributor denied a permit to erect, place, maintain or operate any newsrack may file with the Mayor and Council of Cliffside Park or their designee, a written appeal, which shall be acted upon within 45 days.

2.09 Violations and penalties.

Any violation of this chapter shall subject the violator to a fine of not less than \$100 no more than \$500, to confinement of not more than 90 days in jail, or both. Each newsrack violation constitutes a separate violation, and each day of said violation constitutes a separate violation, and each day of said violation constitutes a separate offense.

2.10 Suspension or revocation of permit.

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

2.11 Notice.

A notice of violation shall be issued to the distributor at least 48 hours in advance of the issuance of any summonses.

2.12 Abandonment, removal and storage fee.

- 2.12.01 In the event that a newsrack remains empty for a period of 7 continuous days, the same shall be deemed abandoned and may be removed at the distributor's cost, by Borough of Cliffside Park, or any of its designated departments.
- 2.12.02 If a distributor is convicted of a violation of this chapter and fails to correct or remedy the violation within 10 days following said conviction, or disposition of any appeal, then the Building Department or any designated department of the Borough may remove the newsrack(s) which was the basis of the conviction, at the distributor's cost.
- 2.12.03 Upon removal of a newsrack, the distributor shall be notified at the address listed on the newsrack. If the newsrack is not claimed within 20 days of the mailing of said notice, the Borough of Cliffside Park or any designated department of the Borough may dispose of the newsrack.
- 2.12.04 For any newsrack that is abandoned or removed in accordance with this chapter, then stored by the Borough, the Borough of Cliffside Park shall charge a twenty-five dollar per day storage fee. After thirty (30) consecutive days, the newracks will be sold for scrap metal. Any funds obtained for scrap metal shall be used to offset the daily storage charge.

2.13 Permits not to be assigned.

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

2.14 Effective Date/Moratorium

- 2.14.01 All distributors shall have forty-five (45) days from adoption of this ordinance to comply with its terms.
- 2.14.02 Failure of the distributor to comply within said time period shall be conclusively presumed that the newsrack has been deemed abandoned as addressed in this ordinance.

Severability.

If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

Effective date.

This Ordinance shall become effective thirty (30) days after final passage and publication as required by law.

Repeal of inconsistent ordinances.

All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

INTRODUCED _____, **2009**

ADOPTED _____, **2009**

Gerald A. Calabrese, Mayor

ATTEST:

Sercan Zoklu, Borough Clerk