

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - # 06-010

TO: Mario Soldevilla, Director
Department of Solid Waste

FROM: Jorge L. Fernandez, City Attorney *JOB*

DATE: December 27, 2006

RE: Provocative Fliers - Coconut Grove
Matter ID No.: 06-2444

**YOU REQUEST OUR OPINION AS TO WHAT LAWFUL MEASURES
ARE AVAILABLE TO THE CITY TO PROHIBIT THE DISTRIBUTION
OF PROVOCATIVE FLIERS ON PUBLIC STREETS AND SIDEWALKS
WITHIN THE CITY?**

By way of background information, you have stated that you have received complaints from citizens describing a situation wherein the streets of Downtown Coconut Grove were littered with “disgusting mini-card fliers” depicting nudity, and in full view of pedestrians including minors. The situation was described as a downpour of litter on the streets that presented a slip hazard for pedestrians. The problem created by the distribution of handbills, fliers or leaflets within public streets and sidewalk is well known to local governments throughout the country.^{1/} Generally, these paper materials are handed to pedestrians, who immediately toss the papers to the ground. Accordingly, the problem that you seek to address is littering.^{2/}

It is well established that the streets and sidewalks are natural and proper places for the dissemination of information and opinion. Therefore, as a point of departure it must be stated that a complete ban on the distribution of fliers, handbills or other materials upon streets and sidewalks (hereinafter referred to as “leafleting”) violates both First Amendment tenets protecting speech and press. See Lovell v. Griffin, 303 U.S. 444, 82 L.Ed. 949, 58 S.Ct. 666 (1938) (a municipality cannot bar the distribution of literature containing religious or political ideas in public places).

^{1/} Just recently, Miami Today reported on Miami Beach’s efforts to ban the distribution of handbills. See, Miami Today, December 14, 2006, “Miami Beach drops flier ban in favor of fines, strict enforcement.” The article reports that after considering a proposed ordinance that would have banned the distribution of handbills in specific areas of South Beach and levied a series of \$500 fines on business found to be responsible, the Miami Beach City Commission backed off and instead decided to better enforce the anti-littering provisions already in the books.

^{2/} *Litter*. The word “litter” as used in statutes and code provisions generally means any garbage, rubbish, can, bottle, box, container, tobacco product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, trash, refuse and paper. (Emphasis Supplied).

Leafleting is an expressive activity protected under the United States Constitution. United States v. Grace, 461 U.S. 171, 176-77, 103 S.Ct. 1702, 1706-07, 75 L.Ed.2d 736 (1983). Under the forum-based analysis developed in Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), the first inquiry is to determine the type of forum to which the citizen seeks access. Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 801, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985). Public sidewalks and streets, as well as other areas open to the public without charge “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” Hague v. C.I.O., 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939). In such places, government regulations of speech must be narrowly drawn to achieve a compelling state interest. International Soc’y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, ---, 112 S.Ct. 2701, 2705, 120 L.Ed.2d 541, *concurring opinion at* 505 U.S. 672, 112 S.Ct. 2711, 120 L.Ed.2d 541 (1992).

A year after deciding Lovell, the Supreme Court, in Schneider v. State (Town of Irvington), 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939), struck down a series of municipal ordinances prohibiting the distribution of handbills on public streets on the rationale of preventing littering. Schneider made clear that while citizens may not enjoy a right to force an unwilling person to accept a leaflet, they do have a protected right to tender it. The Supreme Court stated in Schneider that “the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it.”

The government may, however, impose reasonable time, place, and manner regulations if “the restrictions ‘are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.’” United States v. Grace, 461 U.S. 171, 177, 103 S.Ct. 1702, 1707, 75 L.Ed.2d 736 (1983) (quoting Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983)).

Thus, having established that the City of Miami can not ban leafleting on public streets and sidewalks there is none the less enforcement methods available to deal with the problem of littering. The City of Miami Commission has in fact enacted ordinances that regulate the conduct of those using the streets in a manner contrary to the general health, welfare and safety of the community. Specifically, it has expressed its intent to deal with the problem of litter in Section 22-6 of the Miami Code. Said Code Section provides in pertinent part: “It is the intent of the City Commission of Miami, Dade County, Florida, to prevent, in whatever way possible, the abuse of the environment of the city through acts of any persons that are generally classified under the headings of “dumping” and “littering” which acts severely burden the taxpayers of the city and adversely affect the attractiveness, public health, safety and welfare of the community for its residents and visitors.”

