

PUBLIC NOTICE

Public Notice is hereby given that an ordinance of which the following is a copy was introduced, read and passed on first reading by the Council of the Town of Westfield at a meeting held October 26, 1999, and that the said Council will further consider the same for final passage on the ninth day of November, 1999, at 8:00 p.m., in the Council Chamber, Municipal Building, 425 East Broad Street, Westfield, New Jersey, at which time and place any person who may be interested therein will be given an opportunity to be heard concerning said ordinance.

Bernard A. Heeney Acting Town Clerk

GENERAL ORDINANCE NO.

AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF WESTFIELD TO ADD A NEW CHAPTER 24A

Be it ordained by the Town Council of the Town of Westfield as follows:

Section I:

That a new chapter be added to the Code of the Town of Westfield to be entitled "Regulation of Newsracks" to read as follows:

- § 24A-1 Title.
§ 24A-2 Purpose; Legislative Intent.
§ 24A-3 Legislative Findings.
§ 24A-4 Definitions and Word Usage.

Article II. Regulation of Newsracks.

- § 24A-5 Newsrack Permit Required.
§ 24A-6 Standards for Installation, Maintenance and Operation.
§ 24A-7 Location and Placement.
§ 24A-8 Downtown Zone.
§ 24A-9 Indemnification Agreement.
§ 24A-10 Insurance.
§ 24A-11 Appeals.
§ 24A-12 Enforcement.
§ 24A-13 Violations and Penalties.
§ 24A-14 Impoundment of Newsracks.
§ 24A-15 Reservation.

Article I. In General

Section 24A-1 Title.

This chapter shall be known as the "Regulation of Newsrack Ordinance for the Town of Westfield."

Section 24A-2 Purpose; Legislative Intent.

It is the intent of this chapter to promote the public health, safety and welfare through the regulation of the placement, appearance, type, servicing, and insuring of newsracks located on public right-of-ways in the Town so as to:

- (a) Provide for pedestrian and driving safety and convenience.
(b) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including but not limited to ingress into or egress from any residence or place of business.
(c) 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.
(d) Provide for the placement of newsracks in the Town's Downtown Zone (as defined herein) in a manner which is consistent with the aesthetics of the Downtown Zone, promoting redevelopment and revitalization of the area, while still leaving open ample reasonable means for distribution of newspapers and other printed material constitutionally protected by the freedom of the press.
(e) Reduce unreasonable exposure of the public to personal injury or property damage.
(f) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication.
(g) Maintain and preserve freedom of the press under the First Amendment of the United States Constitution and Article 1, Section 6 of the Constitution of the State of New Jersey.
(h) Cooperate with distributors of newspapers and other publications.
(i) Provide for the proper and efficient maintenance and intended use of public right-of-ways while also leaving open adequate means of distribution of newspapers and other publications in public places.

Section 24A-3 Legislative Findings.

After conducting a study of the existing newsracks in the Town and the effect on the public health, safety and welfare of the residents and visitors of the Town, it has been determined that:

- (a) A substantial growth in the number of newspapers and other publications distributed in the Town has produced a significant increase in the number of newsracks installed in the public right-of-ways.
(b) The uncontrolled placement of newsracks in public right-of-ways presents an inconvenience and a danger to the safety and welfare of persons using the right-of-ways.
(c) The Town and the private sector have invested significant funds towards the maintenance, as well as, towards the redevelopment and revitalization of the Town.
(d) The Town has adopted a specific plan for the economic redevelopment and revitalization of a portion of the Town, officially designated as the Special Improvement District.
(e) The Town is pursuing numerous initiatives to redevelop and revitalize the Central Avenue corridor leading to the Special Improvement District.
(f) There is a need to regulate and establish procedures regarding installation, placement, size, maintenance and insuring of newsracks within the Town.
(g) Establishing procedures for newsracks will improve the aesthetics of the Town, promote the health, safety, and welfare of residents and visitors of the Town, and support the development and revitalization of the Town, while maintaining and preserving freedom of the press under the First Amendment of the United States Constitution and Article 1, Section 6 of the Constitution of the State of New Jersey.

