



**TOWN OF HIGHLAND BEACH
ORDINANCE NO 2022-003**

AN ORDINANCE OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES, CHAPTER 25, “STREETS, SIDEWALKS, BICYCLE/WALKWAY PATHS, AND RIGHT-OF-WAY,” IN ORDER TO PROHIBIT AND ELIMINATE OBSOLETE PROVISIONS PERTAINING TO NEWSRACKS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Highland Beach, Florida, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, on December 7, 2021 the Town Commission adopted Ordinance No. 2021-018 which included amending Chapter 25, “Streets, Sidewalks, Bicycle/Walkway Paths, and Right-of-Way,” to allow for certain improvements located within the public right-of-way; and

WHEREAS, Chapter 25 “Streets, Sidewalks, Bicycle/Walkway Paths, and Right-of-Way,” Article II, “Newsracks,” provides regulations pertaining to newsracks located within rights-of-way; and

WHEREAS, the newsrack provisions have been part of the current Town Code of Ordinances since 1972 and have not been amended since then; and

WHEREAS, at the March 2, 2021 Town Commission meeting, the consensus of the Commission was to prohibit newsracks given there is no longer a need for them; and

WHEREAS, the Town Commission wishes to amend Chapter 25 of the Code of Ordinances in order to prohibit and eliminate obsolete provisions pertaining to newsracks; and

WHEREAS, the Town Commission has determined that the amendments to the Code of Ordinances are in the best interest of the Town of Highland Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing facts and recitations contained in the preamble to this Ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2. The Town of Highland Beach Code of Ordinances is hereby amended by amending Chapter 25, “Streets, Sidewalks, Bicycle/Walkway Paths, and Right-of-Way,” to read as follows (deleting is ~~stricken through~~ and adding is underlined):

25-1. - Obstruction of streets, sidewalks, right-of-way—Prohibited.

It shall be unlawful to obstruct or cause to be obstructed any sidewalk or crossing in any way. It shall be unlawful to erect, build, construct, deposit or place, or to procure or cause to be erected, built, constructed, deposited or placed upon or in any street, or any place where the public has a right of passage, any house, cellar, stable, shed, privy, fence, enclosure, walls, foundations, newsracks or any other structure, or any obstruction of any kind whatsoever; or for the owner or occupant of any lots or part thereof abutting on a street to permit any obstruction to remain upon the sidewalk in front of such lot or part thereof, or for the owner or occupant of such lot or part thereof to permit any sidewalk in front of such lot or part thereof to remain in such condition as to prevent convenient and safe use thereof by the public. The provisions of this section shall not extend to canvas or wooden awnings placed in front of stores or other buildings, when such awnings are not less than eight (8) feet from the ground or sidewalk at the lowest point. It shall be unlawful to construct improvements or install trees in new locations within the public right-of-way including swales, as defined in Section 25-14, without first obtaining a right-of-way permit (right-of-way permit fee shall be waived) from the building department unless waived or otherwise determined as not required by the town’s public works director (with the exception of telecommunication facilities which are governed by Chapter 32 of this Code). For work performed within the State Road A1A right-of-way, the permit required by this section is in addition to any permit that is required by the Florida Department of Transportation (FDOT), and the Town’s issuance of a right-of-way permit shall neither impair FDOT’s regulatory authority nor otherwise impact any conditions or requirements that may be imposed by FDOT. The following improvements are permitted in the public right-of-way, except as provided in Section 17-2(3), and do not require a right-of-way building department permit:

- (a) Underground sprinkler systems with flush or pop-up heads.
- (b) Mailboxes.
- (c) Ground cover as defined in Section 28-2.

(d) Replacement of existing landscaping including, but not limited to, trees, shrubs or plants greater than twenty-four inches in height so long as such landscaping is replaced in the same location. Existing landscaping located within a swale shall not be replaced.

* * *

Sec. 25-14. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Advertising circular* means any publication primarily designed for purposes of advertising rather than for the dissemination of news reports.~~

Bike path means that portion of a right-of-way improved, designed or ordinarily used for bicycle traffic.

~~*Distributor* means the person responsible for placing and maintaining a newsrack, the owner of the newsrack or the publisher of the newspaper vended therein.~~

~~*Newspaper* means a paper that is printed and distributed, usually daily or weekly, and contains primarily news, articles of opinion and features for which no fee has been charged for placement therein.~~

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

Right-of-way means all that area dedicated to public use or otherwise owned by a public agency for public street purposes and shall include roadways, swales, bike paths and sidewalks.

Roadway means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic.

