

EXHIBIT NO. 1 10
1-24-09

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~~6-11-06~~

~~21~~
~~6-13-06~~

City of Alexandria, Virginia

MEMORANDUM

~~23~~
~~1-13-09~~

DATE: JUNE 7, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 8

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

1	Introduction and first reading:	6/13/06
2	Public hearing:	6/17/06
3	Second reading and enactment:	6/17/06
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5		

6 INFORMATION ON PROPOSED ORDINANCE

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8 Title

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10 AN ORDINANCE to amend and reordain Title 9 (Licensing and Regulation) of The Code of the
11 City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Chapter 14
12 (Unsolicited Newspaper Deliveries).
13

14 Summary

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16 The proposed ordinance would establish a "do not deliver" list, analogous to the "do not call
17 list" applicable to telemarketing, and permit residents of the City to list their property
18 address with the City's Office of Citizen Assistance. The delivery of unsolicited newspapers
19 to premises included on the list would be prohibited. Delivery by mail, by handing directly
20 to the recipient in person, and by placing in a newspaper box provided by the recipient
21 would not be subject to the prohibition. The list would be updated and published quarterly.
22 A request for inclusion on the list would be valid for a two-year period, unless the request is
23 cancelled sooner. The listing would apply to all unsolicited newspapers, without regard to
24 content, subject matter or viewpoint. The proposed ordinance also prohibits depositing an
25 unsolicited newspaper in the public right-of-way immediately adjacent to a listed premises.
26 Publishers and distributors would be are required to remove offending newspapers from
27 public or private property. Violation of the new regulations would be a class five civil
28 violation, punishable with a \$25 fine for the first infraction, \$50 for the second infraction,
29 and \$100 for the third and subsequent infractions within one year at a listed address. A fee
30 of \$ 5.00 is proposed for listing, and \$ 25.00 for a copy of the list, and transactions must be
31 available on-line. Information on the list will be subject to the Freedom of Information Act.
32

33 Sponsor

34
35 Staff

36
37 Rose Williams Boyd, Director, Citizen Assistance
38 Ignacio B. Pessoa, City Attorney
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40 Authority

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42 § 2.1, Alexandria City Charter
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44 Estimated Costs of Implementation

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46 As discussed in City Manager's Memorandum
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Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

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

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

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

Section 9-14-5 Penalties.

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

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

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

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

WILLIAM D. EULLE
Mayor

Attachment

Introduction: 6/13/06
First Reading: 6/13/06
Publication:
Public Hearing:
Second Reading:
Final Passage:



Christopher Spera/Alex
01/24/2009 03:14 PM

To Bernard Caton/Alex@Alex, Jackie Henderson/Alex@Alex
cc
bcc
Subject Fw: Delivery of The Washington Examiner in the City of Alexandria

See attached.

Christopher P. Spera, Esq.
Acting City Attorney
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314-3211
(703) 838-4433

----- Forwarded by Christopher Spera/Alex on 01/24/2009 03:14 PM -----



"Nancy Osborn"
<nosborn@dcexaminer.com>
01/23/2009 04:12 PM

To <Christopher.Spera@alexandriava.gov>
cc <newslaw@newslaw.com>, "Michael Phelps"
<mphelps@dcexaminer.com>
Subject Delivery of The Washington Examiner in the City of Alexandria



January 23, 2009

DELIVERY BY E-MAIL

The Mayor and the Honorable Members of City Council
City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314-3211

Dear Mr. Mayor and Members of Council:

We have worked very hard to reach agreement with Council member Wilson and we're

grateful to City Attorney Chris Spera for his efforts to help reach a compromise. However, Councilmember Wilson is intent on making public statements and we could not agree on that approach.

We recognize that standing up in front of a council hearing and making promises doesn't ever carry much weight with any legislative body. We chose instead to work with Mr. Spera, who has been advising your colleague, Justin Wilson, about legislation that would treat unwanted newspaper deliveries with fines and other penalties. We've made several unique proposals to Mr. Wilson and Mr. Spera but nothing we offered was enough. We stopped trying to negotiate on Friday afternoon.

We ask you please to consider some important features of the bigger picture that may get lost in the vehement discussion about the need for fines, penalties and firing people.

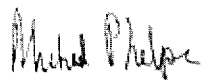
First, the City's proposed ordinance is squarely inside a First Amendment arena and one of the factors in such a case is the significance of the government's interest in the regulation. Nineteen thousand Examiners are delivered twice a week within the City of Alexandria. The last time Mrs. Boyd delivered a list of complaints to us, there were 22 names and addresses on it. That's a dissatisfaction rate of not even one percent of the total delivered. It means that there are 19,000 Alexandria voters who are either happy to get the Examiner's reports and perspective or who are not bothered by it. The speech value of the Examiner's offer and its right to make such an offer will weigh very heavily in First Amendment balancing tests. The courts are *required* to do this.

Second, the Examiner's motive is to get the newspaper into the hands of people who want to read it. Advertisers check our readership data. It is in our best interest to make every effort to stop delivery to people who don't want to read the paper. It's good business for us to devise a system that works for Alexandria.

Third, the Examiner also delivers low advertising rates to retail display advertisers, classified advertisers, and by the way, for City legal notices. This newspaper offers competition to the Washington Times and the Washington Post, which is very good for Alexandria, it's good for us and it's good for our competitors. In this economy, it is time to make efforts to grow the economy, not clamp down legitimate businesses with fines and requirements to fire people.

This is what we ask. Please consider the big picture.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Phelps". The signature is fluid and cursive, with the first name "Michael" and last name "Phelps" clearly distinguishable.

Michael Phelps

Chief Executive Officer
Washington-Baltimore Examiner Newspaper Group
Publisher, The Washington Examiner
1015 15th Street, NW
Washington, DC 20005
202-459-4930; 703-738-0607 (fax)
michael.phelps@examiner.com

cc: Alice Lucan, Attorney at Law
Christopher P. Spera, Esq., City Attorney



Peter Turner
<jns-pturner@comcast.net>

01/24/2009 07:44 PM

Please respond to
Peter Turner
<jns-pturner@comcast.net>

To william.euille@alexandriava.gov, timothylovain@aol.com,
councilmangaines@aol.com, council@krupicka.com,
delpepper@aol.com, paulcsmedberg@aol.com,

cc

bcc

Subject COA Contact Us: #10 Agenda item - Do Not Deliver - Proposed Ordinance

10
1-24-09

Time: [Sat Jan 24, 2009 19:44:02] **IP Address:** [69.140.69.249]

Issue Type: Mayor, Vice-Mayor and Council Members
First Name: Peter
Last Name: Turner
Street Address: 600 W Taylor RUn Parkway
City: Alexandria
State: VA
Zip: 22314
Phone: 703-751-5828
Email Address: jns-pturner@comcast.net
Subject: #10 Agenda item - Do Not Deliver - Proposed Ordinance
Mr Mayor, City Council

My neighbor Jen Johnson and I were unable to stay
through the day to speak in favor of your taking action on this proposed

Ordinance. However, I did have the chance to watch the segment at 230pm

today and would like to share the following as
your counsel and staff

update the proposed ordinance in preparation for the 2/21 meeting.

I

heard the background of this issue that has gone on now for 3 years as well

as the consistent disregard and stalling
tactics that the DC Examiner

seems to like to play with you too. I understand the owner and editor's

comments against this
measure from the Packet and appreciate their

observing the wishes of locals who do not want their paper (we never get it

here).

However, there is precedence to such action to protect the public and it is a Federally protected law requiring marketers and call

centers from removing people who ask to be removed from their lists as well as obeying "do not call" and "do not mail" lists via

submitted requests from the public. These are maintained by the Direct

Marketing Assn and the Direct Selling Assn. This action may hurt

companies whose business model relies on offensive and non-community promoting tactics like the DC Examiner, but not the Packet.

Given

the way the Packet takes care to treat local readers and citizens, how

Comments: could they be hurt by this? I find the arguments by the owner of the

Packet to be unsubstantiated. One need only look at those marketing and call center operations who live under the Federal law to see that they

continue to thrive. The Packet has a long history in this city and

built up goodwill. The DC Examiner could care less about us or any other community. Mr Wilson's explanation of the previous meetings and

subsequent correspondence is clear enough on that score.

In light of the

fact that we are living in a country that is suffering from 8 years of

"self-regulated" economic depression, torture policy, etc... I

find our bending over backward to this company as beyond the pale.

On a

personal note, my wife and I return home from caring for my cancer-ridden mother-in-law who recently passed away. During the six months we lived

mostly with her and I often had to remove the DC Examiner from my driveway or gutter

when returning home to check on things. The papers clearly

telgraph that I was not home despite the fact that I had my
Post stopped

to prevent this. As a homeowner, without this ordinance I have no control

for protecting my home from
burglars casing the community. Our elderly

residents let them pile up and they find their way to the sewers, and in

this area

we have experienced backups during hard rains.

PLEASE do not

wait any longer and pass this ordinance.



Peter Turner
<jns-pturner@comcast.net>

01/24/2009 07:59 PM

Please respond to
Peter Turner
<jns-pturner@comcast.net>

To william.euille@alexandriava.gov, timothylovain@aol.com,
councilmangaines@aol.com, council@krupicka.com,
delpepper@aol.com, paulcsmedberg@aol.com,

cc

bcc

Subject COA Contact Us: #10 Agenda item - Do Not Deliver - Proposed Ordinance

10
1-24-09

Time: [Sat Jan 24, 2009 19:59:07] IP Address: [69.140.69.249]

Issue Type: Mayor, Vice-Mayor and Council Members
First Name: Peter
Last Name: Turner
Street Address: 600 W Taylor Run Pkwy
City: Alexandria
State: VA
Zip: 22314
Phone: 703-751-5828
Email Address: jns-pturner@comcast.net
Subject: #10 Agenda item - Do Not Deliver - Proposed Ordinance
Appear the city of Aurora, Illinois has such an ordinance:

City of

Aurora Code Section 32-7 provides that "No person shall distribute,

deposit, place, throw, scatter or cast
any commercial or noncommercial

handbill upon any
premises if requested by anyone thereon not to do so,

or
if there is placed on such premises, in a conspicuous position

near the entrance thereof, a sign bearing the words
"No Trespassing", "No

Comments: Peddlers or Solicitors", "No Advertisement", "No Unsolicited

Newspapers" or any similar notice indicating in any manner that the

occupants of such
premises do not desire to have their right of privacy

dis-
turbed, or to have any such items left upon such premises."
A

violation of the Code is punishable by a fine not to ex-
ceed

\$1,000 and the violator may be banned from ped-
dling, soliciting or

otherwise doing business in the City of
Aurora for up to one year.