

## ORDINANCE NO. 17-14

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REGULATING OUTDOOR NEWSRACK AND NEWSPAPER VENDING MACHINES AND ON- SITE PUBLICATION DELIVERY, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Fort Myers Beach, Florida that:

Section 1: Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida and Chapter 166, Florida Statutes.

Section 2: Intent and Purpose. The Town Council of the Town of Fort Myers Beach finds and declares that:

(a) The purpose of this ordinance is to establish reasonable time, place and manner restrictions to further the Town's objective in public safety and aesthetics.

(b) The regulations herein are enacted in pursuance of securing and promoting the public health and general welfare of persons in the Town of Fort Myers Beach in their use of the public rights-of-way.

Section 3. Definitions.

(a) "Distributor" means the person responsible for placing, installing and maintaining a newsrack along or adjacent to a public right-of-way.

(b) "Newsrack" means any self-service or coin-operated box, container, storage unit or dispenser of any kind, in any outdoor location, installed, used or maintained for the display, sale or distribution, even if complimentary, of newspapers or other periodicals or magazines including the dissemination of any real estate or any advertising publications of any nature.

(c) "Parkway" means that area between any sidewalk and the curb of any street; or, if there is no sidewalk, then the area between the street or roadway and the property line adjacent thereto. "Parkway" also means any area within the roadway or street that is not open to vehicular travel.

(e) "Roadway" means that portion of a street that is improved, designed and ordinarily used for vehicular travel.

(f) "Sidewalk" means that area between property lines and roadways dedicated to public use by pedestrians.

(g) "Public Property" means parks, squares, plazas and any and all real property owned by the Town.

(h) "On-site" delivery means distribution of printed materials by delivery to homes and residences not placed in the US mail or by commercial delivery service.

(i) "Outdoor" means outside the confines of a building or shelter or in the open.

(j) "Right-of-Way" means lands, by deed, conveyance, agreement, easement, dedication, usage or process of law, reserved for dedication to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

#### Section 4. Indemnification.

All distributors of any publication utilizing newsracks with the Town shall execute an indemnification on a form developed by the Town Attorney holding the Town, its officers, employees and agents harmless against any claims of loss, liability or damage, including expenses and costs for personal injury or property damage arising out of or resulting from the placement of any newsrack on or in or over a public right-of-way.

#### Section 5. General Standards

(a) Any distributor who places or maintains a newsrack within the Town of Fort Myers Beach shall:

(1) Register, on a form developed by the Town, each and every newsrack and its location within the Town.

(i) Upon registration, the Town shall issue to the distributor a weather-resistant decal no larger than 2 inches by 2 inches to be affixed on the newsrack on the lower right portion of the front window or door. If the newsrack has no window or door, the decal shall be affixed to the front of the newsrack so as to be easily visible.

(b) No newsrack shall exceed 55 inches in height, 24 inches in width or 24 inches in depth (*i.e.* 55" x 24" x24").

(c) Any coin-operated newsrack shall utilize a coin-return mechanism for any malfunctions. Every such newsrack shall display a telephone number to contact for refunds.

(d) Newsracks may not display advertising for any product or service except for the publication displayed within the newsrack.

(e) Newsrack shall not sell, offer for sale, hold or maintain any publication in any manner as to expose the public to any photograph, cartoon or drawing contained within such publication displaying any of the following:

(1) the genitals, pubic hair, buttocks, anal cleft, perineum, anal region or pubic hair region of any person.

(2) any portion of the female breast at or below the areola.

#### Section 6. Location Standards

(a) No person shall place, use or maintain a newsrack which projects onto, into or over any part of a roadway; or, which rests, wholly or in part upon or over any portion of a roadway.

(b) No person shall place, use or maintain any newsrack within a distance of nine (9) feet to the edge of any roadway, street or parkway owned by the Town. Newsracks shall not include more than four (4) individual dispensing boxes; and, shall not be located closer than 1000 feet to any other newsrack. No more than two sets of newsracks may be located on any single parcel of property unless permitted otherwise pursuant to subsection (g) following.

(c) Any newsrack placed in or upon the right of way of Lee County within the confines of the Town of Fort Myers Beach shall adhere to the rules and regulation of the County for newsracks in the public right of way.

