

ORDINANCE NO. 083-056

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES, TOWN OF ADDISON, TEXAS, BE AMENDED BY ADDING CHAPTER 11.1 - NEWSRACKS; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AND EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. That the Code of Ordinances of the Town of Addison be amended by adding Chapter 11.1 Newsracks to read as follows:

Chapter 11.1

Newsracks

Sec. 11.1-30. Intent and Purpose.

The City Council of the Town of Addison finds and declares that:

- 1) The uncontrolled placement of newsracks in 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) Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located therein, constitute public nuisances.
- 3) It is a matter of public necessity that the Town of Addison protect children and unconsenting adults in an on its public streets, sidewalks, transportation facilities and other public rights-of-way from viewing such public displays of offensive sexual material. Such displays are thrust indiscriminately upon unwilling audiences of adults

and children and constitute assaults upon individual privacy.

- 4) The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, morals and general welfare of persons in the Town of Addison in their use of public rights-of-way.
- 5) There is an immediate and present danger presented by the uncontrolled placement of newsracks in public rights-of-way, creating an emergency.

Sec. 11.1-31.

DEFINITIONS.

- 1) "Distributor" shall mean the person responsible for placing and maintaining a newsrack in a public right-of-way.
- 2) "Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals.
- 3) "Nudity" means the showing with less than a fully opaque covering of the genitals, pubic hair, buttocks, natal cleft, perineum, anus or anal region of any person, other than a child under the age of puberty, or any portion of the breast at or below the areola thereof of any female person, other than a child under the age of puberty, or the depiction of covered male genitals in a discernibly turgid state.
- 4) "Offensive" means that the work in which the representations appear, taken as a whole, appeals to the prurient interest and patently depicts or portrays the prohibited sexually explicit material in a manner which, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- 5) "Parkway" means that the area between the sidewalks and the curb of any street and where there is no sidewalk that area between the edge of the roadway and property line adjacent thereto. Parkway shall also include any area within a roadway which is not open to vehicular travel.
- 6) "Pictorial Material" means any material suggesting or conveying a visual image, and includes, but is not limited to, a photograph, painting or drawing.

- 7) "Roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel.
- 8) "Sexually explicit material" means any pictorial material depicting human sexual intercourse, human or animal masturbation, bestiality, oral intercourse, anal intercourse, human-animal intercourse, excretory functions, homosexual acts, direct physical stimulation or touching of unclothed genitals or pubic areas of the human male or female, flagellation or torture by or upon a person in the context of a sexual relationship or sexual stimulation. The material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition of these Subsections. Works of art or of anthropological significance are not included within the definition of this Subsection.
- 9) "Sidewalk" means any surface provided for the exclusive use of pedestrians.
- 10) "Street" means all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

Sec. 11.1-32. PERMITS REQUIRED.

It shall be unlawful for any person, firm or corporation to erect, place, maintain or operate, on any public street or sidewalk, or in any other public way or place, in the Town of Addison any newsrack without first having obtained a permit from the City Manager specifying the exact location of such rack(s). One permit may be issued to include any number of newsracks, and shall be signed by the applicant.

Sec. 11.1-33. APPLICATION FOR PERMIT.

Application for such permit shall be made, in writing, to the City Manager upon such form as shall be provided by him, and shall contain the name and address of the applicant, the proposed

specific location of each such newsrack, and shall be signed by the applicant.

Sec. 11.1-34. CONDITIONS OF PERMIT.

- 1) As an express condition of the acceptance of such permit, the permittee thereby agrees to indemnify and save harmless the City, its officers, directors, and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use, or maintenance of a newsrack within the Town of Addison.
- 2) Permits shall be issued for the installation of a newsrack or newsracks without prior inspection of the location, but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon observance of the provisions of this ordinance. Permits shall be issued within forty-eight (48) hours after the application has been filed. An annual permit fee of \$25.00 is required.
- 3) Such permits shall be valid for one year and shall be renewable pursuant to the procedure for original applications referred to in Section 4 and upon payment of the \$25.00 permit fee.

Sec. 11.1-35. STANDARDS FOR MAINTENANCE AND INSTALLATION.

Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway, shall comply with the following standards:

- 1) No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, or two (2) feet in thickness, or weigh more than one hundred twenty-five (125) pounds when empty.
- 2) No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper or news periodical sold therein.
- 3) 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.

- 4) Each newsrack shall have affixed to it 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 call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this subdivision.
- 5) Each newsrack shall be maintained 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:
 - (a) It is reasonably free of dirt and grease, and exposed metal areas shall be painted in an earthtone brown compatible with Addison's standard color for signs and light standards placed in the municipal right-of-way.
 - (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.
 - (e) The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading.
 - (f) The structural parts thereof are not broken or unduly misshapen.
- 6) It shall be unlawful for any person to place or maintain any publication or material in newsracks which exposes to public view any pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.

