VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council
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Village Manager
Genaro "Chip" Iglesias

DT: August 14, 2008

TO: Honorable Mayor and Members of the Village Council

FR: Genaro "Chip" Iglesias, Village Manager

RE: Newsrack Ordinance

RECOMMENDATION

That the Village Council approve the attached ordinance.

EXPLANATION

The Crandon Boulevard Master Plan recommended the placement of standardized newsracks to replace those that the private sector installed in the right of way. Staff met with represenatives from The Islander News, La Isla, Miami Herald/Nuevo Herald, USA Today, and Diario Las Americas. It was agreed that standardized newsracks would be placed in the right of way at the following locations:

1. Crandon Boulevard Bus Shelter at the entrance to the Village
2. Oasis
3. Key Colony Place Shopping Center
4. Winn-Dixie Shopping Center facing W. Enid Drive
5. Winn-Dixie Shopping Center in front of Blockbuster Video facing Crandon Boulevard
6. L' Esplanade Shopping Center facing Crandon Boulevard

Staff had several meetings with the newspaper publishers who were instrumental in the drafting of the ordinance. The purpose of the ordinance is to provide a uniform appearance of the newsracks and to establish procedures regarding their installation, placement and maintenance. Further, the ordinance will promote the health, safety, and welfare of the Village.

The key provisions of the ordinance are listed below:

1. All newsracks in the right-of-way will be the standard set by the Village. Applicants who wish to place their publications in the newsrack will be determined through an annual lottery. Upon completion of the lottery, applicants will be issued a permit for one (1) year.

2. Newsracks which are placed on private property must be painted green to match those that are installed in the right-of-way. There is no design standard for newsracks on private property; however, due to safety concerns they are subject to size and location requirements.

3. All non-conforming newsracks are required to be removed within 60 days of the date the ordinance is adopted.

4. The newsracks are owned by the Village; however, individual modulars will be maintained by the applicant. Contact information is required to be placed on each modular.

ORDINANCE NO. 2008-_____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30 "ZONING AND LAND DEVELOPMENT REGULATIONS " OF THE VILLAGE CODE OF ORDINANCES, BY CREATING ARTICLE XI "NEWSRACKS;" PROVIDING FOR DEFINITIONS; PROVIDING FOR REGULATIONS RELATING TO NEWSRACKS WITHIN THE VILLAGE PUBLIC RIGHTS-OF-WAY AND UPON PRIVATE PROPERTY; PROVIDING FOR NONCONFORMING NEWSRACKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council finds that there is a need to establish procedures regarding the installation, placement, and maintenance of newsracks located upon public property and within any private property exterior to any building or structure within the Village; and

WHEREAS, the Village Council has reviewed this Ordinance in its capacity as the Local Planning Agency, and has recommended this Ordinance and found it to be consistent with the Village's Comprehensive Plan; and

WHEREAS, the Village Council finds that such regulations and procedures governing newsracks will serve to promote the health, safety, and welfare of the citizens of the Village of Key Biscayne, as well as the aesthetics of the Village.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the above stated recitals are hereby adopted and confirmed.

Section 2. **Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 30 " Zoning and Land Development Regulations ", by creating Article XI, "Newsracks", to read as follows:

Sec. 30-260. 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:

Abandoned newsrack: Any newsrack which remains empty for thirty (30) business days; provided, that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack shall not be deemed abandoned.

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

Cubicle: An individual space within a modular newsrack, the intended use of which is the sale or distribution of an individual newspaper, written periodical, or advertising circular.

Distributor: The person or entity responsible for maintaining a newsrack or for the distribution of publications from a newsrack or cubicle of a modular newsrack.

Modular newsrack: A newsrack structure that includes multiple cubicles, each designed for individual display of newspapers, other news periodicals, or advertising circulars. The exact dimensions and color of such modular newsracks shall be determined by the Village Manager or his or her designee, and shall be uniform throughout the Village.

Newsrack: Any self-service or coin-operated box, container, storage unit or other dispenser located, placed, installed, used, or maintained for the display, sale or distribution of newspapers, other news periodicals or advertising circulars.

Permittee: The holder of a permit for placement, installation, or maintenance of one or more newsracks within the Village.

Public property: Any and all real property owned by the Village, or other governmental entity.

Roadway: That portion of the right-of-way improved, designed, or ordinarily used for vehicular traffic.

Sidewalk: That portion of a right-of-way improved, designed, or ordinarily used for pedestrian traffic.

Swale: Any area within a right-of-way which does not meet the definition of a bike path, sidewalk, or roadway. The term shall also include any area within a roadway which is not open to vehicular traffic.

Sec. 30-261. Purpose.

The purpose of this article is to promote public health, safety, and welfare through the regulation of placement, type, appearance, and maintenance of newsracks within the Village so as to:

(1) Provide for pedestrian and driver safety and convenience;

(2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons existing or entering parked or standing vehicles;

(3) Provide for the safety of public and private property during hurricane conditions;

(4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes;

(5) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way, or which unreasonably detract from the aesthetic of store window displays, adjacent landscaping, and other Village improvements;

(6) Maintain and protect the values of surrounding properties and prevent damage to grass landscape right-of way areas;

(7) Provide for the removal of abandoned newsracks;

(8) Reduce unnecessary exposure of the public to personal injury or property damage, especially during storm or hurricane conditions; and

(9) Provide comprehensive time, place, and manner regulations of exterior newsracks within the Village.

Sec. 30-262. Newsrack permit required.

It shall be unlawful for any person to erect, place, maintain, or operate any newsrack within any private property exterior to a building or structure, or utilize any modular

newsrack located on public property in whole or in part within the corporate limits of the Village without first having obtained a permit from the Public Works Director in accordance with the provisions of this article. One permit may be issued to include any number of newsracks or cubicles, and the application shall be signed by the applicant and shall include all information required by the Public Works Director. The following permitting criteria shall apply:

(1) The application for a newsrack permit shall be made in writing to the Public Works Director upon such form as provided by the Village.

(2) The Public Works Director or his/her designee shall be responsible for reviewing all newsrack applications and enforcing this article.

(3) There shall be an application fee for each newsrack or cubicle within a modular newsrack that the applicant wishes to utilize. Such fee shall be paid at such time application is submitted and is nonrefundable. The amount of such fee shall be established by resolution of the Village Council and may be amended from time to time, as necessary.

(4) The Village shall hold an annual lottery to determine which applicants will receive permits for particular cubicles within modules located on public property, subject to the requirements of Section 30-265. Cubicles that are not chosen as a result of the lottery may be occupied until the next lottery on a first come first serve basis.

(5) Concurrent with the application for a newsrack permit as required by this article, each applicant shall execute an indemnification and save-harmless agreement, relieving the Village, its employees, officers, and boards, from any and all threat of damages, costs and liability whatsoever arising from, growing out of or incident to or in any manner connected with the installation, maintenance or operation of each such newsrack owned or maintained by the permittee together with all costs and attorneys' fees, incurred by the Village in defending any claim or suit brought against it, either as sole defendant or joined as a defendant with the permittee, with regard to the permittee's newsracks and specifically including any claim or suit against the Village alleging liability based on the Village's failure to properly enforce or administer the provisions of this article. This indemnification and save-harmless agreement shall also provide that the permittee shall receive prompt notice of any such cause of action and shall be afforded the opportunity to defend same. If the permittee fails to defend the same, the permittee will pay to the Village upon demand all reasonable costs, charges, and fees incurred in connection therewith.

(6) A permit shall be issued or denied within ten (10) days (excluding Saturdays, Sundays, and legal holidays) from the Village finding the application to be complete. An application for transfer of an existing newsrack permit shall be made by submission of an application for transfer to the Village. Such application for transfer shall be submitted within ten (10) days of transfer of ownership of the subject newsracks or, in the case of

permits for use of Village-owned newsracks, the change of ownership of the publication. Notwithstanding the foregoing, if an applicant chooses to participate in the annual lottery described in subsection (4) above, a permit shall be issued within five (5) days (excluding Saturdays, Sundays, and legal holidays) from the date of the lottery.

(7) A permit for cubicles on public property shall be valid for one year. After the permit expires, the permittee can reapply for a newsrack permit in accordance with the provisions of this article.

