

Chapter 97 -- News racks

97.010

News racks.

1. The uncontrolled placement of News racks in public right-of-way presents an inconvenience and danger to the safety and welfare of persons using such right-of-way, including pedestrians, persons entering and leaving vehicles and buildings and persons performing essential utility, traffic control and emergency services.
2. News racks so located as to cause an inconvenience or danger to persons using public right-of-way, and unsightly News racks located therein, constitute public nuisances.
3. It is a matter of public necessity that the City of Moscow Mills Board of Aldermen protect children and unconsenting adults in and on its public streets, sidewalks, transportation facilities and other public right-of-way from viewing such public displays of offensive sexual material. Such displays are thrust indiscriminately upon unwilling audiences of adults and children and constitute assaults upon individual privacy.
4. The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promotion the public health, morals and general welfare of persons in the City of Moscow Mills in their use or public right-of-ways.

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Definitions.

1. Distributor shall mean the person responsible for placing and maintaining a news rack in a public right-of-way.
2. News rack 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. Nudity means the showing with less than a fully opaque covering of the genitals, pubic hair, buttocks, natal cleft, perineum, anus, or anal region of any person, other than a child under the age of puberty, or the depiction of covered male genitals in a discernible turgid state.
4. Offense means that the work in which the representations appear, taken as a whole, appeals to the prurient interest and patently depicts or portrays the prohibited sexually explicit material in a manner which taken as a whole lacks serious literary, artistic, political or scientific value.
5. Parkway means that area between the sidewalks and the curb of any street, and where there is not a sidewalk that area between the edge of the roadway and property line adjacent thereto. Parkway shall also include any area within roadway which is not open to vehicular travel.
6. Pictorial Material means any material suggesting or conveying a visual image and includes, but is not limited to, a photograph, painting or drawing.

7. Roadway means that portion of a street improved, designed, or ordinarily used for vehicular travel.
8. Sexually explicit material means any pictorial material depicting human sexual intercourse, human or animal masturbation, bestiality, oral intercourse, anal intercourse, human-animal intercourse, excretory functions, homosexual acts, direct physical stimulation or touching of unclothed genitals or pubic areas of the human male or female, flagellation or torture by or upon a person in the context of a sexual relationship or equal stimulation. The material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition of these Subsections. Works of art or anthropological significance are not included within the definition of this subsection.
9. Sidewalk means any surface provided for the exclusive use of pedestrians.
10. Street means all that area dedicated to public use for public street purpose and shall include, but not be limited to, roadways, parkways, alleys and sidewalks, private streets or driveways.

97.020 Permit required.

It shall be unlawful for any person firm or corporation to erect, place maintain or operate on any street or sidewalk or in any other public way or place in the City of Moscow Mills any news rack without first having obtained a permit from the City development Administrator specifying the exact location of such rack(s). One permit may be issued to include any number of news racks and shall be signed by the applicant.

97.030 Application for permit.

Application for such permit shall be made in writing to the City development administrator, upon such form as shall be provided by the City, and shall contain the name and address of the applicant, the proposed specific location of said news rack(s), and shall be signed by the applicant.

97.040 Conditions for permit.

1. As an express condition of the acceptance of such permit, the permittee thereby agrees to indemnify and save harmless the City of Moscow Mills, 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 news rack with the City of Moscow Mills, including any loss which may occur from routine city maintenance and operations.
2. Permits shall be issued for the installation of news rack or news racks without prior inspection of the location but such news rack or news racks and the installation use or maintenance thereof shall be conditioned upon observance of the provisions of this Chapter and such reasonable rule and regulations as may be established by the

City Development Administrator. Permits shall be issued within three (3) business days after the application has been filed. An annual permit fee of \$50.00 is required.

3. Such permits shall be valid for one year and shall be renewable pursuant to the procedure for original applications referred to in Section 97.830 above, and upon payment of the \$50.00 permit fee.

97.050 Standards for maintenance and installation.

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

1. No news rack shall exceed four (4) feet in height, thirty (30) inches in width, or two (2) feet in thickness.
2. No news rack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper or news periodical sold therein.
3. 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 mechanism shall be maintained in good working order.
4. 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 for the name and address of the distributor and the telephone number of a working telephone service to 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 division.
5. 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:
 - a. It is reasonable free of dirt and grease.
 - b. It is reasonable free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
 - c. It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon.
 - d. The clear plastic or glass parts thereof, if any, through which the publication therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration.
 - e. The paper or cardboard parts of inserts thereof are reasonably free of tears, peeling or fading.