Sec. 24A-4 Definitions and Word Usage.

(a) Definitions. Whenever used in this chapter, unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following terms shall have the meanings indicated:

"Abandoned Newsrack" - Any Newsrack that does not contain the publication specified therefor for more than thirty-two (32) consecutive days. In case of a labor strike or temporary or extraordinary interruption of distribution or publication of the newspaper or other publication sold or dispensed from that Newsrack, the Newsrack Owner shall notify the Enforcement Officer in writing in order to avoid having the Newsrack deemed abandoned. Such notice shall conclusively establish that the Newsrack(s) in question are not abandoned.

"Downtown Zone" - means (a) the GB-1 General Business District along Central Avenue and the GB-3 General Business District along Central Avenue, each as defined in the Westfield "Land Use Ordinance" and as shown on the zoning map of the Town of Westfield, and (b) the SID.

"Enforcement Officer" - The official of the Town charged with the primary responsibility of administering this chapter. The Enforcement Officer shall be a Town employee as designated by the Town Administrator.

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

"Newsrack Appeals Panel" - The panel created to review appeals of Newsrack Permit denials and other actions by the Enforcement Officer pursuant to the provisions of this chapter. The Newsrack Appeals Panel shall consist of three members, two of which shall be appointed by the Town Administrator and one of which shall be appointed by the Board of Directors of the Downtown Westfield Corporation or its successor entity. The Town Administrator may appoint himself or herself to the Newsrack Appeals Panel. Any hearing before the Newsrack Appeals Panel shall be attended by at least two of such persons. The Enforcement Officer shall not be a member of the Newsrack Appeals Panel. All members of the Newsrack Appeals Panel shall serve for one year terms commencing January 1st and shall be residents of the Town. Decisions of the Newsrack Appeals Panel shall be by majority vote of a quorum of such body. A quorum shall be established by the presence of two members of the Newsrack Appeals Panel.

"Newsrack Location Map" - The map adopted with this ordinance that designates preferred locations and areas where Newsracks may be located in the Downtown Zone.

"Newsrack Owner" - Any person or other legal entity owning a Newsrack or distributing publications in a Newsrack in a Public Right-of-Way.

"Newsrack Permit" - The permit issued by the Town Clerk authorizing placement of a Newsrack in a Public Right-of-Way.

"Public Right-of-Way" - Any public street, highway, sidewalk, parkway, alley or other public property located within the Town, as contrasted with private property which is not subject to this Ordinance.

"Special Improvement District" or "SID" - The Westfield Special Improvement District as established by Section 2-104 of the Code.

"Town" - The Town of Westfield.

- (b) Interchangeability. Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural singular.
(c) Direction. "May" or "should" indicates a permissive direction; "must" or "shall" indicates a mandatory direction.
(d) Terms defined in other codes. Where terms are not defined in this chapter and are defined in the Town Code, they shall have the same meanings as ascribed therein.

Article II. Regulation of Newsracks

Section 24A-5 Newsrack Permit Required.

(a) Newsrack Permit required. It shall be unlawful for any Newsrack Owner to erect, place, maintain or operate on any Public Right-of-Way any Newsrack without first having obtained a Newsrack Permit from the Town Clerk in accordance with the standards and time period set forth below. One (1) Newsrack Permit shall be required for each Newsrack.

(b) Application for Newsrack Permit.

- (1) Any Newsrack Owner who desires to install and maintain a Newsrack on any Public Right-of-Way shall submit an application for a permit, in writing, to the Town Clerk on such forms as shall be provided by the Town Clerk. The application shall contain the following information:
(AA) The name, address and telephone number of the applicant who is the owner and/or principal who is responsible and in charge of the Newsrack;
(BB) The name, address and telephone number of a responsible person whom the Town may notify or contact at any time concerning the applicant's Newsrack;
(CC) The proposed location of such Newsrack as shown on a map of the Town to be provided by the Town Clerk;
(DD) The location of any existing Newsrack located within the Town belonging to said applicant, including the date each was installed;
(EE) The names of newspapers or periodicals to be contained in each Newsrack; and
(FF) A signature by the applicant or the applicant's authorized representative.
(2) Any Newsrack Owner having a Newsrack which is already located or installed in whole or in part on any Public Right-of-Way on the effective date of this section shall, within forty five (45) days from the effective date hereof, file an application for a Newsrack Permit.
(3) Each Newsrack Owner shall have a duty to promptly notify the Enforcement Officer of any changes in the information provided in its application.
(c) Standards for issuance of Newsrack Permit. The Town Clerk shall issue a Newsrack Permit if, upon review of the application by the Enforcement Officer, the applicant is not in violation with any provisions of this chapter.
(d) Time to act on application; statement of reasons. Within fifteen business (15) days of receipt by the Town Clerk of an application for a Newsrack Permit, (i) the Enforcement Officer shall either grant or deny such application and notify the Town Clerk of same and (ii) the Town Clerk shall so notify the applicant in writing. If the application is denied, the notification to the applicant shall state with particularity the reasons for denial, including the specific provisions of this chapter which the application fails to meet. The applicant can correct such defect and then reapply for a Newsrack Permit.

(e) Fees.

- (1) A permit fee in the amount of twenty five dollars (\$25.00) for the first Newsrack installed by a Newsrack Owner and ten dollars (\$10.00) for each additional Newsrack shall be paid to the Town Clerk upon submission of an application for a Newsrack Permit. No application shall be deemed complete unless it is accompanied by the required permit fee.
(2) Any permit issued hereunder shall be valid for a period of one (1) year from the date of issuance thereof and shall be renewable upon the payment to the Town Clerk of an annual fee in the amount of ten dollars (\$10.00), which shall be accompanied by written confirmation that the location of the Newsrack has not been changed.
(3) The purpose of the initial permit fee and the annual renewal fee required under this subsection is to offset the costs of administration, inspection and enforcement of the provisions of this chapter. The amount of such fees shall within reasonable intervals be adjusted by resolution of the Town Council so that the fees may only provide for the offset of the aforesaid costs and nothing more.
(f) Unlimited number of Newsracks. The provisions of this chapter, including the permit requirements, are not intended to limit the reasonable number of Newsracks that can be located in the Town nor the reasonable number of Newsracks that any Newsrack Owner may locate in the Town; provided, however, that no more than one (1) Newsrack containing a specific publication shall be located within a thirty (30) foot radius of another Newsrack containing such publication.
(g) No time restriction. There is no time restriction as to when the public may access Newsracks.

Section 24A-6 Standards for Installation, Maintenance and Operation.

Any Newsrack which in whole or in part rests upon, in or over any Public Right-of-Way or which projects onto, into or over any part of a Public Right-of-Way within the Town shall comply with the following standards:

- (a) No Newsrack shall exceed sixty (60) inches in height, thirty (30) inches in width or twenty-four (24) inches in depth. No Newsrack shall weigh in excess of one hundred twenty-five (125) pounds when empty. No Newsrack shall be constructed of materials which would deteriorate from exposure to the elements if such Newsrack were not properly maintained.
(b) No Newsrack shall be used for commercial advertising or commercial publicity purposes other than to display, promote or advertise the publication contained therein.
(c) Where applicable, each Newsrack shall be equipped with a coin return mechanism to permit a person using the Newsrack to secure an immediate refund in the event that he is unable to receive the publication paid for. The coin return mechanism shall at all reasonable times be maintained in good working order.
(d) Each Newsrack shall have affixed thereto, in a readily visible place so as to be seen by anyone using the Newsrack, a notice setting forth the name and address of the Newsrack Owner and the telephone number of a working telephone service to call to (i) report a malfunction, (ii) secure a refund in the event of a malfunction of the coin-return mechanism, or (iii) provide a notice of violation or impoundment pursuant to this chapter.
(e) Each Newsrack shall be reasonably maintained in a neat and clean condition and in good repair at all times and shall meet these standards:
(1) It is reasonably free of loose, chipped, peeling and cracked paint in the visible areas thereof;
(2) It is reasonably free of rust and corrosion in the visible metal areas thereon;
(3) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are not broken and are reasonably free of cracks, dents, blemishes and discoloration;
(4) The paper or cardboard parts or inserts thereof, if any, are reasonably free of tears, peelings and fading; and
(5) The structural parts thereof are not broken, cracked or otherwise dangerous to users thereof.
(f) Newsracks shall be bolted, weighted or otherwise secured so as to prevent their unauthorized removal or their accidental movement within the Public Right-of-Way, provided that Newsracks located in the Downtown Zone shall not be chained and/or secured to trees, signs, public property, public sidewalks or other Newsracks.
(g) Newsrack Owners shall use good faith efforts to frequently replenish the stock contained in their Newsracks.

Section 24A-7 Location and Placement.

Any Newsrack which rests in whole or in part upon or on any portion of a Public Right-of-Way shall be located in accordance with the following provisions:

- (a) No Newsrack shall be used or maintained which projects onto, into or over any part of the roadway portion of any Public Right-of-Way or which rests, wholly or in part, upon, along or over any portion of the roadway portion of any Public Right-of-Way.

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- (b) No Newsrack shall be permitted to rest upon, in or over any public sidewalk when such installation, use or maintenance:
(1) Endangers the safety of persons or property;
(2) Unreasonably interferes with or impedes the flow of pedestrians along the Public Right-of-Way;
(3) Unreasonably interferes with or impedes the flow of vehicular traffic, including any legally parked or stopped vehicle, along the Public Right-of-Way;
(4) Unreasonably interferes with the ingress into or egress from any public or private property or place of business;
(5) Unreasonably interferes with the use of traffic signs, traffic signals, fire hydrants, police or fire call boxes, utility poles, mailboxes or other equipment located on or near the Public Right-of-Way;
(6) Unreasonably interferes with access to and the operation of Town parking meters; or
(7) Unreasonably interferes with public access to benches or rest stops provided along the Public Right-of-Way.
(c) Newsracks shall be placed adjacent to but at least three (3) feet from curb lines, provided that all Newsracks so installed shall face away from the roadway so as not to provide drive-up access to motorists.
(d) No Newsrack shall be placed, installed, located, used or maintained:
(1) Within twenty (20) feet of any marked crosswalk;
(2) Within twenty (20) feet of any unmarked crosswalk;
(3) Within fifteen (15) feet of any fire hydrant, fire call box, police call box or other emergency facility or equipment;
(4) Within five (5) feet of any driveway;
(5) Within three (3) feet of or on any public area improved with lawns, flowers, shrubs, trees or other landscaping;
(6) Within five (5) feet of the entrance of a bus shelter;
(7) Within five (5) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop.

Section 24A-8 Downtown Zone.

(a) Newsrack Location Map; Authorized Locations. Newsracks shall be located in the Downtown Zone in such a way as to conform to the Newsrack Location Map adopted pursuant to this ordinance and annexed hereto. The Newsrack Location Map identifies the preferred number and locations for installation of Newsracks within the Downtown Zone. The locations identified on the Newsrack Location Map are not exhaustive or exclusive and the Enforcement Officer shall permit additional Newsracks and locations within the Downtown Zone which are not otherwise inconsistent with this ordinance.

(b) Right to Distribution. In no event shall any Newsrack Owner be denied the right to distribute its publications. All reasonable efforts shall be made to provide all Newsrack Owners with ample channels of distribution so as not to abridge their right to distribute their publications within the Town, including within the Downtown Zone.

