

ORDINANCE NO. 2022-08

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL AMENDING THE CODE OF ORDINANCES BY REPEALING CHAPTER 35 TITLED "NEWSRACKS" IN ITS ENTIRETY, AND AMENDING AND RENUMBERING IT AS CHAPTER 12 TITLED "NEWSRACKS," AS CONTAINED HEREIN, TO SIMPLIFY THE CODE, REMOVE UNECESSARY AND OBSOLETE PROVISIONS, AND ESTABLISH CONTENT-NEUTRAL, REASONABLE, TIME, PLACE, AND MANNER RESTRICTIONS FOR THE PLACEMENT AND APPEARANCE OF NEWSRACKS WITHIN WELLINGTON THAT PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE BY ENSURING SAFETY DURING HURRICANE CONDITIONS AND PRESERVE THE AESTHETIC APPEARANCE OF WELLINGTON; PROVIDING A REPEALER CLAUSE; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Wellington Council, as the governing body, pursuant to the authority vested in it by Chapter 166, Florida Statutes, and Article VIII, Section 2 of the Florida Constitution, is authorized and empowered to adopt legislation to govern the affairs of its citizens; and

WHEREAS, Wellington adopted its first Code of Ordinances in 1997, shortly after incorporation, and since that time has adopted revisions as necessary to protect the health, safety and welfare of its citizens; and

WHEREAS, Wellington believes that it is in the best interest of the community to make additional modifications to the Code of Ordinances to remove outdated and unnecessary provisions and to simplify the provisions set forth therein.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF WELLINGTON,
FLORIDA, THAT:**

SECTION 1: Chapter 35 of Wellington’s Code of Ordinances is hereby repealed in its entirety, and is amended and renumbered as Chapter 12, titled “Newsracks,” and is hereby adopted as specifically provided in Exhibit A attached to this Ordinance.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: Should any section, paragraph, sentence, clause, or phrase of this Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington Ordinance, Resolution, or Municipal Code provision, then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 4: Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion or part thereof, other than the part so declared to be invalid.

SECTION 5: This Ordinance shall become effective immediately upon adoption of the Wellington Council following second reading.

PASSED this _____ day of _____, 2022 upon first reading.

PASSED AND ADOPTED this _____ day of _____, 20__ on second and final reading.

WELLINGTON

	FOR	AGAINST
BY: _____ Anne Gerwig, Mayor	_____	_____
_____	_____	_____
John McGovern, Vice Mayor	_____	_____
_____	_____	_____
Michael Drahos, Councilman	_____	_____
_____	_____	_____
Michael Napoleone, Councilman	_____	_____
_____	_____	_____
Tanya Siskind, Councilwoman	_____	_____

ATTEST:

BY: _____
Chevelle D. Addie Village Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Laurie S. Cohen, Village Attorney

EXHIBIT A

~~Chapter 35—NEWSRACKS~~

~~Sec. 35-1.— Purpose and scope.~~

~~The purpose of this article is to promote the public health, safety, welfare, and aesthetics of the village through the regulation of the placement, type, appearance, servicing, and insuring of newsracks on public and private property.~~

~~(Ord. No. 98-20, § 1, 2-9-99)~~

~~Sec. 35-2.— Definitions.~~

~~The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section:~~

~~*Abandoned pocket or newsrack* means any pocket in a modular newsrack or any stand-alone newsrack that does not contain the most current publication specified therefor for more than four consecutive days for a daily publication, eight consecutive days for a weekly publication, 16 consecutive days for a biweekly publication, and 32 consecutive days for a monthly publication.~~

~~*Advertising circular* means any publication that only contains advertising and no news reports.~~

~~*Modular newsrack* means a connected grouping of no less than two 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 and owned by the Village of Wellington.~~

~~*Modular newsrack pocket* means a single opening in a modular newsrack.~~

~~*Newspaper* means any publication that contains news reporting.~~

~~*Newsrack* means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display, sale, or distribution of newspapers.~~

~~*Newsrack enclosure* means any enclosure constructed to screen newsracks and modular newsracks from view, including walls, fences, hedges, or other screens.~~

~~*Private newsrack site* means any location within the Village of Wellington not on public property on which two or more newsracks or one modular newsrack is located.~~

~~*Public newsrack site* means a location approved by the Village of Wellington on public property where newsracks and modular newsracks may be located.~~

