

CITY OF DAPHNE
ORDINANCE 2016-32
AN ORDINANCE TO REGULATE THE DISTRIBUTION OF HANDBILLS
IN THE CITY OF DAPHNE

WHEREAS, the City Council of the City of Daphne, Alabama deems it to be in the best interest of public health, safety, and the general welfare of its citizens to regulate the distribution of commercial handbills within the City of Daphne.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA as follows:

SECTION ONE DEFINITIONS

For the purposes of this Ordinance the following terms, phrases, words and their derivatives shall have the meaning given herein. The word "shall" always mandatory and not merely directory.

1. "Commercial handbill" means any printed or written matter, any sample, device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature which does any of the following:
 - A. Advertises for sale any merchandise, product, commodity or thing; or,
 - B. Directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting interest thereof by sales; or,
 - C. Directs attention to or advertises any meeting, theatrical performance exhibition or event of any kind for which an admission fee is charged for private gain or profit; or,
 - D. While containing reading matter other than advertising matter is predominantly and essentially an advertisement, and is distributed or circulated solely for advertising purposes or for the benefit and gain of any person, business or commercial establishment engaged in the advertising therein.
2. "Newspaper" means any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department 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.

3. "Noncommercial handbill" means any printed or written matter, any sample, device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature not included in the definition of a "commercial handbill."
4. "Occupant" means the owner, tenant or person in possession or charge of any house, dwelling unit, building, lot or premises.
5. "Owner" means any person who alone or jointly or severally with others has legal title to real property including any person serving as employee or agent of the title holder or as a trustee or guardian of the estate or person of the title holder.
6. "Person" means any individual, partnership, association, syndicate, company, firm, trust, corporation, business, entity or organization of any kind.
7. "Private premises" means any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, and shall include the yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging to or appurtenant to such dwelling, house, building or other structure.
8. "Public place" means any area that is used or held out for use of the public and includes streets, sidewalks, street rights-of-ways, alleys,. Public ways and all public parks, squares, grounds and playgrounds.

SECTION TWO HANDBILL DISTRIBUTION – PUBLIC PLACES

No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the City; provided, however, that it shall not be unlawful on any sidewalk, street or other public place within the City for any person to hand out or distribute any such handbills to any person willing to accept it.

SECTION THREE HANDBILL DISTRIBUTION – VACANT PROPERTY

No person shall knowingly throw, deposit or distribute any commercial or noncommercial handbill in or upon any private premises which are uninhabited or vacant in any of the following circumstances:

- a) Where it is apparent that such property is unoccupied; or
- b) Where it is apparent that handbills placed or delivered on previous days have not been removed.

SECTION FOUR HANDBILL DISTRIBUTION – POSTED PREMISES

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises if requested by the owner, occupant or person in control of such premises not to do so, or if there is posted on said premises in a conspicuous position a sign bearing the words “No Trespassing”, “No peddlers or Agents”, “No Advertisements” or any similar notice indicating in any manner that the occupants of the premises do not desire to have their privacy disturbed or to have any such handbills left or deposited on such premises.

SECTION FIVE HANDBILL DISTRIBUTION – INHABITED PREMISES

No person shall throw, deposit deliver or distribute or cause to be thrown, deposited, delivered or distributed any commercial or noncommercial handbill in or upon private premises which are inhabited, and which are not posted as provided in Section Four of this Ordinance except in the following manner:

- a) By delivering any such handbill directly into the personal possession of the owner, occupant or other person then present in or upon such private premises; or,
- b) By leaving such handbill on the private premises provided that it is wrapped, tied folded or otherwise secured so that it will not be blown loose by the wind or other elements.

**SECTION SIX HANDBILL DISTRIBUTION – INHABITED PREMISES –
DO NOT DELIVER REQUESTS**

No person shall throw, deposit, deliver, or distribute or cause to be thrown, deposited delivered, or distributed any commercial or noncommercial handbill in or upon private premises if the owner, occupant or person in control of the premises has requested that such handbill not be delivered to his or her premises.

A distributor of any commercial or noncommercial handbill may establish a system (including by telephone, a website or email) for required use by the owner, for developing and maintaining a list of those persons who have requested that such a handbill not be delivered to his or her premises. If the distributor of such handbill chooses to develop and maintain such a list a copy of such list shall be provided to the City of Daphne in an electronic and searchable format in intervals of no less than thirty (30) days. The distributor shall have a period of fourteen (14) days to cease delivery to the premises of any person who has requested that such handbill not be delivered to his or her premises after which period of time no person shall throw, deposit deliver or distribute or cause to be thrown, deposited, delivered or distributed that handbill in or on the premises.

