

## ORDINANCE NO. 2019-27

### ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY SUPPLEMENTING THE REVISED GENERAL ORDINANCES OF THE BOROUGH TO INSERT NEW CHAPTER 446: "NEWSRACKS" TO REGULATE THE PURPOSE AND PLACEMENT OF EXISTING AND FUTURE NEWSRACKS IN, NEAR, AND UPON PUBLIC STREETS, SIDEWALKS, AND OUTDOOR SPACES

**BE IT ORDAINED** by the Governing Body of the Borough of Red Bank that the Borough's Revised General Ordinances are hereby amended to insert new Chapter 446: "Newsracks" as follows:

#### **CHAPTER 446: NEWSRACKS.**

##### **§ 446-1 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

##### **DISTRIBUTOR**

Any person, organization, firm, or entity responsible for placing, locating, installing or maintaining a newsrack in a public place in the Borough of Red Bank.

##### **DRIVEWAY**

That surface, whether or not improved, over and by which ingress and egress are made into private or public property by vehicles.

##### **NEWSPAPER**

Any newspaper, periodical or magazine of general circulation; any newspaper, periodical or magazine duly entered with the Post Office Department of the United States in accordance with federal statute or regulation; and any newspaper, periodical or magazine filed and recorded with any recording office as required by general law.

##### **NEWSRACK**

Any machine, vending machine, rack, self-service or coin-operated box, container, storage unit or other dispenser used and maintained for the sale and distribution of newspapers, news periodicals, news magazines and any other similar publications.

##### **ROADWAY**

That portion of any street improved, designed or ordinarily used for vehicular traffic.

##### **SIDEWALK**

Any surface provided for the exclusive use of pedestrians, including the area between the curb of any street and the property line adjacent thereto, or if there is no curb, the area between the edge of the street and the property line adjacent thereto, and the sidewalk shall include the public right-of-way along such street or sidewalk.

##### **STREET**

All that area dedicated to public use for public street purposes and includes, but is not limited to, roadways, parkways, alleys and sidewalks.

##### **§ 446-2 Notification by Distributors.**

- A. Any distributor having a newsrack which is already located or installed on any public sidewalk or public right-of way within the Borough of Red Bank on the effective date of this chapter shall, within 60 days of the effective date of this

chapter, notify the Zoning Official, in writing, of the location and placement of each such newsrack. Such notice shall include:

- (1) The precise location of each such newsrack;
- (2) The name, address and telephone number of the distributor; and
- (3) A certification by the distributor that the location, installation and maintenance of such newsrack conforms to, and will continue to conform to, the Borough Code of the Borough of Red Bank, and that said distributor assumes the unconditional obligations for any legal liability occasioned by such installation and maintenance, and that said distributor agrees to indemnify and hold harmless the Borough of Red Bank, its servants, agents and employees, for any and all claims arising out of said distributor's installation, use or maintenance of such newsrack.

B. Any distributor having a newsrack which is already located or installed on any public sidewalk or public right-of way within the Borough of Red Bank on the effective date of this chapter shall, within 60 days of the effective date of this chapter, apply to obtain a permit in accordance with the requirements and deadlines as set forth in the remaining sections of this chapter for any newsrack or newsracks such distributor intends to continue operating.

**§ 446-3      Compliance and permit required.**

A. It shall be unlawful for any person, firm, corporation or distributor to erect, place, maintain or operate a newsrack on any public right-of-way within the Borough of Red Bank without first having obtained a permit from the Zoning Official. The permit shall specify the exact location of each such newsrack. One permit may be issued to include any number of newsracks and shall be signed by the applicant.

B. An application for such permit shall be made in writing to the office of the Zoning Official of the Borough of Red Bank upon such form, as shall be provided, and shall contain the name and address of the applicant and the proposed specific location of said newsrack or newsracks and shall be signed by the applicant. The application must contain a certification by the distributor that said distributor assumes the unconditional obligations for any legal liability occasioned by such installation and maintenance, and that said distributor agrees to indemnify and hold harmless the Borough of Red Bank, its servants, agents and employees, for any and all claims arising out of said distributor's installation, use or maintenance of such newsrack. The application must also be accompanied by a color sketch or color drawing to scale, and specifications of the proposed newsrack depicting compliance with the requirements for dimensions, color and lettering, and the application shall be signed by the applicant.

C. If the applicant meets all the requirements of the provisions of this section, the permit shall be issued within 60 business days for an effective date of January 1.

D. If the application is denied, the Zoning Official, within 30 business days and by regular mail, shall set forth in writing the reasons for the denial. For each requested location, the Zoning Official shall have an additional seven business days to act.

- E. Such denial by the Zoning Official may be appealed within 30 days to the Borough Council of the Borough of Red Bank, which shall render a decision within 60 days.

**§ 446-4      Conditions for permit; term; liability insurance.**

- A. Permits may be issued for the installation of a newsrack or newsracks, but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon compliance with the provisions of this section.
- B. The application for a permit shall require the payment of an application fee of \$75 and an inspection fee of \$25 per newsrack.
- C. The permit shall be valid for a period of one year, commencing January 1, and shall be renewable in January of the subsequent year. Permits shall be renewable pursuant to the procedure for original application.

