

1 DATE: June 3, 2020  
2 VERSION: 1  
3 AUTHOR: Evan Miller, Dennis Jeney, Glenn Mandalas  
4 SUBJECT: Newsrack Ordinance  
5 PRESENTATION DATE: Mayor and Commissioners June 8, 2020 Workshop Meeting  
6  
7

8 **AN ORDINANCE TO AMEND**  
9 **THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH BY**  
10 **CREATING NEW CHAPTER 186,**  
11 **RELATING TO NEWSRACKS.**  
12  
13

14 **WHEREAS**, the Commissioners of the City of Rehoboth Beach desire to reduce clutter  
15 and blight along the City’s public rights-of-way;  
16

17 **WHEREAS**, the Commissioners find that the uncontrolled placement of newsracks in  
18 public rights-of-way causes an inconvenience or danger to the public by, including but not  
19 limited to, inhibiting the safe entry and departure of vehicles, impairing the vision and distracting  
20 the attention of motorists and pedestrians, and providing a source of litter and a collection point  
21 for garbage;  
22

23 **WHEREAS**, the Commissioners find that the Boardwalk, Rehoboth Avenue, Baltimore  
24 Avenue from the Boardwalk to Second Street and Wilmington Avenue from the Boardwalk to  
25 Second Street are especially inundated by pedestrian traffic, particularly during the summer  
26 season, and obstacles placed in these areas in addition to fire hydrants, parking meters, fire  
27 boxes, *et cetera* – which are required for the public health, safety, and general welfare –  
28 exacerbate the already crowded public ways;  
29

30 **WHEREAS**, the Commissioners find that the uncontrolled placement of newsracks in  
31 public rights-of-way detracts from the appearance of streets, sidewalks, and adjacent businesses;  
32

33 **WHEREAS**, the Commissioners desire to maintain and protect the value of private  
34 property within the City of Rehoboth Beach, and maintain the City’s attractiveness for residents,  
35 tourists, visitors, and local businesses;  
36

37 **WHEREAS**, the Commissioners intend to treat all publications equally regardless of  
38 their size, content, circulation, or frequency of publication;  
39

40 **WHEREAS**, the Commissioners desire to promote the free exchange of ideas within the  
41 City of Rehoboth Beach by establishing information centers where the public may easily locate  
42 and access the information disseminated by newsrack vendors;  
43

44 **WHEREAS**, the Commissioners find that creating such information centers will enable  
45 the City to establish reasonable time, place, and manner regulations of the use and placement of

46 newsracks for the purpose of promoting the public health, safety, and general welfare, while also  
47 promoting the free exchange of ideas;

48  
49 **WHEREAS**, the Commissioners desire to establish a fair process where interested  
50 vendors have an equal chance to present their published materials to the public;

51  
52 **WHEREAS**, as of September 11, 2019, there were a total of approximately one-hundred  
53 nineteen (119) newsracks covering approximately twenty-three (23) different publications within  
54 the City’s commercial districts;

55  
56 **WHEREAS**, the Commissioners intend to allocate space for newsracks in four  
57 prominent areas of the City’s commercial districts;

58  
59 **WHEREAS**, the location of these prominent areas was selected based upon their location  
60 in the heart of the commercial districts thereby providing significant exposure to pedestrian  
61 traffic to maximize an opportunity for the publications to be easily located by, and available to,  
62 the interested public; and

63  
64 **WHEREAS**, the provisions and prohibitions herein contained and enacted are in  
65 pursuance of and for the purpose of securing and promoting the public health, safety, morals, and  
66 general welfare of persons in the City in their use of the public rights-of-way.

67  
68 **BE IT ORDAINED**, by the Commissioners of the City of Rehoboth Beach, in session  
69 met, in the manner following to wit:

70  
71 **Section 1.** The Municipal Code of the City of Rehoboth Beach, 2001, as amended, be  
72 and the same is hereby further amended by adding new Chapter 186, Newsracks, as follows:

73  
74 **Article I**  
75 **General Provisions**

76  
77 **§186-1. Definitions.** As used in this chapter, the following terms shall have the meanings  
78 indicated:

79  
80 **CITY MANAGER** - as used in this chapter shall include his or her designated  
81 representative.

82  
83 **NEWSRACK** - any self-service or coin operated box, container, storage unit or other  
84 dispenser erected, installed, used, or maintained for the display or sale of  
85 newspapers, circulars, or other similar publications.

86  
87 **PUBLIC RIGHT-OF-WAY** – any place owned and maintained by or dedicated to use  
88 of the public for the purpose of pedestrian or vehicular travel, including but not  
89 limited to a Street, sidewalk, curb, gutter, alley, mall, court, or Roadway.

90

91 **PUBLICATION** – printed literature offered or available to the public including but not  
92 limited to newspapers, circulars, maps, or other similar publications.  
93

94 **ROADWAY** - That portion of Street improved, designed or ordinarily used for vehicular  
95 travel, exclusive of a berm or shoulder. In the event that a street includes two or  
96 more separate roadways, the term "roadway" as used herein shall refer to any such  
97 roadway separately but not to all such roadways collectively.  
98

99 **SIDEWALK** - That portion of a Street or highway between the curb and adjacent  
100 building lines designed for the use of pedestrians, whether paved or not.  
101

102 **STREET** - Any thoroughfare, avenue, boulevard, lane, alley or other public way within  
103 the corporate limits of the City.  
104

105 **VENDOR** - the person, corporation, employee, or agent responsible for placing and  
106 maintaining or operating a newsrack in a public right-of-way.  
107

108 **§186-2. Fees.**

- 109
- 110 A. The initial license application fee shall be \$35.00 per newsrack.
  - 111
  - 112 B. The annual registration fee shall be \$10.00 per newsrack, payable upon approval  
113 of the permit application.  
114

115 **§186-3. Indemnification and Insurance.**

- 116
- 117 A. Each license issued pursuant to this chapter shall be subject to a requirement that  
118 the vendor shall indemnify, defend, and hold the City harmless from any and all  
119 liabilities, penalties, demands, claims, causes of action, suits, losses, damages,  
120 costs, and expenses (including without limitation cost of defense, settlement, and  
121 reasonable attorneys' fees) for damages to any person (including death) or any  
122 property resulting from, relating to, or arising out of the issuance of a license  
123 pursuant to this chapter or from the placement or location of the newsrack.  
124
  - 125 B. No person, association, firm, or corporation shall place, locate, or maintain a  
126 newsrack on public rights-of-way unless there is on file with the City Manager a  
127 document, issued by an insurance company authorized to do business in the State  
128 of Delaware, naming the City of Rehoboth Beach as an additional insured,  
129 evidencing that the vendor is insured under a liability insurance policy, in full  
130 force and effect at all times, providing minimum coverage for general liability of  
131 \$1,000,000.00 per incident arising out of the location, placement, or operation of  
132 the vendor's equipment. A separate certificate is not required for each newsrack  
133 so long as the certificate evidences coverage for all newsracks placed, located, or  
134 maintained by the vendor involved.  
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136

137 Article II  
138 License Requirement  
139

140 **§186-4. Compliance and License Required.**  
141

142 It shall be unlawful for any person, firm, corporation, distributor, or vendor to erect,  
143 place, maintain or operate a newsrack on any public right-of-way within the City of Rehoboth  
144 Beach without first having obtained a license from the City Manager. The license shall specify  
145 the exact location of each newsrack.  
146

147 **§186-5. Application Procedure.**  
148

- 149 A. An application for such license shall be made, in writing, to the Building &  
150 Licensing Department of the City of Rehoboth Beach upon such form as shall be  
151 provided. The application must be accompanied by a picture or sketch or drawing  
152 to scale, and specifications of the proposed newsrack depicting compliance with  
153 the requirements for dimensions.  
154
- 155 B. Vendors shall submit license applications by December 1 of each year to be  
156 considered in the initial license distribution for the following year. Vendors may  
157 submit applications after December 1 but will not be considered for licenses until  
158 after the applications received on or before December 1 are reviewed and  
159 considered, if space remains.  
160
- 161 C. A license shall be valid for up to a period of one year, commencing on January 1,  
162 and shall be renewable in December of that same year. All licenses shall expire  
163 on December 31 following issuance, regardless of issue date. Licenses shall be  
164 renewable pursuant to the procedure for original application, including payment  
165 of the \$35 licensing fee per newsrack. The license fee will not be prorated.  
166
- 167 D. If the application is denied, the Code Enforcement Officer, within 30 business  
168 days and by regular mail, shall set forth in writing the reasons for the denial.  
169
- 170 E. Licenses issued pursuant to this chapter shall not be assigned or transferred.  
171

172 **§186-6. Decal Required.**  
173

- 174 A. The City Manager shall issue with every license for a newsrack a decal which  
175 shall contain the license number. Said decal must be affixed to the device in such  
176 a manner as to make the decal visible from the nearest street or public way.  
177
- 178 B. Notwithstanding any law to the contrary, any newsrack found on any publicly  
179 owned property within the City without a valid decal may be removed and stored  
180 by the City, without notice.  
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184 **§186-7. Maintenance and Installation Standards.**  
185

- 186 A. No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, and  
187 two (2) feet in length.  
188
- 189 B. No newsrack shall be used for advertising signs or publicity purposes other than  
190 concerning the display, sale, or purchase of the publication contained therein.  
191
- 192 C. Each newsrack wherein payment is required for the dispensing of its product shall  
193 be equipped with a coin-return mechanism to permit a person using the machine  
194 to secure an immediate refund in the event that he or she is unable to receive the  
195 publication paid for. The coin-return mechanism shall be maintained in good  
196 working order.  
197
- 198 D. Each newsrack shall have affixed to it in a readily visible place, a sticker, issued  
199 by the Building and Licensing Department, indicating the approved license  
200 number for said newsrack.  
201
- 202 E. Each newsrack shall be maintained in a neat and clean condition and in good  
203 repair at all times. Specifically, but without limiting the generality of the  
204 foregoing, each newsrack shall be serviced and maintained so that:  
205
- 206 (1) It is reasonably free of dirt and grease;  
207
  - 208 (2) It is reasonably free of chipped, faded, peeling and cracked paint in the  
209 visible painted areas thereof;  
210
  - 211 (3) It is reasonably free of rust and corrosion in the visible unpainted metal  
212 areas thereon;  
213
  - 214 (4) The clear plastic or glass parts thereof, if any, through which the  
215 publications therein are viewed are unbroken and reasonably free of  
216 cracks, dents, blemishes, and discoloration;  
217
  - 218 (5) The paper or cardboard parts or inserts thereof are reasonably free of tears,  
219 peeling, or fading;  
220
  - 221 (6) The structural parts thereof are not broken or in disrepair;  
222
  - 223 (7) No sharp edges or corners would be likely to cause personal injury;  
224
  - 225 (8) It is free from all graffiti.  
226
- 227 F. The costs of installation, maintenance, replacement, removal, and relocation of  
228 newsracks shall be at the sole expense of the vendor. Upon removal of any  
229 newsrack, the vendor shall, at his or her sole expense, cause the public right-of-

230 way to be repaired to a condition in conformity to the surrounding area. Upon  
231 failure of the vendor to make such repairs, the work may be done by the City and  
232 charged to the vendor.  
233

