

BOROUGH OF CLARKS SUMMIT

LACKAWANNA COUNTY, PENNSYLVANIA

NEWS RACK ORDINANCE

ORDINANCE NO. 2015-03

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF ITS RESIDENTS AND VISITORS, BY ESTABLISHING THE REGULATION OF THE PLACEMENT OF NEWS RACKS.

WHEREAS, The uncontrolled placement of news racks in and about the public rights-of-way in the Borough presents an inconvenience and danger to the safety, health and welfare of persons using such rights-of-way, including, but not limited to, pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control, and emergency services; and,

WHEREAS, News racks located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly, dirty or otherwise inadequately maintained news racks located therein, constitute public nuisances; and,

WHEREAS, The uncontrolled proliferation of news racks detracts from the appearance of streets, sidewalks, and adjacent business; and,

WHEREAS, The uncontrolled placement of news racks may unreasonably inhibit entry, passage and/or departure of vehicles, public and private; and,

WHEREAS, The uncontrolled placement of news racks may inhibit wheelchair access and/or interfere with the safe use of the public rights of way by disabled persons; and,

WHEREAS, The uncontrolled placement of news racks impairs the vision and distracts the attention of motorists and pedestrians, particularly small children, and may cause injury to the person or property of such persons; and,

WHEREAS, The placement of news racks without a permit in public rights-of-way adjacent to residential areas detracts from and reduces neighborhood aesthetics and increases the exposure of residents to noise, traffic volume and hazards and congestion; and,

WHEREAS, The uncontrolled placement of news racks increases the civil exposure of the Borough to personal injury, property damage and nuisance claims; and,

WHEREAS, Borough controlled placement and monitoring of news racks provides for and maintains the freedom of speech and press for newspapers and other publications using such dispensing devices for distribution purposes.

NOW, THEREFORE, be it ENACTED and ORDAINED by the Borough Council of the Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania and it is hereby ENACTED and ORDAINED by authority of same as follows:

SECTION 100. LEGISLATIVE INTENT.

This Ordinance is adopted based on the above findings and is intended to regulate the placement of news racks within the Borough of Clarks Summit, Lackawanna County, Pennsylvania by imposing certain appropriate time,

place and manner regulations and license fees to provide for the health, safety and welfare of Clarks Summit Borough residents and visitors.

SECTION 101. DEFINITIONS.

Whenever the following words and phrases are used in this Ordinance, they shall have the meaning ascribed to them in this section:

Distributor. The person or entity who owns or uses any news rack located in the right-of-way in the Borough or located so as to attempt to use or take advantage of the right-of-way or who places or maintains or is responsible for or directs the placing or maintenance of such a news rack.

Impound or Impounding. Either seizing, removing and storing at a designated storage facility or by placing a written notice on the news rack that the news rack is being seized and held in place.

News Rack. Any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, sale or distribution of publications.

Public Right-of-way. Land, which by deed, conveyance, agreement, dedication, usage or process of law is used or reserved for use as a public roadway in the Borough and also includes, but is not limited to, the sidewalk.

Sidewalk. The area of the public right –of-way which is designated or ordinarily used for pedestrian travel.

SECTION 102. Prohibition.

No person shall place, install, use or maintain any news rack which rests in whole or in part upon, in, or on any portion of the right-of-way in the Borough, or that projects onto, into, or over any part of the right-of-way in the Borough, or which attempts to utilize or take advantage of the right-of-way in the Borough except in compliance with the provisions of this Ordinance.

SECTION 103. STANDARDS FOR NEWS RACKS.

- A. **Size.** No news rack shall exceed fifty (50) inches in height, twenty-seven (27) inches in width, or twenty (20) inches in thickness.
- B. **Color.** News racks shall be black, brown, gray, blue or green earth tone colors.
- C. **Advertising.** No advertising signs or material, other than those dealing with the name of the publication contained within the news rack, shall be displayed on the outside of the news rack.
- D. **Coin Return.** Each news rack 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 mechanisms shall be maintained in good working order. News racks dispensing free publications are exempt from this subsection.
- E. **Identification.** Each news rack shall have affixed to it in a readily visible place so as to be seen by anyone using the news rack a notice setting forth the name and address of the distributor and the telephone number of a working telephone service to call to report a malfunction or, 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 Ordinance.

