

Draft VII February 10, 2006

CITY OF BRADENTON BEACH, FLORIDA,

ORDINANCE NO. 05-381

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, ADOPTING AMENDMENTS TO CODE OF ORDINANCES TO ALLOW PLACEMENT OF NEWS-STANDS, NEWSRACKS AND MODULAR NEWSRACKS ON PUBLIC LAND; PROVIDING FOR DEFINITIONS, PROVIDING FOR PERMITS, PROVIDING FOR PERMIT REQUIREMENTS; PROVIDING FOR DISPLAY OF PERMITS; PROVIDING FOR PERMIT REVOCATION; PROVIDING FOR INDEMNIFICATION AND HOLD HARMLESS AGREEMENT; PROVIDING FOR NEWSRACKS AND MODULAR NEWSRACKS STANDARDS AND CRITERIA; PROVIDING FOR LOCATION AND PLACEMENT OF NEWS-STANDS, NEWSRACKS AND MODULAR NEWSRACKS; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact Ordinances in furtherance thereof; and

WHEREAS, the existing Code provisions regarding news-stands, newsracks and the provision of modular newsracks are inadequate to protect pedestrian, bicycle and vehicular access, ingress and egress, traffic flow and patterns, and

WHEREAS, the number of newsracks is proliferating in the City of Bradenton Beach;

WHEREAS, the City of Bradenton Beach desires to initiate voluntary use of modular newsracks replacing in lieu of singular newsracks; and

WHEREAS, the City Commission has determined that the enactment of this Ordinance is for a proper municipal purpose and protects the public health, safety and welfare,

NOW, BE IT ORDAINED and enacted by Ordinance of the City Commission of the City of Bradenton Beach:

Section 1. **Findings of Fact.** The **WHEREAS** clauses set forth above are adopted herein as findings.

Section 2. The City of Bradenton Beach Code of Ordinances, Land Development Code, Article 1, Section 34-1 (Definitions) is hereby amended to add and include the following definitions:

City means the City of Bradenton Beach.

Distributor means the person, individual, partnership, corporation, association, firm, company, organization or any other legal entity which owns, places, or maintains a newsrack on public lands.

Modular newsrack means a connected grouping of at least two (2) pockets within a single publication distribution system that is bolted directly to the paved surface, installed or used for the display, sale or distribution of newspapers, other periodicals or advertising circulars. The number of pockets in a modular newsrack shall be able to be increased or decreased within the single distribution system without altering the color, shape or design of the modular newsrack.

News-stand means an open booth at which newspapers and periodicals are sold.

Newsrack means any single self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, sale or distribution of one type of newspaper, periodical, or circular.

Parkway means that area between the sidewalks and the curb of a roadway and, where there is no sidewalk, that area between the edge of the traveled roadway and the edge of a public rights-of-way. "Parkway" also includes any area within a roadway that is not open to vehicular travel, excluding any area within a roadway that is designated for use as vehicular parking.

Permitee – for the purpose of Article XXII, Newsstands and Newsracks, the permittee may be the owner, authorized agent, distributor, or licensed contractor of the newsstand, newsrack or modular newsracks.

Public land means a parkway, public rights-of-way, roadway, sidewalk, park or any real property or building owned by the city or any other governmental entity

Public rights-of-way means any place of any nature which is dedicated to use by the public for pedestrian or vehicular travel, and includes but is not limited to a street, sidewalk, curb, gutter, crossing, intersection, parkway, highway, alley, lane, way, avenue, boulevard, road, roadway, viaduct, bridge, thoroughfare, park, square, and any other similar public use.

Roadway means that part of a public rights-of-way that is designated and uses primarily for vehicular traffic, including any area designated for use as vehicular parking.

Sidewalk means that part of a public rights-of-way that is designated for use for pedestrian travel.