Section 22-6 seeks to prevent the nuisances associated with the distribution or casting of handbills, fliers, papers, pamphlets, advertisements, or wastepaper upon streets, sidewalks, and public places. Section 22-6 of the Miami Code prohibits littering and imposes a civil penalty of \$500.00 per occurrence for littering.

The Legislature has also adopted a statute regulating litter. Section 403.413, Florida Statutes (2006), is known as the "Florida Litter Law." This statute authorizes the imposition of civil and criminal penalties and fines against any person who dumps litter in violation of its provisions. This includes a civil penalty of \$50.00 against a person who dumps an amount of litter not exceeding 15 pounds. Note that Section 22-6 of the Miami Code designates sanitation inspectors as **litter enforcement officers** of the City of Miami, for the purposes of enforcing Section 403.413, Fla. Stat., and Section 22-6 of the Miami Code.

Additionally, obscenity is not protected by constitutional guaranties of freedom of speech and press. Specific state law prohibits the distribution of materials including handbills or pamphlets that are obscene or lewd, and subjects violators to a criminal penalties. Section 847.011, F.S. (2006).

Finally, although the City of Miami can not ban leafleting, the City of Miami can adopt "content-neutral" regulations such as reasonable time, manner and place restrictions on the activities of individuals engaged in leafleting. For example, the City of Miami may prohibit leafleting in certain areas, and may require a person who engage in leafleting to obtain a permit which would be subject to revocation in the event that the leafleting activities of the permit holder violate applicable code provisions including anti-littering laws. Attached for your convenient reference is a copy of sample ordinances adopted by the City of Las Vegas and the City of Key West. If you desire to proceed with such a regulatory measure we would be glad to assist you in drafting an ordinance to that would seek to address the problems that you have identified with respect to public safety and aesthetics without encroaching upon basic First Amendment rights.

In conclusion, notwithstanding the fact that an absolute ban on leafleting upon streets and sidewalks would be unconstitutional, there is a comprehensive regulatory scheme in place, and there are permissible regulations that can be adopted that if aggressively enforced could serve as an effective measure to prevent the litter nuisance created by the proliferation of individuals and businesses leafleting within the public streets and sidewalks.

JLF/JOB/dd
Attachments

c: Pedro G. Hernandez, City Manager

Title 6 BUSINESS TAXES, LICENSES AND REGULATIONS

Chapter 6.42 HANDBILLS AND ORAL SOLICITATION

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6.42.010 Purpose.

To protect the people against the nuisance of, and incident to, the promiscuous distribution of handbills and circulars, particularly commercial handbills, as herein defined, with the resulting detriment and danger to public health and safety, the public interest, convenience and necessity requires the regulation thereof, and to that end the purposes of this Chapter are specifically declared to be as follows:

(A) To protect the people against the unlawful activities or operations of dissolute persons of criminal habits or tendencies, representing themselves as solicitors, canvassers or handbill distributors, by requiring the registration of all such solicitors, canvassers or handbill distributors, together with the names of their employers, and by regulating the business of handbill and advertising distribution through the imposition of reasonable license fees;

(B) To protect local residents against trespassing by solicitors, canvassers or handbill distributors upon the private property of such residents if they have given reasonable notice that they do not wish to be solicited by such persons or do not desire to receive handbills or advertising matter;

(C) To protect the people against the health and safety menace and the expense incident to the littering of the streets and public places by

the promiscuous and uncontrolled distribution of advertising matter and commercial handbills;

(D) To preserve to the people their constitutional right to receive and disseminate information not restricted under the ordinary rules of decency and good morals and public order, by distinguishing between the nuisance created by the promiscuous distribution of advertising and commercial circulars and the right to deliver noncommercial handbills to all who are willing to receive the same;

(E) To protect local residents, as well as tourists, from any practice tending to annoy persons passing in public places, by any commercial oral solicitation or representation.

(Ord. 1657 § 1, 1973; Ord. 1332 § 1 (part), 1968: prior code § 5-32-1)

6.42.020 Definitions.

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

(A) "Billposter" means and includes any person engaging in the business for hire or posting, fastening, mailing, or otherwise affixing any written, painted or printed matter of any kind, or other form or reproduction thereof, hereinafter called "sign," containing a message or information of any kind whatsoever, to any outdoor billboard, or to or upon any bridge, fence, pole, post, sidewalk, tree, or to or upon the exterior of any other structure except that the terms of this definition shall not apply to nor include any such sign mounted on, fastened to, or suspended from the outside of any building or other structure, in accordance with and

authorized by any provisions of an ordinance or statute, either for any public convenience or use, or regulating the construction or use of so-called outdoor display signs, whether such display signs are illuminated or not.

(B) "Commercial handbill" means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature:

(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; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where such license is or may be required by any law of this State, or under any provision of this Code; or

(4) Which is not covered by the definition of "sign" in the definition of "billposter" in Subsection (A) of this Section.

(C) "Commercial oral solicitation or representation" means and includes any verbal, oral or spoken communication from one person to another person, the subject matter of the communication being the same as is defined under Subsection (B) of this Section for "commercial handbill."

(D) "Handbill distributor" means and includes any person engaging or engaged in the business for hire or gain of distributing commercial or noncommercial handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

(E) "Newspaper" means and includes any newspaper of general circulation as defined by general law, any newspaper duly entered with the Postal Service of the United States, in accordance with Federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, means and includes any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

(F) "Noncommercial handbill" means and includes 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 or literature not included in the aforesaid definitions of a sign, or a commercial handbill, or a newspaper set out in Subsections (A), (B) and (E) of this Section, respectively.

(G) "Private premises" means and includes 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 mailbox belonging or appurtenant to such dwelling house, building or other structure.

(H) "Public place" means and includes any and all streets, boulevards, avenues, lanes, alleys, sidewalks, curbs, or other public ways, and any and all public parks, squares, spaces, plazas, grounds and buildings.

(Ord. 1657 § 2, 1973: Ord. 1332 § 1 (part), 1968: prior code § 5-32-2)

6.42.030 Mail and newspapers exempted.

The provisions of this Chapter shall not apply to:

(A) The distribution of mail by the United States; or

(B) Except as otherwise provided in Section 6.42.135, newspapers as defined in this Chapter.

(Ord. 5226 § 1, 2000: Ord. 1332 § 1 (part), 1968: prior code § 5-32-10)

6.42.040 License--Required.

It is unlawful for any person to engage in the business of a billposter for hire or as a handbill distributor for hire, or for any person to distribute commercial or noncommercial handbills, without first complying with the terms of this Chapter and all other relevant laws and regulations; provided, that nothing contained

herein shall apply to any person advertising his business or activity upon his own premises, if such business or activity is regularly established at a definite location in such city, and also if a license has been obtained therefor, if such license is required under the terms of any applicable law or ordinance.
(Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (A))

6.42.050 License--Agents or employees.

Persons acting for licensees, as agents or employees, in the posting or distributing of any such signs or handbills, shall not be required to obtain a license or pay a fee, but each such person shall comply with each and all of the other provisions hereof, and be subject thereto.
(Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (D)(part))

6.42.060 License--Application.

(A) Any person desiring to engage, as principal, either in the business of a billposter for hire, or in the business of distributing commercial or noncommercial handbills for hire, shall make application to and receive from the Director of the Department of Business Activity, or other officer empowered to issue the same, who shall act whenever the Director is herein referred to, a license in the manner and for the period prescribed by the terms of this Chapter and by all relevant provisions of this Code.

(B) Such applicant shall make written application to the Director upon a form or forms provided for such purpose by the Director. Such form shall contain, among other things

that may be required, the name, the business address, and a brief description of the nature of the business to be conducted by the applicant, the probable number of agents and employees so to be engaged, together with a request for a license for the period for which the applicant seeks to engage in such business.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (B))

**6.42.070 License--Fee payment--
Transferability--Refund.**

(A) The application shall be accompanied by the fee hereinafter provided for in this Chapter.

(B) No license issued under this Chapter shall be transferable.

(C) If any billposter or handbill distributor license is surrendered by the licensee therein named, or is revoked for cause, neither the licensee named in such license, nor any other person, shall be entitled to any refund of any part of such fee.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (C)(part))

6.42.080 License--Fee designated.

License fees under the terms of this Chapter, and for any such purpose, shall be fifty dollars semiannually.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (D)(part))

6.42.090 License--Revocation.

Without excluding other just grounds for revocation, the Board of Commissioners, or

official so empowered by law, may revoke any license obtained under an application containing a false or fraudulent statement knowingly made by the applicant with intent to obtain a license by means of false or fraudulent representations, or for violations of this Chapter, or any other grounds specified by law. (Ord. 1332 § 1 (part), 1968: prior code § 5-32-9 (C)(part))

6.42.100 Posting on public ways and structures.

No person shall post, stick, stamp, paint or otherwise fix, or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other paper or device calculated to attract the attention of the public, to or upon any sidewalk, crosswalk, curb or curbstone, flagstone, or any other portion or part of any public way or public place, or any lamp post, electric light, telegraph, telephone or trolley line pole, or railway structure, hydrant, shade tree or tree-box, or upon the piers, columns, trusses, girders, railings, gates or other parts of any public bridge or viaduct, or other public structure or building, or upon any pole, box or fixture of the fire alarm or police telegraph system, except such as may be authorized or required by the laws of the United States, or State, and the ordinances of the City. (Ord. 1332 § 1 (part), 1968: prior code § 5-32-3)

6.42.110 Vacant premises--Distribution in public places.

(A) It is unlawful for any person to deposit, throw, place, scatter, or cast:

(1) Any commercial or noncommercial handbill in or upon private premises which are temporarily or continuously uninhabited or vacant;

(2) Any commercial handbill in or upon any public place within the City; and

(B) It is also unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; provided, however, that it is not unlawful for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill in any public place to any person willing to accept such noncommercial handbill.

(Ord. 1657 § 3, 1973: Ord. 1332 § 1 (part), 1968: prior code § 5-32-4)

6.42.120 Commercial oral solicitation or representation.

It is unlawful for any person to make a commercial oral solicitation or representation in or upon a public place.

(Ord. 1657 § 4, 1973: Ord. 1332 § 1 (part), 1968: prior code § 5-32-5)

6.42.130 Request or posting not to distribute.

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill upon any premises, if requested by anyone there on not to do so, or if there is placed on the 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 the 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.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-6)

6.42.135 Unsolicited materials delivery prohibited.

It is unlawful for any person to deliver any unsolicited newspaper, circular, periodical, flier or other commercial or noncommercial material to or upon any residential premises if the owner or occupant has provided to the person responsible for the delivery a written notice to discontinue the delivery. In the case of a newspaper or other publication which includes its mailing address, the written notice to discontinue must be sent to that address by certified mail. In any other case, the written notice to discontinue may either be provided by hand delivery or by certified mail addressed to the person responsible for the delivery.

(Ord. 5226 § 2, 2000)

6.42.140 Distribution to private premises.

No person licensed under the provisions of this Chapter, or any other person, shall distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited, except by handing or transmitting any 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 inhabited private premises which are not posted as provided in Section 6.42.130, the aforesaid licensed or other person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited 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 mail boxes may not be so used when so prohibited by Federal postal laws or regulations.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-7)

6.42.145 Distribution on or in motor vehicles.

(A) No person shall deposit, fasten, throw, scatter, cast or place any commercial or noncommercial handbill:

(1) In or upon any vehicle that is parked on any public street or on any property that is owned by the City; or

(2) In or upon any vehicle parked in or upon any private property that provides multiple spaces for parking vehicles. Such property shall, without limitation, include such locations as parking garages, shopping centers, shopping malls, outdoor theaters, drive-in restaurants, gasoline service stations, apartment and housing developments and complexes, casino and other types of parking lots and any other place where provision is made for vehicles to stop or park in designated areas for any purpose.

(B) The provisions of Paragraphs (1) and (2) of Subsection (A) of this Section shall not be

deemed to prohibit in any public or private place the distribution of any commercial or noncommercial handbill by hand delivery to the owner or other occupant of any vehicle who is willing to accept the handbill without payment therefor.

(Ord. 3397 § 2, 1988)

6.42.150 Permitting prohibited posting.

It is unlawful for the owner, lessee, occupant or agent of premises to permit any person, whether licensed or acting under the terms of this Chapter, or otherwise, to post, affix or otherwise attach to any building, structure or fixture located upon such premises, whether such fixture is natural or artificial, any poster or handbill containing any matter prohibited by the terms of this Chapter.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-11)

6.42.160 Existing ordinances unaffected.

The ordinance codified in this Chapter shall not be deemed to repeal, amend or modify any ordinance ever ordained, either prohibiting, regulating or licensing canvassers, hawkers, peddlers, transient merchants, or any person, using the public streets or places for any private business or enterprise, or for commercial sales, not covered herein.

(Ord. 1332 § 1 (part), 1968: prior code § 5-32-13)

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ARTICLE VIII. OFF-PREMISES CANVASSING

DIVISION 1. GENERALLY

Sec. 18-411. Title.

This article shall be known as the off-premises canvassing ordinance.
(Code 1986, § 94.01)

Sec. 18-412. 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:

Business means any commercial activity in which any real property, goods or services are sold or offered for sale, performance for lease, or for rent within the corporate city limits as defined by the Charter.

Edibles means any food or beverage intended for human consumption.

Goods means any tangible item, including edibles.

Historic district means all of that portion of the city located west of White Street between the Atlantic and Gulf of Mexico.

Off-premises canvassing means distribution of information or solicitation of customers on publicly owned property in connection with a business, excluding peddling as defined in section 18-541, and activities licensed pursuant to article VI of this chapter pertaining to mobile vendors.

OPC means off-premises canvassing.

Sale means any trade or offer of trade for currency, credit, services, or goods.

Services means any work, attraction amenity or act rendered for sale.

Solid waste means garbage, rubbish, refuse, bulky items and other discarded solid or liquid materials, including materials resulting from industrial, commercial, agricultural and community activities.

(Code 1986, § 94.02)

Cross references: Definitions generally, § 1-2.

Sec. 18-413. Penalty for violation.

Violations of this article shall be punishable by a civil fine up to \$500.00 and shall be enforceable as provided in article VI of chapter 2.

(Code 1986, § 94.09)

Sec. 18-414. Prohibited in certain locations.

No person shall engage in off-premises canvassing in the following locations:

- (1) Any publicly owned parking lot.
- (2) Mallory Dock, except that those artisans, vendors and performers authorized by the cultural preservation society to be present during the nightly sunset activities and participating in the drawing for the 60 available spaces administered by the society shall be exempt from the requirements of this article.
- (3) Any publicly owned beach or seawall or city-owned, state-owned, or federally owned right-of-way adjacent to any publicly owned beach or seawall.

(Code 1986, § 94.05)

Sec. 18-415. Restrictions in historic district.

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

Corner and *street corner* mean the sidewalk where two or more platted or public streets meet, overlap, intersect or bisect, and the adjoining sidewalk area or unpaved right-of-way area serving as a sidewalk, but not including the street, extending 25 feet in either direction.

Right-of-way includes but is not limited to the street, the sidewalk, the corner and the curb.

(b) Any person engaging in off-premises canvassing in the historic district shall abide by the following restrictions:

(1) No off-premises canvasser may operate on the public right-of-way at the following prohibited streets or areas:

a. Duval Street.

b. Front Street.

c. Wall Street.

d. Exchange Street.

e. Fitzpatrick Street.

f. Tift Alley.

g. The area known as Clinton Square, including that portion of Whitehead Street between Front Street and a point one hundred feet south of Greene Street, and including the portion of Greene Street from Whitehead Street to Front Street.

h. The area known as the Key West Bight, including all city-owned leasehold properties, parking lots, streets, the Harbor Walk and docks.

(2) When an off-premises canvasser stands on a permitted right-of-way, the off-premises canvasser shall remain at least ten feet away from any right-of-way prohibited in subsection (b)(1) of this section.

(3) An off-premises canvasser may operate on a sidewalk so long as he remains within the area defined in subsection (a) of this section as a street corner. No off-premises canvasser shall operate on the street or other portion of the public right-of-way.

(4) No two off-premises canvassers from the same business may operate within 100 feet of each other where both off-premises canvassers are located on public property.

(c) A violation of this section shall be prosecuted in accordance with section 1-15. A violation may also be prosecuted through proceedings before the special master or through any other lawfully available means including civil and injunctive relief.

(Code 1986, § 94.06; Ord. No. 05-01, § 1, 1-4-2005)

Secs. 18-416--18-440. Reserved.

DIVISION 2. PERMIT

Sec. 18-441. Required.

No person shall engage in off-premises canvassing unless the person holds a valid off-premises canvassing permit and fully conforms to the terms of this article.

(Code 1986, § 94.09)

Sec. 18-442. Limitations.

Any off-premises canvassing permit shall not be considered to be a business tax receipt or be equivalent to such license, nor to entitle the permit holder to rights provided in F.S. ch. 205.

(Code 1986, § 94.08; Res. No. 06-292, § 1, 9-6-2006)

Sec. 18-443. Application; fee; issuance.

(a) Each person who engages in off-premises canvassing shall apply to the licensing office of the building department for an off-premises canvassing permit by submitting an application which shall set forth the name, the date of birth, the business represented, and the business address and telephone number. Proof of citizenship, permanent residence, or a work permit shall be required.

(b) A nonrefundable permit fee of \$30.00 must be paid at the time of the application.

(c) A photograph will be taken of each applicant and will be incorporated into the off-premises canvassing permit.