(1) All newsracks shall be removed within 24 hours of an evacuation order that includes the Town of Fort Myers Beach; or, be anchored by one of these methods: (i) ballast to the maximum level possible within the base of the newsrack; or, (ii) be anchored to a concrete pad of a minimum size of 24 inches by 24 inches by 2 inches thick (24" x 24" by 2"); said attachment to be by four 3/8-inch diameter galvanized lag bolts.

(d) No more than eight (8) newsracks are permitted in any single location and must be separated by a minimum 100 feet from any other set of eight (8) newsracks.

(e) No newsrack shall be installed on public land, if so permitted, that is improved with flowers, shrubs, trees or other landscaping.

(f) Newsracks shall not be placed, installed or maintained:

(1) within 15 feet of any marked crosswalk.

(2) within 15 feet of the curb return of any unmarked crosswalk.

(3) within 15 feet of any fire hydrant.

(4) within 15 feet of any driveway.

(5) within 15 feet of any bus stop.

(6) within 15 feet of a "No Parking" sign or "No Parking" zone.

(7) in any position in a public right of way or on private property so that the newsrack obstructs any drivers' views or otherwise creates a dangerous condition.

(g) If a newsrack location does not meet criteria established herein, distributors may request administrative review and approval of alternate locations by the Town Manager in a manner to be established by the Town Manager with any related fees or costs to be borne by the distributor. Appeal of any denial may be made as provided by Section 34-86 of the Town Land Development Code.

Section 7. Maintenance Standards. Each newsrack shall be maintained in a neat and clean condition, and in good repair at all times. Without limiting the foregoing, each newsrack shall be serviced and maintained such that:

- (a) It is reasonably free of dirt, mud, grease and grime.
- (b) It is reasonably free of chipped, faded, peeling or cracked paint or finish.
- (c) It is reasonably free of cracked, dented or discolored plastic or glass parts.
- (d) Structural parts are not broken or misshapen.

Section 8. Enforcement.

Code Enforcement Officers or other Town employees so designated by the Town Manager are responsible for enforcement. If any newsrack is found or reported to be in violation of this ordinance:

- (a) the newsrack distributor as identified from the affixed identification decal shall be notified by email of the violation.
- (b) such notice shall describe the location of the newsrack, the nature of the violation and shall state the corrective action necessary to cure the violation; said corrective action to occur within five (5) business days after the date of notice from the Town.
- (c) if the email notice is ineffective or returned as undeliverable, notice of the violation shall be affixed to the newsrack.
- (d) if uncorrected after the five (5) day period, the distributor shall be subject to a fine of \$100 per day per newsrack in violation.
- (e) any distributor so cited may take an appeal to the Town Special Magistrate.

Section 9. Abandonment.

Any newsrack that remains empty for any period of 30 continuous days, shall be deemed abandoned and may be summarily removed by order of the Special Magistrate.

Section 10. Distribution of Publications by On-site Delivery. Publications not delivered to homes and residences by either the US mail or a commercial delivery service, (e.g. FedEx or UPS) shall not make any such delivery if it reasonably appears that two or more of any publications to the same home or residence have not been received, accepted or picked up. Code Enforcement Officers may cite any person or business in violation of this section.

Section 11. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 12. Inclusion into the Code of Ordinances.

The Town Council intends that this ordinance be made a part of the Town Code of Ordinances, that sections herein may be renumbered or re-lettered and words may be changed to accomplish codification; and, regardless of whether this ordinance is codified, the ordinance may be renumbered or re-lettered and typographical errors that do not affect the intent herein can be corrected with the authorization of the Town Manager without the need for public hearing.

Section 13. Conflict.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.


Section 14. Effective Date.

This Ordinance shall take effect immediately upon its adoption. All newsracks are required to be in compliance with the provisions herein within sixty (60) days following the effective date.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Gore and seconded by Council Member Shamp, and upon being put to a roll call vote, the result was as follows:

Dennis Boback, Mayor	nay	Tracey Gore, Vice Mayor	aye
Anita Cereceda, Council Member	nay	Joanne Shamp, Council Member	aye
Bruce Butcher, Council Member	aye		

DULY PASSED AND ADOPTED THIS 6TH DAY OF NOVEMBER, 2017 BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By:   
Dennis C. Boback, Mayor

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency

By:   
The Peterson Law Group,  
Town Attorney