Section 3. The City of Bradenton Beach Code of Ordinances Chapter 34, Article XII (News-stands and Newsracks) is hereby enacted and adopted as follows:

ARTICLE XII NEWS-STANDS AND NEWSRACKS

DIVISION 1. GENERALLY

Sec. 34-880. Purpose and Intent

- A. This article shall be construed and implemented to create a managed system of news-stand and newsracks which accommodates both the need for a well-maintained, safe and attractive community, and the need for effective distribution of newspapers and periodicals from newspaper stands and newsracks, identification, advertising and communication. It is the purpose of this article to promote health, safety, convenience, aesthetics, and general welfare of the community, by controlling the indiscriminate erection of news-stands and newsracks and to authorize the use of news-stands and newsracks which are:
1. Designed, constructed, installed, and maintained in a manner which does not endanger the public, create undue attention, impede the flow or otherwise interfere with traffic safety, public safety or unduly distract motorists;
 2. Sized to permit the newspapers and periodicals to be displayed.
 3. Consistent with the Community Vision pursuant to Section 34-542.

B. Standards and Regulations Overview

1. The standards and regulations are intended and designed to protect citizens and residents of the city against:
 - a. The unlimited proliferation in number and location of news-stands and newsracks.
 - b. Construction and placement of unsightly, unsafe news-stands and newsracks which dominate and detract from the enjoyment and pleasure in the natural scenic beauty of the city, the surrounding visual environment; and which, in turn, injuriously affect the economic well-being of the citizenry;
 - c. News-stands and newsracks being constructed and placed on public property without first obtaining proper permits.
 - d. News-stands and newsracks failing to be properly maintained once erected and placed; and
 - e. News-stands and newsracks which are placed dangerously in or near street intersections and rights-of-way, so as to pose actual or potential hazards to traffic and pedestrians.

Sec. 34-881 Exemptions

- A. News-stands and newsracks within buildings on private property
- B. Newsracks, periodicals, books, pocket edition books, pamphlets, sheets, cards and other printed or written matter distributed on private property.

Sec. 34-882 Permit Required

It shall be unlawful for any person to erect, place, maintain or operate on any public street or sidewalk, or in any other public way or public place in the city, any newsrack, modular newsrack, or any structure commonly known as a news-stand or any stand or place where newspapers, periodicals and/or magazines are distributed, without first having obtained a permit from the Building Official, as provided in this article.

Sec. 34-883 Application General

- A. Each distributor interested in installing news-stand(s), newsrack(s), or modular newsrack(s), in the City of Bradenton Beach, must first obtain a permit. The issuance of the permit will allow placement in accordance with section 34-889 and 34-890. Application for permit required by section 34-882 shall be made, in writing, to the building official upon such form as shall be provided by the building official and shall attest that the news-stand(s) or newsrack(s) or modular newsrack(s) are in compliance with this ordinance.

- B. Application on forms furnished by the City for a permit shall be in writing by the distributor, or licensed contractor and shall contain the following minimum information, together with the applicable fee.
1. Name, address, and phone number of applicant;
 2. Name, address, and phone number of authorized agent or licensed contractor, if applicable;
 3. Quantity of news-stand(s), newsrack(s) or modular newsrack(s);
 4. Location of existing news-stand, newsrack or modular newsrack.
 5. Check list for Section 34-891;
 6. For news-stands, construction specifications and plans indicating the proposed structure including footings, dimensions, height, setbacks, clearances, spacing, sign face, sign area, colors, wording, and elevation of building walls (if applicable). Drawings shall include (if applicable) all electrical information associated with the news-stand installation;
 7. For all permanent news-stands, certification by a professional engineer licensed in the State of Florida, is required. Certification shall stipulate that the permanent news-stands structure is designed for dead load and wind pressure in any direction, as required by Chapter 16, of the Florida Building Code.

Sec. 34-884 Approvals

A. Application shall be presented by the distributor or licensed contractor to the Building Official accompanied by the proper fee. After an on-site inspection of any existing news-stand, newsrack, or modular newsrack and report by the Building Official that the existing news-stands, newsracks, and/or modular newsracks is in full conformity with this article, the Building Official or his designee shall approve the application.

