

**ORDINANCE 2017-01**

(Amendments to Chapter 18 Streets, Sidewalks, and Other Public Places)

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 18 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES; AMENDING RESERVED SECTIONS IN ARTICLE III SIDEWALKS, AMENDING ARTICLE IV PLACEMENT OF NEWSRACKS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE:**

**WHEREAS**, the City Commission would like to provide for a uniform and aesthetically pleasing receptacle for the distribution of newspapers or news periodicals or commercial handbills, and

**WHEREAS**, it is important to maintain the health, safety and welfare of our community,

**NOW THEREFORE, BE IT ENACTED**, by the City Commission of Lake Wales, Polk County, Florida:

**SECTION 1 Chapter 18, Article III Sidewalks** is amended as follows:

Sec. 18-47 – 18-60 Reserved

Sec. 18-47 – 18-54 Reserved

**SECTION 2 Chapter 18, Article IV – Placement of Newsracks is repealed.**

Sections 18-61 thru 63 have been incorporated and renumbered into the amended version of Chapter 18, Article IV – Newsrack Code as presented in Section 3 of this ordinance.

**SECTION 3 Chapter 18, Article IV – Placement of Newsracks Newsrack Code** is amended as follows:

CHAPTER 18, ARTICLE IV - NEWSRACK CODE

DIVISION 1. - GENERALLY

Sec. 18-55. Short title.

This article may be cited as the "Lake Wales Newsrack Code."

Sec. 18-56. Intent and purpose.

The City Commission finds and declares that:

(1) Findings.

a. The uncontrolled placement and maintenance of newsracks in public

rights-of-way present 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.

- b. Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located thereon, constitute public nuisances.
- c. These factors constitute an unreasonable interference with and obstruction of the use of 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.
- d. The City Commission 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 those areas for such purposes should not be absolutely denied. The City Commission further finds that it is in the public interest to provide newsracks within a designated area set forth in this article to accommodate such interests regulating the time, place and manner of using such City supplied newsracks.

(2) *Purpose.* The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety, and general welfare of persons in the City in their use of public rights-of-way within the designated area through the regulation of placement, appearance, number, size, and servicing of newsracks on the public rights-of-way so as to:

- a. Provide for pedestrian and driving safety and convenience;
- b. 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;
- c. Provide reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes and similar appurtenances, and access to locations used for public transportation purposes;
- d. Reduce visual blight on the public rights-of-way, protect the aesthetics and value of surrounding properties;
- e. Reduce exposure of the city to personal injury or property damage claims and litigation; and
- f. Protect the right to distribute information protected by the federal and state constitutions through use of newsracks.

(3) *Preservation of constitutional rights.* It is not the intent of this article to in any way discriminate against, regulate, or interfere with the publication,

circulation, distribution, or dissemination of any printed material that is constitutionally protected.

Sec. 18-57. 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:

*Block* means one side of a street between two consecutive intersecting streets.

*Commercial handbill* means any pamphlet, circular, brochure, handbill or other document used solely to express the economic interests of the speaker or publisher or of the audience to whom the material is directed.

*Supervisor of code enforcement* refers to the supervisor of code enforcement or his or her designee.

*Distributor* means the person responsible for placing and maintaining publications within the newsrack provided by the City.

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

*Newsrack receptacle or receptacle* means a cabinet or portion of a cabinet within the newsrack structure provided by the City and placed within the Park and Stuart Avenue corridor by the City.

*Park and Stuart Avenue corridor* means that area bounded by and including the public rights-of-way of Park and Stuart Avenues lying between Scenic Highway on the east and Wetmore Avenue on the west.

*Person* means any person or persons, or entity including, but not limited to, a corporation, partnership, unincorporated association or joint venture.

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

*Sidewalk* means any surface provided for the use of pedestrians.

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

*Owner.* The particular individual who was responsible for installing and/or maintaining a newsrack.

*Parkway.* That area between the sidewalk and the curb of any street in a residential area. "Parkway" also includes all the area located between Lakeshore Boulevard and Lake Wailes.

*Public property.* Any property owned by the city.

Right-of-way. Land which, by deed, conveyance, agreement, usage or process of law, is reserved for and dedicated to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

Sec. 18-58. Violations.

(a) Upon determination by the Supervisor of code enforcement that a newsrack receptacle has been installed, used or maintained in violation of this article, a notice to correct the offending condition shall be issued to the distributor utilizing the newsrack. Such notice shall be affixed to the newsrack receptacle and a copy thereof shall be mailed by certified mail, return receipt requested to the distributor at the address noted on the newsrack receptacle. The notice shall specifically describe the offending condition, suggest actions necessary to correct the condition and inform the distributor of the right to appeal.

(b) Failure to properly correct the offending condition within five days (excluding Saturdays, Sundays and legal holidays) after the mailing date of the notice or to appeal the notice of violation within three days after its receipt shall result in the removal of the contents of the offending newsrack. The contents will then be processed as abandoned property.

(c) If the offending newsrack receptacle is not properly identified as to owner under the provisions of this article, its contents shall be removed immediately and processed as abandoned property.

(d) An impound fee, which shall be measured by the city's cost and expense of impounding, shall be assessed against each newsrack receptacle from which the contents are summarily removed.

Sec. 18-59. Abandonment.

If a newsrack receptacle remains empty for a period of 30 continuous days, the newsrack receptacle shall be deemed abandoned and may be treated in the manner as provided in section 18-58 for newsracks receptacle(s) in violation of this article.

Sec. 18-60. Interference with public safety, utilities, governmental use or traffic prohibited.

No person or entity shall install, use, or maintain any newsrack within the Park and Stuart Avenue corridor which projects onto, into, or which rests, wholly or in part, upon the roadway of any public street or on any other public property within the corridor.

Sec. 18-61. Standards.

Any newsrack receptacle within the Park and Stuart Avenue corridor shall comply with the following standards:

- (1) No newsrack receptacle shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper, news periodical or commercial handbill sold or distributed therein.
- (2) Each coin-operated receptacle installed in the newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund if he is unable to receive the paid-for publication. The coin-return mechanism shall be maintained in good working order.
- (3) Each newsrack receptacle shall have affixed to it, in a readily visible place 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 call to report a malfunction or to secure a refund if a malfunction of the coin-return mechanism occurs or to give the notices provided for in this article.
- (4) Each receptacle within the newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of this subsection, each newsrack receptacle shall be serviced and maintained so that:
  - a. It is reasonably free of dirt and grease.
  - b. It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
  - c. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon.
  - d. The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration.

Sec. 18-62. Location.

- (1) In determining which newsracks already in place shall be permitted to utilize a newsrack receptacle after the installation of the City's newsracks, the Supervisor of code enforcement shall be guided solely by the following criteria:
  - a. First priority shall be given to newsracks used for the sale of publications which meet the requirements of F.S. §§ 50.011 and 50.031 as newspapers in which legal notices and process may be published for Polk County.
  - b. Second priority shall be given to newsracks used for the sale or distribution of

daily publications (those published on five or more days in a calendar week) which do not meet the requirements of F.S. §§ 50.011 and 50.031 as newspapers in which legal notices and process may be published for Polk County.

- c. Third priority shall be given to newsracks used for the sale or distribution of weekly publications (those published on at least one but less than five days in a calendar week) which do not meet the requirements of F.S. §§ 50.011 and 50.031 as newspapers in which legal notices and process may be published for Polk County.

#### DIVISION 2. - PERMIT

##### Sec. 18-63. Required.

It shall be unlawful for any person to utilize a receptacle within the City's newsracks located in the Park and Stuart Avenue corridor without having first obtained a permit from the Supervisor of code enforcement specifying the exact location of such newsrack receptacle. One permit may be issued to include any number of newsrack receptacles and shall be signed by the applicant and shall meet the requirements set forth in this article.

##### Sec. 18-64. Application.

(a) Application for a newsrack receptacle permit shall be made, in writing, to the Supervisor of code enforcement upon such form as shall be provided by the City and shall contain the name and address of the applicant, the proposed specific location of the receptacle within the newsrack and shall be signed by the applicant.

(b) From the above application information, the Supervisor of code enforcement shall approve the locations. The Supervisor shall be guided therein solely by the standards and criteria set forth in this article.

##### Sec. 18-65. Conditions for issuance; fees; duration.

(a) As an express condition of the acceptance of such newsrack receptacle permit, the permittee thereby agrees to indemnify and save harmless the city, its elected and appointed officials, and employees against loss, liability or damages, including expenses and costs for bodily or personal injury, and for property damages sustained by any person as a result of the installation, use or maintenance of a receptacle within a newsrack within the Park and Stuart Avenue corridor.

(b) Permits issued for the utilization of a newsrack receptacle require that use or maintenance thereof shall be conditioned upon observance of the provisions of this article and by such reasonable rules and regulations as may

be established by the Supervisor of code enforcement. Permits shall be issued on a first come, first served basis within 48 hours (excluding Saturday, Sunday and legal holidays) after the application has been filed. An annual permit fee in the amount established by the City shall be required.

(c) Such permit shall be valid for one year and shall be renewable pursuant to the procedure for original applications referred to in this section and upon payment of the required permit fee.

#### Sec. 18-66. Suspension or revocation.

In addition to the enforcement procedures provided in this article, the Supervisor of code enforcement may suspend or revoke the newsrack receptacle permit for continued or repeated violations or infractions of any provision of this article or of any rule, direction or regulation of the Supervisor of code enforcement. Such revocation shall apply only to the offending newsrack receptacle and not to any other permitted and non-offending newsrack receptacle. Suspension or revocation shall be mandatory for the third offense against this article.

### DIVISION 3. - PLACEMENT OF NEWSRACKS

#### Sec. 18-67 Standards.

The following standards shall apply to the placement of newsracks within the city:

(1) No person shall install, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public street, or which rests, in whole or in part, upon or over any portion of a roadway.

(2) No person shall install, use or maintain any newsrack which rests, in whole or in part, upon or over any public right-of-way or any public property when such installation, use or maintenance endangers the safety of persons or property or when such newsrack interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle.

(3) No person shall install, use or maintain any newsrack which rests, in whole or in part, upon any parkway, except in the area designated for such use in the location known as the "pavilion site."

(4) No newsrack shall be placed upon any sidewalk in a location where the placement impedes pedestrian traffic or access to any residence or business.

(5) All newsracks lawfully placed within the city in accordance with these standards are subject to the following limitations:

a. No single newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width or twenty-four (24) inches in depth.

b. No newsrack shall be chained, bolted or otherwise affixed to any property or to any permanently fixed object owned by the owner of the newsrack, unless the consent of the owner of such property or object is obtained in writing.

c. Newsracks may be clustered together and chained or otherwise attached to each other; however, no more than four (4) newsracks may be attached or chained together in a cluster. At least eighteen (18) inches must separate clusters.

d. No newsracks shall be placed, installed, used or maintained within three (3) feet of any marked crosswalk, within fifteen (15) feet of the curb return of an unmarked crosswalk, within three (3) feet of any fire hydrant, within three (3) feet of any driveway, within three (3) feet of any display window of a building abutting a sidewalk, or at any location whereby the passageway of pedestrians is reduced to less than three (3) feet.

e. Every newsrack shall be constructed, installed and maintained in a safe and secure condition. Each newsrack shall have fixed to it, in a readily visible place, the telephone number or a working telephone service to call to report a malfunction or to secure a refund in the event of a malfunction of the newsrack.

#### Sec. 18-68. Removal

In the event any newsrack is found not to be in compliance with the standards of the division, the following procedure shall occur:

(1) The city manager or his designee shall give written notice to the owner of the newsrack of the violation. This written notice shall demand that the offending newsrack be removed within ten (10) days from the date of the notice.



(2) Upon failure of the owner, following such notice, to remove the newsrack, the newsrack shall be deemed to be unclaimed property and shall be removed by the city and disposed of pursuant to the laws regulation the disposal of unclaimed property.

(3) If, after receiving the notice of removal, an owner of a newsrack contends that the newsrack is not in violation of the standards of this division, that owner may appeal the notice of violation to the code enforcement board of the city. The requirement to remove the newsrack shall be stayed until the board determines whether or not a violation does exist. In making this determination, the board shall consider only the standards of this division.

**SECTION 4 SEVERABILITY:** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated.

**SECTION 5** This ordinance shall become effective, immediately upon adoption by the City Commission.

**CERTIFIED AS TO PASSAGE** this 7<sup>th</sup> day of February 2017.

BY: Eugene L. M...  
Mayor/Commissioner  
City of Lake Wales, Polk County, Florida

ATTEST: Clara Jan Blangaw  
City Clerk

