

ORDINANCE NO. 11- 1579

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 14 "BUILDINGS AND BUILDING REGULATIONS" AND SPECIFICALLY ARTICLE III "PROPERTY MAINTENANCE STANDARDS"; CREATING SECTION 14-57 "NEWSRACKS ON PUBLIC RIGHTS-OF-WAY" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, The Town of Surfside ("Town") proposes to amend its Code of Ordinances to address a recognized need to regulate the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way for the health, safety and welfare of the Town ; and

**WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments to the fence, walls and hedges regulations on May 26, 2011 with due public notice and input; and

**WHEREAS**, the Town Commission held its first public hearing on June 14, 2011 having complied with the notice requirements required by Florida Statutes; and

**WHEREAS**, the Town Commission shall have conducted a second duly noticed public hearing on these regulations as required by law on July 12, 2011.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE TOWN  
COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:**

**Section 1. Recitals.** The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

**Section 2. Code Amendment.** The code of the Town of Surfside, Florida is hereby amended as follows:

**Sec. 14-57. Newsracks on Public Rights-of-Way.**

(a) Scope. The provisions of this section shall govern the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way. No newsracks shall be permitted except in accordance with the provisions of this article.

(b) Purpose. The purpose of this section is to promote the public health, safety and welfare through the regulation of placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way so as to:

- (1) Provide for pedestrian and driving safety and convenience.
- (2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
- (3) Provide for public and property safety during hurricane conditions.
- (4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
- (5) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned newsracks removed.
- (6) Maintain and protect the values of surrounding properties.
- (7) Reduce unnecessary exposure of the public to personal injury or property damage.
- (8) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication.
- (9) Maintain and preserve freedom of the press.
- (10) Cooperate to the maximum extent with newspaper distributors.

(c) 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:

Equivalent newsrack: Any newsrack of the same size, dimensions and style of the specified newsrack.

If demand warrants or warranted demand: When the measured newspaper stack height needed to meet the newspaper publisher's or distributor's peak annual distribution at the requested newsrack location, as proven by the newspaper publisher or distributor, exceeds 14 inches.

Newsrack: Any type of unmanned device for the vending or free distribution of newspapers or news periodicals.

Public right-of-way: Any public street, highway, sidewalk, parkway or alley.

(d) Certificate of Compliance Required. No person shall place, affix, erect, construct or maintain a newsrack without first obtaining a one-time only certificate of compliance for each newsrack in accordance with the provisions of this article.

(e) Application and Issuance of Certificate of Compliance.

(1) Issuing Authority. The issuing authority and coordinator shall be the public works director. The public works director is responsible for fairly coordinating and administering the physical placement of newsracks of the type and location herein specified, and upon compliance herewith is responsible for issuing the certificates of compliance.

(2) Approving Authorities. The approving authorities shall be the public service director, the parking director and the public works director. The public service director shall provide review and approval only as to compliance with section 62-162(8). The parking director shall provide review and approval only as to compliance with section 62-162(10). The public works director shall provide review and approval coordination with the public service director and the parking director, as well as review and approval only as to comply with subsections (c), (e) through (g) of this section, and sections 62-156 through 62-161, and 62-162(1) through (7), (9).

(3) Applications. The applicant shall file with the public works director a written application for an installation certificate of compliance that shall contain the following information:

(i) The name, address and telephone number of the applicant who is the owner and/or principal in responsible charge of the newsrack.

(ii) The name, address and telephone number of a responsible person whom the Town may notify or contact at any time concerning the applicant's newsracks.

(iii) The number of newsracks and the proposed location of each shown on a drawing provided by public works as in subsection (4) of this section.

(iv) Names of newspapers or periodicals to be contained in each newsrack.

(v) Type or brand of newsracks, including an illustration and description of the newsrack and mount if other than a single pedestal, TK-80PM or K-80PM SHORACK or FN-80SP (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (mandated) or TK-80 or K-80 SHORACK or FN80LB (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (allowed only if demand warrants at the installation location), or equivalent, as per subsection (j).

