

ORDINANCE NUMBER: _____

AMENDING CHAPTER 19

AN ORDINANCE AMENDING CHAPTER 19 OF THE CHARLOTTE CITY CODE ENTITLED “STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES”

WHEREAS, the sale and distribution of newspapers and other publications is protected by the United States Constitution and the North Carolina Constitution; and

WHEREAS, the public rights-of-way have historically been used to distribute newspapers and other publications; and

WHEREAS, heretofore the distribution of newspapers and other publications through newsracks located in the public rights-of-way in the City of Charlotte has largely been unregulated; and

WHEREAS, in recent years there has been a substantial increase in the number of newsracks located in the public rights-of-way that are used to distribute newspapers and other publications; and

WHEREAS, the unregulated placement and maintenance of newsracks in the public rights-of-way interferes with and threatens the public health, safety, and welfare, and presents aesthetic concerns, particularly in the Center City portion of the City; and

WHEREAS, through narrowly tailored time, place, and manner regulations designed to serve significant governmental interests and that leave open reasonable alternative avenues of communication, an appropriate balance may be struck between: (i) the rights of publishers to distribute newspapers and other publications and citizens to obtain newspapers and other publications through and from newsracks located in the public rights-of-way; and (ii) the protection of the public health, safety, and welfare.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Chapter 19 of the Charlotte City Code is amended by adding a new Article XIV to read as follows:

“ARTICLE XIV. Newsracks.

Sec. 19-351. 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:

Modular newsrack means a newsrack that contains multiple separate enclosed compartments to accommodate at any one time the display and sale or distribution of multiple distinct and separate newspapers, magazines, periodicals or other publications.

Newsrack means a self-service or coin operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution newspapers, magazines, periodicals or other publications to the public.

Publisher means the person who publishes a newspaper, magazine, periodical or other publication that is displayed and offered for sale or distribution in a newsrack.

Sidewalk means that portion of the street right-of-way which is improved and designated for the use of pedestrians.

Sec. 19-352. Scope of regulation.

This article applies to newsracks located in public street rights-of-way. Newsracks located on private property, or on other governmentally owned or controlled property including, but not limited to, public transit facilities, are not subject to regulation under this article.

Sec. 19-353. Publisher registration.

(a) Prior to placing, or permitting the placement of a newsrack on a sidewalk, the Publisher shall register with the City by providing the following information:

- (i) name, mailing address, telephone number, and e-mail address of the Publisher and, if the Publisher is not located in the City of Charlotte, a designated agent located in the City of Charlotte; and
- (ii) name and frequency of publication of the newspapers, magazines, periodicals, or other publications to be sold or distributed from the newsracks.

(b) A Publisher shall update registration information required to be provided pursuant to subsection (a) within five days of any change of information.

(c) It shall be unlawful for any person to violate any provision of this section.

Sec. 19-354. Maintenance.

(a) Newsracks must at all times be maintained in a neat and clean condition and in good repair.

(b) It shall be unlawful for any person to violate any provision of this section.

Sec. 19-355. Locational restrictions.

(a) No person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way:

- (i) other than on a sidewalk;
- (ii) within twenty-four inches of the back of curb or, if there is no curb, within twenty-four inches of the edge of the street pavement;
- (iii) at a location that leaves less than forty-eight inches of clear passage along the sidewalk for pedestrians;
- (iv) within thirty feet of the ballast curb line of a railroad or light rail track;
- (v) if on the street side of a sidewalk, within ten feet of a sign that demarks a public transportation stop;
- (vi) within four feet of a fire hydrant;
- (vii) on or within four feet of a driveway, crosswalk, or crosswalk extension;
- (viii) if on the street side of a sidewalk within municipal service districts 1, 2, 3, and 4, within the limits of a loading zone; or
- (ix) at a location that interferes with or impairs the sightline of drivers at intersections.

Notwithstanding the foregoing, the City may approve locations that do not comply with these restrictions when conditions warrant.

(b) Newsracks shall not be bolted or otherwise fixed to the ground or tied, chained, or otherwise fixed to a tree, traffic control device, sign, bench, bus shelter, parking meter, or pole. Newsracks may be chained or otherwise connected to each other for security purposes.

(c) It shall be unlawful for any person to violate any provision of this section.

Sec. 19-356. Center City Modular Newsrack Zone.

(a) The city manager is authorized to establish a Center City Modular Newsrack Zone in which the City will install one or more modular newsracks, and to amend the boundaries of such zone. All portions of the Center City Modular Newsrack Zone must be within municipal service district 3.

(b) The director/engineer is authorized and directed to develop regulations for assigning spaces for rent within a modular newsrack when demand for available spaces

warrants such assignment. The regulations shall differentiate between paid and unpaid publications and shall:

- (i) be content-neutral;
- (ii) allocate spaces through a lottery or similar method;
- (iii) include provisions for periodically reallocating spaces; and
- (iv) provide that allocated spaces are not transferable.

(c) Other than a modular newsrack owned by the City, no person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way within the Center City Modular Newsrack Zone.

(d) It shall be unlawful for any person to violate any provision of this section.

Sec. 19-357. Miscellaneous.

(a) The City may order the removal of newsracks located in public street rights-of-way within specified areas of the City for special events or other anticipated mass gatherings when the Charlotte Mecklenburg Police Department determines that the presence of the newsracks would pose an unreasonable threat to the public health, safety, or welfare. Notice of an order issued pursuant to this subsection shall be given to each affected Publisher (or designated agent) at least ten (10) business days before said event or gathering and shall specify the period of time during which the newsracks must be removed. Notwithstanding the preceding sentence, if it is not practical to give notice at least ten business days before said event or gathering, the City shall give such advance notice as is practicable. In the event that a newsrack is not removed in accordance with an order issued pursuant to this subsection, the City may remove and store the newsrack. Upon removal, the City shall notify the Publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the City.

(b) A newsrack or an allocated space in a modular newsrack that remains empty for a period of thirty consecutive days shall be deemed abandoned. The City may summarily remove an abandoned newsrack. Upon removal, the City shall notify the Publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack may be disposed of by the City. An abandoned space within a modular newsrack may be reallocated to another Publisher/publication.

Sec. 19-358. Regulatory and Nonregulatory User Fees.

The city manager is authorized to establish fees in accordance with Sec. 2-1 of the City Code for reasonable modular newsrack rental fees, newsrack material removal fees, and newsrack removal and storage fees.

Sec. 19-359. Administration and enforcement.

(a) This Article shall be administered and enforced by the director/engineer.

(b) The City may issue a notice of violation to a Publisher for any apparent violation of this Article. Unless the violation is willful or a repeated violation, if the newsrack is brought into compliance within fifteen (15) business days after issuance of the notice of violation, the City shall dismiss the notice of violation and no penalty shall be incurred. In the event that a newsrack is not brought into compliance within fifteen (15) business days after a notice of violation has been issued, the City may summarily remove the newsrack. Notwithstanding the preceding sentence, in the event that a newsrack poses an immediate threat to the public health or safety, the City may summarily remove the newsrack without prior notice. Upon removal, the City shall notify the Publisher that the newsrack has been removed, the reason for removal, and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the City.

(c) A violation of this Article shall not constitute a misdemeanor or infraction punishable under N.C. Gen. Stat. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in North Carolina General Statute 160A-175.

(d) Any person who: (i) willfully or repeatedly violates this article; or (ii) fails to remedy a violation within fifteen (15) business days after a notice of violation has been issued, shall be subject to a civil penalty of \$50.00.

Sec. 19-360. Appeals.

(a) Any person who has been issued a notice of violation, been assessed a civil penalty, or whose newsrack has been removed pursuant to this article may appeal such decision within thirty (30) days after receiving notice of the enforcement decision. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the Department of Transportation. The appellant shall have the right to present evidence at said hearing.

(b) A ruling on appeal is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the Clerk of Superior Court within thirty (30) days after notice of the decision has been sent to the appellant.”

Section 2. Secs. 19-351, 19-356, and 19-358 shall become effective upon adoption.
The remaining sections shall become effective July 1, 2009.

Approved as to Form:

City Attorney