Sec. 34-885 Permit Fees and Annual Inspection Fee.

A. The permit fee and an annual inspection fee, are set forth below:

<u>Category</u>	<u>Permit Fee</u>	<u>Annual Inspection Fee</u>
1. News-stand(s)	\$40.00	\$20.00
2. Newsrack(s)	\$20.00	\$10.00
3. Modular Newsrack(s)	\$30.00	\$10.00
4. Newsrack(s) and Modular Newsrack(s)	\$40.00	\$15.00

B. Annual inspection fees are required and shall be due annually, on October 1st. The annual inspection fee for all news-stands, newsracks and modular newsracks requiring a permit shall be established by section 34-885 A of this code. The Building Official or designee will inspect all news-stands, newsracks, and modular newsracks, at least yearly. If, upon inspection the news-stand, newsrack or

modular newsrack, it is determined same is in compliance, a decal will be affixed on the rear side of the said news-stand, newsrack, or modular newsrack. New news-stands, newsracks, and modular newsracks, will be inspected periodically and if found in compliance will receive a decal.

- C. Non-payment of the annual inspection fee by November 1 of that year shall be considered a violation of this article, and shall be subject to sanctions or remedies set forth under Section 34-887 or 34-892.

Sec. 34-886 Distribution; expiration date; assignability;

The decal provided for in section 34-885 shall expire each year on September 30th. It shall be renewable to the same distributor upon payment to the City of Bradenton Beach for the annual inspection fee. No such decal shall be transferable or assignable without the consent of the Building Official.

Sec. 34-887 News-stand Enforcement.

- A. No news-stand shall be permitted to be erected, maintained or used in the city contrary to the provisions of this article. The Building Official, as Chief Code Enforcement Officer, by and through the duly authorized employees of the city, shall enforce the provisions of this division and is authorized and directed to cause the removal of any news-stand from areas when the continued operation of the news-stand has become or shall appear to be likely to become a nuisance, annoyance or hazard to the general public in its free and unencumbered use of the public street, sidewalk or public place, or interferes with the reasonable requirements of pedestrian or vehicular traffic, or with the free and unhindered passage between such street or sidewalk and any entrances or exits of abutting property or contrary to other provisions of this section. Failure to obtain an annual inspection may be cause for removal. News-stands which are removed by the city may be held by the city for evidence of violation of this division or may be released back to the owner upon the payment of a fine in the amount of \$300.00 and the removal cost.
- B. In the case of a news-stand being erected without a permit, the cost of obtaining an after-the-fact permit shall be triple the regular permit fee.
- C. Prior violators of this Article will not be issued a new news-stand permit unless the violator has corrected the news-stand violation, paid the appropriate fine and the appropriate fee associated with the previous violation.
- D. The Building Official is hereby authorized and empowered to revoke any permit issued upon failure of the permit holder or real property owner to comply with the provisions of the permit or this article, or if the permit was issued on the basis of a misstatement of fact or law, or misrepresentation, or in error.

- E. Any person found to have violated any of the provisions of this division may be fined an amount not to exceed \$200 per day. Each and every day the violation continues is a separate and specific violation of this article.

Sec. 34-888 Permittee to agree to indemnify city against liability.

As an express condition of the acceptance by the permittee of the permit provided for in section 34-882, such permittee shall thereby agree to indemnify and save harmless the city against all liability and expense which may come against the city in consequence of the granting of the permit or on account of any act or thing done by the permittee by virtue of the authority given in the permit.

DIVISION 2. NEWS-STANDS

Sec. 34-889 Construction requirements; consent of abutting owner prerequisite to Construction.

