

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Acting Village Attorney      **DATE:** July 16, 2002  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "AN ORDINANCE ESTABLISHING PERMITS FOR NEWSPAPER DISPENSING DEVICES IN THE VILLAGE OF DOWNERS GROVE", as presented.



**SUMMARY OF ITEM:**

Adoption of the attached ordinance will establish permits and set forth regulations for Newspaper Dispensing Devices on Village property.

**RECORD OF ACTION TAKEN:**

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DRAFT

Orig. 06/07/01

Rev. 07/25/01

12/05/01

12/10/01

01/10/02

06/11/02

06/17/02

**AN ORDINANCE ESTABLISHING PERMITS FOR NEWSPAPER  
DISPENSING DEVICES IN THE VILLAGE OF DOWNERS GROVE**

06/24/02

07/09/02

07/11/02

ORDINANCE NO. \_\_\_\_\_

BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois,

as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 1. That Article XXI of the Downers Grove Municipal Code is hereby created as follows:

**8-2100ART. Article XXI. Newspaper Dispensing Device Ordinance**

**8-2100SEC. Short Title.**

This Ordinance shall be known as, and may be referred to as the "Village of Downers Grove Newspaper Dispensing Device Ordinance."

**8-2101. Findings and Purposes.**

1. The Village Council hereby finds, as follows:

a. The public rights-of-way historically have been used to circulate newspapers and other publications;

b. The substantial growth in the number of newspapers and other publications has produced a significant increase in the number of individual newsracks located on public right-of-way;

c. The unregulated placement and maintenance of individual newsracks in the public rights-of-way interferes with the free and unimpeded use of such public rights-of-way, and threatens the health, safety and welfare of persons who use the public rights-of-way, including pedestrians, children, the aged, persons entering and leaving vehicles and buildings, drivers, persons performing essential utility, traffic control and emergency services, and persons with disabilities, and,

d. The unregulated placement of multicolored, broken, rusted and abandoned individual newsracks of various shapes and sizes in the public rights-of-way significantly detracts from the aesthetic character of surrounding areas.

2. ~~Based on the conditions described above,~~ The Village Council further finds that there is a need for reasonable, time, place and manner ~~guidelines~~ ~~restrictions~~ regarding the installation, placement, size, appearance and maintenance of newsracks in the public rights-of-way ~~including the creation of a modular newsrack district~~. Consistent with these findings, it is the purpose of this Article to promote the health and safety of users of the public rights-of-way and to enhance the aesthetics of the Village in a manner which may utilize newsracks as a method of distribution of newspapers and other publications, so as to do the following:

a. Provide for pedestrian and driving safety and convenience;

- b. Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress and egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;
- c. Provide for the safety of the public and property during windstorms and other inclement weather;
- d. Replace, remove, or relocate individual newsracks that have created visual blight on the public rights-of-way or unreasonably detracted from the aesthetics of adjacent businesses, landscaping and other improvements;
- e. Maintain and protect the values of surrounding properties; and,
- f. Reduce unnecessary exposure of the public to personal injury and property damage.

**8-2102. 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.* Any newspaper dispensing device or any compartment of a modular newsrack, that does not contain the newspaper or other publication specified therefore for more than four consecutive days for a daily publication, eight consecutive days for a weekly publication, 16 consecutive days for a biweekly publication, 32 days for a monthly publication, or 64 days for a bi-monthly publication.

*Compartment.* The individual space within a modular newsrack that dispenses one newspaper or other publication, including the door, coin return mechanism and associated hardware.

*Modular Newsrack.* A newspaper dispensing device that is designed with multiple separate enclosed compartments to accommodate at any one time the display, sale or distribution of multiple distinct and separate newspapers or other publications.

*Modular Newsrack District.* That portion of the Village defined as the Central Business District in the Village's Zoning Ordinance, in addition to the Village Hall Municipal Complex and the Fairview Avenue Train Station.

*Newspapers and other publications.* Includes newspapers, periodicals, advertising circulars, and all other printed materials that may be distributed through the use of newsracks.

*Newspaper Dispensing Device.* Any unmanned, self-service or coin-operated box, container, storage unit or other dispenser located in or upon, or projecting onto, into, or over, any part of the public rights-of-way, and which is installed, used or maintained for the display, sale, or distribution of newspapers and other publications.

*Publisher.* The person or other legal entity selling, displaying or distributing newspapers or other publications in a newsrack.

**8-2103. Newspaper Dispensing Device Commissioner.**

The Newspaper Dispensing Commissioner shall have the following powers and duties:

1. To administer and rule upon the applications for, and the issuance, renewal, suspension, denial and revocation of, Newspaper Dispensing Device Permits as set forth in this Ordinance.
2. To conduct or provide for such inspections of newspaper dispensing devices as shall be necessary to determine and ensure compliance with the provisions of this Ordinance and other applicable provisions of law.
3. To take such further actions as the Newspaper Dispensing Commissioner shall deem necessary to carry out the purposes and intent of this Ordinance and to exercise such additional powers in furtherance thereof as are implied or incident to those powers and duties expressly set forth in this Ordinance.

**8-2104. Newspaper Dispensing Devices; Generally.**

1. Newspaper Dispensing Device Permit Required. A Newspaper Dispensing Device Permit shall be required to establish, operate, or maintain a newspaper dispensing device within the Village.

2. Operation Without Permit Prohibited. It shall be unlawful for any person not having a current and valid Newspaper Dispensing Device Permit to establish, operate, or maintain a newspaper dispensing device on public property within the Village at any time after the effective date of this Ordinance.

3. Operation in Violation of Permit Prohibited. It shall be unlawful for any Licensee to establish, operate, or maintain a newspaper dispensing device on public property within the Village except in the manner authorized by, and in compliance with, the provisions of this Ordinance and by the Licensee's Newspaper Dispensing Device Permit.

#### **8-2105. Newspaper Dispensing Devices; Application and Permit.**

1. Applications for a permit under this section shall be made on forms provided by the Newspaper Dispensing Commissioner for permits allowing for the installation and placement of newspaper dispensing devices within the public right-of-way, along the streets, thoroughfares, parkways, and sidewalks within the Village. The applications shall be provided by the Newspaper Dispensing Commissioner immediately upon request. The application must include a site plan and must expressly state the exact location where the applicant wishes to install a newspaper dispensing device. The application must also include a description of and the specification for the intended newspaper dispensing device.

2. Within five (5) business days of receipt of an application for a permit under this section, the Newspaper Dispensing Commissioner shall grant the application and issue the permit provided that the conditions contained in Section 8-2106 are, where applicable, complied with. If the terms and conditions contained in Section 8-2106 are not complied with, the Newspaper Dispensing Commissioner shall, within five (5) business days of receipt of the application for a permit, deny the application, and state the reasons in writing for such denial.

3. A permit granted hereunder shall apply only to the location provided for in the permit, and no newspaper dispensing device permitted hereunder shall be relocated without application for and issuance of a new permit.

#### **8-2106. Newspaper Dispensing Device Permit Conditions.**

No newspaper dispensing device, other than modular newsracks, shall be placed within the modular newsrack district. A Village permit allowing the placement of privately owned newspaper dispensing devices outside the modular newsrack district shall be subject to, and granted upon, the following conditions, restrictions and requirements:

1. Newspaper dispensing devices shall be placed adjacent and parallel to building walls not more than six inches distant therefrom, or near and parallel to the curb not less than 18 inches and not more than 24 inches distant from the curb.

2. No newspaper dispensing device shall be placed, installed, located, used or maintained:
- a. Within three feet of any fire hydrant or other emergency facility.
  - b. Within fifteen feet of any intersecting driveway, alley, or street.
  - c. Within three feet of any marked crosswalk.
  - d. At any location where the width of paved clear space in any direction for the passage of pedestrians is reduced to less than five feet.
  - e. So as to be chained or otherwise secured to any tree, utility pole, light pole, parking meter, traffic control post, street signpost, or other public property.
  - f. On or within any median within any public right-of-way.
  - g. So as to project into any part of the public right-of-way or along the street, thoroughfares, parkways and sidewalks within the Village, unless authorized by a properly issued Village permit.
  - h. Within three feet ahead of and 15 feet to the rear of any sign marking a designated bus stop.

- i. Within three feet of any bus bench or bus shelter.
- 3. Within three feet of any display window of any building abutting the sidewalk or parkway, or in such manner as to impede or interfere with the reasonable use of such window for display purposes.
- 4. On any handicapped access ramp.
- 5. The permittee shall maintain the device in good working order, in a safe and clean condition, in such a manner that:
  - a. It is reasonably 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 publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
  - e. The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
  - f. The structural parts thereof are not broken or unduly disfigured;
  - g. The device shall display a telephone number for refund in case of malfunctioning of the device.
  - h. No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, or two (2) feet in thickness.
- 6. The permittee shall not use a newspaper dispensing device for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the materials sold therein.
- 7. A permit shall allow the installation of a newspaper dispensing device only at the exact location described in the application for the permit. The permit shall contain a description of the authorized location. Permits shall not be transferable from one location to another.
- 8. The permittee, upon removal of the dispensing device, shall restore the property of the Village to the same condition as when the device was initially installed, ordinary wear and tear expected.
- 9. As an express condition of the acceptance of a permit hereunder, the permittee thereby agrees to indemnify and hold harmless the Village, its officials, both elected and appointed, its employees and agents against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damaged sustained by any person as the result of the negligent installation, use or maintenance of a device within the Village.

**8-2107. Provision of Modular Newsracks.**

The Village shall provide for the placement of modular newsracks on public rights-of-way in the Modular Newsrack District.

1. The modular newsracks shall be purchased by a publication or publications in accordance with Village specifications. Each publication shall be required to pay the applicable cost for each modular newsrack it uses and shall be responsible for maintaining such modular newsrack.

2. After the initial installation of modular newsracks, the total number of compartments in the modular newsracks in the modular newsrack district may be increased or decreased only consistent with the purposes stated in Section 8-2101. Modular newsracks shall be placed in locations throughout the district which afford easy, convenient service to pedestrians, but which do not obstruct or interfere with access to abutting properties, and which do not impede or endanger pedestrian, bicycle or vehicle traffic. Any publication may petition the Village for placement of a modular newsrack at a specific location within the Modular Newsrack District. The Newspaper Dispensing Device Commissioner shall review each petition and determine whether such location is warranted.

3. There shall be no newspaper dispensing devices of any type located within the Modular Newsrack District except as part of a Village approved modular newsrack. All existing newspaper dispensing devices shall be removed from the Modular Newsrack District within seven days after

placement of the modular newsrack. Any newspaper dispensing device not so removed or otherwise placed in violation of this Article shall be subject to confiscation by the Village.

**8-2108. Allocation of Modular Newsrack Compartments.**

The Village shall ensure that modular newsrack compartments are allocated in accordance with the following procedures:

1. Each compartment in a modular newsrack shall contain copies of only one newspaper or other publication, and have a door that is sized to fit and display such newspaper or other publication.

2. The Village shall ensure that there are enough compartments in each modular newsrack to accommodate all publishers who initially wish to distribute their newspapers and other publications at that location, up to a maximum of 16 compartments per newsrack in the Modular Newsrack District. If more than 16 publishers wish to distribute newspapers or other publications at that location, then the compartments shall be allocated as follows:

a. Priority shall be given to publishers who continuously have distributed newspapers or other publications in newsracks at that location for more than 12 months before the effective date of this ordinance, as indicated by the publisher's affidavit provided to the Village;

b. Among publishers who have priority under this subsection, compartments will be allocated first to newspapers and other publications issued at least five days per week, second to newspapers and other publications issued between two and four days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently;

c. If there are more compartments than publishers with priority under this section, then the Village shall allocate the remaining compartments among publishers who do not have priority, first to newspapers and other publications issued at least five days per week, second to newspapers and other publications issued between two and four days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently;

d. Notwithstanding the requirements of this subsection, no newspaper or other publication may receive a second space in a modular newsrack until all other interested publishers have had the opportunity to have their newspaper or other publication allocated to a compartment.

e. Whenever additional compartments become available, they shall be allocated in the manner described in this subsection; and,

f. In the event two or more publishers have equal priority under this subsection, then allocation shall be by lottery or other random method.

3. For initial assignment of newsrack space, the Village shall notify all publishers who currently distribute their newspapers and publications at each location where the Village is installing a modular newsrack. Such notification shall, at a minimum, consist of a copy of the Village's Application for Modular Newsrack Space. On the application, each publisher shall include the number of compartments and the locations it is seeking. All applications shall be returned to the Newspaper Dispensing Device Commissioner, who shall ensure that compartments are allocated in accordance with the procedure set forth above.

4. After the initial assignment of newsrack space, any publisher seeking to place its publication within the Modular Newsrack District must fill out an Application for Modular Newsrack Space and submit it to the Newspaper Dispensing Device Commissioner, who shall ensure that compartments are allocated in accordance with the procedure set forth above.

5. The opportunity of publishers to have their newspapers or other publications distributed from a modular newsrack shall not be affected whatsoever by their content, consistent with the First Amendment to the United States Constitution.

