

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING CHAPTER 54, "SOLID WASTE," ARTICLE II, "LITTER" DIVISION 2, "HANDBILLS" BY PROVIDING FOR THE PROHIBITION OF THROWING, DISCARDING, PLACING, OR DEPOSITING HANDBILLS OR FLYERS AS LITTER IN PUBLIC PLACES; PROVIDING FOR DEFINITIONS; CREATING CRITERIA FOR REBUTTABLE PRESUMPTIONS CONCERNING LITTERING WITH COMMERCIAL HANDBILLS OR FLYERS; BY PROVIDING FOR SEIZURE OF HANDBILLS OR FLYERS FOR USE AS EVIDENCE; PROVIDING FOR REMOVAL OF HANDBILLS AT VIOLATOR'S EXPENSE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR APPEALS, PAYMENT OF FINES AND FORECLOSURE; PROVIDING FOR FINES AND PENALTIES; AND PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City of Coral Gables' aphorism is the "City Beautiful" and has historically emphasized aesthetics and visual beauty in promoting the City; and

WHEREAS, litter on public property caused by persons distributing commercial handbills, pamphlets, leaflets or flyers harms the City's aesthetics and visual beauty by causing blight, harms and, further damages the City's efforts to promote, provide for, and protect the public health, safety, morals, and welfare of the residents of and visitors to the City of Coral Gables by causing congestion in the City's commercial streets, rights-of-way, parking lots and sidewalks; and

WHEREAS, the Commission of the City of Coral Gables wishes to improve the general cleanliness of the City and to ensure the safety of its citizens and visitors; and

WHEREAS, the City desires to reduce the substantial expenses and human resources incidental to the cleaning of litter on public property caused by uncontrolled distribution of commercial handbills, pamphlets, leaflets and flyers; and

WHEREAS, the City recognizes that a portion of the advertising litter, congestion and pedestrian harassment problem in the City is caused by businesses outside the City that send their representatives to the City's non-residential districts with their business handbills causing a financial burden upon the population of the City; and

WHEREAS, it would serve a substantial governmental interest for the City Commission to enact an Ordinance increasing the City's ability to enforce regulations

concerning litter, pedestrian sidewalk and street congestion and harassment due to commercial handbills, flyers, pamphlets and leaflets; and

WHEREAS, the City Commission of Coral Gables is desirous to enact an ordinance increasing the City's ability to enforce regulations concerning commercial handbills which is increasing at an alarming rate causing a health, fire and safety hazard as well as becoming unsightly by reasonable regulation of the time, place, and manner of the distribution and delivery of unsolicited print or written materials in the City of Coral Gables in accordance with *Sciarrino v. City of Key West*, 83 F.3d 364 (11th Cir. 1996) .

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA THAT:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The Code of the City of Coral Gables, Florida is hereby amending Chapter 54, "Solid Waste," Article II, "Litter," Division 1, "Generally," and Division 2, "Handbills" to read as follows:

CHAPTER 54. SOLID WASTE

ARTICLE II. LITTER

DIVISION 1. GENERALLY

Sec. 54-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized private receptacle means a litter storage and collection receptacle.

Benefactor means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing of the handbill, flyer, pamphlet or leaflet.

Business means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

Non-residential Districts means any area within the City which is recognized as a Non-residential District under the City's Zoning Code.

Handbill means any printed or written matter, leaflet, pamphlet, paper, or handbill which is not delivered by United States Mail, including but not limited to material:

- a. Which advertises for sale any merchandise, product, service, commodity or thing;
- b. Which directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting the interests thereof by sales; or
- c. Which directs the attention to or advertises any meeting, theatrical performance, exhibition or event of any kind for which an admission fee is charged for the purpose of private gain or profit.

~~Handbill or Flyer means any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature.~~

Litter means any paper, handbill, leaflet, pamphlet, garbage, refuse, and rubbish and all other waste material which, if thrown or deposited and left on a public sidewalk, street, road, avenue, swale, median, building, fence, wall, alley, park, or any other public area, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private property or on any motor vehicle or visible from the exterior of a motor vehicle as herein prohibited, tends to create a danger to public health, safety and welfare.

Park means a park, reservation, playground, beach, recreation center or any other public area in the city.

Person, Benefactor, or owner include, within their respective meanings, either an individual or an entity.

~~Sec. 54-31. Merchant~~

~~Any merchant who advertises his goods, wares, or merchandise by causing such advertising material to be thrown or deposited in violation of any of the provisions of this article shall be equally guilty of violating this article along with the person so throwing or depositing same.~~

DIVISION 2. HANDBILLS

Sec. 54-52. Throwing or distributing in public places.

It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed or deposited, litter in any manner or amount whatsoever in or upon any public sidewalk, street, road, alley, parking lot or other public place within any of the city's Non-residential Districts. , to hand out or distribute, whether

~~with charge or without charge, to the receiver thereof, any handbill to any person unwilling to accept it.~~

Sec. 54-56. Enforcement and notice of violation.

This division shall be enforced by any code enforcement official or police officer of the city. The code enforcement official shall issue a notice of violation to the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 30 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

Sec. 54-57. Seizure of handbills as evidence.

The code enforcement official is authorized to seize, for use as evidence in the prosecution of the alleged violator before the hearing officer, all handbills in the possession of the alleged violator.

Sec. 54-58. Violations and prosecution.

If a violation of this section occurs, there shall be imposed a civil fine which amount shall be adopted by resolution of the City Commission. All such violations shall be prosecuted before a hearing officer. At any prosecution when the litter involved is a handbill, if 10 or more handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the handbills, the hearing officer shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the handbill as litter.

Section 54-59. Rights of violators, payment of fine, right to appeal; failure to pay fine or to appeal.

A violator who has been served with a notice of violation shall elect either to:

- (1) Pay the civil fine in the manner indicated in the notice of violation; or
- (2) Request an administrative hearing before a hearing officer to appeal the decision of the code enforcement officer which resulted in the issuance of the notice of violation pursuant to Chapter 101 of the City Code.

If the named violator, after notice, fails to pay the civil fine or fails to timely request an administrative hearing before the hearing officer, the hearing officer shall be informed of such failure by report from the code enforcement official. Failure of the named violator

to appeal the decision of the code enforcement official within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly. Any party aggrieved by the decision of the hearing officer may appeal the decision in accordance with the law.

Section 54-60. Recovery of unpaid fines; lien; foreclosure.

The City may institute proceedings in a Court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment, including levy against the personal property, but shall not be deemed to be a court judgment, except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the City may foreclose or otherwise execute upon the lien.

Section 3. Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

All ordinances or parts of ordinances in conflict herewith, be and the same, are hereby repealed.

Section 5. Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

PASSED AND ADOPTED this _____ day of _____ 2009.

DONALD D. SLESNICK II, MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY