

Memorandum



CITY OF DALLAS

DATE February 7, 2014

TO

Honorable Members of the Quality of Life & Environment Committee: Dwaine R. Caraway (Chair) Sandy Greyson (Vice Chair), Adam Medrano, Rick Callahan, Carolyn R. Davis, Lee M. Kleinman

SUBJECT

Proposed Amendments to Anti-Litter Ordinance

On Monday February 10, 2014, the Quality of Life & Environment Committee will discuss and give direction on proposed amendments to Chapter 7A, "Anti-Litter Regulations", of the Dallas City Code. Attached are a copy of the proposed amendments and informational materials.

Please contact me if you have any questions or need additional information.

A handwritten signature in blue ink that reads "Joey Zapata".

Joey Zapata
Assistant City Manager

Attachment

cc: Honorable Mayor and Members of The City Council
A.C. Gonzalez, City Manager
Warren M. S. Ernst, City Attorney
Judge Daniel Solis, Administrative Judge
Rosa A. Rios, City Secretary
Craig D. Kinton, City Auditor
Ryan S. Evans, Interim First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Theresa O'Donnell, Interim Assistant City Manager
Charles M. Cato, Interim Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Frank Libro, Public Information Officer
Elsa Cantu, Assistant to the City Manager – Mayor and City Council



MICHAEL S. RAWLINGS
Mayor

November 12, 2013

The Honorable Dwaine R. Caraway
Councilmember
Quality of Life Committee Chair
City of Dallas
1500 Marilla Street, 5FN
Dallas, Texas 75201

Dear Councilman Caraway:

You requested that I meet with management of the Dallas Morning News and Al Dia to discuss the City Council's concern in relation to the excess amount of newspapers that pile up from time to time in front of houses in Dallas.

I asked Jim Moroney, Publisher and CEO of The Dallas Morning News to review and assess their procedures, and look for ways to improve and minimize the problem. We had two conversations on this issue and attached you will find his response.

If we take any next steps as a council, it should first go through the Quality of Life Committee which you Chair. I greatly appreciate the attention and importance Mr. Moroney has given this matter, and hope we can all work together to find a feasible resolution.

Should you have any further comments or question, please feel free to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Michael S. Rawlings".

Michael S. Rawlings
Mayor

cc: Members of the Dallas City Council
AC Gonzalez, Interim City Manager
Jim Moroney, Publisher & CEO, Dallas Morning News

The Dallas Morning News

Jim Moroney

Publisher and Chief Executive Officer

October 29, 2013

Michael S. Rawlings, Mayor
Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201

Mayor Rawlings,

As requested, here is the information on our delivery practices for Al Dia:

First, as a reminder, here are our current distribution processes:

- Household specific delivery model. Not a saturation delivery.
- Long-term tenured readership
 - Over 90% of Briefing & Al Dia subscribers have had delivery for over one year
- Strictly enforced expectations that carriers stop delivery after two or more papers are in lawns
- Direct phone line and email address is promoted on the bag and in the paper every delivery day to inform readers of how to stop delivery either temporarily for vacation or permanently.
- The same contractual delivery standards exist for Al Dia and Briefing as are in place for The Dallas Morning News.
- Three formal third party audits are performed each week to ensure delivery accuracy and confirm contractual delivery compliance.
- Delivery contractors perform routine audits on almost a daily basis to ensure contract compliance
- Electronic delivery lists are updated daily for all publications to ensure accurate delivery and immediate transmission of stop and start requests.

Second, here are some recent actions we have taken to further improve how we monitor the distribution of our free news publications:

- In addition to the three routine audits performed each week, two street-by-street audits of the entire city of Dallas have been done in the past 12 months. One in late 2012 and another this past Summer.
 - Every one of the ~110,000 addresses that receive Al Dia or Briefing was reviewed

- Third party auditors checked for out-of-compliance deliveries of Briefing, Al Dia, and La Estrella (Ft Worth Star-Telegram's Spanish language publication).
- In the 2012 audit 729 out-of-compliance deliveries were found
- The Summer 2013 audit results showed an improvement of 45% with 398 non-compliant deliveries. In both audits the error rate was less than 1%

Here are additional steps we have taken since the Council took up this issue:

- Maintain bi-annual street-by-street audit of every district.
- Provide direct contact information for a senior executive for distribution at *The Dallas Morning News* to Council members for distribution to constituents and community watchdogs.

We work hard to make accurate household specific deliveries every day with every edition. We work diligently every week to remove deliveries that have not been picked up. We don't want our neighborhoods to look unkempt based on our delivery practices.

Al Dia is an important instrument of information for an important and growing segment of Dallas' voting population. I know we share the belief that a democracy will only flourish and endure if its citizens are well informed. Any overly burdensome distribution obligations that the city would impose on Al Dia would very likely result in our discontinuation of Al Dia distribution within the Dallas city limits in favor of greater circulation in the other incorporated municipalities in North Texas.

Regards,



Jim

ORDINANCE NO. _____

An ordinance amending Sections 7A-12, 7A-13, 7A-14, and 7A-20 of and adding Section 7A-21 to CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended; defining terms; creating an offense for causing the placement, deposit, or distribution of handbills on private premises where prohibited; creating a presumption that the person named in a handbill is criminally responsible for the placement, deposit, or distribution of the handbill; providing for signs to prohibit solicitors and handbills on residential premises; making certain semantic, grammatical, and structural changes; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city of Dallas currently regulates the distribution of commercial and noncommercial handbills on private premises in a manner intended to reduce litter and crime at those premises, while at the same time maintaining a person’s First Amendment right to communicate through that medium; and

WHEREAS, handbills continue to be profusely distributed on private premises in violation of city regulations, thereby contributing to litter and crime at those premises; and

WHEREAS, the persons physically distributing the handbills are not easily identifiable for purposes of enforcing the city regulations and are usually only agents of the advertiser, sponsor, or other person whose name actually appears on the handbill; and

WHEREAS, the city council believes that the person whose name appears on a handbill is ultimately and criminally responsible for any distribution of that handbill in violation of city regulations, whether personally or through an agent, because it is extremely unlikely that the handbill would have been distributed at all except at the request of, with the permission of, and for the benefit of that person; and

WHEREAS, the city council believes that creating a presumption that the person named in a commercial or noncommercial handbill is the person criminally responsible for a violation of city regulations governing the distribution of handbills would further the public health, safety, and welfare; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 7A-12, “Depositing Handbills on Uninhabited or Vacant Premises,” of CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 7A-12. DEPOSITING HANDBILLS ON UNINHABITED OR VACANT PREMISES.

A [Nø] person commits an offense if he places, [shall throw or] deposits, or distributes, or causes to be placed, deposited, or distributed, any commercial or noncommercial handbill in or upon any private premises that [which] are [temporarily or continuously] uninhabited or vacant.”

SECTION 2. That Section 7A-13, “Distribution of Handbills Where Posted or Indicated as Prohibited,” of CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 7A-13. DISTRIBUTION OF HANDBILLS WHERE POSTED OR INDICATED AS PROHIBITED.

(a) A [Nø] person commits an offense if he places [shall throw], deposits, or distributes, or causes to be placed, deposited, or distributed, any commercial or noncommercial handbill upon [any] private premises, if:

(1) the person is requested by anyone [there] on the premises not to place, deposit, or distribute the handbill; [do so,] or

(2) a weatherproof sign [if there] is conspicuously placed upon or near the front or main entrance to the [on such] premises [in a conspicuous position near the entrance thereof, a sign] bearing the words "No Solicitors or Handbills [Trespassing," "No Peddlers or Agents," No Advertisement]," or any similar notice indicating [in any manner] that the occupants of the [such] premises do not desire to be bothered, [molested or] have their right of privacy disturbed, or [to] have any [such] handbills left upon the [such] premises.

(b) Every person, before placing, depositing, or distributing a commercial or noncommercial handbill upon any private premises, shall first examine the premises to determine if any sign described in Subsection (a)(2) is exhibited upon or near the front or main entrance to the premises. If such a sign is exhibited, the person shall immediately depart from the premises without disturbing the owner or occupant or leaving any commercial or noncommercial handbill.

(c) It is a defense to prosecution under Subsections (a) and (b) of this section that the handbill was:

(1) an item of mail, a notice, or a package delivered by the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety Administration;

(2) a newspaper delivered pursuant to a request by or a contract with the owner or occupant of the premises;

(3) an official notice placed on the premises by an officer, employee, or agent of a governmental entity in the performance of official duties; or

(4) a particular handbill that was placed, deposited, or distributed on the premises with the express consent of the owner or occupant of the premises.

(d) A person commits an offense if the person removes, defaces, or renders illegible a sign placed by the owner or occupant on private premises as described in Subsection (a)(2) of this section. It is a defense to prosecution under this subsection that the person was the owner or occupant of the premises or an agent of the owner or occupant."

SECTION 3. That Section 7A-14, "Manner of Distribution of Handbills to Inhabited Premises," of CHAPTER 7A, "ANTI-LITTER REGULATIONS," of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 7A-14. MANNER OF DISTRIBUTION OF HANDBILLS TO INHABITED PREMISES WHEN NOT PROHIBITED.

(a) A [Nø] person commits an offense if he places [shall throw], deposits, or distributes, or causes to be placed, deposited, or distributed, any commercial or noncommercial handbill in or upon inhabited private premises upon which handbills have not been prohibited under Section 7A-13 [are inhabited], except by:

(1) handing or transmitting the [any such] handbill directly to the owner, occupant, or other person then present in or upon the [such] private premises; or

(2) placing or attaching the [~~In case of inhabited private premises which are not posted, as provided in this chapter, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such~~] handbill on or at the front or main entrance door of the [in or upon such] inhabited private premises in a manner that: *[NOTE: The door hanging requirement (OPTION 1) contained in this Subsection (a)(2) is the controversial issue because it would prohibit free newspapers from being thrown on property as is currently done. The Dallas Morning News objects to this provision and wants something more in line with OPTION 2, which it claims is similar to its current practice. I put the language for OPTION 1 and OPTION 2 at the end of this ordinance for informational purposes.]*

(A) [, if such handbill is so placed or deposited as to] secure, or prevents the [such] handbill from being blown or drifted about the [such] premises or deposited upon any other private property or upon any sidewalk[s], street[s], or other public place[s]; and

(B) does not use any adhesive material or any other material that may cause damage to the door or property.

(b) It is a defense to prosecution under Subsection (a) of this section that the handbill was:

(1) an item of mail, a notice, or a package delivered by the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety Administration;

(2) a newspaper delivered pursuant to a request by or a contract with the owner or occupant of the premises; or

(3) an official notice placed on the premises by an officer, employee, or agent of a governmental entity in the performance of official duties.

(c) Mailboxes [~~and except that mailboxes~~] may not be [sø] used to deposit handbills under Subsection (a)(2) when [sø] prohibited by federal postal law or regulations.

~~[(a) — Exemption for mail and newspapers. The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except, that newspapers shall be placed on private property in such manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property].”~~

SECTION 4. That Section 7A-20, “Penalty for Violation of Chapter; Enforcement of Chapter,” of CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended, is amended to read as follows:

"SEC. 7A-20. PENALTY FOR VIOLATION OF CHAPTER; ENFORCEMENT OF CHAPTER.

(a) Penalty for violation of chapter.[:] A person who violates a provision of this chapter, or who fails to perform an act required of the person [~~him~~] by this chapter, commits an offense. A person is guilty of a separate offense for:

(1) each day or portion of a day during which the violation is committed, continued, or permitted; or

(2) each handbill or other item placed, deposited, or distributed in violation of this chapter.

(b) Except as provided in Subsection (c), an [~~A~~] offense under this chapter is punishable by a fine of not more than \$2,000 or [~~not~~] less than:

(1) \$50 for a first conviction of a violation of Section 7A-16, 7A-17, or 7A-19;

(2) \$100 for a first conviction of a violation of Section 7A-18; and

(3) \$200 for a first conviction of a violation of Section 7A-7.1.

(c) An offense under Section 7A-12, 7A-13, or 7A-14 of this chapter is punishable by a fine of not more than \$500.

(d) The minimum fines established in Subsection (b) will [~~shall~~] be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time may [~~shall~~] the minimum fine exceed the maximum fine established in Subsection (b).

(e) [~~(d)~~] The [~~Except where otherwise specified, a~~] culpable mental state [~~is not~~] required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

(f) [(e)] Authority to enforce chapter. [;] The director shall enforce this chapter when violations occur on private property, [;] except that, when a fire hazard exists on private property, this chapter will [~~shall~~] be enforced by the fire marshal. Any police officer of the city shall enforce this chapter when a violation occurs in a public place [~~, and any member of the park patrol of the city is empowered to enforce this chapter when a violation occurs in any public park in the city].~~].

(g) [(f)] For the purpose of this section, DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, or the director's authorized representatives.

(h) [(g)] As an alternative to imposing the criminal penalty prescribed in Subsection (b), the city may impose administrative penalties, fees, and court costs in accordance with Article IV-b of Chapter 27 of this code, as authorized by Section 54.044 of the Texas Local Government Code, for an offense under Section 7A-18 of this chapter. The alternative administrative penalty range for an offense is the same as is prescribed for a criminal offense in Subsection (b).

(i) The penalties provided for in this section are in addition to any other enforcement remedies and penalties that the city may have under city ordinances and state law."

SECTION 5. That CHAPTER 7A, "ANTI-LITTER REGULATIONS," of the Dallas City Code, as amended, is amended by adding Section 7A-21, entitled "Presumption of Distribution of Handbills," to read as follows:

"SEC. 7A-21. PRESUMPTION OF DISTRIBUTION OF HANDBILLS.

Whenever a handbill is placed, deposited, or distributed, or caused to be placed, deposited, or distributed, in violation of Section 7A-12, 7A-13, or 7A-14 of this chapter, it is presumed that the person named on the handbill is the person who committed the violation, either personally or through an agent or employee."

SECTION 6. That CHAPTER 7A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 7. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 8. That this ordinance will take effect on _____, 2014,
and it is accordingly so ordained.

APPROVED AS TO FORM:

WARREN M. S. ERNST, City Attorney

By _____
Assistant City Attorney

Passed _____

LC/DCC/00558A

NOTE: The door hanging requirement (OPTION 1) contained in Section 7A-14(a)(2) is highly controversial because it would prohibit unsolicited free newspapers from being thrown on property as is currently done. The Dallas Morning News objects to this provision and wants something more in line with OPTION 2, which it claims is similar to its current practice. Below is the language for OPTION 1 and OPTION 2 for informational purposes.

**OPTION 1 – PROPOSED MANNER OF DISTRIBUTING HANDBILLS
TO UNPOSTED INHABITED PREMISES**

SECTION 3. That Section 7A-14, “Manner of Distribution of Handbills to Inhabited Premises,” of CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 7A-14. MANNER OF DISTRIBUTION OF HANDBILLS TO INHABITED PREMISES WHEN NOT PROHIBITED.”