- F. Maintenance. Each news rack 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, each news rack shall be serviced and maintained so that:
1. It is reasonably free of dirt and grease;
 2. It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
 3. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereof;
 4. 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;
 5. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
 6. The structural parts thereof are not broken or unduly misshapen; and,
 7. It is free of graffiti.
- G. Existing News Racks. Provided it is not determined to be a public nuisance or dangerous to the public safety, health or general welfare, a news rack lawfully in existence as of the effective date of this Ordinance shall be allowed to remain at the same location for a period of one hundred eighty (180) days following said effective date. In order to benefit from this subsection, a distributor must report to the Code Enforcement Officer within sixty (60) days of said effective date the number and location of each news rack located within the Borough as of said effective date. Such inventory list shall be conclusive as to the location and existence of such news racks. After said one hundred eighty (180) days, news racks governed by this Ordinance shall be required to comply with the provisions of this Ordinance.

SECTION 104. LOCATION OF NEWS RACKS.

News racks shall be located only where sidewalks exist in the CC Central Commercial District and the HC Highway Commercial District in accord with the following:

- A. Sidewalk Only. News racks shall be located only in the sidewalk portion of the right of way.
- B. Traffic or Street Interference. No news rack shall be located in whole or in part in any roadway or driveway or otherwise located so as to interfere with vehicular traffic or street maintenance.
- C. Curb or Building Wall.
1. A minimum of four (4) feet of clear area shall be maintained between the news rack and the back edge of sidewalk.
 2. News racks located at the wall of a building shall be located parallel to and not more than six (6) inches from the wall thereof.
 3. News racks shall not interfere with passage for persons with disabilities and shall comply with all Americans with Disabilities Act requirements.
- D. Display Window. No news rack shall be located directly in front of any display window of any building abutting a sidewalk or parkway, without the written consent of the person or entity legally in occupancy or otherwise in control of the premises on which the display window is located. If such consent is withdrawn, any news rack placed in front of a display window shall be removed within fourteen (14) days of the date of written notice from the Code Enforcement Officer to the distributor of such news rack.
- E. Sidewalk Location. No news rack shall be located on the sidewalk directly opposite a newsstand or another news rack.

- F. Securing News Racks. News racks shall be adequately and safely secured to the sidewalk utilizing a concrete slab to which the news rack is affixed or other method as is approved by the Code Enforcement Officer beforehand. News racks shall not be chained or tied to other news racks or to any other fixed object.
- G. Multiple News Racks. In areas where there are more than one (1) news rack, it is encouraged that news racks be placed next to each other. There shall be a limit of two (2) news racks per publication at any one location.
- H. Prohibitions. No news rack shall be placed, installed, used or maintained:
1. Within one hundred (100) feet of any other cluster of news racks whether or not containing the same issue or edition of the same publication;
 2. Where placement unreasonably interferes with the use of utility poles, traffic signs or signals, mailboxes or mechanical sidewalk cleaning machinery; or
 3. Where placement blocks or unreasonably interferes with the public's access or passage to and from a crosswalk or a designated public bus stop area.
- I. Additional Standards. In order to implement the provisions of this Ordinance, the Borough Council may adopt by Resolution such additional standard plans, standard specifications, design guidelines, permit provisions and other rules as may be necessary to maintain the public's safety, health and general welfare and so as to otherwise preserve and protect the right-of-way. Work standards and practices not addressed by the foregoing shall conform to generally recognized design and construction standards and practices.

SECTION 105. ADDITIONAL NEWS RACK CONTROLS.

- A. Council Action. The Borough Council may, by resolution, identify locations within the unincorporated areas of the Borough, typically identified as a block or blocks of a particular street, requiring additional controls for news racks, beyond the requirements set forth in the preceding sections of this Ordinance, including, but not limited to, the mandated, exclusive use of fixed pedestal mounted news racks or placing restrictions on the number of news racks at any one location, based on but not limited to the following factors:
1. Pedestrian and vehicular safety;
 2. Interference with the flow of pedestrian or vehicular traffic including ingress and egress from any residence, business, public facility or legally parked or stopped vehicles;
 3. Access for the safe and efficient use and maintenance of sidewalks, poles, posts, traffic signs or ramps, hydrants, mailboxes, police or fire call boxes, sidewalk elevators, delivery areas, loading zones, transit shelters, curb ramps, parking meters, and locations used for public transportation services;
 4. Visual blight, clutter and litter problems associated with poorly maintained, improperly located or abandoned news racks;
 5. The unique aesthetic and historical attributes of the particular area;

6. Interests of Borough businesses and residents, including the interests of those involved in the publication or distribution of newspapers and other publications through news racks.

B. Process. In adopting this Ordinance, the Borough Council recognizes that regulation of news racks implicates rights protected by the First Amendment of the United States Constitution and by Article I, §2, of the Pennsylvania Constitution. To that end, the Council directs the Code Enforcement Officer to interpret and apply this section and any guidelines promulgated hereunder, and to exercise their powers and duties, in a manner consistent with those Constitutional rights.