(4) Procedure. The public works department shall:

- (i) Develop a map of a large enough scale to show general town-wide locations of newsracks by each publisher or distributor.
- (ii) Request a list of proposed newsrack locations, marked on the above map, from each distributor.
- (iii) Prepare a scale drawing or aerial photograph of each newsrack location showing the position and name of each newsrack at that location.
- (iv) Obtain approvals of the above newsrack drawings from the parking director and the public service director.
- (v) Obtain confirmation approvals of the above approved newsrack drawings from each distributor.
- (vi) Have the public works survey crew, following certificate of compliance issuance, then mark placement locations with a template so that installation crews will have no problem.

(5) Issuance of Certificate of Compliance. Upon a finding by the public works director that the applicant is in compliance with the provisions of this section and having received the required approvals from the parking director and public service director, the public works director shall cause to be issued a certificate of compliance for installation by the newspaper publishing company. Such issuance shall be made within five working days of the Town's receipt of the completed application.

(6) Denial of Certificate of Compliance. If a certificate of compliance for some newsrack location applied for shall be denied, the applicant shall be notified within five working days of the Town's receipt of the completed application. The applicant shall be advised of the specific cause of such denial by the public works director, who will suggest alternative locations therefor. The applicant may reapply for substitute alternative location at no additional certificate of compliance fee.

(7) Additional Certificate of Compliance. If at any time initial application for an installation certificate of compliance a publisher wishes to install additional newsracks, then subsections (3) and (4) of this section are to be repeated in accordance with the provisions of this section. Under subsection (f), any additional returnable bond deposit required will credit any amount still on account. Additional certificate of compliance fees shall be in accordance with subsection (g), except that the \$50.00 publisher's fee is waived if previously paid.

(f) Insurance.

(1) Prior to the issuance of a certificate of compliance by the public works director, the applicant shall furnish to the public works director a certificate of insurance and a one-

time only returnable bond deposit, both in specific accordance with the terms of section 14-30, except that returnable bonding amounts for newsrack installations shall be:

TABLE INSET:

TOTAL PROPOSED NEWSRACKS	TOTAL RETURNABLE BOND
1 to 4	\$150.00
5 to 10	\$300.00
11 to 20	\$500.00
21 and up	\$700.00

(2) Reasonable evidence of equivalent self-insurance coverage may be substituted by the applicant for the above certificate of insurance.

(3) Insurance under subsection (f) shall run continuously with the presence of the applicant's newsrack in town rights-of-way, and any termination or lapse of such insurance shall be a violation of this section, subject to appropriate remedy by the code enforcement division

(g) Fees. There shall be a one-time only certificate of compliance fee in the amount established by the town commission for each newspaper publisher. Failed inspections are subject to a re-inspection fee in the amount established by the town commission. All of the above fees will be used to defray administrative expenses relating to this section only, and any revenues over expenses remaining after the implementation of this section will be returned to the newspaper publishers in proportion to their respective contributions.

(h) Appeals. Any applicant who has been denied a certificate of compliance pursuant to the provisions of this section may file an appeal with the town commission by requesting in writing to the town manager appearance before the commission to review such denial. The appeal shall be heard by the commission within 30 days of the filing of the appeal or at the next regularly scheduled agenda, whichever occurs first. The decision of the commission on appeal is subject to judicial review as provided by the laws of the state.

(i) Placement Generally. Subject to the prohibitions set forth in subsection (l), newsracks shall be placed parallel to and not less than 18 inches nor more than 24 inches from the edge of the curb. Newsracks placed near the wall of a building must be placed parallel to and not more than six inches from the wall

(j) Installation and Maintenance.

(1) Newsracks shall be single pedestal TK-80PM or K-80PM SHORACK or FN-80SP (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (mandated) or TK-80 or K-80 SHORACK or FN-80LB (with or without equivalent coinbox attachment) with special pedestal and 14-inch square base plate (allowed only if demand warrants at the installation location) or equivalent.

(2) Newsrack equipment shall be in gloss black. The height of the cabinet top of all newsracks shall be 39 inches above the finished grade level.

(3) Newsracks shall carry no cardholders or advertising, but may display the name, with lettering and background of any colors, of the newspaper being dispensed, in spaces in the locations and sizes set forth below:

(i) On the front of the newsrack, the lettering size shall not exceed 1 3/4 inches height. The lettering shall be placed within a colored-band space not exceeding 2 1/2 inches in height above the door hinge.

(ii) On the sides and back of the newsrack, the lettering size shall not exceed 2 1/2 inches in height. The lettering shall be placed within a colored-band space not exceeding 4 1/2 inches in height and beginning one inch from the top of the newsrack.

(4) Newsracks for free newspapers may omit the coinbox and may have the pull bar welded to the door to produce an "honor rack."

(5) Newsracks shall be maintained in good working order at all times, freshly painted and with unbroken hoods.

(6) Mounts shall be bolted in place through four standard holes in the base plate in accordance with standards provided in subsection (k). Newsrack cabinet tops shall be installed and checked for level; a water-soluble, paintable, ten-year calk of gloss brown color shall be applied and wiped to seal around the base plate and the mounting surface.

(k) Newsrack Mounting Standards. The following standards shall be applicable to the mounting of newsracks in this town:

(1) Foundation four-inch minimum concrete, 2,500 psi (28-day strength), class I.

(2) Two-inch minimum concrete edge distance for bolts.

(3) One-half-inch chamfer all concrete edges.

(4) Three-eighths-inch diameter hot-dipped galvanized hex bolt mounts, three-inch minimum imbedding, threads down, through four corners of the pedestal base.

(l) Specific Prohibitions. No newsrack shall be placed, installed, used or maintained:

(1) Within five feet of any marked crosswalk.

(2) Within ten feet of any unmarked crosswalk.

(3) Within ten feet of any fire hydrant, fire callbox, police callbox or other emergency facility.

(4) Within five feet of any driveway.

(5) Within five feet ahead of, and 15 feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.

(6) Within two feet of any bus bench, or plaza bench.

(7) At any location whereby the clear space for passageway of pedestrians is reduced to less than six feet.

(8) Where a vertically protruding member of the newsracks is on or within 12 inches of any area improved with lawn or hedges or within three feet of flowers or trees.

(9) Within three feet of any display window of any building abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window display purpose, or within five feet of a building entrance.

(10) On or within two feet of signs, parking meters, street lights or utility poles

(m) Enforcement Procedures – Nonconforming Newsracks. Within 150 days of the effective date of the ordinance from which this article is derived and at any time thereafter, any newsrack in violation of any provision of this section shall be subject to remedy and due process under the code enforcement board.

(n) Enforcement Procedures – Abandoned Newsracks.

(1) If any newsrack installed pursuant to this section does not contain the publication specified therefor within a period of forty-eight (48) hours after release of the current issue, the code enforcement division may deem the newsrack abandoned and take appropriate action for an ordinance violation. In addition, a newsrack shall be deemed abandoned when no publication is in the newsrack for a period of more than seven consecutive days.

(2) In the event a newspaper publishing company or its distributor desires to voluntarily abandon a newsrack location, the distributor shall notify the public works director, completely remove the newsrack and mount, and restore the public right-of-way to a safe condition, leaving no holes or projections in the mounting surface.

**Section 3. Severability.** If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

**Section 4. Conflict.** All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

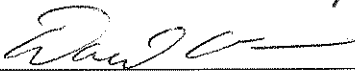
**Section 5. Inclusion in the Code of Ordinances.** It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be

renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.


**Section 6. Effective Date.** This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 14 day of June, 2011.

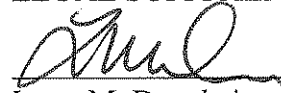
PASSED and ADOPTED on second reading this 12 day of July, 2011.

  
\_\_\_\_\_  
Daniel Dietch, Mayor

Attest:

  
\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney

On Second Reading Moved by: Commissioner Kopelman

On Second Reading Seconded by: Commissioner Karukin

**Vote:**

Mayor Dietch	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Vice Mayor Graubart	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Karukin	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Kopelman	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Olchyk	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>