(a) A ~~[No]~~ person commits an offense if he places ~~[shall throw]~~, deposits, or distributes, or causes to be placed, deposited, or distributed, any commercial or noncommercial handbill in or upon inhabited private premises upon which handbills have not been prohibited under Section 7A-13 ~~[are inhabited]~~, except by:

(1) handing or transmitting the ~~[any such]~~ handbill directly to the owner, occupant, or other person then present in or upon the ~~[such]~~ private premises; or

~~(2) placing or attaching the [In case of inhabited private premises which are not posted, as provided in this chapter, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such] handbill on or at the front or main entrance door of the [in or upon such] inhabited private premises in a manner that:~~

~~(A) [if such handbill is so placed or deposited as to] secure or prevents the [such] handbill from being blown or drifted about the [such] premises or deposited upon any other private property or upon any sidewalk[s], street[s], or other public place[s]; and~~

~~(B) does not use any adhesive material or any other material that may cause damage to the door or property.~~

~~(b) It is a defense to prosecution under Subsection (a) of this section that the handbill was:~~

~~(1) an item of mail, a notice, or a package delivered by the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety Administration;~~

~~(2) a newspaper delivered pursuant to a request by or a contract with the owner or occupant of the premises; or~~

~~(3) an official notice placed on the premises by an officer, employee, or agent of a governmental entity in the performance of official duties.~~

~~(c) Mailboxes [and except that mailboxes] may not be [so] used to deposit handbills under Subsection (a)(2) when [so] prohibited by federal postal law or regulations.~~

~~[(a) Exemption for mail and newspapers. The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except, that newspapers shall be placed on private property in such manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property].”~~

**OPTION 2 – PROPOSED MANNER OF DISTRIBUTING HANDBILLS
TO UNPOSTED INHABITED PREMISES**

SECTION 3. That Section 7A-14, “Manner of Distribution of Handbills to Inhabited Premises,” of CHAPTER 7A, “ANTI-LITTER REGULATIONS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 7A-14. MANNER OF DISTRIBUTION OF HANDBILLS TO INHABITED PREMISES WHEN NOT PROHIBITED.

(a) ~~A~~ ~~[No]~~ person commits an offense if he ~~[shall]~~ throws, deposits, or distributes, or causes to be thrown, deposited, or distributed, any commercial or noncommercial handbill in or upon inhabited private premises upon which handbills have not been prohibited under Section 7A-13 ~~[are inhabited]~~, except by:

(1) handing or transmitting the ~~[any such]~~ handbill directly to the owner, occupant, or other person then present in or upon the ~~[such]~~ private premises; or

(2) placing ~~[. In case of inhabited private premises which are not posted, as provided in this chapter, such person, unless requested by anyone upon such premises not to do so, may place]~~ or depositing the ~~[any such]~~ handbill in or upon the ~~[such]~~ inhabited private premises in ~~[, if]~~ such a manner ~~[handbill is so placed or deposited]~~ as to secure or prevent the ~~[such]~~ handbill from being blown or drifted about the ~~[such]~~ premises or deposited upon any other private property or upon any sidewalk[s], street[s], or other public place[s].

(b) Mailboxes ~~[and except that mailboxes]~~ may not be ~~[so]~~ used to deposit handbills under Subsection (a)(2) when ~~[so]~~ prohibited by federal postal law or regulations.

(c) A person commits an offense if he throws or causes to be thrown any commercial or noncommercial handbill that is a free newspaper or other free publication in or upon inhabited private premises if at least three issues of the same publication are already present on the exterior of the premises. After three issues of the same free newspaper or other free publication have accumulated on the exterior of any inhabited private premises, the person throwing or causing the throwing of the free newspaper or other free publication shall immediately remove all issues of the newspaper or other publication from the premises and shall cease throwing or causing the throwing of the newspaper or other publication to the premises until the express consent of the owner or occupant of the premises is obtained.

~~[(a) — Exemption for mail and newspapers. The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except, that newspapers shall be placed on private property in such manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property].”~~

[Note that OPTION 2 does not include the ban on adhesive materials, which the Quality of Life and Environment Committee would want adopted in any version.]