

Ordinance Fact Sheet

TO: CITY COUNCIL **DATE:** April 27, 2009
FROM: CITY ATTORNEY
SUBJECT: NEW HANDBILL DISTRIBUTION ORDINANCE

TITLE OF PROPOSED ORDINANCE

ORDINANCE OF THE CITY OF PASADENA REPEALING CHAPTER 9.44 OF THE PASADENA MUNICIPAL CODE (DISTRIBUTION OF UNSOLICITED WRITTEN MATERIAL) AND ADOPTING A NEW CHAPTER 9.44 (HANDBILLS)

PURPOSE OF ORDINANCE

This handbill distribution ordinance implements the direction given by Council on March 2, 2009 to repeal the existing handbill ordinance and adopt a new ordinance which would:

- (1) Prohibit the distribution of handbills on residential property unless the handbills are properly secured so that they will not be blown about;
- (2) 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, subject to certain exceptions;
- (3) Permit the handing of any handbill to a person who is willing to accept the handbill; and
- (4) Establish a rebuttable presumption that the person whose message is on the unlawfully-distributed handbill has violated the ordinance.

This ordinance was previously before the Council for first reading on April 13, 2009. In order to address concerns over owners, landlords, and property managers posting a "No Handbills" sign on behalf of their residents, a clarifying Paragraph B has been added to section 9.44.030. This clarifies that at multi-unit residences where a "No Handbills" sign is posted by an owner, landlord, or property manager, the City can only cite a handbill distributor where the occupant has provided prior authorization for the posting of a "No Handbills". Such authorization is often in the form of a rental agreement or a set of covenants, conditions, and restrictions.

MEETING OF 04/27/2009

AGENDA ITEM NO. 8.A.1.

REASON WHY LEGISLATION IS NEEDED

This legislation is needed for several reasons. First, in October 1999, U.S. District Judge William Keller issued a permanent injunction prohibiting the City from enforcing the existing handbill distribution ordinance which regulated handbill distribution by way of a refusal registry (“do-not-deliver” list). Since then, the City has not enforced the existing handbill distribution ordinance. The proposed ordinance has been developed to reflect recent developments in this area of the law. As recently as 2002, the U.S. Supreme Court has noted that an ordinance allowing residents to post “No Solicitation” signs “provides ample protection for the unwilling listener.” *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 168 (2002). Consistent with the *Watchtower* case, several cities have handbill distribution regulations that are similar to the ordinance before the Council, including the cities of Anaheim, Burbank, Modesto, National City, Newport Beach, Rancho Palos Verdes, and San Bernardino.

Second, the legislation is needed to reduce the opportunity for windborne litter.

Third, the legislation reduces the instances in which handbills are left to sit unclaimed and/or accumulate at homes that may be unoccupied where such accumulation makes such homes more vulnerable to burglaries and other criminal activity.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

The Planning & Development Department will implement the proposed ordinance.

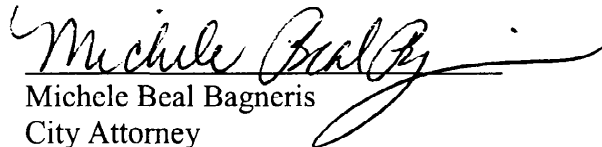
FISCAL IMPACT

While staff anticipates there will be negligible fiscal impacts associated with enforcement of the proposed ordinance, staff does not anticipate that enforcement costs will be fully recovered through expected level of citations.

ENVIRONMENTAL REVIEW

This proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines § 15061, as it is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

Respectfully submitted,

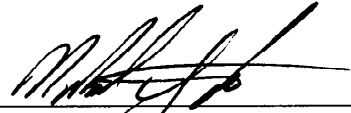

Michele Beal Bagneris
City Attorney

Prepared by:



Jayan N. Rad
Deputy City Attorney

Concurred by:



Michael J. Beck
City Manager

Introduced by: _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PASADENA REPEALING
CHAPTER 9.44 OF THE PASADENA MUNICIPAL CODE
(DISTRIBUTION OF UNSOLICITED WRITTEN MATERIAL) AND
ADOPTING A NEW CHAPTER 9.44 (HANDBILLS)**

WHEREAS, adopting laws which protect the safety and security of the residents of the City of Pasadena while in their residences is of great importance to the City Council and is within the police power of the City; and

WHEREAS, the City Council has determined that the City's existing ordinance regulating handbill distribution should be amended to reflect recent court decisions affecting the constitutionality of laws regulating handbill distribution; and

WHEREAS, the City Council finds and determines that there are a considerable number of citizens that are adversely affected by persons, without consent, distributing handbills to residential property; and

WHEREAS, the City Council finds and determines that the practice of distributing unsolicited handbills to residential property creates a serious police problem and a threat to public safety in that residents are unaware that such material is going to be distributed to their property and, heretofore, have been unable to make proper provisions

to stop the distributions or delivery of such result of the accumulation of handbills on their property.

WHEREAS, the City Council finds and determines that the City has a compelling need to prohibit the distribution of handbills on residential property where the occupant has expressed his or her unwillingness to receive such handbills. Prohibiting distribution of handbills in defiance of an occupant's expressed desire not to receive them strikes an appropriate accommodation between the rights of distributors to solicit willing listeners with the rights of occupants to object to receive the material.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary reads as follows:

“Summary

The purpose of this ordinance is to repeal Chapter 9.44 (Distribution of Unsolicited Written Material) and adopt a revised Chapter 9.44 (Handbills) which prohibits handbill distribution upon residential property where a handbill is not properly secured; prohibits handbill distribution upon residential property where a “No Handbills” sign is posted; exempts handbill distribution to persons who are willing to accept the same, who paid to receive such handbills, and/or who are duly authorized public officers; sets forth administrative penalty process; allows for cost recovery actions by property owners or the city manager.”

SECTION 2. The City Council finds that this ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines § 15061, as it is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

SECTION 3. Chapter 9.44 of Title 9 of the Pasadena Municipal Code entitled “Distribution of Unsolicited Written Material” is hereby repealed in its entirety and replaced with a new Chapter 9.44, entitled “Handbills” as follows:

“Chapter 9.44 – Handbills

Sections:

- 9.44.010 - Definitions**
- 9.44.020 - Residential property**
- 9.44.030 - Prohibition when “No Handbills” sign posted**
- 9.44.040 - Exemptions**
- 9.44.050 - Effect on other ordinances**
- 9.44.060 - Penalties and administrative proceedings**
- 9.44.070 - Removal and costs required**
- 9.44.080 - Remedies not exclusive**

9.44.010 - Definitions

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

“Distribute” means to hand, transmit, deposit, drop, throw, scatter, or cast, either directly or indirectly.

“Person” means any individual person, firm, partnership, association, corporation, company, organization, society, group or legal entity of any kind.

“Residential property” means any dwelling, house, apartment, mobile home, condominium, building, or other structure, designed or used either in whole or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, hallway, vestibule, or mailbox belonging to such dwelling, house, building, or other structure.

9.44.020 - Residential property

It is unlawful for any person to distribute any handbill in or upon any residential property unless the handbill is properly placed, secured, or deposited such that it will not be blown or drifted about the property or elsewhere, eliminating the hazards of randomly scattered litter.

9.44.030 - Prohibition when “No Handbills” sign posted

A. It is unlawful for any person to distribute any handbill in or upon any residential property if there is placed on the property in a conspicuous position (near the entrance and, where feasible, visible from the public right-of-way), a legible and conspicuous notice of at least sixteen (16) square inches in area bearing the words “No Handbills” or any similar notice indicating in any manner that the occupant does not desire to have their right of privacy disturbed or to have any such handbills left upon the property (such as a “No Solicitation” notice), unless such person has first received the written permission of the occupant authorizing the person to so distribute.

B. In order for Section 9.44.030A to apply to multi-unit residential properties where the owner, landlord, or property manager posts a “No Handbills” or similar notice on behalf an occupant, the occupant shall have provided their prior authorization to the owner, landlord, or property manager. This section shall not supersede provisions of any landlord/tenant agreement or covenants, conditions and restrictions with respect to multi-unit residential housing.

9.44.040 - Exemptions

The provisions of this chapter shall not apply to:

- A. Distribution of any handbill to any person who is willing to accept the same;
- B. Distribution of any handbill for which consideration has been paid by the person receiving such handbill; or
- C. Distribution of any handbill made by a duly authorized public officer or employee of or contractor acting with the authority of the City, the State of California, or the United States acting to promote the purpose of the contract.

9.44.050 - Effect on other ordinances

- A. Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the Pasadena Municipal Code.
- B. In the event of a conflict between any provision in this chapter and the limitations on calling or directing public attention to advertisements in Chapter 5.20 of this code, this chapter shall control.

C. Nothing contained in this chapter shall be deemed to supersede or modify the standards and size limitations (and exemptions thereon) for sign displays in Chapter 17.48 of this code.

9.44.060 - Penalties and administrative proceedings

A violation of any of the provisions of this chapter may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this code, including, but without limitation, civil penalties, late payment penalties, administrative fees, and other related charges as established by resolution of the city council.

9.44.070 - Removal and costs required

Handbills distributed in violation of this chapter are subject to summary removal by the owner of the affected object, property, or structure upon which the handbill is affixed, or by the city manager or designee. The costs of removal may be assessed in accordance with law against the person responsible for the violation.

It shall be a rebuttable presumption that any person whose message is displayed on the handbill or which benefits from the message displayed upon the handbill is the party responsible for distribution.

9.44.080 – Remedies Not Exclusive

The remedies under this chapter shall be cumulative and not exclusive. The remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal.”

SECTION 4. The City Council hereby declares that, should any section, paragraph, sentence, phrase, term or word of this ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared invalid.

SECTION 5. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 6. This ordinance shall take effect 30 days from its publication.

Signed and approved this _____ day of _____, 200__.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 200 ____, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Date:
Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:

Jay N. Rad
Deputy City Attorney