

9/24/97

95-0-97

AN ORDINANCE

**AMENDING CHAPTER 3 OF TITLE 7 OF THE
EVANSTON CITY CODE REGULATING NEWSRACKS**

WHEREAS, the City of Evanston is an Illinois home rule municipality pursuant to Article VII, Section 6, of the Illinois Constitution 1970; and

WHEREAS, as an Illinois home rule municipality the City may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the rights of all citizens, the public health, safety, morals, and welfare, and to issue permits; and

WHEREAS, the City has the authority to regulate the use of the streets and other municipal property pursuant to the provisions of Chapter 65 Illinois Compiled Statutes 5/11-80-2 (1996); and

WHEREAS, the City has the authority to regulate crosswalks pursuant to the provisions of Chapter 65 Illinois Compiled Statutes 5/11-80-11; and

WHEREAS, the City has the authority to regulate sidewalks pursuant to the provisions of Chapter 65 Illinois Compiled Statutes 5/11-80-13; and

WHEREAS, the City has the authority to regulate traffic and sales upon the streets, sidewalks, public places, and municipal property pursuant to the provisions of Chapter 65 Illinois Compiled Statutes 5/11-80-20; and

WHEREAS, the City Council has determined that the rights of all persons to use the public ways in furtherance of their First Amendment rights must be equally protected so as not to grant any person a permanent or semi-exclusive use of the public way without reasonable regulation; and

WHEREAS, the City Council has determined it to be in the promotion of the First Amendment rights of all citizens, as well as the promotion of motor vehicle and pedestrian safety and the public health, safety, morals, and welfare that the public rights-of-way, streets, thoroughfares, parkways, and sidewalks remain available and open to the citizens of the City, and others so as not to grant a monopoly to one party to the permanent or semi-permanent exclusion of others; and

WHEREAS, the City Council has further determined that reasonable regulations should be implemented for the location of newspaper dispensing devices on public property and that such regulations are essential in the promotion of commerce to maintain the appearance of public property; and

WHEREAS, the City Council further determined that the location of newsracks which cause an inconvenience or danger to persons using public property, or unsightly newsracks located therein are a public nuisance; and

WHEREAS, the City Council further determined that regulating the placement of newsracks shall permit the City to continue to provide for the maintenance of public streets and sidewalks through snow removal,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Chapter 3 Title 7 of the Evanston City Code, 1979, as amended, is hereby further amended by adding the following new paragraph:

7-3-17: NEWSRACKS

7-3-17-1: DEFINITIONS:

Terms used in this Section shall have the following meanings:

DISTRIBUTOR: The person responsible for placing and maintaining a newsrack.

NEWSRACK: Any self-service or coin-operated box, container, storage unit or other dispenser which fully encloses and secures the periodicals contained therein and is installed, used or maintained for the dissemination of newspapers or other news periodicals regardless of whether a charge is imposed.

OFFICIAL CITY NEWSRACK ENCLOSURE: A fixture provided by the City for the placement of multiple newsracks.

PERMIT: An administrative/inspection permit issued by the City Manager or his designee.

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

PUBLIC PROPERTY: Any public property within the City which shall include, but not be limited to streets, roadways, right-of-ways, and parkways.

ROADWAY: That portion of a street improved, designed, or ordinarily used for vehicular travel.

7-3-17-2: DECLARATION OF PUBLIC NUISANCE: The violation of any provision in Section 7-3-17 is expressly declared to be a public nuisance.

7-3-17-3: ADMINISTRATIVE/INSPECTION PERMIT REQUIRED: It shall be unlawful for any person to erect, place, install, maintain or operate a newsrack on any public property within the City of Evanston, without an administrative/inspection permit.

Administrative/inspection permits are only valid for the person, periodical and location specified in the inspection permit application and are not assignable or transferable.

Administrative/inspection permit stickers shall be posted permanently in a conspicuous location upon the newsrack for which it was issued.

7-3-17-4: APPLICATION: Applications for an administrative/inspection permit under Section 7-3-17 shall be made to the City Manager or his designee on forms prescribed and furnished by the City Manager or his designee.