**8-2109. Appeal of Denial of Permits.**

The decision of the Newspaper Dispensing Commissioner in refusing to grant a permit under this Article shall be appealable. The applicant shall have the right to appeal the decision to the Village Council Manager, provided that the applicant files a written notice of appeal, including a statement of the grounds of appeal, with the Newspaper Dispensing Commissioner within fifteen (15) calendar days after notice of the decision of the Newspaper Dispensing Commissioner. The Village Council Manager shall set a hearing on the appeal ~~at its next regularly scheduled Council meeting~~, and notice of such time and place shall be given in the same manner as specified in this Article. The Village Council Manager shall have the power to reverse, affirm or modify the decision of the Newspaper Dispensing Commissioner. In making its determination, the Village Council Manager shall only consider the standards set forth in this Article. ~~Its~~ <sup>This</sup> decision shall be rendered the same day as the hearing. The decision of the Village Council Manager shall be final.

#### **8-2110. Emergency.**

Notwithstanding any other provision of this Article, however, the Village may remove any newspaper dispensing device from public property which, because of its location or condition, poses an immediate threat to the health, safety and welfare of the public or a member thereof. The Newspaper Dispensing Commissioner shall send, by certified mail, with return receipt requested, a written notice to the address of the owner or user of the newspaper dispensing device. The notice shall state the address and telephone number of the Newspaper Dispensing Commissioner and a description of why the newspaper dispensing device was removed. The owner may request a hearing before the Village Council Manager by filing a written appeal with the Newspaper Dispensing Commissioner. In this event, a hearing shall be held, according to Section 8-2110, for the purpose of determining whether there is a continued need for the removal.

#### **8-2111. Revocation of Permits.**

The Newspaper Dispensing Commissioner shall revoke any permit issued under the terms of this Article after a finding of any of the following causes, which shall constitute violations of this Article:

1. Fraud, misrepresentation, or any false statement contained in the application for a permit;
2. Violation of any term of the permit granted to the permittee;
3. Violation of any term of this Article.

#### **8-2112. Removal of Newspaper Dispensing Devices.**

1. If any newspaper dispensing device is placed or remains within any public right-of-way, street, thoroughfare, parkway or sidewalk without a permit therefor being issued, or after the expiration or revocation of a previously issued permit, or is deemed abandoned or unclaimed, or in violation of any other provision of this Article, the Newspaper Dispensing Commissioner shall send, by certified mail, with return receipt requested, a written notice to the address of the owner or user of the newspaper dispensing device. The notice shall state the address and telephone number of the Newspaper Dispensing Commissioner, a description of why the newspaper dispensing device is in violation of the requirement of this Article; that the owner or user is ordered to cause immediate removal of the newspaper dispensing device from the public property; and that the newspaper dispensing device shall be removed by the Village after a date designated by the notice. The date shall be no less than ten (10) calendar days after the date the notice is mailed or first posted, as the case may be, unless the owner or user requests a hearing before the Village Council Manager by filing a written appeal with the Newspaper Dispensing Commissioner on or before the designated removal date.

2. When any appeal is filed pursuant to this Section, the Village Council Manager shall set a hearing on the appeal ~~at its next regularly scheduled Council meeting~~ and a notice of such time and place shall be given in the manner as specified in this Section. In making its determination, the Village

~~Council Manager~~ shall only consider the standards set forth in this Article. ~~Its~~ His decision shall be rendered on the same day as the hearing. The decision of the Village ~~Council Manager~~ shall be final.

3. If any newspaper dispensing device is still on public property after the ten (10) day period described in subsection (1) of this Section, or if an appeal is made and denied after hearing before the Village ~~Council Manager~~, the Newspaper Dispensing Commissioner shall cause removal of the newspaper dispensing device.

4. The owner of any newspaper dispensing device removed in accordance with the terms of this Article shall be responsible for all the expenses of the removal, storage and disposal of such newspaper dispensing device. Should the newspaper dispensing device or materials fail to be claimed or should the owner fail to pay any money due the Village within a period no less than sixty (60) days after the removal of the newspaper dispensing device, such newspaper dispensing device or materials shall be unclaimed property and ~~may be disposed of pursuant to law~~ become property of the Village.

**8-2113. Penalties.**

Any person or entity who shall be guilty of a violation of any of the provisions of this Article, shall be subject to a fine of not less than seventy-five dollars (\$75.00) and not more than seven hundred fifty dollars (\$750.00). A separate offence shall be deemed committed for every day a violation continues.

**8-2114. Severability.**

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Article.

SECTION 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

\_\_\_\_\_  
Mayor

Passed:  
Published:  
Attest: \_\_\_\_\_  
Village Clerk

[news]