

Agenda Report

TO: CITY COUNCIL **DATE: March 2, 2009**

THROUGH: PUBLIC SAFETY COMMITTEE

FROM: CITY MANAGER

SUBJECT: AMENDMENT TO DISTRIBUTION OF UNSOLICITED WRITTEN MATERIAL ORDINANCE – PASADENA MUNICIPAL CODE CHAPTER 9.44

RECOMMENDATION:

It is recommended that the City Council

- (1) Find the proposed ordinance to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code § 21080(b)(9) and State CEQA Guidelines Section 15306 (Information Collection).
- (2) Direct the City Attorney to return within 60 days with an ordinance repealing the existing handbill ordinance (Distribution of Unsolicited Written Material Ordinance (Pasadena Municipal Code Chapter 9.44)) and a new ordinance which would:
 - (a) Prohibit the distribution of handbills on residential property (which includes apartments, condominiums, etc.) unless the handbills are properly secured, affixed or weighted so that it will not be blown about or off the property or by delivering the handbill personally to the occupant thereon.
 - (b) Prohibit the distribution of handbills on residential property if there is placed in a conspicuous location near the entrance, a legible sign of at least 16 square inches bearing the words "No Handbills" or a similar notice that the resident wishes not to have their right of privacy disturbed or to receive any handbills, such as a "No Solicitors" sign, unless the distributor has the resident's prior

authorization to distribute (subject to exceptions which include public officials delivering public notices required by law and handbills which have been requested by the resident (e.g., newspaper subscriptions).

- (c) Prohibit any person from distributing handbills in or upon any automobile or other vehicle citywide.
- (d) Permit the handing of any handbill to a person who is willing to accept the handbill.
- (e) Establish a rebuttable presumption that the person whose message is on the unlawfully-distributed handbill has violated the ordinance.

BACKGROUND

In June 1998, the City Council adopted Municipal Code section 9.44 entitled "Distribution of Unsolicited Written Material"¹ which restricted the distribution of handbills², leaflets, fliers and other written material to business and residences where the owners have listed themselves on a refusal registry ("do-not-deliver" list) maintained by the Finance Director, or where a "no solicitation" sign has been conspicuously posted on, or near the entrance or front door.

In September 1998, the ACLU of Southern California filed a federal civil rights lawsuit against the City on behalf of several community activists challenging the [then] new ordinance. In October 1999, U.S. District Judge William Keller issued a permanent injunction prohibiting the City from enforcing the existing handbill distribution ordinance. Since that time, the City has not enforced the existing handbill distribution ordinance. Staff's recommendation was developed to reflect recent developments in this area of the law.

DISCUSSION

The City of Pasadena has a substantial government interest in regulating the distribution of handbills in the City's residential districts thereby protecting the health, safety and general welfare of the public. These objectives can be accomplished by reducing the opportunity for windborne litter to diminish the beauty and quality of life throughout the city of Pasadena and preventing harm to the public health and general welfare, including the potential degradation of aquatic resources, oceans, bays and waterways caused by litter pollution of storm water discharge systems.

¹ "Unsolicited written material" means written material that is delivered to a residence in the absence of a subscription agreement.

² "Handbill" includes any printed or written advertising matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, paper, booklet or any other printed matter or literature.

The City further seeks to assure the safety of the general public by ensuring that unsolicited or unwanted handbills are not distributed to homes that have posted proper notice thereby reducing the instances in which handbills are left to sit unclaimed and/or to accumulate at homes that may be unoccupied wherein such accumulation makes such homes more vulnerable to burglaries and other criminal activity.

In addition to the past concerns raised by residents relative to the distribution of unsolicited written material at residential sites, so too has the issue of the distribution of handbills on automobiles and other vehicles citywide. The objectives sought by limiting the distribution of handbills on private residential property can also be achieved by prohibiting the distribution of handbills on automobiles and other vehicles citywide. However, the law is unsettled on the question of whether the City can ban handbill distribution on vehicles on public property (such as the Rose Bowl parking lot.) As an alternative, the City could choose to ban handbill distribution on vehicles parked in residential districts only (not citywide).

RECENT LEGAL DEVELOPMENTS

Over the past several years, federal courts have upheld the validity of various registries maintained by the federal government and the states of Indiana, North Dakota, and Utah. Several of those registries were created for the purpose of offering registration for consumers to stop telemarketers from calling (i.e.; a “do-not-call” list). While these court decisions suggest a refusal registry might now survive a court challenge, staff believes a more cost-effective solution to the issues presented would be to require residents post a “No Handbills” sign if they do not wish to receive handbills. Such a regulation would have the same effect as a “do-not-deliver” list, but would (1) avoid the need for staff to maintain a “do-not-deliver” list; and (2) dispense with the need for handbill distributors to review a “do-not-deliver list” before delivering handbills throughout the City.

Additionally, the U.S. Supreme Court has determined that a permit requirement for door-to-door solicitors violates the First Amendment. Accordingly, a new handbill ordinance should not require handbill distributors to obtain a permit from the City.

Finally, in 2007, the California Supreme Court found that the California Constitution protects the right to free speech at a shopping mall (a private commercial property), even though the First Amendment does not. As such, the objective of this ordinance focuses on handbill distribution regulations relative to residential property only -- and not all private property. However, staff believes that prohibition of handbill distribution on automobiles and other vehicles citywide is appropriate due to the litter concerns associated with such unsolicited activity. As discussed above, the law is unsettled on the question of whether such a regulation (which would include vehicles parked on public property) unlawfully restricts the distributors’ free speech rights.

ENVIRONMENTAL DETERMINATION

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code § 21080(b)(9); Administrative Code, Title 14, Chapter 3, Class 6, § 15306, Information Collection). This section specifically applies to information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

The proposed project at this time will result in information gathering for the development of a future ordinance revision. When the ordinance is prepared, additional CEQA review will be required to analyze the specific changes that are proposed at that time.

CONCLUSION

Repeal of the existing handbill ordinance and adoption of a new handbill ordinance consistent with current legal requirements will assist the City in ensuring public safety by creating a mechanism in which handbills may readily be refused thereby:

- (1) Diminishing opportunities for such items to remain unclaimed and/or to accumulate at homes that may be unoccupied whereby such unclaimed or accumulated items unintentionally create a public nuisance by making such homes more vulnerable to burglaries and other criminal activity and;
- (2) Assisting in the reduction of windborne litter from diminishing the beauty and quality of life throughout the city of Pasadena and preventing harm to the public health and general welfare, including the potential degradation of aquatic resources, oceans, bays and waterways caused by the pollution of storm water discharge systems.

FISCAL IMPACT

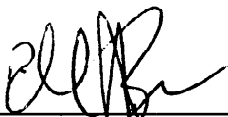
While it is anticipated that there will be negligible fiscal impacts associated with enforcement of the proposed ordinance regulating the distribution of unsolicited written material, it is not anticipated that enforcement costs will be fully recovered through expected level of citations.

Respectfully submitted,



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Approved by:



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