7-3-17-5: ISSUANCE OF ADMINISTRATIVE /INSPECTION PERMIT: Upon receipt of an application for a newsrack administrative/inspection permit, the City Manager or his designee shall review the application and determine compliance with all applicable City, State and Federal codes, ordinances, statutes, policies and rules and regulations. When the review reveals that all applicable requirements are complied with, an administrative/inspection permit shall be issued within ten (10) business days of its receipt. If a determination is made that the applicant has not complied with all applicable codes, ordinances, statutes, policies and rules and regulations, the application shall be denied and the reasons for such denial shall be stated in writing and mailed to the applicant within five (5) business days of receipt of the application. Any applicant that receives a notification of denial for a newsrack administrative/inspection permit in accordance with this Section, shall have a right to a hearing as provided for in Section 7-3-17-19.

7-3-17-6: AGREEMENT REQUIRED: In every application for a newsrack, the applicant shall agree to the following:

- (A) That any and all costs related to the installation and maintenance or removal of the newsrack shall be incurred by the applicant.
- (B) That the privileges granted to the applicant are non-transferable and shall only apply to the periodical and location specified in the respective application.
- (C) That the applicant shall name the City as an additional insured from any loss or claim for personal injury or property damage, alleged against the City or applicant, arising out of the installation, removal, existence, use or maintenance of the newsrack.
In the event the City, its officers, directors, employees and agents are named as defendants in any personal injury or property damage claim or suit concerning a

newsrack, the City may tender and the applicant must accept defense of all claims and suits which do not allege specific misconduct, misfeasance or malfeasance on the part of the City, its officers, directors, employees and agents as the proximate or contributing cause of the loss.

- (D) That upon the removal of a newsrack, the permittee shall restore the property where the newsrack was located, to the condition of the property prior to the installation of the newsrack, normal wear and tear excepted.

7-3-17-7: LOCATION AND MANNER OF INSTALLATION, SIZE AND MAINTENANCE OF NEWSRACKS AND DISTRIBUTOR IDENTIFICATION: Any newsrack which in whole or in part rests upon, in or over any public property, shall comply with the following standards:

(A) LOCATION AND MANNER OF INSTALLATION:

1. No box shall be less than one and a half (1.5) feet from the back of curb edge of the roadway.
2. No newsrack shall be permitted to rest upon, in or over any public property, 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 parked or stopped vehicle, the ingress into or egress from any residence or place of business, or interferes with the use of poles, posts, traffic signs or signals, hydrants, mailboxes, parking meters, traffic control devices, or other objects permitted at or near said location.
3. No newsrack shall be chained, bolted, or otherwise attached to any tree, utility pole, light pole, parking meter, traffic control post, street sign post, or other fixture located on public property except to other newsracks or an Official City Newsrack Enclosure.
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 newsracks 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, or other emergency facility.

- (d) Within fifteen (15) feet of any intersection, driveway, alley or street from the point where the curb line meets an imaginary line which constitutes an extension of the boundary of the driveway, alley or street at its narrowest point.
- (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 three (3) feet.
- (h) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.
- (I) On or interfering with any handicapped access ramp.
- (j) On or within any median within any public right-of-way.
- (k) Within 250 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 or periodical.

(B) SIZE: No newsrack shall exceed the following:

- 1. Four (4) feet in height.
- 2. Twenty-four (24) inches in width.
- 3. Twenty inches (20) in depth.

(C) MAINTENANCE:

- 1. 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.
- 2. 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 the person is unable to receive the paid for periodical. The coin-return mechanism shall be maintained in good working order.
- 3. 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.
 - (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 periodicals 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.
- (g) Each newsrack shall fully enclose and secure the periodicals contained therein so as to prevent the periodicals from potentially littering public property.

7-3-17-8: DISTRIBUTOR IDENTIFICATION: 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.

7-3-17-9: OFFICIAL CITY NEWSRACK ENCLOSURE: The City Manager or his designee, shall determine various locations in the City where Official City Newsrack Enclosures shall be placed for the purpose of avoiding the placement of multiple newsracks in furtherance of the City's general health, safety and welfare.