(c) Alternative Locations. In the event that the location in the Downtown Zone requested by a Newsrack Owner in its Newsrack Permit application is not available, the Enforcement Officer shall seek to identify a location as close as practicable to that requested by the Newsrack Owner. In the event that the Enforcement Officer is unable to approve the Newsrack Owner's request for a specific location within the Downtown Zone, the Enforcement Officer shall identify his reasons for such a decision based on the criteria of this chapter and identify the location or locations that are available in the Town. In no event shall the Newsrack Owner be denied the right to distribute its publications.

Section 24A-9 Indemnification Agreement.

No Newsrack Permit shall be issued unless the Newsrack Owner shall have executed and filed with the Town Clerk an indemnification agreement in a form provided by the Town pursuant to which the Newsrack Owner agrees to forever defend, protect, indemnify and save harmless the Town, its officers, agents and employees from and against any and all causes of action, injuries, losses, liabilities, damages, expenses, fees and costs arising out of the location of the Newsrack or the Newsrack Owner's maintenance of the Newsrack.

Section 24A-10 Insurance.

(a) Filing of insurance policy. No Newsrack Permit shall be issued unless the Newsrack Owner shall have filed with the Town Clerk a copy of an insurance policy or certificate of insurance, issued by a company duly authorized to transact business under the laws of this State, providing for the payment of not less than one hundred thousand dollars (\$100,000) to satisfy all claims for damage by reason of bodily injuries to, or the death of, any person as a direct or indirect result of the maintenance or operation of the Newsrack, and further providing for the payment of not less than ten thousand dollars (\$10,000) to satisfy all claims for property damage occurring as a direct or indirect result of the maintenance and operation of such Newsrack and naming the Town of Westfield as an additional insured.
(b) Notice to Town of change in coverage. The insurance policy shall provide that the insurance company shall notify the Town thirty (30) days prior to cancellation or substantial change in coverage.

Section 24A-11 Appeals.

(a) Right to Appeal. Any applicant who is denied a Newsrack Permit or any other person who is affected by any other action by the Enforcement Officer in connection with the enforcement of any provision of this chapter or of any rule or regulation adopted pursuant hereto, may request and shall be granted a hearing on the matter before the Newsrack Appeals Panel. A written petition requesting such a hearing and containing a statement of the grounds therefor shall either be delivered personally to the Town Administrator or sent by certified or registered mail, return receipt requested, within thirty (30) days from the date of the action which is being appealed. The availability of such a hearing shall not in any way be deemed to deprive or preclude an applicant from directly seeking relief in any court of competent jurisdiction.
(b) Hearing. Upon receipt of such a petition, the Town Administrator shall set a time and place for such a hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why the decision or action should be affirmed, reversed or modified. The hearing shall be commenced not later than ten (10) business days after the day on which the petition was filed (or as soon thereafter as is practicable), provided that upon application of the petitioner, the Town Administrator may postpone the date of the hearing for a reasonable time beyond such ten (10) business day period if, in his judgment, the petitioner has submitted a good and sufficient reason for such postponement. The Newsrack Appeals Panel shall consider the findings of the Enforcement Officer and the testimony and submissions, if any, of the petitioner. After such hearing, the Newsrack Appeals Panel shall affirm, overrule or modify the action of the Enforcement Officer.

(c) Record of Proceedings. The findings and decision of the Newsrack Appeals Panel shall be in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice or order issued in connection with the matter. The record of such proceedings shall be retained for sixty (60) days after the final decision is made.

(d) Non-exclusive Remedy. The foregoing appeal procedure is not to be construed as the sole and exclusive remedy of the petitioner.

Section 24A-12 Enforcement.

(a) Enforcement Officer. Except as otherwise provided, the requirements of this chapter shall be enforced by the Enforcement Officer who shall seek such penalties as are provided herein.
(b) Notice of Noncompliance. If the Enforcement Officer determines that a Newsrack does not comply with the provisions of this chapter, the Enforcement Officer shall mail a written notice to the Newsrack Owner, by certified mail, return receipt requested, stating the reasons why such Newsrack does not comply with the aforesaid provisions.
(c) Determination of a Violation. If a Newsrack Owner fails to adjust, correct, obtain a permit or otherwise cause such Newsrack to comply with the provisions of this chapter within fourteen (14) days from the date that written notice of noncompliance is mailed by the Enforcement Officer, such Newsrack Owner shall be deemed in violation thereof. The foregoing shall not preclude the Enforcement Officer from providing subsequent written notices of noncompliance for the same offense.
(d) Form of notice. Notices pursuant to this chapter shall be sent to the holder of the Newsrack Permit or, in the case of a Newsrack located in the Town without a Newsrack Permit, notices shall be sent to the name and address listed on the Newsrack, if available, or to the publisher of the publication contained therein.

Section 24A-13 Violations and Penalties.

Any Newsrack Owner who fails to comply with the provisions of this chapter shall be liable for a fine of not more than five hundred dollars (\$500.00) or imprisonment for a term of not more than ninety (90) days, or both. Each and every day that a violation of this chapter continues shall be deemed a separate and distinct offense.

Section 24A-14 Impoundment of Newsracks.

- (a) Grounds for impounding Newsracks. The Town may impound any Newsrack:
(1) That fails to comply with the provisions of Section 24A-7(b) hereof;
(2) Where the Newsrack Owner has received more than two (2) notices of noncompliance within a year, which notices remain uncorrected after applicable cure and appeal periods have expired;
(3) Which is an Abandoned Newsrack as defined by this chapter;
(4) Where the Newsrack Owner fails to pay the annual permit fee (provided that the Town sends a notice by certified mail, return receipt requested, of delinquency to the Newsrack Owner and the Newsrack Owner fails to pay the annual permit fee within thirty (30) days of the date that the Town provided such notice);
(5) Where the Newsrack Owner has not submitted a permit application within sixty (60) days from written notice of the adoption of this ordinance; or
(6) Where a Newsrack is placed in the Town without first obtaining a Newsrack Permit therefor.
(b) Notice of impoundment action. Except for those situations provided for in subsections (a)(1), (5) and (6) above, the Town shall employ all reasonable efforts to provide thirty (30) days notice, by certified mail, return receipt requested, to the permittee before impounding the Newsrack.
(c) Notice of actual impoundment. The Town shall employ all reasonable efforts to provide written notice of a Newsrack's actual impoundment by certified mail, return receipt requested to the Newsrack Owner of the impounded Newsrack by the next full business day after the impoundment. The Newsrack Owner shall be entitled to obtain the return of the impounded Newsrack from the Town upon request during normal business hours, provided that the Newsrack is not being held as evidence in any criminal proceeding.
(d) Unclaimed Newsracks. Any Newsrack impounded pursuant to this chapter that is not claimed within thirty (30) days of actual impoundment shall be disposed of in a manner determined by the Enforcement Officer in accordance with relevant law.

Section 24A-15 Reservation.

If, as a result of changed conditions (which are not emergent conditions), the Mayor and Town Council find that it is necessary and in the public interest to alter the standards, the method of vending or the prescribed location of any Newsrack provided for herein, no alteration shall be taken until all affected Newsrack Owners are afforded due notice and hearing on the nature of said alteration.

Section II.

