

SPONSORED BY TRUSTEE

TRUSTEE'S BILL

ORDINANCE NO.

NO. 02-04
Series of 2002

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TITLE: A BILL FOR AN ORDINANCE AMENDING CHAPTER 11 OF THE HUDSON MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE 6, ENTITLED "PLACEMENT OF NEWSRACKS."

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. The Hudson Municipal Code is amended by the addition thereto of a new Article 6 of Chapter 11 to read as follows:

Article 6

PLACEMENT OF NEWSRACKS

Sec. 11-90. Definitions.

For purposes of this Article 6 of Chapter 11, the following words shall have the following meanings:

- (1) *Distributor* means the person responsible for placing and maintaining a newsrack in a public right-of-way.
- (2) *Newsrack* means any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals.
- (3) *Parkway* means that area between the sidewalks and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway and property line adjacent thereto. Parkway shall also include any area within a roadway which is not open to vehicular travel.
- (4) *Roadway* means that portion of a street improved, designed or ordinarily used for vehicular travel.
- (5) *Sidewalk* means any surface provided for the exclusive use of pedestrians.

Sec. 11-91. Permit Required.

(1) 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 Town owned or operated place or facility in the Town, any newsrack without first having obtained a permit from the Town specifying the exact location of such rack(s).

(2) One permit may be issued to include any number of newsracks.

Sec. 11-92. Application for Permit.

(1) Application for a newsrack permit shall be made, in writing, to the Town upon such form as shall be provided by the Town.

(2) The application shall contain the name and address of the applicant and the proposed specific location of said newsrack, and shall be signed by the applicant.

(3) Permits shall be issued within seventy-two (72) hours after the application has been filed.

(4) An annual permit fee of twenty-five dollars (\$25.00) per newsrack shall be paid at the time of application.

Sec. 11-93. Conditions for Permit.

(1) As an express condition of the issuance of such permit, the permittee thereby agrees to indemnify and save harmless the Town, its officers, directors and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use or maintenance of a newsrack within the Town.

(2) Permits shall be issued for the installation of a newsrack only after prior inspection of the location by the Town Administrator, or his designee.

(3) Newsrack permits and the installation, use or maintenance of newsracks shall be conditioned upon observance of the provisions of this Article and such reasonable rules and regulations as may be established by the Town.

(4) Such permits shall be valid for one year and shall be renewable pursuant to the procedure for original applications referred to in section 16-92 and upon payment of the twenty-five dollar (\$25.00) annual permit fee.

(d) It is free of rust and corrosion in the visible unpainted metal areas thereon.

(e) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and free of cracks, dents, blemishes and discoloration.

(f) The paper or cardboard parts, or inserts thereof, are free of tears, peeling or fading.

(g) The structural parts thereof are not broken or unduly misshapen.

(h) The plastic parts of any structural portion are unbroken and free of cracks, dents, blemishes and discoloration.

Sec. 11-95. Location and Placement of Newsracks.

Any newsrack which rests in whole or in part upon or on any portion of a public right-of-way, or which projects onto, into or over any part of a public right-of-way, shall comply with this section:

(1) No newsrack shall be used or maintained which projects onto, into or over any part of the roadway of any public street.

(2) No newsrack shall be chained, bolted or otherwise attached to any municipally owned fixture, including, but not limited to: street signs; traffic control devices; and fire hydrants. For purposes of this paragraph, the phrase "municipally owned fixture" does not include concrete or asphalt sidewalks located in the public right-of-way.

(3) Newsracks may be chained, bolted or otherwise attached to other newsracks or privately owned fixture if: such placement otherwise complies with this Article; and permission for such connection has been secured from the owner of the other newsrack or fixture.

(4) Newsracks may be placed adjacent 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 distance of not less than one hundred (100) feet shall separate each group of newsracks.

(5) Newsracks shall be placed and installed in such a manner so as to prevent their movement caused by high winds or other foreseeable conditions.

(6) No newsrack shall be placed, installed, used or maintained:

(a) Within three (3) feet of any marked crosswalk or curb cut for a crosswalk.

Sec. 11-94. Standards for Maintenance and Installation.

Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway shall comply with the following standards:

(1) No newsrack shall exceed four (4) feet in height, thirty-two (32) inches in width, or two (2) feet in depth.

(2) Newsracks may be used only for the following purposes:

- (a) The display and sale of newspapers or other news periodicals;
- (b) Advertising the sale of the newspapers or periodicals sold therein;
- (c) Publicizing charitable or community services and activities of a nonprofit nature; and
- (d) Other public service purposes.

(3) Newsracks shall not be used to advertise or direct attention to any business, commodity, service or activity, conducted, sold or offered other than from such newsrack.

(4) 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 he is unable to receive the publication paid for. The coin return mechanism shall be maintained in good working order at all times.

(5) Each newsrack shall have affixed to it, in a readily visibly place so as to be seen by anyone using the newsrack, a notice setting forth the name, address and telephone number of the distributor.

(6) Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, each newsrack shall be serviced and maintained so that:

- (a) It is free of dirt and grease.
- (b) It is free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
- (c) It is painted one solid color.

(b) Within twelve (12) feet of any curb return.

(c) Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility.

(d) Within five (5) feet of any driveway.

(e) At any location where the clear space for the passageway of pedestrians would be reduced to less than six (6) feet, unless such passageway is already restricted by the placement of a permanent utility pole or other similar permanent fixture, and the attachment of the newsrack to that fixture or placement of the newsrack adjacent to that fixture will not substantially reduce the remaining clear space available for pedestrian passage.