1. As to those areas identified as requiring additional controls, the Code Enforcement Officer shall prepare a preliminary statement detailing the specific additional controls recommended and the procedures for implementing those controls. The statement shall also contain and be based on specific factual findings using the above-referenced factors and such other factors considered relevant to the recommendations.
2. Following preparation of such a preliminary statement, the Code Enforcement Officer shall cause to be posted in those areas written public notice identifying such location or locations. That notice shall also be sent via registered mail to each known distributor or owner of any news rack in the area or who is otherwise known to have a presence in the area. The notice shall set forth the date, time and location of a public hearing to be conducted regarding the Code Enforcement Officer's findings and recommendations and include a summary of the Code Enforcement Officer's findings and recommendations.
3. A hearing before the Borough Council shall be conducted not less than ten (10) days but not more than sixty (60) days following the posting or mailing of the notice and shall provide to the public and to all interested persons or entities, including, but not limited to, any distributor or owner of any news rack in the area, an opportunity to contest the Code Enforcement Officer's findings and recommendations and to show good cause why the additional controls recommended by the Code Enforcement Officer should not be implemented as recommended or otherwise.
4. Within ten (10) days after the hearing, and after giving due consideration to the arguments, information or other matters, if any, presented at or in connection with the hearing, the Borough Council shall issue a final statement detailing such additional controls required for news racks in the identified area and outlining the procedures for implementing those additional controls.

SECTION 106. PERMIT.

- A. Permit Required. Any person who desires to install or place a news rack must first obtain a permit.
- B. Inventory. An inventory list of the distributor's news racks in the Borough per §103G shall accompany the application for the permit.
- C. Plan. The application shall include a plan specifying the proposed location of the news rack, the proposed type and style of news rack, the proposed method of affixing, attaching or securing the news rack and the proposed location or locations.
- D. Fee. Permit fees shall be established by resolution of Borough Council.

SECTION 107. RESTORATION COSTS.

Upon removal, withdrawal or abandonment of any news rack, the distributor and the owner shall be jointly and severally liable for all costs and expenses, including reasonable attorney fees, associated with restoring the right-of-way to the condition that would have existed had the news rack not been installed.

SECTION 108. INSURANCE.

- A. **Insurance Required.** Any person placing, installing or maintaining a news rack as governed by this Ordinance shall furnish to the Code Enforcement Officer a certificate showing that such person has then in force a policy or policies of public liability insurance and property damage insurance, naming the Borough as an additional insured and in an amount not less than \$250,000 minimum liability combined single limit (bodily injury and property damage) per person and per occurrence.
- B. **Term of Insurance.** Each such person shall keep in force such policy or policies of public liability and property damage insurance during such time as he or she continues to place or install or maintain any news rack under the terms of this Ordinance.
- C. **Copy of Policy; Notice of Cancellation.** The evidence of insurance filed with Borough shall also include a copy of such insurance policy or policies and a written statement by the insurance carrier that the such carrier will provide the Borough thirty (30) days written notice before cancelling such insurance.

SECTION 109. INDEMNIFICATION.

Any person placing, installing, maintaining a news rack under this Ordinance shall further be required to execute a written agreement with the Borough that he or she agrees to indemnify, defend and hold harmless the Borough and its agents and representatives from all claims, demands, lawsuits, liability, damage or judgments (herein collectively referred to as claims) arising out of or in any way connected with the placement, installation or maintenance of any news rack governed by this Ordinance. The only exception to this duty to indemnify, defend and hold harmless is for those claims caused solely by the negligence or willful misconduct of the Borough or its agents or representatives.

SECTION 110. IMPOUNDMENT OF RACKS, CORRECTIONS OR OTHER DISPOSAL AUTHORIZED.

- A. **Actions.** The Code Enforcement Officer or other authorized Borough Official:
 - 1. May immediately correct any violation of this Ordinance and shall do so without impounding if such correction can be accomplished simply, easily, quickly and with nominal or no expense;
 - 2. May immediately take other corrective or necessary, remedial action including but not limited to the impounding of any news rack if, at the time, the news rack presents an imminent and substantial danger to the public health, safety or general welfare. This corrective or remedial action shall be at the distributor's or owner's sole expense. Any expenses, fees or costs including reasonable attorney fees incurred by the Borough in connection with such action shall be paid by the owner or distributor who shall be jointly and severally liable therefor.
 - 3. Must provide notice to the distributor or other person, if actually known, maintaining a news rack that the news rack is in violation of this Ordinance. That notice may be either in person or by telephone or by mail, in the Officer's discretion, or by affixing a written notice to the news rack. The notice must state that unless the violation is corrected or a hearing requested from the Borough Council within ten (10) working days if the notice is in person or by telephone, within ten (10) working days from the date of mailing if the notice is by mail, or within ten (10) working days of affixing the written notice if the notice

is by affixing a notice to the news rack, whichever is later, the news rack will be impounded either by seizure and removal to a designated storage facility or by impoundment in place;