**§ 446-5      Standards for maintenance and installation.**

Any newsrack which in whole or in part rests upon or over any public sidewalk or public right-of-way shall comply with the following standards:

- A. No newsrack shall exceed 60 inches in height, 24 inches in width or 20 inches in depth.
- B. The exterior of the newsrack shall be in accordance with this chapter and only deal with the display, sale or purchase of the newspaper sold therein. No newsrack shall be used for advertising signs or publicity purposes other than those dealing with the display, sale or purchase of the newspapers sold therein.
- C. Each newsrack shall only be used to store newspapers the distributor intends on selling.
- D. 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 or she is unable to receive the newspaper paid for. The coin return mechanism shall at all times be maintained in good working order.
- E. Each newsrack shall have affixed to it, in a readily visible location, a notice setting forth the name and address of the distributor and a telephone number which persons may call to report a malfunction or to secure a refund in the event of a malfunction of the coin return mechanism or to give the notices provided for in this chapter.
- F. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. In particular, each newsrack shall be maintained so that:
  - (1) It is reasonably free of loose, chipped, peeling or cracked paint on the exterior surfaces thereof;
  - (2) It is reasonably free of rust and corrosion on the exterior surfaces thereof;
  - (3) The clear plastic or glass parts thereof, if any, are not broken or cracked so as to create danger to users thereof; and

- (4) Structural parts are not broken, cracked or otherwise in a condition which might render them dangerous to users thereof.
- G. Each newsrack shall be maintained to prevent the newspapers from being scattered about the area.
- H. Each newsrack not located on an existing sidewalk or other hard surface area shall be placed on a precast concrete base. Installation, maintenance and removal of the base shall be the responsibility of the distributor.

**§ 446-6 Location and placement of newsracks.**

Any newsrack which in whole or in part rests upon or over any public sidewalk or public right-of-way shall be located in accordance with the following requirements:

- A. No 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.
- B. No newsrack shall be permitted to rest upon, in or over any public sidewalk, when such installation, use or maintenance:
  - (1) Endangers the safety of persons or property; or
  - (2) Unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle; or
  - (3) Unreasonably interferes with the ingress to or egress from any residence or place of business; or
  - (4) Unreasonably interferes with passengers boarding or exiting from buses at designated bus stops; or
  - (5) Unreasonably interferes with the use of traffic signs or signals, fire hydrants or mailboxes located or permitted at or near said location.
- C. Newsracks shall be chained, bolted or otherwise secured so as to prevent their being blown or knocked down, or otherwise moved, onto or around the public right-of-way; provided, however, that no newsrack shall be chained, bolted or otherwise secured to any traffic or street sign, signals, or poles without obtaining the permission of the Zoning Official.
- D. Newsracks may be placed next to each other in groups at the same location, provided that no group of newsracks shall extend for a distance of more than six feet along a curb, and provided, further, that there shall be a minimum of 20 feet between any such group of newsracks and any other newsrack or group of newsracks.
- E. No newsrack shall be placed, installed, used or maintained:
  - (1) Within six feet of any marked crosswalk or handicap curb ramp;

- (2) Within 12 feet of a curb return of any unmarked crosswalk;
- (3) Within 15 feet of any fire hydrant, fire or police call box, or other emergency communication facility;
- (4) Within five feet of any driveway or apron;
- (5) At any location whereby the clear space for the passageway of or for pedestrians is reduced to less than six feet or would be reduced to six feet by newsrack;
- (6) Within 10 feet of any standby or sprinkler connection or related safety or fire equipment;
- (7) Within five feet of any building, showroom or display window, unless written permission from the owner is secured and same is submitted with the application;
- (8) Within three feet of or on any public area improved with lawn, flowers, shrubs, trees or landscaping;
- (9) Within 300 feet of any other newsrack containing the same issue or edition of the same publication;
- (10) In front of a single-family or two-family residence;
- (11) To cause sight line obstruction at any intersection or driveway; or
- (12) No more than two newsracks may be placed adjacent to each other at any location that complies with this chapter. After a newsrack, or a pair of newsracks, is permitted for a specific location, no additional newsracks shall be placed less than 200 feet from the permitted newsrack.

**§ 446-7      Enforcement.**

- A. If the Zoning Official or designee shall determine that a newsrack does not comply with the provisions of this chapter, including the requirement to provide the notification required by § 446-2 of this chapter, then the Zoning Official or designee shall mail a written notice to the distributor of such newsrack, by certified mail, return receipt requested, stating the specific reasons why such newsrack does not comply with the provisions of this chapter.
- B. If a distributor fails to adjust, correct, register or otherwise cause such newsrack to be brought into compliance with the provisions of this chapter within 10 days of the date the written notice of noncompliance is mailed by the Zoning Official or designee, then such distributor shall be deemed to be in violation of this chapter.

**§ 446-8      Violations and penalties.**

- A. Any distributor who, following written notice as set forth in § 446-7 of this chapter, fails to comply with the provisions of this chapter shall, upon conviction therefor in Municipal Court, be subject to a fine not to exceed \$1,000.00. Each day for which distributor fails to comply with the provisions of this chapter shall constitute a

separate violation hereunder.

B. If a distributor is convicted of a violation of this chapter by the Municipal Court and if such distributor thereafter refuses to remedy or correct the said violation within 20 days of the date of said conviction or, in the event of a direct appeal, within 20 days of the date upon which said conviction shall become final, then the Zoning Official or designee of the Borough of Red Bank shall be empowered to remove the newsrack which was the basis for such conviction from the public sidewalk or public right-of-way. The Borough of Red Bank will store the newsrack for a period not to exceed 30 days, during which period the owner can retrieve the newsrack. After 30 days, the Borough of Red Bank will discard the newsrack.

**§ 446-9      Severability.**

If any provision of this chapter shall be adjudged unconstitutional or invalid by a court of competent jurisdiction, then such judgment shall not affect, impair or invalidate the remaining provisions hereof, which shall continue in full force and effect.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that this Ordinance shall take effect immediately upon its passage and adoption according to law.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin		X			
Councilwoman Triggiano		X			
Councilman Ballard		X			
Councilman Yngstrom	Second	X			
Councilman Ziprich	Motion	X			
Councilwoman Horgan					X

Dated: June 19, 2019