(f) Within three (3) feet of or on any public area improved with flowers, shrubs, trees or other landscaping.

(g) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block which contains the same issue or edition of the same publication.

(h) Within three (3) feet of any designated no parking or restricted parking area.

(i) At any location wherein it is determined by the Town Administrator that its placement causes a traffic hazard including, but not limited to, impairment of a driver's vision triangle caused by its placement.

(7) The provisions contained in subsection (5) of this section shall not apply if compliance with said provisions would prohibit the placement of newsracks for a distance of one hundred fifty (150) feet on the same side of the street in the same block; provided, however, that in no event shall a newsrack be allowed which would substantially interfere with or impede the flow of: pedestrian or vehicular traffic flow; the ingress or egress to any residence or place of business; or the use of emergency facilities.

Sec. 11-96. Violations of Article.

(1) Upon a determination by the Town Administrator or his designee that a newsrack has been installed, used or maintained in violation of the provisions of this Article, a notice to correct the offending condition shall be issued to the distributor of the newsrack.

(2) The notice shall be mailed via first class United States Mail to the distributor at the address shown on the newsrack.

(3) The notice shall specifically describe the offending condition and suggest actions necessary to correct the condition.

(4) Failure to properly correct the offending condition within seven (7) days (excluding Saturdays, Sundays and legal holidays) of the date of the notice shall result in the offending newsrack being summarily removed and processed as unclaimed property.

(5) If the offending newsrack is not properly identified as to owner under provisions of section 11-94(5) hereof, it shall be removed immediately and processed as unclaimed property.

(6) The distributor may, by written notice within seven (7) days of the date of the notice of violation, request an informal meeting with the Town Administrator or his designee. Said meeting shall be held within five (5) working days from the date of the request. The appeal time referred to in section 11-97 herein shall commence and begin to run as of the date of the meeting.

Sec. 11-97. Appeals.

(1) Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this Article may appeal to the Board of Trustees.

(2) An appeal must be perfected within seven (7) days after receipt of notice of any protested decision or action.

(3) An appeal is perfected by filing with the Town Clerk a letter of appeal briefly stating therein the basis for such appeal.

(4) A hearing shall be held on a date no more than sixty (60) days after receipt of the letter of appeal.

(5) Appellant shall be given at least ten (10) days' notice of the time and place of the hearing.

(6) At such hearing, the Board of Trustees shall give the appellant and any other interested party a reasonable opportunity to be heard. The appellant shall have the right to examine the evidence upon which the Town Administrator or his designee relied, to cross-examine any witnesses who may have testified, and to offer any evidence which may tend to show that the subject newsrack does not violate any provision of this Article.

(7) At the hearing, the burden of proof shall be upon the appellant to show that there was no evidence to support the action taken by the Town Administrator or his designee.

(8) At the conclusion of the hearing, the Board of Trustees shall make a final determination.

(9) The perfection of any appeal to the Board of Trustees shall stay the removal of any newsrack until the Board of Trustees makes its final determination, unless the newsrack presents a clear and present danger of imminent personal injury or property damage.

Sec. 11-98. Emergency.

Nothing contained in this Article shall be interpreted to limit or impair the exercise by the Town of its police power, in the event of an emergency, to remove any such newsrack.

Sec. 11-99. Revocation.

(1) In addition to the enforcement procedures provided in section 11-96 of this Article, upon the second violation of any provision of this Article within a period of one (1) year, the Town Administrator or his designee shall revoke the permit for placement of newsracks and the distributor shall forthwith remove all newsracks covered by said permit.

(2) "Violation," as contained herein, means any violation of which the distributor has been notified pursuant to section 11-96 and which was not corrected within the times provided therein, the determination of which has not been withdrawn by the Town Administrator or his designee after the informal meeting established by section 11-96, or which has not been overturned by the Board of Trustees or any reviewing court.

Sec. 11-100. Abandonment.

If a newsrack remains empty for a period of thirty (30) continuous days, the newsrack shall be deemed abandoned, and shall be treated in the manner as provided in section 11-96 for newsracks in violation of the provisions of this Article.

Sec. 11-101. Compliance.

All newsracks resting in whole or in part upon or on any portion of a public right-of-way or which project onto, into or over any part of a public right-of-way, shall be brought into compliance with the terms of this Article no later than thirty (30) days after the effective date of this ordinance. Any newsrack not found to be in compliance with the requirements of this Article as of such date shall be subject to Section 11-96, entitled "Violations of Chapter."

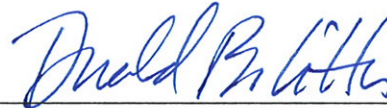
Section 2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this 27th day of February, 2002.


TOWN OF HUDSON, COLORADO



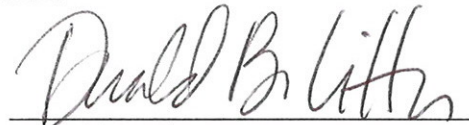
Donald B. Litton, Mayor



ATTEST:


Judy Larson, Town Clerk

PASSED ON SECOND AND FINAL READING this 13th day of March, 2002, AND ORDERED PUBLISHED ONCE IN FULL.



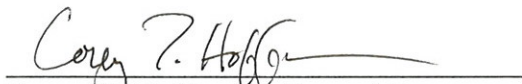
Donald B. Litton, Mayor



ATTEST:


Judy Larson, Town Clerk

APPROVED AS TO FORM:


Corey P. Hoffmann, Town Attorney