

ORDINANCE AMENDING CHAPTER 74 OF THE CITY CODE RELATING TO STREETS AND SIDEWALKS

BE IT ORDAINED, by the Mayor and City Council of the City of Winston-Salem as follows:

Section 1: There is hereby created in Chapter 74, a new Article XIII, to be entitled “NEWSRACKS” and to read as follows:

“Sec. 74-500. – General.

(a) *Purpose.* The purpose of this article is to establish a comprehensive set of regulations applicable to newsracks located within the public right-of-way for the purpose of improving the aesthetics and safety of the City of Winston-Salem.

(b) *Applicability.* The regulations in this article apply only within the Downtown Winston-Salem Business Improvement District, a municipal service district created pursuant to N.C.G.S. § 160A-535 *et seq.*, upon Resolution of the Mayor and City Council of the City of Winston-Salem on the 25th day of November, 2013.

(c) *Definitions.* As used in this article, unless the context otherwise requires, the words listed below shall have the following meanings:

Box Corral. Any device approved by the City for the purpose of grouping newsracks in clusters.

Distributor or publisher. The person responsible for placing and maintaining a newsrack in a right-of-way or the designated agent thereof.

Graffiti. Any form of communication in any format placed on a newsrack that is illegal or without permission from the publisher.

Newsrack. Any individual self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, distribution or sale of any written or printed material including, but not limited to, newspapers, news periodicals, magazines, books, pictures, photographs, advertising circulars, flyers, promotional materials, and records to the public (hereinafter, collectively referred to as “newsrack materials”).

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

Right-of-way. Any property under the ownership and control of the City of Winston-Salem and used for public street and related purposes, including, but not limited to, sidewalks, sidewalk areas, shoulders, or plazas.

Sidewalk. That portion of the street right-of-way under the jurisdiction of the City of Winston-Salem that is improved and designated for the use of pedestrians.

Sec. 74-501. – Prohibitions.

(a) *Failure to register.* It is unlawful for any person to install or place a newsrack within box corral unless the newsrack has been registered with the City and approved by the Assistant City Manager responsible for Public Works as described in Section 74-503.

(b) *Unlawful placement.* It is unlawful for any person to install or place a newsrack in violation of any of the provisions of Section 74-504.

(c) *Failure to maintain the appearance of a newsrack.* It is unlawful for any person to maintain a newsrack in violation of any of the provisions of Section 74-506.

(d) *Display of certain material.* It is unlawful for any person to display material in violation of Section 74-507.

Sec 74-502. Box Corrals.

(a) To alleviate issues surrounding pedestrian traffic, sidewalk congestion, and the presence of a significant number of newsracks within close proximity of one another, all newsracks shall hereby be placed into box corrals.

(b) The Assistant City Manager responsible for Public Works shall develop equitable criteria to allocate space to distributors and publishers within the Box Corrals.

(c) Any newsrack placed in a Box Corral shall not exceed fifty (50) inches in height, twenty-four (24) inches in width, and twenty-four (24) inches in thickness. This includes all signs and any other permanent attachments necessary for the operation of the newsrack.

(d) Unless explicitly excluded, all sections of this chapter apply to newsracks within Box Corrals.

Sec. 74-503. – Registration, approval of location.

(a) Prior to placing a newsrack within a box corral, the publisher shall register the newsrack with the City by providing the following information:

(1) The name, address, and telephone number of the publisher. If the publisher's main office is not located in the City, the publisher shall provide the name, address, and telephone number of a designated agent located in the City.

- (2) The title of the newsrack material to be sold or distributed from the newsracks.
- (3) Photograph(s) of the actual newsrack to be placed on the sidewalk.
- (4) The proposed location of the newsrack.

(b) From the above information, the Assistant City Manager responsible for Public Works shall approve the proposed location of the newsrack based on the standards provided in Section 74-504. If the requested location is denied, it shall be without prejudice to amend such registration to state a different location.

(c) The placement of box corrals will be determined pursuant to those procedures enacted pursuant to Section 74-502.

Sec. 74-504. – Placement.

(a) Each newsrack must be placed entirely within a box corral.

(b) Box corrals may be placed no closer than five (5) feet from the edge of the street curb and shall be placed parallel to and no more than six (6) inches from the sidewalk edge farthest away from the street curb, or the wall of a building that is adjacent to the sidewalk edge.

(c) No newsrack or box corral may be affixed or attached to any fixture or building.

(d) No box corral may be placed or installed:

- (1) Other than on a sidewalk.
- (2) Within fifteen (15) feet of any fire hydrant, standpipe or siamese connector.
- (3) Within five (5) feet of any emergency call box or other emergency telecommunications equipment or any other emergency facility.
- (4) Within five (5) feet of any driveway or crosswalk.
- (5) Within five (5) feet of any public transit benches or other public benches and trash containers.
- (6) At any location where the clear space for the passageway of pedestrians is reduced to less than five (5) feet.
- (7) Within a ten (10) foot radius of the points of intersection of the right-of-way of two (2) intersecting streets.
- (8) Within five (5) feet of any underground utility access points, ventilation areas or meters.
- (9) Within five (5) feet of any handicapped ramps or other facilities provided for handicapped persons.
- (10) Within five (5) feet of any building access, exits or any emergency access or exit ways.
- (11) At a location that interferes with or impairs the sightline of drivers at intersections.

Sec. 74-505. – Maintenance/appearance of box corrals.

(a) *Condition.* Each box corral shall be maintained in a clean and neat condition and in good repair at all times. This includes, without limitation, that:

- (1) The box corral shall be free of dirt, rubbish, and grease;
- (2) The box corral shall be free of chipped, faded, cracked and peeling paint in the visible areas;
- (3) The box corral shall be free of rust and corrosion in the visible areas;
- (4) The structural parts are not broken or misshapen;
- (5) The newsrack shall be free of unsanitary conditions and not posing a threat to the general public health and safety of the City of Winston-Salem; and
- (6) The newsrack shall be free of graffiti.

(b) *Physical requirements.* Each box corral shall be made of metal and painted black. No plastic box corrals are allowed. The City shall approve of any design of each box corral prior to its installation.

Sec. 74-506. – Maintenance/appearance of newsracks.

(a) *Condition.* Each newsrack shall be maintained in a clean and neat condition and in good repair at all times. This includes, without limitation, that:

- (1) The newsrack shall be free of dirt, rubbish, and grease;
- (2) The newsrack shall be free of chipped, faded, cracked and peeling paint in the visible areas;
- (3) The newsrack shall be free of rust and corrosion in the visible areas;
- (4) Any plastic or glass parts are unbroken and free of cracks, dents, blemishes, and discoloration;
- (5) The structural parts are not broken or misshapen;
- (6) The newsrack shall be free of any cardboard or paper parts or inserts free of tears, peeling, or discoloration;
- (7) The newsrack shall be free of unsanitary conditions and not posing a threat to the general public health and safety of the City of Winston-Salem; and
- (8) The newsrack shall be free of graffiti.

(b) *Identification information.* The name, address, and telephone number of the publisher shall be displayed on the newsrack in such a manner as to be readily visible and readable.

(c) *Physical requirements.* Each newsrack shall be made of metal. No plastic, wire or open form of newsrack is allowed.

Sec. 74-507. - Display of certain material.

(a) No newsrack shall be used for advertising signs or publicity purposes other than an identification sign dealing with the display, sale, or purchase of the materials contained therein.

(b) No newsrack shall expose to the public view materials that: (1) to the average person, applying local community standards, looking at the work in its entirety, appeals to the prurient interest; (2) describes or depict, in an obviously offensive way, sexual conduct, or excretory functions; or (3) lacks, as a whole, serious literary, artistic, political, or scientific values.

Sec. 74-508. – Hold harmless.

Every publisher that places a newsrack in a box corral shall file a written statement with the Assistant City Manager responsible for Public Works for the City of Winston-Salem in a form satisfactory to the City Attorney, whereby the publisher agrees to indemnify and hold harmless the City, its officers, agents, and employees, from any loss, liability, or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use and/or maintenance of a newsrack within the City of Winston-Salem.

Sec. 74-509. – Administration and enforcement.

(a) *Administration.* This article shall be administered and enforced by the Assistant City Manager responsible for Public Works for the City of Winston-Salem.

(b) *Notice.* The City may issue a notice of violation to a publisher for any violation of this article. If the violation is brought into compliance within fifteen (15) business days after the issuance of the violation, the City will dismiss the notice of violation and no penalty will be incurred by the publisher. The Assistant City Manager shall provide notice of the violation to the publisher by certified and first class mail. If the certified mail notice is unclaimed or refused but the first class mail is not returned within ten (10) days after mailing, the first class mail shall be deemed to be sufficient to provide notice.

