

REQUESTED COMMISSION ACTION:

Consent	x	Ordinance	Resolution	Consideration/ Discussion	Presentation
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SHORT TITLE Creating an ordinance to address the concerns that citizens have had regarding the various newspapers and flyers that have been left upon their property even after requesting no further service.

Summary of Purpose and Why:

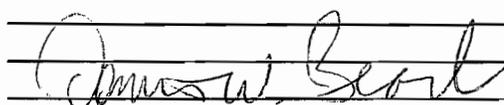
AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 131, "OFFENSES AGAINST PERSONS AND PROPERTY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY CREATING SECTION 131.23, "UNSOLICITED PUBLICATIONS," TO PROVIDE FOR DEFINITIONS; DUTIES AND OBLIGATIONS OF PUBLISHERS AND DISTRIBUTORS OF UNSOLICITED PUBLICATIONS; TO PROVIDE REMOVAL REQUIREMENTS FOR PUBLICATIONS DELIVERED IN VIOLATION OF THIS ORDINANCE AND FOR PENALTIES AND ENFORCEMENT; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

- (1) Origin of request for this action: City Commission
- (2) Primary staff contact: Gordon B. Linn, City Attorney Ext. 4614
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
<u>City Attorney</u>	<u>2-2-15</u>		<u>See City Attorney's Comm. #2015-531</u> 
_____	_____	_____	_____
_____	_____	_____	_____



City Manager



ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2015-510

February 2, 2015

TO: Dennis W. Beach, City Manager
FROM: Gordon B. Linn, City Attorney
RE: Ordinance – Unsolicited Newspapers

Attached please find the following captioned Ordinance addressing the above-referenced matter:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 131, "OFFENSES AGAINST PERSONS AND PROPERTY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY CREATING SECTION 131.23, "UNSOLICITED PUBLICATIONS," TO PROVIDE FOR DEFINITIONS; DUTIES AND OBLIGATIONS OF PUBLISHERS AND DISTRIBUTORS OF UNSOLICITED PUBLICATIONS; TO PROVIDE REMOVAL REQUIREMENTS FOR PUBLICATIONS DELIVERED IN VIOLATION OF THIS ORDINANCE AND FOR PENALTIES AND ENFORCEMENT; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Please place this matter on the February 10, 2015 City Commission Agenda. I have attached a Commission Agenda Cover Sheet for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.

A handwritten signature in cursive script, appearing to read "Gordon B. Linn", is written over a horizontal line.

GORDON B. LINN

GBL/jrm
l:cor/manager/2015-510

Attachments

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH AMENDING CHAPTER 131, "OFFENSES AGAINST PERSONS AND PROPERTY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY CREATING SECTION 131.23, "UNSOLICITED PUBLICATIONS," TO PROVIDE FOR DEFINITIONS; DUTIES AND OBLIGATIONS OF PUBLISHERS AND DISTRIBUTORS OF UNSOLICITED PUBLICATIONS; TO PROVIDE REMOVAL REQUIREMENTS FOR PUBLICATIONS DELIVERED IN VIOLATION OF THIS ORDINANCE AND FOR PENALTIES AND ENFORCEMENT; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 131.23, "Unsolicited Publications," of Chapter 131, "Offenses Against Persons and Property," is hereby created to read as follows:

§131.23 UNSOLICITED PUBLICATIONS.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DELIVER. To deliver, distribute, deposit, throw, cast or place, or cause or permit to be delivered, distributed, deposited, thrown, cast or placed, a

publication, directly or indirectly by contractor, agent, employee or otherwise, but shall not include delivery by the United States Postal Service, delivery by handing or transmitting directly to the owner or occupant then present on the property, or delivery by placing within a receptacle or container expressly maintained by the owner or occupant of property for the receipt of newspaper deliveries.

DISTRIBUTOR. An entity or person who engages in the business of circulating or delivering newspapers.

PUBLICATION. Any printed material issued weekly or with other frequency, whether printed in broadsheet, tabloid or other sheet or booklet form, and shall include without limitation a newspaper of general circulation as defined by general law, any newspaper duly entered with the United States Postal Service in accordance with statute or regulation, any collection of advertising or solicitations appended together in booklet or magazine form and any newspaper distributed without cost to or subscription by the recipient.

PUBLISHER. A person who engages in the business of printing and issuing for circulation, or causing to be printed and issued for circulation, a publication.

UNSOLICITED PUBLICATION. A publication to which neither the owner nor occupant of the premises to which it is delivered currently subscribes or has not requested.

(B) *Obligations of Publishers and Distributors.*

(1) Any publisher delivering or causing delivery of an unsolicited publication to a location within the City of Pompano Beach shall:

(a) provide reasonable methods, including but not limited to, telephonic means, e-mail means and regular mail means, to allow owners and/or occupants of premises located within the City of Pompano Beach to communicate to the publisher that they do not wish to receive the unsolicited publication issued by the publisher; notice of all such methods shall be regularly included in, on or with the unsolicited publications issued by the publisher;

(b) implement a process or system whereby the addresses of all persons making requests for no delivery pursuant to subsection (1)(a) hereto are timely communicated to any and all applicable distributors responsible for distributing the unsolicited publication issued by the publisher;

(c) timely communicate the address of all persons making requests for no delivery made pursuant to subsection (1)(a) hereto to all applicable distributors pursuant to the process or system implemented pursuant to subsection (1)(b) hereto;

(d) implement and communicate to the requesting person a means of tracking requests for no delivery made pursuant to subsection (1)(a) hereto, including, by way of example, the assignment of a tracking number or some other reference system, so as to allow all persons making such requests to reference same in the event there is the need for follow-up or further communication;

(e) implement and utilize a process or system to timely follow up with all applicable distributors to ensure compliance with requests made pursuant to subsection (1)(a) hereto;

(f) upon written request from the Office of Code Compliance or designee, provide the City of Pompano Beach with contact information for any applicable distributor to allow the city to follow up with that distributor on any complaint received by the city from a resident regarding delivery of an unsolicited publication after making a request pursuant to subsection (1)(a) hereto; and

(g) the requirements set forth in subsections (1)(a) through (1)(f) hereto shall not apply to requests made by residents for temporary cessation of deliveries.

(2) Any distributor delivering unsolicited publications in the City of Pompano Beach shall:

(a) not distribute to any address where the owner or occupant has made a request for no delivery pursuant to subsection (1)(a) hereof and such request has been communicated to the distributor by the publisher pursuant to subsections (1)(b) and (1)(c) hereto;

(b) in making deliveries, use their best efforts to place publications in proximity to the entrances of the units to which the distributor intends delivery; unsolicited publications (other than those in properly located and maintained newspaper boxes or racks) should not be placed on streets, sidewalks, public rights-of-way, or other public property and shall not be distributed by placing them at intervals along a block, or by placing several near the entrance to a multi-unit building, other than in direct relation to the number of publications requested by the occupants of the block or building;

(c) implement and utilize a system or procedure for tracking and executing a publisher's direction regarding requests for no delivery made pursuant to subsection (1)(a) hereto;

(d) upon written request from the Office of Code Compliance or designee, use their best efforts to provide the City of Pompano

Beach with facts and details related to complaints received by the city from a resident regarding delivery of an unsolicited publication after making a request pursuant to subsection (1)(a) hereto;

(e) take any corrective measures requested by the City of Pompano Beach after its completion of any investigation into complaints received by the city from a resident regarding delivery of an unsolicited publication after making a request pursuant to subsection (1)(a) hereof; and

(f) the requirements set forth in subsections (2)(a) through (2)(e) hereto shall not apply to requests made by residents for temporary cessation of deliveries.

(C) *Removal.*

(1) If the publication can be located, the distributor thereof shall remove any publication delivered in violation of Section (B)(2)(b) within 24 hours following notice and demand by the owner or occupant of the premises.

(2) If the publication can be located, the distributor thereof shall remove any publication delivered in violation of Section(B)(2)(b) within 24 hours following notice and demand by the Office of Code Compliance or designee.

(3) Violation of this section (C) shall constitute a separate and independent violation from the antecedent violation of Section (B).

(D) *Enforcement by the City.*

(1) Any resident of the City of Pompano Beach wishing to make a complaint regarding delivery of an unsolicited newspaper in violation of this chapter to the property at which they reside or which they own shall provide the following information to the Office of Code Compliance or designee:

(a) the name of the requesting person;

(b) the address that was the subject of the request;

(c) the date of and method used to make the request;

(d) the tracking number or other reference information provided by the publisher in response to the request; and

(e) the name and publication date of the unsolicited publication that is the subject of the complaint.

(2) Any resident of the City of Pompano Beach wishing to make a complaint regarding a publisher's failure to provide a tracking number or other means of reference for a no delivery request in violation of Section (B)(1)(d) of this chapter shall provide the following information to the Office of Code Compliance or designee:

- (a) name of the requesting person;
- (b) the address that was the subject of the request;
- (c) the date of and method used to make the request;

and

(d) the name and publication date of the unsolicited publication that is the subject of the complaint.

(3) Any person wishing to make a complaint unrelated to a no delivery request and regarding improper placement of unsolicited publications by a distributor of unsolicited publications in violation of Section (B)(2)(b) of this chapter shall provide the following information to the Office of Code Compliance or designee:

(a) the name of the complaining person;

(b) the location of the alleged improper placement and time the condition was observed; and

(c) the name and publication date of the unsolicited newspaper that is the subject of the complaint.

(4) Any person wishing to make a complaint for failure to remove an improperly delivered unsolicited publication in violation of Section (C)(1) shall provide the same information as is required in Section (C)(1), plus the date, time and manner of communication of the request to remove.

The city shall have no obligation to take any action on a complaint that does not contain the required information set forth above.

(E) *Penalties; Enforcement.*

(1) It shall be unlawful for any person to violate any of the provisions of this section.

(2) Any person found guilty of violating any of the provisions of this section shall be punished in accordance with Section 10.99 of the Municipal Code of Ordinances. In addition, such person shall pay all costs and

expenses involved in the case, including attorney's fees. Each day upon which a violation of this chapter occurs, shall constitute a separate and additional violation.

(3) In addition to any penalty provided by law for the violation of any provision of this chapter, the city may bring suit in the appropriate court to enjoin, restrain or otherwise prevent the violation.

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision of application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2015.

PASSED SECOND READING this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
1/26/15
l:ord/ch131/2015-174