- f. The structural parts thereof are not broken or unduly misshapen.
6. It shall be unlawful for any person to place or maintain any publication or material in News racks which exposes to public view and pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.

97.060 Location and placement of News rack.

Any News rack 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 be located in accordance with the provisions of this section.

1. No News rack 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, private street, or drive. All News racks shall be placed on a paved surface, secured, anchored or bolted to the ground so as to avoid tipping.
2. No News rack shall be permitted to rest upon, in or over any public sidewalk or parkway, 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 purposed of other governmental use, or when such News rack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally marked or stopped vehicle, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailbox or other objects permitted at or near said location.
3. No News rack shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, except to other News racks.
4. News racks may be placed next to each other, providing that no group of News racks shall extend for a distance of more than eight (8) feet along a curb, and a space of not less than 500 feet shall separate each group of News racks.
5. No News rack shall be placed, installed, used or maintained:
 - a. within three (3) feet of any marked crosswalk;
 - b. within twelve (12) feet of the curb return of any unmarked crosswalk;
 - c. within ten (10) feet of any fire hydrant, fire call box, police call box, or other emergency facility;

- d. within twenty five (25) feet of any driveway;
- e. within three (3) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop;
- f. within three (3) feet of the outer end of any bus bench;
- g. at any location whereby the clear space for the passageway of pedestrians is reduces to less than six (6) feet;
- h. within three (3) feet of, or on, any public area improved with lawn, flowers, shrubs, trees or other landscaping;
- i. within five hundred (500) feet of any other News rack on the same side of the street in the same block containing the same issue or edition of the same publication'
- j. shall be restricted in areas other than (HC) Highway Commercial (CB) Community Business (PD) Planned Development (LI) Light Industrial, and (OP) Office Park zoning districts; and
- k. not less than ten (10) feet from any curb.

97.070 Violations of chapter

Upon determination by the City Development Administrator that a News rack has been installed, used or maintained in violation of the provisions of this chapter, an order to correct the offending condition will be issued to the distributor of the News rack. Such order shall be telephoned to the distributor and confirmed by mailing a copy of the order by certified mail return receipt requested. The order shall specifically describe the offending condition and suggests actions necessary to correct the condition. Failure to properly correct the offending condition within three (3) days (excluding Saturdays, and Sundays, and legal holidays) after the mailing date of the order shall result in the offending News rack being summarily removed and processed as unclaimed property. The City Development Administrator shall cause inspection to be made of the corrected condition or of a News rack reinstalled after removal under this section. The distributor of said News rack shall be charged Ten Dollars (\$10,00) inspection fee for each News rack so inspected which charge shall be additional to all other fees and charges required under this chapter.

97.080 Appeals

Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this ordinance may appeal and shall be appraised of his right to appeal to the Board of Adjustment. An appeal must be perfected within three (3) days after receipt of notice of any protested decision or action by filing with the office of the City Clerk a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held at the next regular scheduled meeting of the Board of Adjustment, after giving fifteen (15) days public notice of said hearing, and after receipt of the letter of appeal. Appellant shall be given at least five (5) days notice of the time and place of the hearing. The Board of Adjustment 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 City Development Administrator should not be upheld. In all such cases, the burden of proof shall be upon

the appellant to show that there was no substantial evidence to support the action of the City Development Administrator. At the conclusion of the hearing the Board of Adjustment shall make a final conclusive determination.

97.090 Revocation.

In addition to the enforcement procedures provided in this Chapter it shall be within the power and discretion of the City development Administrator to suspend or revoke the permit for continued or repeated violation of infractions of any provision of this ordinance or any rule, direction or regulation of the City Development Administrator. Suspension or revocation shall be mandatory for the third offense.

97.100 Abandonment.

In the event a news rack remains empty for a period of ten (10) publication dates, or thirty (30) continuous days, whichever is less, the same shall be deemed abandoned, and may be treated in the manner provided in section 97.870 for news racks in violation of the provisions of this chapter.

Adopted by Ordinance 6/14/93.