Sec. 11.1-36. LOCATION AND PLACEMENT OF NEWSRACKS.

An newsrack which rests in whole or in part upon or on any portion of a public right-of-way or which projects onto, into, or over any part of a public right-of-way shall be located in accordance with the provisions of this section:

- 1) No newsrack shall be used or maintained which projects onto, into, or over any part of the roadway of any public street, or which rests, wholly or in part upon, along, or over any portion of the roadway of any public street.
- 2) No newsrack shall be permitted to rest upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally marked or stopped vehicle, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location.
- 3) No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, except to other newsracks. No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.
- 4) Newsracks may be placed next to each other, provided that no group of newsracks shall extend for a distance of more than eight (8) feet along a curb, and a space of not less than three (3) feet shall separate each group of newsracks.
- 5) No newsrack shall be placed, installed, used or maintained:
 - (a) Within three (3) feet of any marked crosswalk.
 - (b) Within twelve (12) feet of the curb return of any unmarked crosswalk.
 - (c) Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility.
 - (d) Within five (5) feet of any driveway.
 - (e) Within three (3) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop.
 - (f) Within three (3) feet of the outer end of any bus bench.
 - (g) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet.

(h) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.

(i) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.

The provisions contained in Subsection E of this Section shall not apply if compliance with the provisions would prohibit the placement of newsracks for a distance of one hundred fifty (150) feet on the same side of the street in the same block.

Sec. 11.1-37. VIOLATION OF ORDINANCE.

Upon determination by the City Manager that a newsrack has been installed, used or maintained in violation of the provisions of this ordinance, an order to correct the offending condition will be issued to the distributor of the newsrack. Such order shall be telephoned to the distributor and confirmed by mailing a copy of the order by certified mail return receipt requested. The order shall specifically describe the offending condition and suggest actions necessary to correct the condition. Failure to properly correct the offending condition within three (3) days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the order shall result in the offending newsrack being summarily removed and processes as unclaimed property under provisions of the Unclaimed Property Ordinance. If the offending newsrack is not properly indentified as to owner under provisions of Section 11.1-34 hereof, it shall be removed immediately and processed as unclaimed property under provisions of the Unclaimed Property Ordinance. The City Manager shall cause inspection to be made of the corrected condition or of a newsrack reinstalled

after removal under this Section. The distributor of said newsrack reinstalled after removal under this Section. The distributor of said newsrack shall be charged a \$10.00 inspection fee for each newsrack so inspected which charge shall be in addition to all other fees and charges required under this Code and the Unclaimed Property Ordinance.

Sec. 11-1-38. APPEALS.

Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this Ordinance may appeal and shall be appraised of his right to appeal to the City Council. An appeal must be perfected within three (3) days after receipt of notice of any protested decision or action by filing with the office of the City Secretary a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than ten (10) days after receipt of the letter of appeal. Appellant shall be given at least five (5) days notice of the time and place of the hearing. The City Council shall give the appellant, and any other interested party, a reasonable opportunity to be heard, in order to show cause why the determination of the City Manager should not be upheld. In all such cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the City Manager. At the conclusion of the hearing, the City Council shall make a final and conclusive determination.

Sec. 11.1-39. REVOCATION.

In addition to the enforcement procedures provided in Section 11.1-39 of this Code it shall be within the power and discretion of the City Manager to suspend or revoke the permit for continued or repeated violation or infractions of any provision of this Code. Suspension or revocation shall be mandatory for the third offense against Section 11.1-37 of this Code.

Sec. 11.1-40. CITY MANAGER'S DESIGNATED REPRESENTATIVE.

"City Manager" is used in this Code shall include his designated representative(s).

Sec. 11.1-41. ABANDONMENT.

In the event a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 11.1-37 for newracks in violation of the provisions of this Code.

SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code.

SECTION 3. PENALTY.

That any person, firm or corporation violating any of the provisions of this ordinance, shall upon commission be deemed guilty of a misdemeanor, and shall be subject to a fine not to exceed the sum of Two Hundred Dollars (\$200.00) for each offense, and each day such violation continues shall constitute a separate offense.

SECTION 4. EMERGENCY.

The fact that the present ordinances and regulations of the Town of Addison are inadequate to control the placing of newsracks with the Corporate Limits of the Town of Addison, Texas, creates an emergency for the immediate protection of the business, property, health, safety and general welfare of the public which requires that this ordinance shall become effective from and after this date and after publication of the caption as the law requires.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 13th day of September, 1983.

MAYOR 

ATTEST:


CITY SECRETARY

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