(c) *Appeal of notice of violation.* At any time before the expiration of the fifteen (15) day period for curing a violation under this Section, the distributor or publisher may request a hearing before the Assistant City Manager to appeal the notice of violation and the reasons therefor. The decision rendered by the Assistant City Manager at said hearing may not be appealed. Upon completion of the hearing, the Assistant City Manager shall consider the evidence before him and shall either affirm, vacate or modify the notice violation. The notice shall be stayed pending completion of the hearing and rendering of a decision. If the notice of violation is not vacated, the distributor or publisher shall bring the newsrack into compliance or remove the newsrack within three (3) days of the decision. If the distributor or publisher fails to remove a newsrack, the Assistant City Manager shall cause the newsrack to be removed and stored; the storage and removal fees shall be governed by Section 74-510(b)(2). If a notice of violation is vacated, the vacated notice of violation will not be considered a violation for purposes of Section 74-510(a)(4).

Sec. 74-510. – Removal of newsracks.

(a) *Cause for removal.* The City may remove a newsrack from a box corral for the following reasons:

(1) In the event a newsrack poses an immediate threat to the public health or safety, the City may remove the newsrack without prior notice to the publisher. Upon such removal, the City will provide the publisher with (i) notice of removal, (ii) the reason for the removal, and (iii) contact information for claiming the removed newsrack. In the event the newsrack is not claimed by publisher within forty-five (45) days from the issuance of the notice described herein, the newsrack will be deemed to have been abandoned and will be disposed of by the City.

(2) Failure to bring a newsrack into compliance within fifteen (15) business days after a notice of violation has been issued pursuant to Section 74-509 of this chapter.

(3) The newsrack has remained unused for two (2) delivery cycles or fourteen (14) consecutive days, whichever is longer.

(4) Repeated violations. If any one (1) newsrack, owned by the same publisher, located in the same or similar location, is the subject of repeated violations, the newsrack may be removed by the City. For this chapter, repeated violations shall mean the issuance of more than three (3) violations in any twelve (12) month period to the same publisher for a newsrack located in the same or similar location.

(5) Failure to bring a newsrack into compliance within ninety (90) days from the effective date of this article (Article XIII, Newsracks) as related in Section 74-511.

(b) *Notice of removal, hearing, appeal.*

(1) *Notice of removal.* The Assistant City Manager shall notify the publisher by certified and first class mail of the reasons for the removal. If the certified mail notice is unclaimed or refused but the first class mail is not returned within ten (10) days after mailing, the first class mail shall be deemed to be sufficient to provide notice.

(2) *Storage; costs.* The costs of removal and storage of any newsrack shall be borne by the publisher and may be collected by the City by filing a civil action in the nature of a debt. No newsrack that has been removed and stored by the City shall be released to the publisher unless the costs of removal, storage and any necessary repair to the premises on which the newsrack was placed have been paid. If a newsrack that has been removed and stored remains unclaimed for a period of sixty (60) days, the newsrack shall be deemed to be abandoned and shall be disposed of by the City.

(3) *Appeal.* At any time before the expiration of the fifteen (15) day period for curing a violation under this Section, the distributor or publisher may request a hearing before the Assistant City Manager to appeal the notice of violation and the reasons therefor. Upon completion of the hearing, the Assistant City Manager shall consider the evidence before him and shall either affirm, vacate or modify the notice violation. The notice shall be stayed pending completion of the hearing and rendering of a decision. If the notice of violation is not vacated, the distributor or publisher shall bring the newsrack into compliance or remove the newsrack within three (3) days of the decision. If the distributor or publisher fails to remove a newsrack, the Assistant City Manager shall cause the newsrack to be removed and stored; the storage and removal fees shall be governed by Section 74-510(b)(2). If a notice of violation is vacated, the vacated notice of violation will not be considered a violation for purposes of Section 74-510(a)(4).

Sec. 74-511. – Existing newsracks.

(a) All newsracks that are located in the public right-of-way at the time of the effective date of this article (Article XIII, Newsracks) shall be brought into compliance within ninety (90) days from the effective date of this article (Article XIII, Newsracks).

(b) All newsracks that are not come brought into compliance within ninety (90) days from the effective date of this article (Article XIII, Newsracks) shall be removed pursuant to Section 74-510.”

Section 2. Section 74-1. Penalty is hereby amended to read as follows:

“(a) Unless otherwise provided, ~~The~~ the following shall be deemed to be expressly incorporated by reference within each section of this chapter: A violation of this, or any part thereof, shall constitute a class 3 misdemeanor and subject the offender to a fine of not more than \$500.00.

(b) The provisions of subsection (a) of this section shall not apply to Articles XI and XIII of this chapter 74 or to any section or part of chapter 74, that regulates the operation or parking of vehicles. Articles XI and XIII have separate enforcement provisions contained within each article. A violation of any section, or part thereof, that regulates the operation or parking of vehicles shall constitute an infraction and any such offender shall be required to pay a penalty of not more than \$50.00.”

Section 3. This ordinance shall become effective upon adoption.