Sidewalk means any surface within a right-of-way provided for the exclusive or primary use of pedestrians.

Swale means any depressed linear area within a right-of-way which is not either a bike path, sidewalk or roadway that can store and/or convey stormwater drainage from roadways and other

adjacent impervious surfaces commonly referred to as bioswales or ditches. The term shall also include any area within a roadway which is not open to vehicular traffic.

~~Sec. 25-31. Placement; location.~~

~~Any newsrack which rests in whole or in part upon, or on any portion of a right-of-way or which projects onto, into or over any part of a right-of-way shall be relocated in accordance with the provisions of this section:~~

~~(1) No newsrack shall be used or maintained which projects onto, into or over any part of any roadway or bike path, or which rests wholly or in part upon or over any portion of any roadway or bike path.~~

~~(2) No newsrack shall be permitted to rest upon, in or over any sidewalk or swale when such installation, use or maintenance endangers the safety of persons or property; or when such site or location is used for public utility purposes, public transportation purposes or other government use; or when such newsrack unreasonably interferes with or impedes the flow of pedestrian vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes permitted on or near such location; or when such newsrack interferes with the cleaning of any sidewalk.~~

~~(3) Newsracks located totally on private property shall be subject to and comply with the provisions of this Code and shall be placed upon the property only with the express written consent of the owner of the property.~~

~~(4) No more than one cluster of newsracks shall be located within the northerly limits of the town from the town hall north, or within the southerly limits of the town from the town hall south; the clusters shall not be closer than one mile apart. Neither shall any additional newsrack of any other publication be placed within this distance except immediately adjacent to permitted newsracks of other publications.~~

~~(5) No newsrack shall be placed, installed, used or maintained:~~

- ~~a. Within fifteen (15) feet of any marked crosswalk.~~
- ~~b. Within fifteen (15) feet of the curb return of an unmarked crosswalk.~~
- ~~c. Within fifteen (15) feet of any fire hydrant, fire call box, police call box or other emergency facility.~~
- ~~d. Within fifteen (15) feet of any driveway.~~

- ~~e. Within five (5) feet ahead of and fifteen (15) feet to the rear of any sign marking a designated bus stop.~~
- ~~f. Within five (5) feet of any bus bench.~~
- ~~g. At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet.~~
- ~~h. Within five (5) feet of any area improved with lawn, flowers, shrubs or trees.~~

~~Sec. 25-32. Contents; maintenance; identification of distributor.~~

~~(a) — Newsracks shall be used for the sale and distribution of newspapers. Any other publications, including advertising circulars, will not be permitted.~~

~~(b) — Each newsrack shall be maintained in a clean and neat condition and in good repair at all times. Unsightliness will not be tolerated. The type and appearance, including colors, of the newsrack facilities shall blend with the surroundings of the particular location to the extent practicable. Standards shall be determined so as to permit a reasonably wide selection of newsrack facilities on the market.~~

~~(c) — Each newsrack on the streets of the town shall have displayed on the newsrack the name, address and telephone number of the distributor in a place where such information may easily be seen.~~

~~Sec. 25-33. Addition of newsracks to enclosures erected by town.~~

~~If the town, at its expense, decides to install and maintain a cover or supporting structure for the newsracks, additional newsracks shall not be added to the adjacent area without town commission approval. The expense of enlarging the supporting structure shall be borne by the owner of the newsrack requesting the addition. No advertising or signs shall be affixed to the supporting structure.~~

~~Sec. 25-34. Abandonment.~~

~~If a newsrack remains empty for thirty (30) continuous days, it shall be deemed abandoned and may be treated in the same manner as provided in section 25-39 for newsracks in violation of this Code.~~

~~Sec. 25-35. Building permit, fee required.~~

~~A building permit with current applicable fees is required for a newsrack. The police department shall also review the plans with regard to safety. The permit holder shall pay a nonrefundable fee of one thousand dollars (\$1,000.00) per calendar year; provided, however, that if the permit is issued during the calendar year, the fee for the permit shall be prorated for any full calendar month which has expired during the calendar year.~~

~~Sec. 25-36. Indemnification of town.~~

~~An application for a newsrack permit shall be accompanied by a nonrefundable fee as established by resolution of the town commission, and shall contain a written statement, signed by the applicant, whereby the applicant agrees to indemnify and hold harmless the town, its officers, agents and employees, from any loss, liability or damages, including expenses and costs, for bodily injury and property damage sustained by any person as a result of the location, installation, use, maintenance, removal or storage of the applicant's newsracks within the town.~~