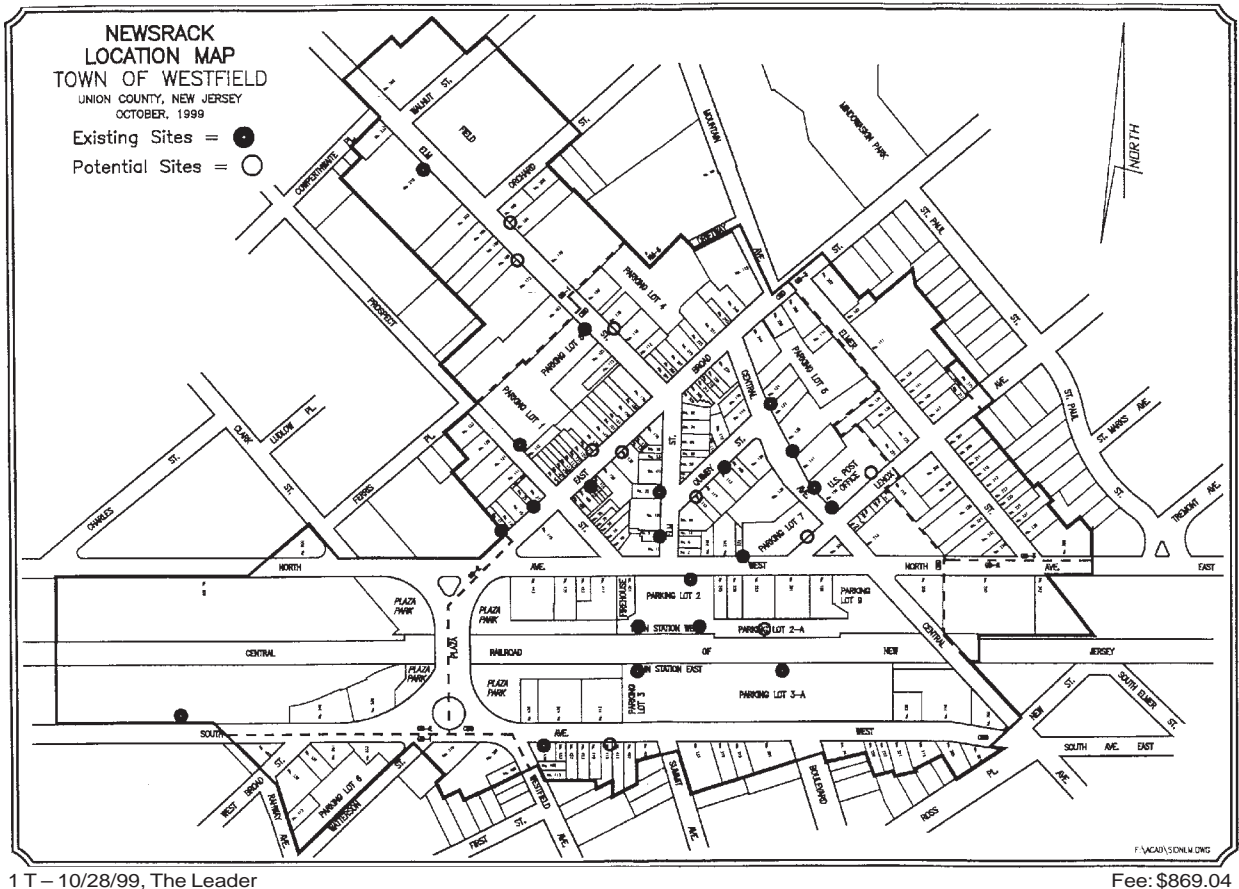
Any or all ordinances or parts thereof in conflict or inconsistent with any part of the terms of this ordinance are hereby repealed to the extent that they are in such conflict or inconsistent; provided in any case where the provisions of this ordinance impose a higher standard than that set forth in any ordinance of the Town or under the laws of the State of New Jersey, then the standards as set forth herein shall prevail. If the provisions of this ordinance impose a lower standard than any ordinance of the Town or the laws of the State of New Jersey, then the higher standard contained in any other such ordinance or law shall prevail.

Section III.

In the event that any section, part or provision of this ordinance shall be held to be unconstitutional or invalid by any court, such holding shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so held unconstitutional or invalid.

Section IV.

This ordinance shall take effect after passage and publication as soon as, and in the manner permitted by law.



1 T - 10/28/99, The Leader Fee: \$869.04