7-3-17-10: EXEMPTION: The installation of newsracks located within an Official City Newsrack Enclosure shall be exempt from the location provisions set forth in Section 7-3-17-7 subsections 1, 2, & 5 (a) through (j).

7-3-17-11: ADDITIONAL NEWSRACKS ON STREETS: If an Official City Newsrack Enclosure exists on a block within the City, no other newsrack shall be permitted on the same side of a street on such a block unless the Official City Newsrack Enclosure is filled. If a place becomes vacant in the Official City Newsrack Enclosure, at the option of the City Manager or his designee, a permittee may be required to remove the additional newsrack on the block and relocate the newspaper or periodical to within the Official City Enclosure.

7-3-17-12: ABANDONMENT: In the event a newsrack remains empty for a period of thirty (30) continuous days, it shall be considered abandoned.

7-3-17-13: REVOCATION OF ADMINISTRATIVE/INSPECTION PERMIT: The City Manager or his designee is hereby given the authority to revoke a newsrack administrative/inspection permit, if a permittee has:

- (A) Not complied with applicable codes, ordinances, statutes, laws, policies or rules and regulations; or
- (B) A newsrack which is a danger to the public, health, safety or welfare; or
- (C) Made fraudulent, false or misrepresentative statements in the application for a permit.

7-3-17-14: REMOVAL: After proper notice is given, the City Manager or his designee may cause the removal of a newsrack:

- (A) After revocation of a permit in accordance with Section 7-3-17-13.
- (B) After expiration of a permit.
- (C) That is installed without a permit.
- (D) That is deemed abandoned or unclaimed.

7-3-17-15: IMMEDIATE REMOVAL: In the event a determination is made that the existence of a newsrack presents an immediate danger to the public's health, safety or welfare, the City Manager or his designee, may cause the removal of such a newsrack without giving prior notice. However, notice shall be given as soon as practicable after such removal.

7-3-17-16: IMPOUND FEE: The permittee or if there is no permittee, the person responsible for installing a newsrack shall be assessed an impound fee. Said impound fee shall be determined by the City Manager or his designee and be based on the actual cost to the City for removal and storage, including a ten (10) percent administrative fee and the cost of restoring the public property to its condition prior to the installation and removal of the newsrack. Upon the payment of the assessed fees, the permittee or the person responsible for installing the newsrack shall be entitled to possession of the newsrack removed in accordance with this Section.

7-3-17-17: UNCLAIMED NEWSRACKS: Should a permittee or the person responsible for the installation of a newsrack fail to claim a removed newsrack or pay the fees assessed in accordance with Section 7-3-17-16, such newsrack shall be deemed to be unclaimed property and may be disposed of pursuant to law.

7-3-17-18: FORM AND MANNER OF NOTICE: All notices required to be given in accordance with Section 7-3-17, shall be in writing setting forth the reasons for the denial or revocation of an administrative/inspection permit or the removal of a newsrack and the date the newsrack will be removed. The notice shall inform permittees that they have the right to request a hearing before the City Manager.

7-3-17-19: NOTICE AND HEARING: The City Manager or his designee, shall send notice of intent to revoke a newsrack administrative/inspection permit or remove a newsrack. A newsrack administrative/inspection permit shall not be revoked unless the permittee has had an opportunity to present evidence in his behalf. The City Manager or his designee, shall within five (5) business days of the hearing issue a written order of his findings. Such written order shall be sent to the permittee in accordance with the notice provisions of Section 7-3-17-18. If within ten (10) days of the notice of intent to revoke or remove, the permittee does not request a hearing in writing, the City Manager shall have the subject newsrack removed.

7-3-17-20: RULES AND REGULATIONS: The City Manager is authorized to establish rules, regulations and procedures for the implementation of Section 7-3-17.

7-3-17-21: EXISTING NEWSRACKS: All newsracks existing within the City of Evanston as of the effective date of this Ordinance shall be permitted to exist, provided there is subsequent compliance with the terms of this Ordinance within thirty (30) days of being notified by the City Manager or his designee.

7-3-17-22: 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 Ordinance.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: October 13, 1997

Adopted: October 27, 1997

Approved: November 3, 1997

Lorraine H. Norton
Mayor

ATTEST:

Mary P. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel