

ORDINANCE NO. _____

AN ORDINANCE REPEALING SECTIONS 17-17 THROUGH 17-19 OF THE CODE OF ORDINANCES AND CREATING ARTICLE VII, SECTIONS 17-166 THROUGH 17-173 OF THE CODE OF ORDINANCES TO REGULATE NEWSPAPER DISTRIBUTION ON PUBLIC RIGHTS-OF-WAY, AND PROVIDING FOR: JUSTIFICATION; DEFINITIONS; LABELING, PLACEMENT, LOCATION, AND CHARACTERISTICS OF NEWSRACKS; AN ANNUAL STICKER FOR EACH PERMITTED RACK; ANNUAL GENERAL PERMITTING WITH FEE NOT TO EXCEED \$200 PER YEAR AND INSURANCE COVERAGE TO THE URBAN COUNTY GOVERNMENT IN THE AMOUNT OF \$25,000; FOR THOSE NEWSRACKS IN THE DOWNTOWN DISTRICT AN ADDITIONAL ANNUAL FEE OF \$25 PER RACK AND A ONE-TIME INSTALLATION FEE OF \$25 PER RACK; THE CREATION OF A DOWNTOWN DISTRICT; IMPOUNDING OF NON-COMPLIANT NEWSRACKS WITHOUT ADVANCE NOTICE; NOTIFICATION TO OWNER AFTER IMPOUNDMENT WITH PAYMENT OF FEE FOR COSTS AND ABILITY TO DISPOSE OF RACKS IF UNCLAIMED; APPEAL PROCESS; FINE NOT TO EXCEED \$500 FOR VIOLATION; ALL EFFECTIVE JANUARY 1, 2009.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Sections 17-17 through 17-19 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby are repealed.

Section 2 – That Article VII, Sections 17-166 through 17-173 of the Code of Ordinances of the Lexington-Fayette Urban County Government, is hereby created to read as follows:

Sec. 17-166.

(a) The Council of the Lexington-Fayette Urban County Government finds and declares that newsrack regulation within the public rights-of-way is a permissible subject of the exercise of the government's police power to protect the public health, safety and welfare and to enhance aesthetics based on the following reasons:

- (1) Unregulated placement of such newsracks impedes or restricts the flow of pedestrian and vehicular traffic within public rights-of-way.
- (2) Such newsracks can block or reduce visibility and therefore increase the possibility of accidents.
- (3) Such newsracks can impair or prevent maintenance of utility poles, mailboxes, traffic signals and signs, and hydrants.
- (4) Unregulated placement of such newsracks impedes access into buildings and detracts from the aesthetics of the architectural features of buildings, parks, landscaping, and other attractive features in the community.
- (5) Poorly maintained newsracks and the hodgepodge of sizes, shapes and colors are unsightly and interfere with efforts to enhance the visual appeal of the community.

(b) The Council of the Lexington-Fayette Urban County Government further finds and declares that reasonable time, place and manner restrictions will not regulate content and will enhance public safety and aesthetics without impairing the First Amendment right of newspapers and others to distribute their publications.

Sec. 17-167.

As used in this Article, the following terms shall have the meanings ascribed to them in this section:

- (a) "*Abandoned*" means any newsrack that does not contain the newspaper or other publication specified therefore for a reasonable period of time. The following periods of time constitute abandonment: more than seven (7) consecutive days for a daily publication, fifteen (15) consecutive days for a weekly publication, thirty (30) consecutive days for a biweekly publication, or sixty (60) days for a monthly publication.
- (b) "*Downtown district*" as used in this Article, shall mean all of the public right-of-way, including the sidewalks, located within the following geographic boundaries, and shall include both sides of any street:
 - (1) The northern boundary – Church Street, Barr Street, and Short Street between Martin Luther King Boulevard and Elm Tree Lane. However, it shall also extend to include Limestone Avenue up to and including its intersection with 4th Street, and Elm Tree Lane up to and including its intersection with Corral Street.
 - (2) The eastern boundary - Elm Tree Lane and Rose Street. However, it shall also extend to include Main Street up to and including its intersection with Midland Avenue, and East Vine Street up to and including its intersection with Midland Avenue.
 - (3) The southern boundary – High Street. However, it shall also extend to include Martin Luther King Boulevard up to and including its intersection with the Avenue of Champions, and Limestone Avenue up to and including its intersection with the Avenue of Champions.
 - (4) The western boundary – Broadway. However, it shall also extend to include Main Street up to and including its intersection with Newtown Pike, and Vine Street, up to and including its terminus with Main Street.

A map of the Downtown district will be created by the urban county government and shall be provided to any applicant or permittee.

- (c) "*Corral*" means a structure or group of structures in one location erected by the urban county government or its designee, and firmly affixed to the ground in order to enclose a number of newsracks.

- (d) "*Newspapers and other publications*" means and includes newspapers, periodicals, advertising circulars, and all other printed materials which may be distributed through the use of newsracks.
- (e) "*Newsrack*" or "*rack*" means any unmanned, self-service or coin-operated box, container, storage unit or other dispenser located in or upon, or projecting onto, into, or over, any part of the public right-of-way, and which is installed, used or maintained for the display, sale, or distribution of newspapers and other publications. Unless the context clearly indicates otherwise, newsrack includes individual and joint racks.
- (f) "*Owner*" means the person or other legal entity which either owns a newsrack, or is responsible for its operation and maintenance.
- (g) "*Public rights-of-way*" or "*rights-of-way*" means and includes all highways, streets, alleys, sidewalks, and other real property or easements, which are owned or controlled by the urban county government, including the areas above and below such easements, and which are reserved or used for pedestrian or vehicular traffic. It does not mean parks, green spaces or other real property owned or controlled by the urban county government.
- (h) "*Publisher*" means the person or other legal entity selling, displaying, or distributing newspapers or other publications in a newsrack.

Sec. 17-168.

It shall be unlawful to own or maintain a newsrack upon the public right-of-way which does not conform to the standards of this section. There are additional requirements placed on those newsracks located in the Downtown district, as further specified in Sections 17-169(c) and 17-170 of this Article. All newsracks located in the public rights-of-way are subject to the following requirements:

- (a) The exterior of each newsrack shall bear a label which contains the name, address, and telephone number of the owner. Such label shall be inconspicuous in size and color, and placed in such a location as to be readily visible. The urban county government shall provide an annual sticker to be placed on a location on each rack to be determined by the government.
- (b) Each newsrack shall have a self-closing, spring-loaded door for each enclosed compartment, and each rack which offers newspapers or other publications for sale shall be equipped with a functional coin-return mechanism which permits customers to secure an immediate refund if the door is inoperable. The door and coin return mechanisms of newsracks shall be maintained in good working condition, and the owner shall cause any malfunction in their operation to be repaired promptly.
- (c) Each newsrack shall be maintained by its owner in a reasonably clean condition, and without limiting the generality of the foregoing, shall be free of dirt and grease, rust and corrosion in visible metal areas, graffiti, discolored or bare surfaces, chipped, faded, cracked and peeling paint, cracked, dented or broken

components, posted bills and other debris, including ruined or out of date publications.

- (d) A newsrack which is not bolted or attached permanently to the public right-of-way with the permission of the urban county government shall be secured by a weighted base or pedestal to prevent it from being tipped over or upset by the elements or by minimal contact from passersby, or otherwise.
- (e) A newsrack shall not be bolted or attached permanently to the public right-of-way without the permission of the urban county government.
- (f) A newsrack may display the name, trademark, and logo of the newspaper(s) or other periodical(s) being dispensed therefrom. A newsrack may display a rack card, located only on one (1) side of the exterior of the rack, to announce the news of the day or other appropriate information. No other advertising shall be displayed on newsracks.
- (g) Each newsrack shall be placed in a location which affords easy, convenient service to pedestrians, but which does not obstruct or interfere with access to abutting properties, and which does not impede or endanger pedestrian, bicycle or vehicle traffic. Accordingly, a newsrack shall not be placed as follows:
 - (1) Upon a sidewalk directly in front of an entrance to a building, or in a manner that impedes pedestrian traffic at a designated bus stop zone, loading zone, taxi stand, or handicapped parking space.
 - (2) In such a manner as to obstruct sight lines at street intersections, within the triangle area formed by the street curblines and a line connecting points twenty-five (25) feet from the intersection of the curblines extended.
 - (3) Within twelve (12) feet of a fire hydrant.
 - (4) Within thirty (30) inches of a street or curbline where parking is permitted, or within eighteen (18) inches of a street curb or curbline where parking is not permitted.
 - (5) Within two (2) feet of a parking meter, mailbox, bench, light post, planter, or tree (measured from the nearest edge of the tree grate).
 - (6) In such a manner that the remaining free and open sidewalk width is not less than four (4) feet.
 - (7) Against a building unless the building manager or owner agrees to such placement in writing, the placement of the rack closer to the curb cannot be achieved consistent with the other placement restrictions provided in this section, and such placement does not impede pedestrian traffic.
 - (8) Chained or otherwise attached to any tree, bench, sign post or other fixture whatsoever.

- (9) Located on or over a tree grate.
 - (10) Placed so as to obscure the architectural or historic features of any structure or landmark in an urban county government Historic Overlay Zone or National Historic District.
- (h) The issuance of an annual general permit by the urban county government for a newsrack(s) to be located in the public rights-of-way does not excuse compliance with the provisions of this section or this Article.

Sec. 17-169.

It shall be unlawful for any person to locate, maintain or operate a newsrack on any public right-of-way without first obtaining an Annual General Permit. The urban county government shall create a permitting process that includes the following:

- (a) Annual General Permit. The application for an annual general permit, which allows for the placement of newsracks in the public right-of-way, shall be made to the urban county government on a standardized form(s) provided by the government, and shall be signed by the applicant. The permit is to be renewed on an annual basis. The annual fee for issuing a permit shall not exceed two hundred dollars (\$200.00).
- (b) Listing of Locations. The applicant must provide the urban county government with a written listing of all of the locations of its newsracks that are located in the public rights-of-way as part of the Annual General Permit process.
 - (1) A permittee shall notify the urban county government in writing in advance of locating any additional newsracks in the public rights-of-way.
 - (2) For any applicant that has a newsrack(s) located in the public rights-of-way at the time this Article goes into effect, the provision of the list shall not necessarily indicate that any or each such newsrack is compliant with the terms of this Article, and by issuing an Annual General Permit, the urban county government is not expressly permitting each such rack.
 - (3) Provide the urban county government with a current certificate of general liability insurance, naming the urban county government as an additional insured party with a minimum coverage of \$25,000.00, which must be maintained as long as the applicant owns or maintains any newsrack in the public right-of-way. The applicant may provide a bond or other suitable form of coverage to the urban county government in lieu of the insurance.
 - (4) Provide any required affidavit regarding the date of use of a particular location by that publication.
- (c) Additional Downtown district requirements. If the applicant requests permission to locate any newsrack(s) in the public rights-