4. May impound any news rack in accordance with this Ordinance or the decision of Borough Council following a hearing timely requested pursuant to this Ordinance;

B. Hearing. A distributor or owner of any impounded news rack may request a hearing from the Borough Council regarding the impounding up to ten (10) working days after the first day of impoundment whether by seizure or by impoundment in place.

C. Disposition of News Racks. If a hearing regarding the notice of violation or the impounding of the news rack is not timely requested or if the news rack is not returned in accord with the provisions of this Ordinance, the Code Enforcement Officer may sell or otherwise dispose of the news rack, and its contents, and deposit the proceeds, if any, from any such sale or other disposition, any moneys contained in said news rack, in the Borough general fund.

SECTION 111. RETURN OF IMPOUNDED RACKS.

A. Unless the news rack and its contents are being held as evidence in a criminal prosecution, the distributor or other person maintaining the news rack, or if there is no such known person, a claimant who provides sufficient proof of ownership of an impounded news rack may, at any time up to and including the thirtieth (30th) day after the impounding, and if a hearing pursuant to this Ordinance is held concerning the news rack, may, at any time up to and including the thirtieth (30th) day after the decision at such hearing becomes final, obtain a return of the news rack and its contents upon paying costs of restoration, if any, and an impound fee pursuant to a fee schedule adopted by the Borough Council.

B. Council Directive following Hearing. The Borough Council may, after a hearing in accordance with this Ordinance, order the news rack returned without payment of any impound fee; or if an impound fee has previously been paid, may order return of any such impound fee.

C. Court Action. A court before whom criminal charges concerning an impounded news rack are pending, may, upon dismissal of the charges or a finding of acquittal, in its discretion, order an impounded news rack returned without payment of an impound fee or the return of the impound fee paid.

SECTION 112. ABANDONMENT.

In the event a news rack remains empty for a period of thirty (30) consecutive calendar days, the same shall be deemed abandoned and may be treated in the manner provided herein for news racks in violation of the provisions of this Ordinance.

SECTION 113. APPEALS.

A. Opportunity for Appeal. Any person whose application for a permit is disapproved, or whose permit is revoked or suspended, or whose news rack is impounded may appeal such action to the Borough Council.

B. Filing. Such appeal shall be in writing and signed by the person and filed in the office of the Code Enforcement Officer within ten (10) days of the date of such action appealed from.

C. Hearing. The Borough Council shall conduct a hearing at a public meeting within forty (40) days of the filing of such appeal and shall notify such person by written letter mailed to the permanent address of the person

shown on the application, such mailing to occur fifteen (15) days or more prior to such hearings. In lieu of mailing such notice, it may be delivered to such person.

- D. Procedure. The President of the Borough Council shall preside over the hearing and shall administer oath to all witnesses.
- E. Action. The Council shall affirm the action appealed from or reverse such action or may modify the Code Enforcement Officer's action. Any reversal or modification shall be by majority vote of the Borough Council members present, providing a quorum is present.
- F. Restricted Participation. The Code Enforcement Officer shall not participate in the making of such decision, but shall be permitted to testify or present evidence.

SECTION 114. PENALTIES.

Any person who shall violate any of the provisions of this Ordinance shall on conviction thereof be sentenced to pay a fine of not less than \$25.00 and no more than \$300.00 plus costs, and on failure to pay such fine and costs, to imprisonment for not more than ten (10) days. Each day's continuance of a violation of any provision of this Ordinance shall constitute a separate offense.

SECTION 115. REPEALS.

This Ordinance repeals any other prior ordinances or ordinance provisions in conflict with this Ordinance.

SECTION 116. SEVERABILITY.


Should any section, subsection, clause, provision or other portion of this ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance; the Borough Council having adopted this ordinance as if such invalid portions had not been included therein.

SECTION 117. EFFECTIVE DATE.

This Ordinance shall become effective five (5) days following its adoption.

ORDAINED AND ENACTED this 3rd day of February, 2015, by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania.

BOROUGH OF CLARKS SUMMIT

By: 
Germaine Carey, Council President

APPROVED this 3rd day of February, 2015

By: 
Patty Lawler, Mayor

ATTEST:


Virginia Kehoe, Manager/Secretary