

ORDINANCE No. 2008-29-165

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING A "HANDBILL ORDINANCE;" PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXCLUSIONS; PROVIDING FOR REGULATIONS; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has a substantial interest in keeping the City's free of debris and,

WHEREAS, the City Council also has a substantial interest in protecting the health, safety and welfare of its citizens, which includes aesthetic and traffic concerns, and,

WHEREAS, the City Council finds that the depositing, placement, throwing, scattering or casting of handbills in public and the placement of handbills upon vehicles, vacant property and in residential neighborhoods without the express permission of the owner, lessee or operator of vehicles, constitutes a nuisance and annoyance to the owners and operators of such vehicles, to the owners and occupants of such private premises, and to the public, and

WHEREAS, the City Council deems it necessary and appropriate to provide for regulations concerning handbills in the City of Miami Gardens,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

**SECTION 1. ADOPTION OF REPRESENTATIONS:** The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

**SECTION 2. CREATION OF ORDINANCE:** An Ordinance relating to Handbills is hereby created in the City of Miami Gardens, as follows:

**HANDBILL ORDINANCE**

**Section 1. Purpose and legislative findings.**

(a) The City Council finds that the placement of handbills upon vehicles situated upon public streets or highways and upon vehicles situated upon off-street parking areas provided for the use of patrons, employees or visitors of private commercial establishments, including business or shopping centers, constitutes a nuisance and annoyance to the owners and operators of such vehicles, to the owners and occupants of such private premises and to the public, for the reasons described herein.

(b) The City Council finds that the placement of handbills upon vehicles, without the consent of the owner, lessee or operator of such vehicle, upon or in the vicinity of the windshield of such vehicle, creates a potential traffic safety hazard, because vehicle operators may not notice such handbills until after entering such vehicle and resuming operation thereof, and that therefore, such handbills may remain upon and obstruct the view of vehicle operators or may cause operators to abruptly [or] dangerously exit their vehicle to remove such obstruction. Furthermore, handbill materials placed upon or in the vicinity of vehicle windshields impair the functioning of windshield wipers by the formation of residue or debris from paper or other like material of handbills that interferes with safe and efficient operation of such windshield wipers.

(c) The City Council finds that the placement of handbills anywhere upon the exterior of an unoccupied vehicle without the consent of the owner, lessee or operator thereof, creates an unnecessary risk that litter will be created by the disposal of unwanted and unsolicited handbills.

(d) The City Council finds that the placement of handbills on vacant or uninhabited property creates an unnecessary risk that litter will be created by the disposal of unwanted and unsolicited handbills.

(e) The City Council finds that (i) this article seeks to implement a substantial governmental interest, including the City's interest in traffic

safety and aesthetics, as described above, (ii) directly advances that substantial governmental interest of the City, and (iii) reaches no further than necessary to accomplish the City's governmental objective as stated herein.

**Section 2. 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:

- a. *Commercial Handbill* shall mean any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, poster, paper or booklet, or any other printed or otherwise reproduced original or copies of any matter:
  - (1) Which advertises for sale any merchandise, product, commodity, or thing; or
  - (2) 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
  - (3) Which directs 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.
  - (4) While, containing reading matter other than advertising matter, is predominately and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.
- b. *Handbill* shall mean any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, poster, paper or booklet, or any other printed or otherwise reproduced original or copies of any matter.
- c. *Handbill distributor* shall mean and include any person distributing, or causing, directing, or instructing handbills to be distributed.
- d. *Newspaper* shall mean and include any newspaper of general circulation as defined by general law, any newspaper duly entered

with the United States Postal Service, in accordance with any federal statute or regulation, any newspaper filed and recorded with any recording officer as provided by general law and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year.

- e. *Off-street parking area* means the entire width between the boundary lines of any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons and includes parking lots and parking garages provided by commercial establishments, institutions or governmental units for the use of employees, visitors and/or patrons.
- f. *Park* or *parked*, in reference to a vehicle, means the standing of a vehicle, when not occupied by any person.
- g. *Person* shall mean any individual, trust, union, partnership, limited partnership corporation or other business entity.
- h. *Private premises* shall mean and include any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mail box belonging or appurtenant to such dwelling, house, building, or other structure.
- i. *Public place* shall mean and include any and all streets, public parks, squares, spaces, plazas, grounds and buildings in the city.
- j. *Street* or *highway* means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic, and also includes private roads which are subject to a traffic control jurisdiction agreement pursuant to F.S. § 316.006(2)(b).
- k. *Vehicle* means every device, in, upon, or by which any person or property is or may be transported or drawn upon a street or highway.