~~Sec. 25-37. Bond; insurance.~~

~~Any accidents directly attributable to newsrack usage will be the responsibility of the permit holder, distributors and owners of newspapers. The applicant shall file with the town, along with the application for a newsrack permit, a bond issued by an insurance company authorized to do business in the state in the penal sum of one thousand dollars (\$1,000.00), with the town named as obligee, conditioned for the faithful performance of the provisions of this article. The applicant shall file with the application proof of general liability insurance in the amount of three hundred thousand dollars (\$300,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence and fifteen thousand dollars (\$15,000.00) in property damage, naming the town as coinsured.~~

~~Sec. 25-38. Enforcement.~~

~~(a) Upon determination by the town manager that a newsrack has been installed, used or maintained in violation of the provisions of this article, a citation to correct the offending condition shall be issued to the distributor of the newsrack. Such citation shall be mailed by certified mail, return receipt requested. The citation shall specifically describe the offending condition and~~

~~suggest actions necessary to correct the condition. The citation shall contain the results and any data collected from any pedestrian and vehicular traffic study that may have been performed to ascertain the offending condition. In addition, where the owner of the offending newsrack is not known or identified, a copy of the citation shall be posted on the offending newsrack.~~

~~(b) Failure to properly correct the offending condition within twenty (20) days after the mailing or posting date of the citation, whichever is later, shall result in the offending newsrack being removed by the town. If the offending newsrack is not properly identified as to the distributor and the distributor is not otherwise known, the citation shall be posted as provided herein and if the offending condition is not corrected within twenty (20) days, it shall be removed by the town. Any newsrack removed by the town hereunder shall be stored at the distributor's expense for a period of ninety (90) days. The newsrack shall be released to the distributor upon a proper showing of ownership and payment of any and all storage charges. If the newsrack is not claimed within the ninety day period, the newsrack may be sold at public auction and the proceeds applied first to storage charges and then paid into the general fund of the town. At least ten (10) days prior to the public auction, the town clerk shall publish a description of the newsrack, the location from which it was removed and notice of the auction in a newspaper of general circulation in the town and shall provide the distributor identified on the newsrack or if otherwise known, with written notification of the auction by certified mail, return receipt requested.~~

~~(c) If the distributor of the newsrack appeals the citation to correct the offending condition as provided in section 25-40, removal of the newsrack shall be stayed pending final disposition of the appeal, which final disposition shall include any judicial review. The town shall pay or reimburse to the distributor any storage charges paid pursuant to a citation to correct which is appealed as provided herein and the decision rendered favorable to the distributor.~~

~~Sec. 25-39. Appeals.~~

~~Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this article (hereinafter, an appellant) may appeal to the code enforcement board. An appeal must be perfected within the twenty (20) days after the mailing or posting of the notice of any protested decision or action by delivering to the office of the town manager a letter of appeal briefly stating the basis for the appeal. A hearing on the appeal shall be held on a date not more than sixty (60) days after receipt of the letter of appeal. The appellant shall be given at least seven~~

~~(7) days' written notice of the time and place of the hearing. The board shall give the appellant and any other interested party a reasonable opportunity to be heard, in order to show cause why the determination of the license inspector should not be upheld. At the conclusion of the hearing, the board shall make a final and conclusive determination. The determination shall be reduced to writing and signed by the chairman of the board and filed in the office of the town clerk within twenty (20) days of the hearing and a copy shall be sent to the appellant. The decision of the board shall be effective when rendered. The decision of the board may be appealed as provided for by law.~~

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. Section 2 of the Ordinance may be made a part of the Town Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section,” “division,” or any other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption at second reading.

The foregoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

	AYE	NAY
Mayor Douglas Hillman	_____	_____
Vice Mayor Natasha Moore	_____	_____
Commissioner Peggy Gossett-Seidman	_____	_____
Commissioner Evalyn David	_____	_____
Commissioner John Shoemaker	_____	_____

PASSED on first reading at the Regular Commission meeting held on this _____ day of _____, 2022.

The foregoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

	AYE	NAY
Mayor Douglas Hillman	_____	_____
Vice Mayor Natasha Moore	_____	_____
Commissioner Peggy Gossett-Seidman	_____	_____
Commissioner Evalyn David	_____	_____
Commissioner John Shoemaker	_____	_____

PASSED AND ADOPTED on second and final reading at the Regular Commission meeting held on this _____ day of _____, 2022.

ATTEST:

By: _____
Lanelda Gaskins, MMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Glen J. Torcivia, Town Attorney