Any news-stand permitted under section 34-882 shall be constructed only in accordance with the general design and regulations, to be approved by the building official. No news-stand shall be constructed so as to extend or project more than fifteen (15) inches over any sidewalk, street, or any other public way or public place. No news-stand shall be constructed which will prevent removal of the news-stand without damage or impairment to the abutting property. No news-stand shall be constructed or permitted for operation where any part of the same shall extend over any public sidewalk or any public way or public place, except with the written consent of the person entitled to the possession and use of the property immediately abutting such public street or sidewalk or other public way or public place at the point where such news-stand is located.

DIVISION 3. NEWSRACKS AND MODULAR NEWSRACKS

Sec. 34-890 Standards for newsracks and for modular newsracks.

- A. Any newsrack or modular newsrack placed on public land shall comply with the following standards:
 - 1. No new single free standing newsrack shall exceed fifty-four (54) inches in height, thirty (30) inches in width or two (2) feet in depth. No new modular newsrack shall exceed fifty-seven (57) inches in height, eighteen (18) feet in width or two (2) feet in depth. An increase in width may only be permitted through the Special Exception process stipulated under section 34-402.
 - 2. No modular newsrack shall be used for advertising signs or publicity purposes other than to identify the newspaper or other printed matter contained therein. Each publication occupying space in a modular newsrack may identify itself by name on the front door of the unit it occupies in letters not exceeding two inches in height. No additional signage is permitted on the exterior of the rack except properly placed rack cards.

3. Each newsrack and modular newsrack shall have affixed to it, in a readily visible place, a notice minimum size of four (4) square inches, setting forth the name and address of the distributor and a working telephone number to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin return mechanism, or to give any notice provided for in this division.
4. Each newsrack and modular 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, every newsrack and modular newsrack placed on public land 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 or cracked paint in the visible painted areas thereof;
 - c. It is reasonably free of rust or corrosion in the visible unpainted areas thereon;
 - d. The clear plastic or glass parts thereof, if any, through which the publications 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; and
 - f. The structural parts thereof are not broken or unduly mis-shapen.
5. The permittee of the newsrack or modular newsrack located on public land shall execute an indemnification, in a form approved by the city attorney, which will hold the city, its officers, employees and agents, harmless from any claim, demand or judgment in favor of any person or entity arising out of or resulting from the placement of any newsrack or modular newsrack upon, in or over a public rights-of-way or other public property.
6. In the event a newsrack or modular newsrack remains empty for more than forty-five (45) consecutive days, the same shall be deemed abandoned and may be considered in violation of the provisions of this division. In the event that more than one third of the pockets in a modular newsrack remain unoccupied or empty for more than forty-five (45) consecutive days, same may be considered a violation of this division unless the unoccupied pockets are removed.
7. Modular newsracks shall be "Bradenton Beach" green and all lettering white. However, a distributor may install a modular newsrack of an alternative color provided that the distributor receives prior written permission from the city building official.
8. Modular newsracks shall be manufactured to meet or exceed the following standards:
 - a. Cabinets shall be made from high density marine grade polyethylene, high grade aluminum or galvanized material, carbon steel, hot dipped, or the equivalent.
 - b. Modular newsracks shall be designed and installed for a 130 m.p.h. 3 second gust wind load as prescribed by the Florida Building Code.

Sec. 34-891. Location and placement of newsracks and modular newsracks.

- A. All newsracks and modular newsracks placed on public land shall be located in conformity with the following requirements of this section:

1. No singular newsrack or modular newsrack shall be used or maintained which projects onto, into or over any part of the roadway of any public street, or which rests wholly or in part upon, along, or over any portion of the roadway of any public street.
2. No newsrack or modular newsrack shall be chained, bolted or otherwise attached to any fixture located in the public rights-of-way except that individual newsracks may be chained, bolted or otherwise attached to other newsracks. Modular newsracks shall be bolted to a paved surface.
3. No singular newsrack shall be placed, installed, used or maintained:
 - a. Within three (3) feet of any marked crosswalk.
 - b. Within twelve (12) feet of any intersection (measured at the right-of-way line).
 - c. Within five (5) feet of any fire hydrant or other emergency facility.
 - d. Within five (5) feet of any driveway.
 - e. Within three (3) feet ahead of, or fifteen (15) feet to the rear of, any sign marking a designated bus stop or trolley 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 a wheelchair is reduced to less than three (3) feet.
 - h. On any public land improved lawn, flowers, shrubs, or trees.
 - i. Within one (1) foot of any handicap access ramp.
 - j. Within ten (10) feet of any public artwork or decorative fountain.
 - k. Where it will interfere with or impede the flow of pedestrian or vehicle traffic, ingress into or egress from a place of business or any legally parked or stopped vehicle.
 - l. In any manner which the location of the newsrack interferes with the ordinary use of public property.
 - m. In any manner which endangers the safety of persons or property.
 - n. Where it interferes with the use or access to public utilities or other governmental services.
 - o. Within one hundred-fifty (150) feet on the same side of the street of a modular newsrack . This minimum separation shall be applied in every location where a modular newsrack is installed. Upon the installation of a modular newsrack, all singular newsracks within one hundred-fifty (150) feet of the modular newsrack shall be removed within thirty (30) days.
4. No modular newsrack shall be placed, installed or maintained:
 - a. Within three (3) feet of any marked crosswalk.
 - b. Within twelve (12) feet of any intersection (measured at the right-of-way line).
 - c. With five (5) feet of any fire hydrant, or any other emergency facility.
 - d. Within five (5) feet of any driveway.
 - e. Within three (3) feet ahead of or fifteen (15) feet to the rear of any sign marking a designated bus stop or trolley 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 a wheelchair is reduced to less than three (3) feet.
 - h. On any grass or landscaped area unless a concrete pad extending at least one (1) foot to the side and rear beyond the modular newsrack. In the event the modular newsracks are removed, the concrete pad and connecting sidewalk must be removed and the site restored to its previous or better condition.
 - i. Within one (1) foot of any handicap access ramp.
 - j. Within ten (10) feet of any public artwork or decorative fountain.
 - k. At any location where the placement of a modular newsrack is likely to cause drivers to stop or park in an unsafe, obstructive position.
 - l. Where it will interfere with or impede the flow of pedestrian or vehicle traffic, ingress into or egress from a place of business or any legally parked or stopped vehicle.
 - m. In any manner which the location of the newsrack interferes with the ordinary use of public property.
 - n. Within ten (10) feet of a pedestrian entrance or vehicular driveway of a single family house, public or private school or a house of worship.
 - o. On any sidewalk or pedestrian path, where such placement will result in less than five (5) feet of clear area for pedestrian usage.
 - p. Within five (5) feet of a pedestrian crossing traffic signal control button.
 - r. When placed next to other newsracks, no group of modular newsracks shall extend for a distance of more than eighteen (18) feet in width unless a space of not less than three (3) feet separates each group of modular newsracks.
 - s. In any manner which endangers the safety of persons or property.
5. A newsrack or modular newsrack placed adjacent to the wall of a building shall be placed parallel to such wall.
 6. No singular newsrack or modular newsrack shall be placed so as to impede or interfere with the reasonable use of a window for display purposes.
 7. Placement of a singular newsrack or modular newsrack shall comply with all federal, state or local handicapped disability regulations.
 8. Singular newsracks may be chained one to the other. However, if necessary to remove a newsrack which violates any provision of this division, such chain may be removed by the city; and the destruction thereof shall be without recourse against the city. The distributor will be given advance notice in accordance with section 34-892.
 9. Each modular newsrack shall be located level and placed on a concrete base set in the ground, and shall be constructed, installed and maintained in a safe and secure condition. When located in compliance with the requirements of this division, a newsrack or modular newsrack may be placed on an existing concrete sidewalk or asphalt surface.

Sec. 34-892. Violations of this division.