SECTION SEVEN HANDBILL DISTRIBUTION – MAIL EXEMPTED

The provisions of this Ordinance shall not apply to the distribution of mail by the United States.

**SECTION EIGHT HANDBILL DISTRIBUTION – SUBSCRIPTION
PUBICATION EXEMPTED**

The provisions of this Ordinance shall not apply to the distribution of newspapers, commercial handbills or noncommercial handbills in or upon private premises when an occupant or owner of said private premises is currently subscribing to such newspapers or such handbills or has requested that such newspapers or such handbills be delivered. A newspaper, commercial handbill or noncommercial handbill may be delivered to private premises when an occupant or owner of the private premises is not currently subscribing to such newspaper or such handbill or has not requested that such newspaper or such handbill be delivered provided that such is delivered or distributed in compliance with Section Five of this Ordinance, and not otherwise left or thrown upon the premises, and provided further that the owner, occupant or other person in charge of the premises has not requested that such handbill not be delivered to his or her premises as provided in Section Six of this Ordinance.

**SECTION NINE HANDBILL DISTRIBUTION – ENFORCEMENT
PROCEDURES**

- A. A City of Daphne police officer may choose to cite and release a person accused of violating this Ordinance. The “Uniform Non-traffic Citation and Complain” (“UNTCC”) shall serve as the charging instrument and shall be issued in accordance with Rule 20 of the Alabama Rules of Judicial Administration.
- B. A city employee designated as an enforcement officer may issue a municipal offense ticket (“MOT”) for a violation of this Ordinance. The person charged with a violation must within the time period specified on the MOT or within seventy-two (72) hours before the court date shown on the MOT:
 - 1) Appear in person before a Magistrate Judge, sign a plea of guilty waiver of rights on the MOT, and pay the fine and applicable court costs. The Magistrate shall retain a copy of the MOT; or
 - 2) Sign the plea of guilty waiver of rights provision on the MOT and mail or hand deliver to the Clerk of the Municipal Court the signed page and payment of the amount of the fine and applicable court costs. Remittance by mail or hand delivery of the fine and costs constitutes a guilty plea and waiver of trial even if the “plea of guilty waiver of rights” provision of the ticket has not been signed by the defendant. If the amount sent is insufficient then the money received by the clerk shall be considered to be a partial payment, it shall be applied by the clerk to the fine and costs, and shall be deposited as required by law. The clerk may give notice of the insufficiency, and a supplemental summons or warrant of arrest may

- 3) be issued for the defendant's arrest, and a judgment shall be entered for the balance due; or
 - 4) Sign the MOT and agree to appear in court on the date and at the time shown on the MOT to protest the charges. If the defendant fails to appear, the court may, in its discretion issue further notice or a supplemental summons or warrant of arrest.
- C. Employees of the city designated as enforcement officers who observe violations of this Ordinance are further authorized to appear before the magistrate and request a summons or warrant to be issued pursuant to Rule 3.1 of the Alabama Rules of Criminal Procedure.
- D. Employees of the city, designated as enforcement officers may issue corrective notice to persons suspected of violating this Ordinance. The issuance of a corrective notice is, however, not required prior to the issuance of a MOT, UNTCC or warrant.

SECTION TEN PENALTIES

Any person who pleads guilty or is found guilty of a violation of this Ordinance may be punished by a fine not to exceed five hundred dollars (\$500.00), by imprisonment for not more than six (6) months or may be sentenced to perform community service as directed by the judge or to take other remedial action to comply with the terms of this Ordinance in lieu of a fine or imprisonment. Each day a violation of this Ordinance is committed or permitted to continue shall constitute a separate offense.

SECTION ELEVEN SCHEDULE OF FINES

Ordinance 2010-46, Establishing Penalties and Enforcement Procedures for Violation of Municipal Ordinances be amended so as to provide for a fine of not to exceed \$500.00 for violation of this Ordinance by adding the following to the schedule of fines:

Distribution of Handbills Ordinance Violations. Not to Exceed \$500.00

SECTION TWELVE SEVERABILITY CLAUSE

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION THIRTEEN EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption and publication as required by law.

ADOPTED AND APPROVED ON THIS 5th DAY OF July, 2016.



Dane Haygood, Mayor

ATTEST:



Rebecca A. Hayes, City Clerk