### **Section 3. Exclusions.**

The provisions of this article shall not be deemed to apply to the distribution of mail by the United States Postal Service, the distribution of newspapers, or to

official notices distributed by governmental entities for the sole purpose of alerting persons of a risk to the public health, safety or welfare.

**Section 4. Distributing handbills in public places.**

It shall be unlawful for any person to deposit, place, throw, scatter or cast any handbills in or upon any public place within this city. However, that it shall not be unlawful for any person to hand out or distribute, any handbill in any public place to any person willing to accept such handbill.

**Section 5. Prohibition on placing handbills on vehicles.**

(a) No person shall deposit or place or cause the deposit or placement of any handbill anywhere upon the exterior of any vehicle while such vehicle is parked upon any street or highway, or upon any off-street parking area, as described in Section 2. However, nothing herein shall prevent a person from handing a handbill to a person sitting in a parked vehicle who is willing to accept such handbill.

(b) No person shall deposit or place or cause the deposit or placement of any handbill anywhere upon the exterior of any unoccupied vehicle while such vehicle is parked in a residentially zoned neighborhood without the express permission of the owner, lessee or operator thereof.

(c) This section shall not be applicable to official citations or notices placed pursuant to governmental authority.

**Section 6. Prohibition on signs and poles.**

It shall be unlawful to attach a handbill to any sign, utility pole, transit shelter or other structure within the public right-of-way.

**Section 7. Distributing, depositing, etc., on posted property.**

It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any handbill upon any premises, if requested by anyone in control of said premises 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 Peddlers or Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbills left upon such premises.

**Section 8. Distributing, depositing, etc., on premises.**

It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any handbill in or upon any private premises, except by handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such private premises; provided, however, that in case of private premises which are not posted as provided in Section 8, the aforesaid licensed or unlicensed person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations.

**Section 9. Posting on building or structure.**

It shall be unlawful for any person to post any handbill on any private house or building or wall, or fence, without the consent of the owner.

**Section 10. Requirements for commercial handbills**

It shall be unlawful for any person to distribute, deposit, scatter, hand out or circulate any commercial handbill in any place, under any circumstance, which does not have printed on the cover, front or back thereof, the name and address of the following.

- (1) The person who printed, wrote, compiled or manufactured the handbill.
- (2) The person who caused the handbill to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring such handbill shall also appear thereon

**Section 11. Presumption.**

It will be presumed that the person(s) listed on commercial handbills are responsible for the dissemination of the same and to the extent handbills are disseminated in violation of this Ordinance, such person(s) shall be in violation of this Ordinance.

**Section 12. Penalties.**

Every person found guilty of a violation of this Ordinance shall be punished by a fine of not more than \$500.00 per violation. In addition any

person who fails to comply with this Ordinance, upon conviction shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00, or by imprisonment not to exceed sixty (60) days in the County jail or both, at the discretion of the Court. The penalties provided for in this Ordinance are in addition to any other penalties permitted by law.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 9<sup>th</sup> DAY OF JULY 2008.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 24<sup>th</sup> DAY OF JULY 2008.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: Councilman Oliver Gilbert

MOVED BY: Vice Mayor Watson  
SECOND BY: Councilman Williams

**VOTE: 6-0**

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> X </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilman Andre' Williams	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> </u> (Yes)	<u> </u> (No) (Not Present)
Councilman Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)

# City of Miami Gardens

1515 NW 167<sup>th</sup> Street  
Bldg. 5, Suite 200  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilman Oliver Gilbert III  
Councilwoman Sharon Pritchett  
Councilman Andre Williams

## Agenda Cover Page

Date: July 23, 2008

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes  No

Sponsor Name/Department:

**Councilman Oliver Gilbert III**

Public hearing

Ordinance

1st Reading

Advertising requirement: Yes  No

RFP/RFQ # \_\_\_\_\_

Quasi-Judicial

Resolution

2nd Reading

Yes  No

Yes  No

## **Title**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING A "HANDBILL ORDINANCE;" PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXCLUSIONS; PROVIDING FOR REGULATIONS; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

## **Staff Summary**

Keeping Miami Gardens beautiful takes discipline and hard work. The irritation felt when seeing vehicles, light poles, public and private property littered with handbills is a constant nuisance, one which can be curtailed with the creation of a new handbill ordinance.

With the passing of this ordinance, it will become illegal for handbills to be placed on vehicles. Additionally, commercial handbills will be required to contain the name and address of the individual that is responsible for its distribution. Conviction could impose a misdemeanor charge with a \$500.00 fine per violation; imprisonment of up to 60 days in jail or both. These fines would be in addition to any other penalties permitted by law.