(8) If a newsrack permit is denied, in whole or in part, the Public Works Director or his/her designee shall notify the applicant in writing explaining the reasons for the denial of the permit within ten (10) days (excluding Saturdays, Sundays, and legal holidays) from the date of filing a complete application as determined by the Village.

(9) In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the Public Works Director. This section shall also apply to the review and approval of any such amendment.

Sec. 30- 263. Appeals.

Any person aggrieved by a finding, determination, notice, order or action taken under the provisions of this article may file an appeal with the Village Council by requesting in writing to the Village Manager an appearance before the Council to review such denial. The appeal shall be heard by the Council within thirty (30) days of the filing of the appeal or at the next regularly scheduled agenda, whichever occurs first, unless extended by the person seeking the appeal. The decision of the Village Council on appeal is subject to judicial review as provided by the laws of the state.

Sec. 30-264. Standards for placement on private property.

Any newsrack located in whole or in part within the corporate limits of the Village and located within any private property exterior to a building or structure shall comply with the following standards:

(1) No newsracks shall be used for advertising signs or publicity purposes, other than to state the name of the newspaper or news periodical sold therein.

(2) Each newsrack shall be maintained in a clean, neat, level, aligned, and attractive condition and in good repair at all times.

(3) No newsrack shall be located where it projects onto, into, or over, any part of any street or bike path, or rests wholly or in part upon or over any portion of any street or bike path.

(4) No newsrack shall be located where it, in whole or in part, rests upon, in, or over any public right-of-way or other public property in any manner whatsoever.

(5) A newsrack whether in the form of a module or pedestal shall be painted the same color as Village owned newracks and private module(s) shall have the same dimensions as those modules installed by the Village. A newsrack that is of a pedestal type shall have external dimensions not to exceed twenty one (21) inches in height, twenty-four (24) inches in width, and twenty-one (21) inches in depth, and shall have a pedestal that measures thirty-two (32) inches in height.

(6) Newsracks placed adjacent to a wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall.

(7) Newsracks shall be securely fastened either to the ground or concrete, or weighted in the base or pedestal to insure stability. In no event shall any newsrack be chained, bolted, or otherwise attached to any fixture or anything located in the right-of-way or on public property.

(8) Old or out-of-date material removed from any newsrack by the person who owns, maintains, or stocks the newsrack shall be recycled or disposed of in a lawful manner. Such material shall not be disposed of in any trash receptacle owned or rented by others, without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

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

a. Within any single family and two-family zoning district;

b. Within ten (10) feet of any driveway or crosswalk;

c. Within fifteen (15) feet of the curb return of any unmarked crosswalk not located at an intersection;

d. Within fifteen (15) feet of any intersection (as measured from the intersection stop bar(s) or stop line(s));

e. Within twenty-five (25) feet of any fire hydrant, fire or police call-box, or other emergency facility;

f. At any location whereby the clear space for the passageway of pedestrians is reduced to less than four (4) feet;

g. Within five (5) feet of any display window or any building abutting the sidewalk or swale when said sidewalk or swale is on public property or within ten (10) feet of a building entrance or door;

h. On or within ten (10) feet of any signs, street lights, utility poles, or medians;

i. At any location where the newsrack causes, creates or constitutes a traffic hazard.

j. At any location which could obscure traffic control signs from the visibility of motorists; or

k. Within five (5) feet of any steps.

(10) The placement of all newsracks shall comply with all local, state, and federal regulations, including handicap accessibility regulations.

(11) Upon a declaration that the Village is under a hurricane warning, any owner of a newsrack located within any private property exterior to a building or structure, where such newsrack is not securely fastened or anchored to a building or structure, shall remove the newsrack and store it indoors until the hurricane warning is lifted.

(12) No more than three (3) newsracks on pedestals shall be permitted at any one (1) location and there shall be a minimum distance of fifty (50) feet between newrack locations.

(13) No more than one (1) module shall be permitted at any one (1) location and there shall be a minimum distance of fifty (50) feet between modules.

Sec. 30-265. Standards for placement on public property.

Any distributor of any newspaper or written periodical wishing to distribute such periodical from a location in whole or in part within the corporate limits of the Village and located on public property or a public right-of-way shall comply with the following requirements:

(1) The location of individual newspapers or periodicals on public property within the Village shall be limited to modular newsracks owned by the Village.