~~*Responsible person* means the person designated by the publisher of the newspaper or advertising circular as the person responsible for receiving notices of violation from the village. Where no such person is designated, the publisher shall be considered the responsible person.~~

~~(Ord. No. 98-20, § 2, 2-9-99)~~

~~Sec. 35-3.— Public property.~~

~~(a) *Location and placement of newsracks and modular newsracks on public property.* Newsracks or modular newsracks may be installed on public property only in the areas designated as approved public newsrack sites listed below, and in such additional sites as may be designated pursuant to the provisions of this chapter:~~

~~Site 1—South Shore Boulevard, east of Forest Hill Boulevard~~

~~Site 2—Forest Hill Boulevard, west of Highway 441~~

~~Site 3—Wellington Trace, in front of the water plant~~

~~Site 4—South Shore Boulevard, south of Greenview Shores Boulevard~~

~~Site 5—Big Blue Trace, north of Paddock Drive~~

~~Site 6—Fairlane Farms Road, south of Forest Hill Boulevard~~

~~Site 7—Lake Worth Road and South Shore Boulevard~~

~~A map of approved newsrack sites shall be maintained in the office of the village clerk.~~

~~(b)—Additional locations for newsracks or modular newsracks on public property may be approved by the village. Requests for additional sites not initiated by village staff shall demonstrate that there is a significant changed condition that necessitates the village to consider permitting additional newsrack sites. Such changed conditions may include, but not be limited to, annexation of additional land area, opening of a new public right-of-way, or development of previously undeveloped property. Additional public newsrack sites may be designated if the proposed site meets the following criteria:~~

~~(1)—Does not result in any sidewalk with less than five feet of clear area;~~

~~(2)—Does not project onto, into, or over any part of the vehicular travel way;~~

~~(3)—Is not within ten feet of any pedestrian crossing;~~

~~(4)—Is not within ten feet of any fire hydrant;~~

~~(5)—Is not within ten feet of a driveway or within any safe sight distance or triangle;~~

~~(6)—Is not within 250 feet of an intersection;~~

~~(7)—Is not within 100 feet of any property designated for residential, school, or house of worship purposes;~~

~~(8)—Is not at any location that the village determines that such placement is likely to cause unsafe parking or traffic circulation patterns;~~

~~(9)—Is not within 1,250 feet of any other approved newsrack site.~~

~~(Ord. No. 98-20, § 3, 2-9-99)~~

~~Sec. 35-4.—Use of modular newsracks and newsrack enclosures.~~

~~(a)—At newsrack sites where modular newsracks are provided, advertising circulars shall be required to utilize these facilities subject to the following:~~

~~(1)—The village shall assign advertising circular pockets based on demonstration of need.~~

~~(2)—Pockets shall be assigned by lottery conducted no less frequently than once per year or as space becomes available in the modular newsrack.~~

~~(3)—Pockets that are abandoned shall be offered through a lottery system, as they become available.~~

~~(b)—At newsrack sites where newsrack enclosures are provided, all newsracks and modular newsracks shall be required to utilize these facilities subject to the following:~~

~~(1)—Newsracks and modular newsracks shall not be located outside the newsrack enclosure.~~

~~(2)—Newsracks and modular newsracks shall not block access aisles.~~

~~(Ord. No. 98-20, § 4, 2-9-99)~~

~~Sec. 35-5. Standards for maintenance, appearance, and installation.~~

- ~~(a) Newsracks shall not exceed 48 inches in height.~~
- ~~(b) Newsracks shall be designed and installed to withstand a 110-mile-per-hour wind load or in the alternative, publishers shall post with the village a surety bond in a form acceptable to the village in the amount of \$500.00 per publication to ensure removal of such newsracks when determined necessary by the village.~~
- ~~(c) Each newsrack and modular newsrack shall be maintained in a neat, clean condition and in good repair. This shall include but not be limited to:
 - ~~(1) Free of graffiti;~~
 - ~~(2) Reasonably free of dirt, grease, and rust;~~
 - ~~(3) Free of chipped, faded, cracked, or peeling paint;~~
 - ~~(4) Display windows shall be unbroken;~~
 - ~~(5) All mechanical mechanisms shall be maintained in sound working order.~~~~
- ~~(d) The exterior of newsracks and modular newsracks shall be maintained free of advertisements except for the name of the publication.~~
- ~~(e) The name, address, and telephone number of the person responsible for receiving all notifications pertaining to the use of a newsrack site or modular newsrack shall be permanently displayed on a label on the exterior of each newsrack or modular newsrack pocket. Failure to post this information shall be deemed abandonment of the newsrack or modular newsrack pocket.~~
- ~~(f) Coin-operated newsracks and modular newsracks shall be equipped with a coin return, which shall be maintained in good working order.~~
- ~~(g) All coin-operated newsracks and modular newsracks shall also post the name, address, and telephone number of the person responsible for reimbursement in the event of failure of the coin mechanism.~~