(d) The licensing office, upon receipt of a completed application and permit fee, shall verify that the business represented has a current business tax receipt from the city or another jurisdiction and upon such verification shall issue an off-premises canvassing permit. No off-premises canvassing permit shall be issued for a representative of an unlicensed business.

(e) Any off-premises canvassing permit issued under articles VI and X of this chapter and article VI of chapter 62 will be valid for purposes of this section until the expiration date stated on the permit.

(Code 1986, § 94.03; Res. No. 06-292, § 1, 9-6-2006)

Sec. 18-444. Transferability; limitation on number; renewal.

(a) The off-premises canvassing permit is nontransferable and shall be used only by the person in whose name it is issued. Any permit transfer shall render the permit void and ineffective. Any business sale, assignment whether voluntary or involuntary, or transfer of over 50 percent of the shares of any corporate business represented shall render the permit void and ineffective.

(b) A permit holder may represent more than one business at a time, but must obtain a separate off-premises canvassing permit for each business represented.

(c) No more than four off-premises canvassing permits will be issued per business.

(d) Off-premises canvassing permits are valid for one year from the date of issuance. An off-premises canvassing permit holder may obtain renewal each year by applying to the licensing office, updating the required information, and paying a renewal fee of \$30.00. Any off-premises canvassing permit not renewed prior to expiration shall be deemed void and of no further use and effect to any person.

(Code 1986, § 94.04)

Sec. 18-445. Conduct.

All off-premises canvassing permit holders shall comply with the following conditions while engaged in off-premises canvassing:

(1) The off-premises canvassing permit holder shall wear the permit, including a photograph of the permit holder, located as on a shirt front pocket.

(2) No off-premises canvassing permit holder shall obstruct vehicular traffic in violation of the provisions of F.S. ch. 316.

(3) No off-premises canvassing permit holder shall place advertising materials upon any vehicle not belonging to the permit holder.

- (4) No off-premises canvassing permit holder shall throw, place or deposit solid waste on any street, sidewalk, or publicly owned right-of-way unless such solid waste is advertising material and is bundled and ready for distribution.
 - (5) No off-premises canvassing permit holder shall interfere with or obstruct the free travel or passage of any pedestrian on the sidewalk.
 - (6) No off-premises canvassing permit holder shall distribute printed literature except upon request of an interested party.
 - (7) No off-premises canvassing permit holder operating on public property shall leave the area of operation without forfeiting his right to operate in a given area.
- (Code 1986, § 94.07)

Sec. 18-446. Revocation or suspension.

(a) An off-premises canvassing permit may be suspended or revoked on any of the following grounds:

- (1) Fraud or misrepresentation of a material statement contained in the permit application.
- (2) Failure by permit holder to comply with sections 18-414 and 18-415 and this division.
- (3) Conduct by the permit holder in connection with the permitted business in a manner which creates a public nuisance or endangers the public health, safety or welfare.

(b) Upon one judicial or special master finding of a violation of the terms of sections 18-414 and 18-415 and this division or other pertinent federal, state, or local law by a person holding a valid off-premises canvassing permit, the city manager shall, after conforming with subsection (c) of this section, issue a written warning. Upon a second such judicial or special master finding the city manager shall impose a determinate suspension of the off-premises canvassing permit or revoke the off-premises canvassing permit. Upon three such judicial or special master findings regarding a particular business within one calendar year, the city manager may revoke all off-premises canvassing permits for the business involved. Judicial findings of violation shall include pleas of nolo contendere and convictions, whether or not adjudication is withheld.

(c) Before reaching any decision under subsection (b) of this section, the city manager shall:

- (1) Afford to the permit holder or business, in the case of revocation of all permits for that business, notice of the violation charged and a reasonable, informal opportunity to be heard;
- (2) Consider the permit holder's or business', in the case of revocation of all permits for that business, past record of compliance with this article and related laws; and
- (3) Consider the degree of risk to the public health, safety, and peace arising from the violation in evidence.

(d) The city manager's decision shall be rendered in writing and shall include notice to the operator of a right to appeal the decision to the city commission within ten days thereof. Appeals not filed in writing with the city clerk within the period shall be deemed waived and shall not be heard by the city commission.

(e) Any off-premises canvassing permit revoked by the city manager pursuant to this section shall immediately be void and of no further use and effect to any person, including during the pendency of any appeal. Persons and businesses having off-premises canvassing permits revoked may reapply for new off-premises canvassing permits upon the expiration of a period of one year from the date of revocation.

(Code 1986, § 94.10)

Secs. 18-447--18-475. Reserved.