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April 12, 1994

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**Law and Legislation Committee
Sacramento, California**

Honorable Members in Session:

SUBJECT: Regulation of Distribution of Advertisements to Residential Properties

LOCATION/COUNCIL DISTRICT: City-wide

STAFF RECOMMENDATION

This report recommends that the Law and Legislation Committee receive and file the City Attorney's memorandum relating to city regulation of distribution of advertisements to residential properties.

CONTACT PERSON: Diane B. Balter, Deputy City Attorney, 264-5346

FOR COMMITTEE MEETING OF: April 19, 1994

SUMMARY

This report responds to a City Council request for information on the City's ability to regulate distribution of advertisements to residential properties. The City Attorney concludes that judicial interpretations of the First Amendment's protection of free speech prohibit any effective or practical regulation.

BACKGROUND INFORMATION

On April 5, 1994, Councilwoman Fargo asked for a report back on whether the City can restrict the distribution of advertisements placed in plastic bags and tossed on driveways and lawns or hung on doors. Among the objectives for such restrictions would be a decrease in litter and preventing

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Re: Regulation of Distribution of
Advertisements to Residential Properties
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Similar requests were made in 1992 by then-Mayor Rudin, and former Councilmember Tom Chinn and Councilmember Terry Kastanis. On February 21, 1992, the City Attorney issued the attached memorandum which concludes that legal precedents prohibit most regulation of door-to-door distribution, and those methods which are available are neither practical nor effective. Although it is not noted in the 1992 memorandum, the precedents apply as clearly to written materials which are advertisements only (commercial speech) as to newspapers and other written materials which contain non-commercial speech.

There have been no changes in the First Amendment doctrines applicable to advertising distribution to residential premises since 1992, and the opinion expressed by the City Attorney at that time is still applicable today.

FINANCIAL CONSIDERATIONS

This report has no financial implications.

POLICY CONSIDERATIONS


This report does not have implications for existing City policies.

MBE/WBE

This report does not involve the procurement of goods or services.

Respectfully submitted,

WILLIAM L. OWEN
Interim City Attorney

By: 
DIANE B. BALTER
Deputy City Attorney

RECOMMENDATION APPROVED:


DAVID MARTINEZ
Deputy City Manager



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February 21, 1992

MEMORANDUM

TO: Mayor Anne Rudin
Councilmember Tom Chinn
Councilmember Terry Kastanis

FROM: Sharon Siedorf Cardenas, City Attorney
Diane B. Balter, Deputy City Attorney *DBB*

SUBJECT: Inquiries re Limitations on Distribution of Advertisements, Handbills,
etc. to Residential Properties

Each of you has recently made an inquiry regarding the possibility of limiting the distribution of advertisements, handbills, fliers, etc. to residential premises. Problems cited include unsightliness and burglars being able to select unoccupied residences because of accumulated material. Diane Balter has met with Gary Little, the Citizens Assistance Officer, Mike Hanamura, Neighborhood Services Manager, and Jeannette Chan from Councilmember Chinn's Office to discuss this issue. Based on our advice that legal precedents prohibit most regulation of door-to-door distribution, the group concluded that there is no legal and effective way to solve this problem.

The courts are very protective of the right to distribute First Amendment protected materials door-to-door. Courts routinely overturn ordinances which prohibit or regulate such distribution, either dismissing the objectives of litter and crime prevention as insufficient to justify the restriction on free speech, or finding the ordinance not sufficiently related to the governmental interest (litter or crime prevention) advanced in justification of the ordinance.

An instructive example is Ad World, Inc. v. Township of Doylestown, 672 F.2d 1136 (3d Circ. 1982), which holds that an ordinance prohibiting unrequested door-to-door distribution of a newspaper consisting of community news and advertising material violated the newspapers'

rights under the First and Fourteenth Amendments. The Township urged that its ordinance was meant to prevent or to reduce burglary and vandalism, but the court declared that "we may not permit undifferentiated fears to excuse the suppression of First Amendment rights" and that the Township had "provided no evidence of a strong connection between accumulation of papers and the incidence of burglary."

In another case, Woodbury Daily Times Co., Inc. v. Township of Monroe, 610 F.Supp. 916 (D.C.N.J. 1985), a town enacted an ordinance requiring that circulars, advertisements, handbills, etc. be distributed on residential properties only by (1) handing materials personally to the resident; (2) placing materials on the entranceway, on the porch, by the door, within a screen door, or at or near the entranceway; or (3) placing materials in a receptacle, delivery box, or tube designated to receive all such materials. This is the type of ordinance that would respond to your concerns about fliers left on lawns and driveways. The court held the ordinance invalid, concluding that prevention of litter "has never been considered a particularly weighty objective" and that the ordinance did not well serve its intended purpose of preventing litter and crime. The court noted that, under the ordinance, printed material could still accumulate around the entranceway, on the porch, or in a delivery box or tube, enabling a burglar "of any intelligence" to discern that a dwelling was vacant, and that "the chances of limiting litter are only marginally improved by the ordinance, since materials may blow off a porch or entranceway, or out of an overstuffed delivery box.

A somewhat earlier California decision is consistent with these federal authorities. In Van Nuys Publishing Co. v. City of Thousand Oaks (1971) 5 Cal.3d 817, the California Supreme Court struck down an ordinance which banned the placement of any printed matter or advertisements on private property without prior consent of the resident, stating:

A city cannot, however, preserve 'privacy' (or attack litter) by prohibiting all distribution without 'prior consent,' as the City of Thousand Oaks has attempted to do here. (Footnote omitted.) The potentially devastating effect on First Amendment rights of such a provision necessitated that the City adopt a less restrictive alternative method to achieve its legitimate goals. Id. at 827-828.

These decisions leave little room for regulation. Two possibilities are:

- (1) Enforcing the trespass laws against a distributor who leaves printed materials at a home with a posted "no handbills" sign.

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- (2) Creating and maintaining a registry of persons who request that publications not be delivered to their homes and enforcing the trespass laws when material is distributed there.

Both are difficult to enforce and somewhat impractical.

The lengths to which the courts go to protect door-to-door distribution is revealed by the Ad World court's attempt to shift the burden from the distributors to the homeowners:

... a requirement may be imposed that homeowners take steps to prevent accumulation in their absence. Putting the onus on the homeowner to cure the burglary problem may be appropriate. The Supreme Court has tenaciously protected the right of a speaker to reach a potential listener and get the listener's attention. [citation omitted] It does not seem onerous to impose on the potential listener some of the costs of this important freedom.

Against this legal background, it appears that complaints about door-to-door distribution of written materials cannot be resolved by government regulation.

DBB/mr

cc: Councilmember Heather Fargo
Councilmember Lyla Ferris
Councilmember Josh Pane
Councilmember Joe Serna
Councilmember Kim Mueller
Councilmember Lynn Robie
Mike Hanamura, Neighborhood Services Manager (3540)
Gary Little, Citizens Assistance Officer (0300)
Jeanette Chan, Admin. Assistant to City Council (0100)
Mary McFadden, Admin. Assistant to City Council (0100)
Alice Pierce, Admin. Assistant to Mayor (0100)

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