

EXHIBIT NO. 1

25
6-17-06 ~~21~~
~~6-13-06~~

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 7, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: ORDINANCE TO PROHIBIT THE DELIVERY OF FREE NEWSPAPERS TO PRIVATE PROPERTY OWNERS WHO HAVE DECLINED THE SERVICE

ISSUE: Citizen complaints about unsolicited newspapers being delivered to their homes and their inability to get the newspaper publisher to stop the deliveries.

RECOMMENDATION: That Council pass the ordinance on first reading and schedule it for public hearing, second reading, and final passage on Saturday, June 17. Although the ordinance becomes effective upon final passage, the "Do Not Deliver" list must be published first and would become effective on September 1, 2006.

DISCUSSION: Consumer Affairs staff began receiving citizen complaints in December 2004 regarding the delivery of unwanted free newspapers and their inability to stop the deliveries. Citizens also expressed concern about the newspapers being delivered when they were out of town and piling up at their door or in the front yard. Several homeowners associations have asked that papers not be delivered in their area because of similar concerns and security and littering issues associated with the delivery of the newspapers.

To date, staff have processed a total of 102 complaints. Staff has had some success working directly with the circulation manager and other staff of the newspapers to terminate the unwanted deliveries. A number of citizens have reported that the newspapers have been stopped for limited periods of time and then the deliveries resumed. Staff determined that in many instances contractors make the actual deliveries and their response to the complaints has been mixed. In addition, newspaper staff turnover has resulted in citizen "no delivery" requests not being transmitted to new staff members.

Over the past two years, Council has received an increasing number of complaints from residents who expressed concern about their inability to stop the delivery of the free newspapers. The City Attorney has suggested a "do not deliver" approach modeled on the national "do not call" list employed to stop unwanted telephone solicitations on home telephones. The proposed ordinance

establishes a "Do Not Deliver" list maintained by the Office of Citizen Assistance. It provides for the publication of the list on a quarterly basis and imposes escalating fines for violations.

FISCAL IMPACT: Approximately \$500 in FY 2007 to implement the ordinance requirements. To make that money available to the Office of Citizen Assistance a supplemental appropriation amendment will be processed in the fall.

STAFF:

Rose Williams Boyd, Director of Citizen Assistance
Jacqueline Levy, Consumer Affairs Administrator

Introduction and first reading: 6/13/06
Public hearing: 6/17/06
Second reading and enactment: 6/17/06

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Title 9 (Licensing and Regulation) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Chapter 14 (Unsolicited Newspaper Deliveries).

Summary

The proposed ordinance would establish a “do not deliver” list, analogous to the “do not call list” applicable to telemarketing, and permit residents of the City to list their property address with the City’s Office of Citizen Assistance. The delivery of unsolicited newspapers to premises included on the list would be prohibited. Delivery by mail, by handing directly to the recipient in person, and by placing in a newspaper box provided by the recipient would not be subject to the prohibition. The list would be updated and published quarterly. A request for inclusion on the list would be valid for a two-year period, unless the request is cancelled sooner. The listing would apply to all unsolicited newspapers, without regard to content, subject matter or viewpoint. The proposed ordinance also prohibits depositing an unsolicited newspaper in the public right-of-way immediately adjacent to a listed premises. Publishers and distributors would be are required to remove offending newspapers from public or private property. Violation of the new regulations would be a class five civil violation, punishable with a \$25 fine for the first infraction, \$50 for the second infraction, and \$100 for the third and subsequent infractions within one year at a listed address. A fee of \$ 5.00 is proposed for listing, and \$ 25.00 for a copy of the list, and transactions must be available on-line. Information on the list will be subject to the Freedom of Information Act.

Sponsor

Staff

Rose Williams Boyd, Director, Citizen Assistance
Ignacio B. Pessoa, City Attorney

Authority

§ 2.1, Alexandria City Charter

Estimated Costs of Implementation

As discussed in City Manager’s Memorandum

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Title 9 (Licensing and Regulation) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Chapter 14 (Unsolicited Newspaper Deliveries).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Title 9 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained by adding thereto a new Chapter 14 to read as follows:

[The following is all new language.]

Chapter 14 Unsolicited Newspaper Deliveries

Section 9-14-1 Definitions.

As used in this chapter:

(a) Deliver means to deliver, distribute, deposit, throw, cast or place, or cause or permit to be delivered, distributed, deposited, thrown, cast or placed, a newspaper, directly or indirectly by 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.

(b) Distributor means a person, other than a publisher, who engages in the business of circulating or delivering newspapers.

(c) Newspaper means any publication issued monthly or more frequently, whether printed in broadsheet, tabloid or other sheet or booklet form, containing information or editorials on current events, news of general or local interest, and commercial advertising and information, irrespective of content, subject matter or viewpoint, 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, and any newspaper distributed without cost to or subscription by the recipient.

(d) Publisher means a person who engages in the business of printing and issuing for circulation, or causing to be printed and issued for circulation, a newspaper.

(e) Unsolicited newspaper means a newspaper to which no owner or occupant of the premises to which it is delivered currently subscribes.

Section 9-14-2 Do not deliver list established.

(a) The Director of Citizen Assistance shall maintain a list of premises, by address, whose owner or occupant has filed a notice with the director, on a form provided by the director, requesting that unsolicited newspapers not be delivered to the premises.

1 (b) The notice provided pursuant to subsection (a) shall be effective for a period of two years.
2 The list shall be revised and published by the director four times per year, at the inception of each
3 calendar quarter, and shall be effective on publication; provided, however, that an owner or
4 occupant who desires that his or her premises be removed from the list may provide notice of
5 removal, on a form provided by the director, to the director and to any publisher or distributor
6 desired by the owner or occupant, and the removal shall be effective as to all publishers and
7 distributors upon receipt of such notice by the director.
8

9 (c) The director shall have no responsibility to verify the identity of any owner or occupant, and
10 the inclusion of a premises on the list, or removal therefrom, shall be conclusive as all owners and
11 occupants. The City shall have no responsibility for any errors or omissions on the list, and the
12 information on the list shall be public.
13

14 (d) In addition to submission by other methods, the director shall provide for the submission of
15 forms filed pursuant to this chapter, and payment of the filing fee therefor, on-line via the City's
16 web site.
17

18 (e) The director shall charge a fee of \$ 25.00 for each copy of the list.
19

20 **Section 9-14-3 Prohibition on delivery to listed premises.**
21

22 (a) No publisher or distributor shall deliver any unsolicited newspaper to any premises included
23 on the list.
24

25 (b) No publisher or distributor shall deliver any unsolicited newspaper to the public right-of-way
26 in front of or adjacent to a premises included on the list.
27

28 (c) No publisher or distributor shall deliver more than one copy of any unsolicited newspaper to
29 private property adjacent to a premises included on the list, unless expressly requested in writing
30 by the owner or occupant of such adjacent property.
31

32 (d) No publisher or distributor shall deliver more than one copy of any unsolicited newspaper to
33 the public right-of-way in front of or adjacent to the property on any side of a premises included
34 on the list.
35

36 **Section 9-14-4 Removal.**
37

38 (a) The publisher or distributor thereof shall remove any newspaper delivered in violation of
39 Section 9-14-3(a) or Section 9-14-3(c) within 24 hours following notice and demand by the owner
40 or occupant of the premises.
41

42 (b) The publisher or distributor thereof shall remove any newspaper delivered in violation of
43 Section 9-14-3(b) or Section 9-14-3(d) within 24 hours following notice and demand by the
44 Director of Citizen Assistance or designee.
45

46 (c) Notice and demand may be given in person, or by telephone, facsimile, or e-mail, directed to
47 the business office, circulation department or equivalent office or department of the publisher or

1 distributor, and shall be effective as to each recipient as of the date and time given.

2
3 (d) Violation of this section 9-14-4 shall constitute a separate and independent violation from the
4 antecedent violation of section 9-14-3.

5
6 **Section 9-14-5 Penalties.**

7
8 (a) Violation of section 9-14-3 shall constitute a class five civil violation, pursuant to section 1-1-
9 11 of this code; provided, however, that for the purpose of determining whether a subsequent
10 violation is subject to an enhanced penalty, delivery of the same publication to the same address
11 within a 12-month period shall constitute a violation arising from the same set of operative facts.

12
13 (b) Violation of section 9-14-4 shall constitute a class four civil violation, pursuant to section 1-1-
14 11 of this code; provided, however, that for the purpose of determining whether a subsequent
15 violation is subject to an enhanced penalty, the failure to remove the same publication from the
16 same address within a 12-month period shall constitute a violation arising from the same set of
17 operative facts.

18
19 (c) In any action for the enforcement of this section, the information on the list in effect on the
20 date of violation, including notices of removal, shall be conclusive.

21
22 Section 2. That this ordinance shall become effective upon the date and at the time of
23 its final passage; provided, however, that the do not deliver list established hereunder shall be first
24 published and become effective on September 1, 2006.

25
26
27 WILLIAM D. EUILLE
28 Mayor

29 Attachment

30
31 Introduction: 6/13/06
32 First Reading: 6/13/06
33 Publication:
34 Public Hearing:
35 Second Reading:
36 Final Passage:
37
38
39
40
41
42
43
44
45
46

25
6-17-06



<marykimm@hotmail.com>

06/16/2006 10:01 AM

Please respond to
<marykimm@hotmail.com>

To <alexvamayor@aol.com>, <delpepper@aol.com>, <council@joycewoodson.net>, <councilmangaines@aol.com>, <council@krupicka.com>, <macdonaldcouncil@msn.com>, cc bcc Subject COA Contact Us: Item 25, "unsolicited newspaper deliveries"

COA Contact Us: Item 25, "unsolicited newspaper deliveries"

Time: [Fri Jun 16, 2006 10:01:15] IP Address: [68.32.116.43]

Response requested: []

First Name: Mary
Last Name: Kimm
Street Address: Alexandria Gazette Packet
1604 King Street
City: Alexandria
State: VA
Zip: 22314
Phone: 301 996-5084 cell
Email Address: marykimm@hotmail.com
Subject: Item 25, "unsolicited newspaper deliveries"

I am writing to express my concern over item number 25 on tomorrow's agenda:

"25. Public Hearing, Second Reading and Final Passage of an Ordinance to Establish a "do-not-deliver" List of Addresses at Which the Owner or Resident Has Elected Not to Receive Unsolicited Newspaper Deliveries; To Regulate the Delivery of Such Newspapers to Addresses on the List, and To Prohibit Delivery Contrary to the Regulations."

I understand that the Alexandria Gazette Packet is not the source of the concerns prompting this proposal. Nevertheless, our business would be seriously hurt by this ordinance and the provisions it contains. The unintended consequences of this proposal are far reaching, and include first amendment concerns, enforcement and verification issues and more. The Alexandria Gazette Packet, a free newspaper delivered to thousands of homes and businesses in the City of Alexandria, has a tradition of public service that extends back more

than 200 years, as you know.

Apparently there were only two complaints in the past year about delivery of the Gazette, and both were professionally and promptly resolved.

Comments:

If the City's concern is primarily consumer issue about the way one business, The Examiner, is conducting itself, this proposal is not the best way to move forward. I ask you to table this proposal. Please direct the business or businesses in question work with the appropriate City departments on resolving complaints and establishing best practices for responding to City residents who request a stop in delivery.

The Gazette would be happy to participate in a meeting or task force addressing the concerns that prompted this ordinance.

Jerry Vernon and I are meeting with the city attorney today at noon. Jerry will appear at the public hearing on Saturday.

Please feel free to call me to discuss this. Please do not vote for such an ill-advised measure. Let's solve the problem, not create a bevy of new ones.

The best way to reach me is by cell phone, 301-996-5084 or email.

Mary Kimm
Chief Operating Officer
Editor and Publisher
Alexandria Gazette Packet
Connection Newspapers
marykimm@hotmail.com

703-917-6416 office
703-821-5050 switchboard
301-996-5084 cell

Jerry Vernon
Executive Vice President
Publisher
Alexandria Gazette Packet
Connection Newspapers
jvernon@connectionnewspapers.com

703-917-6404 office
703-862-7240 cell

SPEAKER'S FORM

DOCKET ITEM NO. 25

- wants additional time - see letter

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

- 1. **NAME:** Herb Moloney
- 2. **ADDRESS:** 6408 Edsall Road, Alexandria, VA 22312 (also D.C.)
TELEPHONE NO. 703 560 5000 **E-MAIL:** hmoloney@dcexaminer.com
- 3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
The Washington Examiner
- 4. **WHAT IS YOUR POSITION ON THE ITEM?**
Against
- 5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
Publisher, The Washington Examiner
- 6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
Yes

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker

June 16, 2006

William Eville
Mayor, City of Alexandria

Dear Mr. Mayor:

On behalf of the Washington
Examiner, I would like to request 15
minutes of speaking time on Docket Item
25 for Publisher Herb Neoloney -

Thank you -

Alue Neff Loren
202 298 7210