~~(Ord. No. 98-20, § 5, 2-9-99; Ord. No. 99-16, § 1, 8-10-99)~~

~~Sec. 35-6. Permits.~~

- ~~(a) The village shall require a permit to place any newsrack or use any modular newsrack on public property.~~
- ~~(b) Owners of newsracks and modular newsracks shall be required to obtain a permit from the village within 30 days of the effective date of this chapter to install or maintain newsracks on public property within the village. Thereafter, permits will be required to be renewed on October 1 of each year.~~
- ~~(c) The village may adopt by resolution a fee for these permits.~~
- ~~(d) Newsracks or modular newsracks placed on public property without permits shall be removed by the village following proper notice to the publisher or responsible person.~~

~~(Ord. No. 98-20, § 6, 2-9-99)~~

~~Sec. 35-7. Insurance and indemnification.~~

- ~~(a) Every publisher who places a newsrack or uses a modular newsrack on public property shall provide the village with a current certificate of insurance naming the village as an additional named insured within 30 days of the effective date of this chapter or for new publishers concurrent with the issuance of the village permit. Such insurance shall be comprehensive general liability or commercial general liability coverage.~~
- ~~(b) Minimum limits of coverage shall be \$300,000.00 per occurrence combined single limit for bodily injury liability and property damage liability.~~
- ~~(c) Proof of insurance shall be required annually at the time of permit renewal.~~
- ~~(d) The village shall be notified, in writing, 30 days prior to any termination or lapse of insurance. This requirement shall be acknowledged by the insurance company on the certificate of insurance.~~
- ~~(e) Termination or lapse of insurance shall be a violation of this chapter and shall result in the removal of any affected newsracks.~~
- ~~(f) Every publisher who places a newsrack or uses a modular newsrack on public property shall agree to execute and deliver as part of the village permit a written agreement under which it agrees to indemnify, hold harmless, and defend the village, its officers, agents, and employees from any loss, liability, or damage sustained by any person as a result of the installation, use, or maintenance of a newsrack or modular newsrack within the village.~~

~~(Ord. No. 98-20, § 7, 2-9-99)~~

~~Sec. 35-8. Newsracks and modular news racks on private property.~~

~~Newsracks and modular newsracks located on private property shall conform to the following criteria:~~

- ~~(1) Newsracks and modular newsracks shall only be allowed on properties designated for commercial, industrial, or multiple family uses.~~
- ~~(2) Newsracks and modular newsracks shall not be located along or adjacent to any entrance or exit drive within 100 feet of a public right-of-way.~~
- ~~(3) Newsracks and modular newsracks shall be not be located within any required landscape buffer strip or required parking stall.~~
- ~~(4) Newsracks and modular newsracks shall be screened from view from adjacent properties and rights-of-way by a visual barrier such as a building, wall, fence, hedge, berm, or some combination thereof.~~
- ~~(5) Newsracks and modular newsracks shall be located in a manner so that safe sight distances are maintained and traffic circulation is not unduly impacted.~~
- ~~(6) Private newsracks sites shall be maintained in a neat and orderly manner free of debris, inoperable, or abandoned newsracks or modular newsracks.~~
- ~~(7) Newsracks and modular newsracks shall be maintained according to the standards contained in section 35-5 above (standards for maintenance, appearance, and installation).~~

~~(Ord. No. 98-20, § 8, 2-9-99)~~

~~Sec. 35-9. Enforcement.~~

~~(a) Public property.~~

- ~~(1) Upon determination by the village that a newsrack or a modular newsrack on public property has been installed or used in violation of this chapter, a written notice to correct the violation shall be issued to the responsible person.~~

~~(2) Failure to correct a violation not related to the use of a village-owned modular newsrack within seven days of the receipt of the notice shall result in the removal of the offending newsrack or modular newsrack by the village.~~

~~(3) Failure to correct a violation related to the improper use of a village-owned modular newsrack within seven days of the receipt of the notice shall result in the revocation of the permit for the offending newsrack or modular newsrack.~~

~~(4) The village shall store newsracks that are removed for a period of 30 days. Thereafter, the village may dispose of the newsrack. The village may adopt by resolution a fee for the removal and storage of newsracks.~~

~~(b) Private property.~~

~~(1) Upon determination by the village that a newsrack or a modular newsrack on private property has been installed or used in violation of this chapter a written notice to correct the violation shall be issued to the responsible person and to the property owner.~~

~~(2) Failure to correct a violation within the time specified in the notice shall result in enforcement proceedings pursuant to section 2-196.~~

~~(Ord. No. 98-20, § 9, 2-9-99)~~

~~Sec. 35-10. – Appeal of permit revocation.~~

~~(a) Any person aggrieved by the revocation of a permit under the provisions of this chapter may file an appeal with the village.~~

~~(b) A hearing before the code enforcement board shall be scheduled no later than 60 days following receipt of the written appeal, unless the parties mutually agree to an extension of this time period. Appellants shall be given seven days written notice of the time and place of the hearing.~~

~~(c) The code enforcement board shall give the appellants and other interested parties a reasonable opportunity to be heard. At the conclusion of the hearing, the code enforcement board shall render its determination. The determination shall be issued in written form with a copy sent to appellants.~~

~~(Ord. No. 98-20, § 10, 2-9-99)~~

Chapter 12 - NEWSRACKS

Sec. 12-1. – Purpose, Findings, and Scope.

(a) Purpose. The purpose of this chapter is to establish content-neutral, reasonable time, place, and manner restrictions to regulate the placement and appearance of newsracks on both public and private property in order to further Wellington's objectives of promoting the public health, safety, and welfare, to ensure safety during hurricane conditions, and to preserve the aesthetic appearance of Wellington.

(b) Findings. Wellington finds that the unregulated placement and maintenance of newsracks in Wellington roadways and rights-of-way create a danger to the safety and welfare of persons using such roadways and rights-of-way, including pedestrians, persons entering or exiting vehicles and buildings, and persons performing essential utility, traffic control, and emergency services. Wellington further finds that newsracks located so as to cause a danger to persons using Wellington roadways and rights-of-way, and unsightly newsracks located therein, such as newsracks that are poorly maintained or that have been defaced with graffiti, constitute a public nuisance. Further, the Florida Constitution,

Wellington's Charter, its Comprehensive Plan and its various code provisions require Wellington to maintain the character and aesthetics of the community through its codes, and Wellington finds that reasonable regulations governing the placement and appearance of such newsracks are necessary to promote the public health, safety, and welfare of persons using Wellington roadways and rights-of-way, and to protect the aesthetic appearance of the community.

(c) Scope. The provisions of this chapter shall govern newsracks on both public rights-of-way and private property within Wellington.

Sec. 12-2. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Abandoned Newsrack means any newsrack that is severely damaged, does not display the required owner contact information, or has been empty for 30 days or more.

Newsrack means any self-servicing or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display, sale, or distribution of newspapers, periodicals, magazines, or other publications.

Private Newsrack site means any location within Wellington not on public property on which one or more newsrack(s) is located.

Public Newsrack Site means a location approved by Wellington on public property where newsracks may be located, either within a street right-of-way or on other Wellington property.

Public Property means any real property owned by Wellington.

Responsible Person means the person designated by the publisher of the newspaper, periodical, magazine or other publication as the person responsible for receiving notices of violation from Wellington. Where no such person is designated, the publisher shall be considered the responsible person. Rights-of-way means lands dedicated or deeded to Wellington or Acme Improvement District for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other public purposes.

Roadway means that portion of a street improved, designed, or ordinarily used for vehicular travel.

Sec. 12-3. - Public Property.

Location and Placement of Newsracks on Public Roadways. Newsracks may be installed on public roadways and rights-of-way only in the areas designated as approved public newsrack sites listed below, and on such additional public properties as may be designated pursuant to the provisions of this chapter:

Site 1—Wellington Trace, in front of the water plant

Site 2—Big Blue Trace, north of Paddock Drive

Site 3—West side of Stribling Road, south of Forest Hill Boulevard

Additional newsrack sites may be established by approval of the Wellington Council. Requests for additional sites must demonstrate that there is a public benefit to be realized that cannot be met by existing newsrack locations on public or private properties and that the proposed location can be installed and operated without projecting into the roadway travel surfaces or interfering with the safe use of roadway intersections, rights-of-way, sidewalks, driveways, parking lots, or fire hydrants. A map of approved newsrack sites shall be maintained in the office of the Village Clerk.

Sec. -12-4. - Standards for Maintenance, Appearance, and Installation.

(a) Newsracks shall not exceed 48 inches in height.

- (b) Newsracks shall be designed and installed to withstand a 110-mile per hour wind load or in the alternative, publishers shall post with Wellington a surety bond in a form acceptable to Wellington in the amount of \$500.00 per publication to ensure removal of such newsracks when determined necessary by Wellington.
- (c) Each newsrack shall be maintained in a neat, clean condition and in good repair. This shall include but not be limited to:
 - (1) Free of graffiti;
 - (2) Reasonably free of dirt, grease, and rust;
 - (3) Free of chipped, faded, cracked, or peeling paint;
 - (4) Display windows shall be unbroken; and
 - (5) All mechanical mechanisms shall be maintained in sound working order.
- (d) The exterior of newsracks shall be maintained free of advertisements except for the name of the publication.
- (e) The name, address, and telephone number of the person responsible for receiving all notifications pertaining to the use of a newsrack site shall be permanently displayed on a label on the exterior of each newsrack. Failure to post this information shall be deemed abandonment of the newsrack.
- (f) Coin-operated newsracks shall be equipped with a coin return, which shall be maintained in good working order.
- (g) All coin-operated newsracks shall also post the name, address, and telephone number of the person responsible for reimbursement in the event of failure of the coin mechanism.

Sec. 12-5. – Newsrack Location Approval on Public Property.

- (a) The placement of additional newsracks on public roadways, rights-of-way, and all other public property requires Wellington Council approval.
- (b) Newsracks placed on public roadways, rights-of-way, and all other public property without Wellington Council approval will be removed by Wellington following reasonable notice to the publisher or responsible person.

Sec.-12-6. - Indemnification.

Every publisher who places a newsrack on public property shall execute an indemnification in a form approved by the village Attorney, holding Wellington, its officers, employees and agents harmless and indemnifying them from any claim, demand or judgment in favor of any person or entity arising out of or resulting from the placement of their newsrack(s) in or over a public roadway, right-of-way or other public property..

Sec. 12-7. - Newsracks and on private property.

Newsracks located on private property shall conform to the following criteria:

- (1) Newsracks may be allowed on properties designated for commercial, flex, or multiple family land uses.
- (2) Newsracks shall not be located along or adjacent to any entrance or exit drive within 100 feet of a public right-of-way.
- (3) Newsracks shall be not be located within any required landscape buffer strip or required parking stall.
- (4) Newsracks shall be screened from view from adjacent properties and rights-of-way by a visual barrier such as a building, wall, fence, hedge, berm, or some combination thereof.

- (5) Newsracks shall be located in a manner so that safe-sight distances are maintained and traffic circulation is not unduly impacted.
- (6) Private newsrack sites shall be maintained in a neat and orderly manner free of debris, inoperable, or abandoned newsracks.
- (7) Newsracks shall be maintained according to the standards contained in this chapter (standards for maintenance, appearance, and installation).

Sec. 12-8. - Enforcement.

(a) *Public Property.*

- (1) Upon determination by a code compliance officer that a newsrack on public property has been installed or used in violation of this chapter, a written notice to correct the violation shall be issued to the responsible person.
- (2) Failure to correct such violation within the time specified shall constitute a violation and shall be enforced as provided in Chapter 2, Article IV of this Code.
- (3) Wellington may remove newsracks on public roadways, rights-of-way, and all other public property that violate the provisions of this chapter.
- (4) Wellington shall store newsracks that are removed by Wellington for a period of 30 days. Thereafter, Wellington may dispose of the newsrack. Wellington may adopt by resolution a fee for the removal and storage of newsracks.

(b) *Private property.*

- (1) Upon determination by a code compliance officer that a newsrack on private property has been installed or used in violation of this chapter a written notice to correct the violation shall be issued to the responsible person and to the property owner.
- (2) Failure to correct such violation within the time specified shall constitute a violation and shall be enforced as provided in Chapter 2, Article IV of this Code. .
- (c) No person, other than the publisher or responsible party, shall tamper with or remove any newsrack from public or private property, or remove any identifying label from any newsrack.