- A. Any newsrack or modular newsrack installed, used or maintained in violation of the provisions of this division may be removed and stored by the building official or disposed of as provided for hereafter. Upon determining that a violation of this division has occurred, the distributor shall be notified by telephone, and in writing, that a violation has been observed; and the distributor shall be given an opportunity to correct same. The notice shall specify the offending condition, the action necessary to correct the violation within ten (10) business days. The distributor may request an informal hearing, in writing, pertaining to the violation, within the same ten (10) business day period of time; and such written request shall stay the time given to cure the violation. In the event the violation is not cured within the time given, the building official may remove the newsrack or modular newsrack and shall advise the distributor, in writing, of its removal. The distributor may reclaim it upon payment of the expenses of removal, the costs of storage, and payment of all related administrative expenses. If a distributor fails to claim a newsrack or modular newsrack within thirty (30) days after written notice from the City to reclaim it, it shall be deemed abandoned property and may be disposed of by city in the same manner as other abandoned or unclaimed property.
- B. Where the installation, use, or maintenance of a newsrack or modular newsrack poses an imminent or immediate danger to pedestrians or vehicles, creates a health or safety hazard for pedestrians or vehicles, or otherwise unreasonably interferes with the safe use of any public rights-of-way or other public property, the building official may summarily cause the newsrack or modular newsrack to be removed. After removal, the distributor shall be notified, in writing, of removal and shall be afforded an opportunity to reclaim the newsrack or modular newsrack upon the payment of the expenses of removal, costs of storage and payment of all related administrative expenses. If the owner fails to reclaim the newsrack or modular newsrack within thirty (30) days after written notice of removal, it shall be deemed abandoned property and may be disposed of by the city in the same manner as other abandoned or unclaimed property.
- C. Under emergency weather conditions where a newsrack may become dangerous to persons or properties, the building official may require that newsracks shall be removed by the distributor. In such event, the building official shall give notice, by telephone, to the distributor and shall specify the warning time provided for removal. Any newsrack that is not removed, pursuant to notice from the building official, may be removed by the city. In such event, the distributor may reclaim the newsrack(s) upon paying the expenses incurred by the city for removal, the costs of storage and payment of all related administrative expenses. Should the distributor fail to reclaim any newsrack(s) within thirty (30) days after written notice from the city to reclaim it, it shall be deemed to be abandoned property and may be disposed of by the city in the same manner as other abandoned or unclaimed property.
- D. The city shall have no liability for damages to any newsrack or modular newsrack removed by the city pursuant to this division for damages to the newsrack arising out of or

associated with its removal, to include claims for damage to the newsrack or modular newsrack, or loss of revenue. The city shall have no obligation to remove the coin and change box from any news rack or modular news rack in its possession, and the owner shall be solely responsible for any loss of funds contained in the coin/change box.

Section 3. SEVERABILITY: If any section, paragraph, provision or term of this Ordinance, or any portion thereof, shall be determined by a Court of competent jurisdiction to be invalid, such decision shall not otherwise affect the validity of the remaining portions of this Ordinance that were not declared to be invalid.

Section 4. REPEAL OF ORDINANCES: Any Ordinance in conflict herewith, to the extent of such conflict, is hereby repealed.

Section 5. EFFECTIVE DATE: This Ordinance shall become effective immediately upon adoption, on the adoption date; and all pre-existing news-stands, newsracks, and modular newsracks shall be subject to the terms of this Ordinance on October 1, 2006. Permit applications will be accepted beginning on March 17, 2006 for issuance on September 30, 2006.

PASSED AND DULY ADOPTED, with a quorum present and voting, this ____ day of _____, 2006.

First Reading: _____, 2006

Second Reading: _____, 2006

CITY OF BRADENTON BEACH, FLORIDA, BY AND THROUGH THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH

By: _____
John R. Chappie, Mayor

ATTEST: Nora Idso, City Clerk

By: _____ City Clerk