234 Article III  
235 Location and Placement  
236

237 **§186-8. Permitted Locations.**  
238

- 239 A. Any newsrack which rests in whole or in part upon or on any portion of the public  
240 right-of-way or which projects onto, into, or over any part of a public right-of-  
241 way shall be located in accordance with the provisions of this section.  
242
- 243 B. No newsrack shall be used or maintained within the public rights-of-way in the C-  
244 1, C-2, and C-3 Districts (the City’s “Commercial Districts”) except for in the  
245 following areas:
  - 246 (1) The designated area outside of 306 Rehoboth Avenue;
  - 247 (2) The designated area near the City of Rehoboth Beach Post Office;
  - 248 (3) The designated area on along the east side of N 1<sup>st</sup> Street;
  - 249 (4) The designated area at the intersection of S 1<sup>st</sup> Street and Wilmington  
250 Avenue
  - 251 (5) On private property so long as the location meets the requirements set out  
252 in part H of this section, and written permission from the property owner  
253 is on file with the City Manager.  
254
- 255 C. No newsrack shall be used or maintained which projects onto, into, or over any  
256 part of the roadway of any public street or which rests, wholly or in part, upon,  
257 along, or over any portion of the roadway of any public street.  
258
- 259 D. No newsrack shall be permitted to rest upon, in, or over any public sidewalk or  
260 street, when such installation, use, or maintenance endangers the safety of persons  
261 or property or when such site or location is used for public utility purposes, public  
262 transportation purposes, or other governmental use, or when such newsrack  
263 unreasonably interferes with or impedes the flow of pedestrians or a vehicle or  
264 traffic, including any legally parked or stopped vehicle, the ingress into or egress  
265 from any residence or place of business, or the use of poles, posts, traffic signs, or  
266 signals, fire hydrants, U.S. postal receptacles, handicapped person access ramp,  
267 or other objects permitted at or near said location.  
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- 274 E. No newsrack shall be chained, bolted, or otherwise attached to any fixture located  
275 in the public right-of-way, except to other newsracks with the permission of the  
276 owner thereof.  
277
- 278 F. In the event the city must expand or otherwise reconfigure public right-of-way or  
279 make improvements thereto to improve the adjacent street, sidewalk or for other  
280 public purpose, any and all newsracks displaced by such improvements shall be  
281 removed by the licensee at the licensee's sole cost and expense and in accordance  
282 with the instruction of the City. Wherever possible, and only in accordance with  
283 the requirements of this ordinance, the city shall attempt to allow the relocation of  
284 any newsracks displaced as provided herein to the newly reconfigured right-of-  
285 way without additional license fee; provided, however, where such right-of-way  
286 will no longer accommodate newsracks in accordance with the requirements of  
287 this ordinance, the city shall not be obligated to provide alternative or other sites  
288 for such displaced newsracks.  
289
- 290 G. Newsracks may be placed next to each other, provided that no more than six (6)  
291 newsracks may be placed in any space of 20 feet in any direction within the same  
292 block of the same Street.  
293
- 294 H. No newsrack shall be placed, installed, used, or maintained:  
295
- 296 (1) Within three (3) feet of any marked crosswalk;
  - 297
  - 298 (2) Within fifteen (15) feet of the curb return of any unmarked crosswalk;
  - 299
  - 300 (3) Within fifteen (15) feet of any fire hydrant;
  - 301
  - 302 (4) Within three (3) feet of any parking meter or fine box;
  - 303
  - 304 (5) Within five (5) feet of any driveway;
  - 305
  - 306 (6) Within three (3) feet ahead or fifteen (15) feet to the rear of any sign or  
307 demarcation marking the beginning of a designated bus stop;
  - 308
  - 309 (7) Within three (3) feet of any public bench;
  - 310
  - 311 (8) At any location whereby the clear space for the passageway of pedestrians  
312 is reduced to less than six (6) feet;
  - 313
  - 314 (9) Within three hundred (300) feet of any other newsrack on the same side of  
315 the street in the same block containing the same issue or edition of the  
316 same publication;
  - 317
  - 318 (10) Within ten (10) feet of any standby or sprinkler connection or related  
319 safety or fire equipment;

- 320  
321 (11) Within five (5) feet of any building or display window, unless written  
322 permission from the owner is secured and the same is submitted with the  
323 application;  
324  
325 (12) Within one (1) foot of any public area improved with lawn, flowers,  
326 shrubs, trees or landscaping;  
327  
328 (13) Along any portion of the Boardwalk;  
329

330 **§186-9. Lottery.**

- 331  
332 A. If the space available at a given location is inadequate for the number of vendors  
333 who have submitted valid license applications, allocation will be decided by  
334 lottery. The lottery system will be administered by the City Manager.  
335  
336 B. Priority will be given to publications not already assigned a new annual license  
337 for the same issue and edition.  
338

339 **§186-10. Abandonment and Removal.**

- 340  
341 A. In the event that a newsrack remains empty for a period of ten (10) continuous  
342 days, or does not contain the publication specified in the application therefor  
343 within ninety-six (96) hours after the release of the current issue, the City  
344 Manager may deem the newsrack abandoned and may, after proper notice,  
345 authorize the Code Enforcement Officer or designee to remove the newsrack from  
346 its location and impound said newsrack.  
347  
348 B. In the event of an emergency that would cause newsracks located within the City  
349 to endanger the public health, safety, and welfare, the City Manager may  
350 temporarily remove the newsrack from its location and impound said newsrack.  
351  
352 C. If, after giving notice to the vendor of the impoundment of a newsrack, the  
353 newsrack is stored by the City for in excess of sixty (60) days, the City shall have  
354 the right to dispose of or destroy the newsrack.  
355  
356 D. Newsracks that do not contain the proper City-issued decal may be removed by  
357 the City at any time without notice.  
358  
359 E. The City Manager shall inspect the condition of a newsrack reinstalled after  
360 removal under this chapter. The vendor of said newsrack shall be charged an  
361 inspection fee of \$10.00 for each newsrack so inspected.  
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Article IV  
Violations

**§186-11. Violations and Penalties.**

- A. Any person, entity, or vendor violating any provision of this chapter shall be subject to a civil citation and a fine of \$100 for each offense.
- B. In the event that any fine, fee, cost, or charge of any nature whatsoever pertaining to newsracks remains unpaid, the vendor shall be prohibited from obtaining a new or renewal licenses until any past fines, costs, fees, and charges are made current.
- C. Each newsrack which is operated by the vendor and is in violation of this chapter shall be considered a separate offense.
- D. In addition to the penalties provided herein, the City Manager may suspend or revoke a license for continued or repeated violations or infractions of any provisions of this chapter. Suspension or revocation of a license shall be mandatory for the third violation of this chapter.

**§186-12. Notice Required Before Removal.**

- A. Upon a determination by the City Manager that a newsrack has been installed, used or maintained in violation of the provisions of this chapter, a Notice of Violation (NOV) to correct the offending condition shall be issued to the vendor of the newsrack. Such NOV shall be mailed to the vendor by certified mail, return receipt requested.
- B. The NOV shall specifically describe the offending condition. Failure to properly correct the offending condition within fifteen (15) days after the mailing date of the NOV may result in the offending newsrack being removed from its location and impounded.

**§186-13. Appeals.**

- A. Any vendor aggrieved by a NOV, finding, determination, or action taken under the provisions of this chapter may appeal to the City Manager of the City of Rehoboth Beach.
- B. Such appeal shall be in writing, setting forth the reasons for the appeal, and shall be filed with the City Manager's Office by certified mail, with return receipt requested, together with an appeal processing fee of \$100.00, within ten (10) days after the receipt of the finding, determination, or action being appealed.
- C. Upon receipt of the notice of appeal, the City Manager shall render a decision within sixty (60) days following receipt thereof by the City Manager's Office.

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D. In all 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.

**Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Section 3.** This Ordinance shall become effective immediately upon its adoption by a majority vote of all members of the Commission of the City of Rehoboth Beach.

Adopted by the Commissioners  
of the City of Rehoboth Beach  
\_\_\_\_\_, 2011

\_\_\_\_\_  
Secretary of the Commissioners of  
the City of Rehoboth Beach

**Synopsis:** This Ordinance seeks to balance the important role associated with the sale and distribution of newspapers and publications with the City’s obligation to provide for the health, safety, and general welfare of the public by creating a series of specific and reasonable time, place, and manner regulations governing newsracks located within the City of Rehoboth Beach. In addition to the specific regulations, this Ordinance further requires all vendors seeking to place a newsrack within the City to first obtain a proper license.