(2) The Village shall install modular newsracks at the following locations as determined by the Village:

(a) Any bus shelter;

(b) Esplanade Shopping Center/Post Office: east side of Crandon Blvd at 971 Crandon Blvd.

(c) Wynn Dixie Shopping Center: west side of Crandon Blvd at W. Wood intersection;

(d) Wynn Dixie Shopping Center: north side of W. Enid at the intersection of Village Green Way;

(e) Key Colony Place Shopping Center: west side of Crandon Blvd at 200 Crandon Blvd;

(f) Oasis Cafe: north side of Harbor Drive at 21 Harbor Drive;

(g) Crandon Blvd. Bus Shelter: east side of Crandon Blvd. at the corporate limits of the Village; and

(h) Such additional locations as determined by the Village Manager or his/her designee.

(3) The Village shall not charge distributors annual rent for the use of any modular newsracks. However, no newspaper shall be allowed to utilize more than one cubicle space in any one particular modular newsrack. All distributors shall provide their own lock and key for each cubicle which they utilize. Additionally, each distributor shall retain full responsibility for the security of their newspapers and/or periodicals and for any revenue generated from the sales of same.

(4) The Village shall provide the maintenance for the external paint for the modulars on public property and the permittee shall be responsible for all other maintenance related to its specific cubicle(s) within a modular.

Sec. 30-266. Identification of permittee to be posted.

Every person, firm, or corporation who places or maintains a private newsrack or modular or who utilizes a cubicle in a modular on public property shall have his permit number, name, address, and telephone number affixed to the newsrack or modular newsrack in a place where such information may be easily seen for the purpose of providing the public with the information necessary to contact the permittee in order to secure refunds and report-device malfunctions.

Sec. 30-267. Nonconforming newsracks.

Any newsrack located within the Village as of the effective date of this article that does not conform to the requirements of this article shall be deemed nonconforming. Newsrack owners shall be notified by the Public Works Director that all nonconforming

newsracks shall be removed or altered so as to conform to the provisions of this article within sixty (60) days from the effective date of this article.

Sec. 30-268. Enforcement.

(1) Upon a determination by the Public Works Director that a newsrack or modular newsrack has been installed, used, or maintained in violation of this article, a written notice to correct the violation shall be issued to the distributor. Such notice shall be immediately telephoned to the distributor and confirmed by mailing a copy of the notice by certified mail, return receipt requested. The notice shall specifically describe the offending condition and state actions necessary to correct the condition.

(2) Failure to correct a violation related to the use of a private newsrack within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the notice shall result in the removal of the offending newsrack by the Village. The distributor shall be charged a cost of removal fee of $50.00 for each newsrack in violation of this article so removed. The fee shall be paid prior to the return of the newsrack. No newsrack which is removed under this section shall again be installed, used, or maintained in the Village unless the offending condition in violation of this article is corrected.

(3) Failure to correct a violation related to the improper use of a Village-owned modular newsrack within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the notice shall result in the revocation of the permit.

(4) If the location or condition of a newsrack constitutes an imminent and serious danger to the public, the offending newsrack may be immediately removed and notice promptly provided thereafter in accordance with this section. If it is determined by the Village Manager or by the Village Council, upon request for public hearing, that such removal was unnecessary, the newsrack shall be immediately returned to the distributor and no fee shall be charged by the Village.

(5) In addition to the remedies provided herein, the Village may enforce this section through its code enforcement procedures as provided in the Village Code, through appropriate injunctive relief, and otherwise as permitted by law.

Sec. 30-269. Abandonment.

If a newsrack or cubicle of a modular newsrack remains empty for a period of thirty (30) continuous days, the newsrack or cubicle shall be deemed abandoned, and may be treated in the manner as provided in Section 30-268 as a violation of the provisions of this article.

Section 3. **Severability.** That 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. **Inclusion in Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this ____this day of _____, 2008.
PASSED AND ADOPTED on second reading this ___this day of _____, 2008.

_____
Robert Vernon, Mayor

Attest:

_____
Conchita H. Alvarez, CMC
Village Clerk

Approved As To Form And Legal Sufficiency:

By: _____

Village Attorney