

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: August 10, 2009

FROM: CITY ATTORNEY

SUBJECT: REPEAL OF 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)

PURPOSE OF ORDINANCE

This ordinance repeals the existing handbill ordinance in Chapter 9.44 of the Pasadena Municipal Code.

REASON WHY LEGISLATION IS NEEDED

In 1994, the California Court of Appeal struck down a Fresno ordinance that restricted door-to-door distribution of specified categories of written materials in *City of Fresno v. Press Communications, Inc.*, 31 Cal.App.4th 32 (1994). The court found the ordinance to be impermissible content regulation, violating the distributors' free speech rights. At the time, Pasadena's handbill ordinance was similar to Fresno's. Therefore, in 1998, informed by the *Press Communications* case, the City Council revised the handbill ordinance by regulating distribution by way of a refusal registry ("do-not-deliver" list) in Chapter 9.44 of the PMC. The refusal registry was similar to one that had been in place in the City of Beverly Hills for several years at the time. Other later-adopted types of refusal registries were upheld by courts in subsequent years, including do-not-call lists established by the federal government and the states of North Dakota and Indiana. In October 1999, U.S. District Judge William Keller issued a permanent injunction prohibiting Pasadena from enforcing the handbill distribution ordinance. Since then, the City has not enforced the existing handbill distribution ordinance in Chapter 9.44.

The proposed ordinance reflects the Council's direction at its July 27, 2009 meeting to formally repeal the existing Chapter 9.44 of the Pasadena Municipal Code.

MEETING OF 08/10/2009

AGENDA ITEM NO. 8.A.1.

The proposed ordinance reflects the Council's direction at its July 27, 2009 meeting to formally repeal the existing Chapter 9.44 of the Pasadena Municipal Code.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

No programs, or departments or groups are affected. This ordinance merely repeals a handbill distribution ordinance that the City has been enjoined from enforcing.

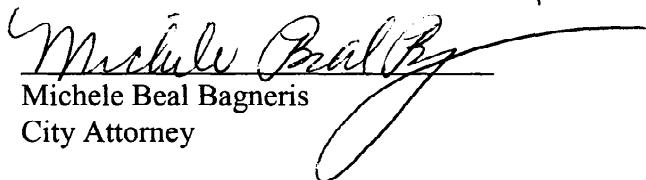
FISCAL IMPACT

Adoption of this ordinance will have no fiscal impact.


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,

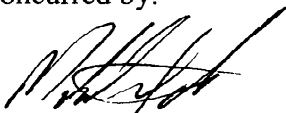

Michele Beal Bagneris
City Attorney

Prepared by:



Javan N. Rad
Assistant City Attorney

Concurred by:



Michael J. Beck
City Manager

REDLINE

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)

The People of the City of Pasadena ordain as follows:

SECTION 1. 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 2. Chapter 9.44 of Title 9 of the Pasadena Municipal Code entitled "Distribution of Unsolicited Written Material" is hereby repealed in its entirety.

~~9.44.010 Definitions.~~

~~For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, the following definitions shall apply:~~

~~A. "Finance director" means the director of finance of the city of Pasadena, or the authorized designee thereof.~~

~~B. "Distribute" means the act of throwing, casting, scattering, or depositing.~~

~~C. "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.~~

~~D. "Refusal register" means the most recent edition of the unsolicited written material refusal register maintained by the finance director in accordance with this chapter.~~

~~E. "Unsolicited written material" means written material that is delivered to a business or residence in the absence of a subscription agreement.~~

~~F. "Written material" means any handbill, pamphlet, circular, newspaper, paper, booklet, poster, leaflet or other printed matter.~~

~~9.44.020 Refusal register.~~

~~A. The finance director shall maintain a list of those businesses and residences whose owners or occupants have submitted a written expression of their unwillingness to receive unsolicited written material. Such list shall be known formally as the "unsolicited written material refusal register."~~

~~B. The finance director shall update the refusal register on a quarterly basis, as necessary.~~

~~C. The finance director shall, upon payment of a fee in an amount established by resolution of the city council to cover the direct costs of duplication, provide a copy of the refusal register to any person.~~

~~9.44.030 Distributors required to carry refusal register.~~

~~It is unlawful for any person to distribute unsolicited written material unless he or she has, upon his or her person, a copy of the refusal register.~~

~~9.44.40 Regulations governing distribution.~~

~~It is unlawful for any person to distribute unsolicited written material, or to cause unsolicited written material to be distributed, in violation of the following regulations:~~

~~A. Unsolicited written material shall not be distributed to any business or residence that is listed on the refusal register.~~

~~B. Unsolicited written material shall not be distributed to any business or residence that contains a "no solicitation" sign conspicuously posted on, or near, the entrance or front door.~~

~~C. Unsolicited written material shall not be distributed to any business or residence that contains unremoved unsolicited written material of the same publisher.~~

~~D. Unsolicited written material shall not be distributed to any business or residence that reasonably appears to be vacant. For purposes of this provision, "reasonably appears to be vacant" means that the business or residence does not contain any interior furnishings that are visible from the public right-of-way.~~

~~E. Unsolicited written material shall not be distributed to any business or residence at any location other than at the doorknob or doorstep of such premises.~~

~~**9.44.50 Unlawful distributions designated litter.**~~

~~All unsolicited written material that is distributed in violation of Section 9.44.040 is designated as litter.~~

~~**9.44.60 Exemptions.**~~

~~The provisions of this chapter shall not apply to the following:~~

- ~~A. The distribution of United States mail, telegrams or other matter preempted by state or federal law.~~
- ~~B. The posting of legally required notices.~~
- ~~C. Distribution of any notices or other written material by persons employed by or acting at the behest of the city, state of California or the federal government.~~

~~**9.44.70 Violation--Penalty.**~~

~~Violation of any of the provisions of this chapter is subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this code.~~

~~**SECTION 3.** This ordinance shall take effect 30 days from its publication.~~

~~Signed and approved this _____ day of _____, 2009.~~

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 _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSENT:

Date:

Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Javan N. Rad
Assistant City Attorney