

THE CITY OF PARK HILLS, KENTUCKY  
ORDINANCE NO. 4, 2012

AN ORDINANCE REPEALING CHAPTER 100 OF THE PARK HILLS CODE OF ORDINANCES IN ITS ENTIRETY, AND ENACTING A NEW CHAPTER 100 OF THE CODE TO PROHIBIT THE PLACEMENT OF BENCHES, VENDING MACHINES, AND OTHER ITEMS ON PUBLIC RIGHTS OF WAY, AND TO ESTABLISH A PENALTY AND PROCESS FOR REMOVAL FOR NONCOMPLIANCE

WHEREAS, That the City Council of The City of Park Hills, Kentucky determines that prohibiting encroachments within the public rights-of-way is necessary to ensure the health, safety, and general welfare of the City of Park Hills and its residents; and

WHEREAS, That City Council determines that prohibiting encroachments in the public rights-of-way assists in ensuring aesthetically pleasing City sidewalks, streets, neighborhoods, and business districts; and

WHEREAS, That City Council acknowledges that newsracks cannot be expressly prohibited and must receive special regulation due, in part, to protections uniquely available to them under the federal and Kentucky Constitutions and their role in disseminating information to the general public; and

WHEREAS, That it is necessary and prudent to regulate items in or on the public rights-of-way to ensure the safety of pedestrians and operators of vehicles traversing City streets, sidewalks, and rights-of-way; and

WHEREAS, That pursuant to its police powers and other applicable law, the City of Park Hills has the exclusive right to regulate its public rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PARK HILLS, KENTUCKY, as follows:

**Section One.** That Chapter 100, entitled *Public Property*, of the Park Hills Code of Ordinances is hereby repealed in its entirety.

**Section Two.** That a new Chapter 100 of the Park Hills Code of Ordinances, entitled *Encroachments On Or In The Public Rights-of-way* is hereby created, as follows:

**CHAPTER 100: ENCROACHMENTS ON OR IN THE PUBLIC RIGHTS-OF-WAY**

<u>Section 100.01</u>	<u>Definitions</u>
<u>Section 100.02</u>	<u>Encroachments On Or In The Public Rights-of-Way Prohibited</u>
<u>Section 100.03</u>	<u>Merchandise Display</u>
<u>Section 100.04</u>	<u>Newsracks</u>
<u>Section 100.99</u>	<u>Penalty</u>

100.01 DEFINITIONS. For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. Bench. A seat or seats located on or along any public right-of-way for the accommodation of persons awaiting transportation or for other purposes. This definition includes benches that may or may not have advertising located anywhere on their exterior.
- B. Modular Newsrack. A newsrack that is designated with multiple separate enclosed compartments able to accommodate the display, sale, or distribution of multiple distinct and separate newspapers, which exceeds the dimensions of an individual newsrack.
- C. Newspaper. A publication of general circulation printed and distributed either daily or weekly that contains news, current events, features, advertising or information of interest to the general public, often distributed through the use of newsracks.
- D. Newsrack. Any type of unmanned device for the vending or free distribution of newspapers, periodicals, or printed materials of any nature.
- E. Planter. A container for plants, trees, bushes, or other vegetation.
- F. Public Right-of-Way. All areas deeded to the public, or dedicated to the public by formal dedication or by operation of law that are legally open to public use, such as public streets, sidewalks, roadways, highways, parkways, alleys, and parks, as well as areas

surrounding and immediately adjacent to public buildings, and the airspace above them.

- G. Shelter. An enclosed or semi-enclosed structure, with or without seats, located on any public right-of-way for the accommodation of persons awaiting transportation or for other purposes.
- H. Vending Machine. Any machine that dispenses a product to the general public, including, but not limited to, soft drink vending machines, cigar or cigarette vending machines, food vending machines, and coffee or other hot drink vending machines, but excluding newsrack vending machines.
- I. The Code. The Code of Ordinances of The City of Park Hills, Kentucky, as may be amended from time to time.
- J. The Clerk. The individual holding the office of City Clerk/Treasurer at Section 30.21 of the Code.

100.02 ENCROACHMENTS ON OR IN THE PUBLIC RIGHT-OF-WAY PROHIBITED.

- A. General Prohibition Against Public Right-of-Way Encroachments. No encroachment shall be allowed on or in any public right-of-way unless otherwise provided in this Chapter or elsewhere in the Code.
- B. Non-compliance. The Clerk shall inform any offending person or entity in writing by ordinary mail at his, her, or its last known business or home address, that the offender has ten (10) calendar days from the date of the notice to remove the encroachment from the right-of-way. If the encroachment is not removed within the ten (10) calendar days, then the City shall have the right to remove the encroachment at the violator's cost without further notice.
- C. Exceptions. The following exceptions to the general prohibition at subsection (A) shall be allowed, subject to the condition that the item(s) placed on or in a right-of-way do not create safety hazards by blocking reasonable access to or passage through a right-of-way or egress and ingress to an adjoining entrance way, or by obstructing vehicular traffic or traffic signal sight lines:

1. Sandwich board advertising abutting a licensed business, as permitted by the Code.
2. Planters or landscaping items.
3. Set-outs of merchandise or other related items in the right-of-way of the abutting business establishment during that business' regular operating hours, as set forth in Section 100.03 of this Chapter, unless otherwise prohibited by the Code.
4. Any property placed in the right-of-way by a governmental or quasi-governmental agency or body, including, but not limited to traffic control and directional signs and devices, fire hydrants, emergency call boxes, United States Postal Service mail receptacles or boxes, telephones, electrical and light poles, public transportation shelters, benches and identifying signs as required or permitted by law, and street identification signs.
5. Temporary signage promoting parades, festivals, concerts, or other special events that are open to the public, subject to the condition that the event has been issued a valid permit by the City Council under Chapter 95 of the Code or other applicable law. Temporary signage must be removed within seven (7) calendar days following the conclusion of the event.
6. Temporary scaffolding or other materials related to exterior building renovation or construction, subject to the conditions within the Code requiring a permit prior to proceeding with said renovation or construction.
7. Any encroachment otherwise allowed in the Code.

100.03 MERCHANDISE DISPLAY. The display of merchandise is permitted on sidewalks only, subject to the following restrictions:

- A. Only new merchandise for sale, including plants and gardening materials, may be displayed.

- B. Displays are limited to the area directly in front of a commercial establishment offering the items for sale.
- C. Displays may not be located within six (6) feet of the edge of the sidewalk nearest the curb, and shall allow for six (6) feet of clear width on the sidewalk.
- D. Displays shall not block ingress or egress to any entrances or exits of adjoining buildings or properties.
- E. Merchandise may not be displayed more than one-half hour prior to opening of the business and must be removed within one-half hour after closing the business each day.
- F. No such displays shall engage the use of electricity, nor shall such displays be animated or use lights or noise-making devices.

100.04 NEWSRACKS. Newsracks may be placed in public rights-of-way, subject to the following conditions and restrictions:

- A. It shall be unlawful for any person to place, affix erect, construct, or maintain a newsrack upon any right-of-way without having obtained written permission for the placement and location from the Clerk in accordance with this Section.
  - 1. An applicant shall submit a written request for placement of a newsrack to the Clerk with the following information: (a) the name, address, telephone number, and email address of the person or entity responsible for the newsrack, (b) the name, address, telephone number, and email address of the person who the Clerk should notify or contact at any time concerning the permittee's newsrack, (c) the number, location, position, and installation method of the newsrack shown on a reasonably scaled map, drawing, or aerial photograph, (d) the names of the publications to be contained within each newsrack, frequency of distribution and re-stocking schedule, and (e) a description and the dimensions of the newsrack.

2. The Clerk shall issue a written decision to an applicant within 14 days of the submission of the written request containing the information set forth in subsection (A)(1).
  3. Any denial or adverse decision regarding an applicant's proposed placement of a newsrack in the right-of-way may be reviewed *de novo* to the Park Hills Code Enforcement Board within 30 days of the denial or adverse decision. An adverse decision of the Code Enforcement Board may be reviewed *de novo* to the Kenton District Court within 30 days of the issuance of the Board's Final Order.
- B. Newsracks shall have the following dimensions:
1. The height shall not exceed 60 inches off the ground.
  2. The width, measured at the widest point, shall not exceed 25 inches.
  3. The depth, measured at the widest point, shall not exceed 25 inches.
- C. Newsracks may not be bolted or permanently affixed to any public sidewalk or improved right-of-way unless such installation is approved by the Clerk or her designee. If approved, installation shall be in a manner that conforms with the requirements of this Section, and to ensure minimal damage to the right-of-way infrastructure.
- D. Newsracks that are not bolted or permanently attached to any public sidewalk or right-of-way shall be secured by a weighted base or pedestal to prevent the newsrack from being tipped over or upset by the elements or contact with pedestrians.
- E. Newsracks shall not be chained or otherwise attached to any tree, bench, signpost, shelter, or any other fixture.
- F. Each newsrack shall be regularly maintained by its owner in a reasonable, clean, net, and attractive condition, and be in good repair and operation at all times so that:

1. It is kept free from graffiti; and
  2. It is kept free of chipped, faded, peeling, or cracked paint in its visible painted areas; and
  3. It is kept free of rust and corrosion in the visible unpainted metal areas thereof; and
  4. The clear glass or plastic parts thereof, if any, through which the printed material being dispensed are not broken and are kept free of tears, peeling, or fading; and
  5. The structural parts of the newsrack operate, and are not broken or unduly misshapen.
- G. In the event that an owner shall remove the newsrack and any mounting attachment, the owner shall restore the location to a safe condition, leaving no defect or projection in the pavement. The owner shall notify the Clerk in writing of the newsrack's removal within seven (7) days after completing the removal.
- H. Any newsrack that is abandoned or fails to comply with any of the requirements set forth in this Section may be removed by the City after sending a seven-day written notice to the owner by ordinary mail at the address specified by subsection (A)(1) that the newsrack is deemed abandoned or not in compliance with this Section. A newsrack will be deemed abandoned when it does not provide the newspaper specified therefore for more than seven consecutive days for a daily publication, or 14 consecutive days for a weekly publication or other magazine or informational material.
- I. Newsracks shall be placed in locations that do not obstruct or interfere with ingress or egress by abutting properties and that do not impede or endanger pedestrians or vehicular traffic.
- J. Newsracks shall not be placed:
1. Upon a public right-of-way in a manner that blocks ingress or egress to a building or readily identifiable or marked bus stop loading zone or other loading zone, or handicapped parking space; or

2. Within 15 feet of a fire hydrant; or
3. Within 2 feet of a parking meter, mail box, bench, light post, planter, or tree grates; or
4. On any portion of a tree grate, manhole cover, meter or valve box cover, or vent cover for underground utilities; or
5. At any location whereby the clear space on the public sidewalk for passageway of pedestrians is reduced to less than 4 feet; or
6. In such a manner where the door of the newsrack opens beyond the edge of a street curb.

K. Modular newsracks are prohibited.

L. As a condition to receiving the written permission described at subsection A, the newsrack permittee shall release and indemnify, defend, and save harmless the City of Park Hills, its officers, elected officers, agents, contractors, and employees from and against all claims, actions, demands, judgments, costs, expenses, and damages of every kind and nature incurred by or incurring to any person whatsoever predicated upon injury to or death of any person, or loss of or damage to property, public or private, or whatever ownership, or damages to business, arising out of or connected directly or indirectly with the exercise of any right or privilege granted by any written permission issued under this Section.

#### 100.99 PENALTY.

- A. Any violation of any provision of this Chapter is classified as a civil offense.
- B. The Park Hills Code Enforcement Board shall have the power and authority to issue remedial orders and impose civil fines to enforce this Chapter. Enforcement of this Chapter shall be in accordance with the procedures set forth within Park Hills Ordinance No. 14, 2007, and as amended. Civil fines for violations of this Chapter shall be those set forth at Section VIII of Park Hills Ordinance No. 14, 2007. The City shall possess a lien on property, real or personal, for all fines, penalties, charges,



costs, and attorney's fees associated with enforcing this Chapter, and the cost of placing a lien on personal or real property. The lien shall be superior to and have priority over all other liens filed subsequently, except state, county, school district, and city *ad valorem* taxes and trash fees.

**Section Three.** That if any provision of this Ordinance is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provisions of this Ordinance shall continue in full force and effect.

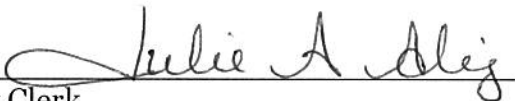
**Section Four.** That all other ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of the conflict.

**Section Five.** That this Ordinance shall be effective when passed, published and journalized according to law.



Don Catchen, Mayor

ATTEST:

  
City Clerk

First Reading: 2/13/12  
Second Reading: 3/12/12  
Passed: 3/12/12

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