

ORDINANCE NO. 1015



AN ORDINANCE TO REGULATE THE DISTRIBUTION OF HANDBILLS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY MINETTE, ALABAMA, WHILE IN REGULAR MEETING ASSEMBLED ON NOVEMBER 7, 2022, AS FOLLOWS:

Section 1. Definitions.

For purposes of this Ordinance, the following terms, phrases, words and their derivatives shall have the meaning given herein. The word "shall" is 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 originals 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 the 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 or private gain or profit; or,
 - (D) While containing reading matter other than advertising matter, is predominately and essentially an advertisement, and is distributed or circulated solely for advertising purposes 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 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 right-of-way, alleys, public ways and all public parks, squares, grounds, and playgrounds.

Section 2. Commercial Handbill Requirements.

All Commercial handbills, on their face, must include sufficient information, instructions, and notification so that a recipient of said handbill is notified of their option and the procedure to opt out of the delivery of such handbills.

Section 3. Handbill Distribution – Public Places.

No person shall throw or deposit any commercial or noncommercial handbill in or around 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 4. 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:

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

Section 5. 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 than 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 6. 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 Five of this Ordinance, except in the following manner:

- (1) 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
- (2) 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 winds or other elements.

Section 7. 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 Bay Minette, 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 8. Handbill Distribution – Mail Exempted.

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

Section 9. Handbill Distribution – Subscription Publications 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 Six 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 Seven of this Ordinance.

Section 10. Enforcement Procedures.

- (1) A City of Bay Minette police officer may choose to cite and release a person accused of violating this Ordinance. The "Uniform Non-Traffic Citation and Complaint" ("UNTCC") shall serve as the charging instrument and shall be issued in accordance with Rule 20 of the Alabama Rules of Judicial Administration.
- (2) 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:
 - (A) Appear in person before a magistrate judge, sign the 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
 - (B) 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 on 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, and 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 be issued for the defendant's arrest, and a judgment shall be entered for the balance due; or
 - (C) Sign the MOT and agree to appear in court on the date and at the time shown on the MOT to protect 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.
- (3) Employees of the city, designated as enforcement officers, who observe violations of the Ordinance are further authorized to appear before a magistrate and request a summons or warrant to be issued pursuant to Rule 3.1 of the Alabama Rules of Criminal Procedure.
- (4) Employees of the city, designated as enforcement officers, may issue corrective notices 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 a warrant.
- (5) In any prosecution for any violation of the provisions of this Ordinance, relating to the distribution of Handbills, the failure of a distributor of any commercial or noncommercial handbill to establish a system (including by telephone, a website, or email) for developing and maintaining a list of those persons who have requested that such a handbill not be delivered to his or her premises, as described in Section 6 in this Ordinance, shall be prima facie evidence that such distributor has violated this Ordinance.

Section 11. Penalties.

Any person who pleads guilty or is found guilty of a violation of this Ordinance may be punished by a fine of not less than two hundred fifty dollars (\$250.00) and not more than 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 12. Provisions Severable.

If any part, section or subdivision of this Ordinance shall be held unconstitutional, invalid or noncompliant with applicable federal or state laws, orders or resolutions, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect.

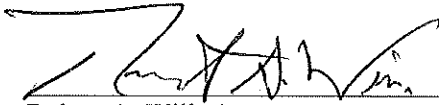
Section 13. Codification.

This Ordinance shall be codified as Section 15 in the City of Bay Minette Code of Ordinances.


Section 14. Effective Date.

This Ordinance shall be posted in accordance with Alabama law, and the same shall become effective commencing at 12:01 a.m. on November 27, 2022


DONE, ORDERED, APPROVED and ADOPTED this the 21st day of November, 2022.


Robert A. Wills, Mayor

ATTEST:


Rita Diedtrich, City Clerk

I, the undersigned qualified and acting Clerk of the City of Bay Minette, Alabama, do hereby certify that the above Ordinance was published by posting copies thereof in the Bay Minette City Hall, the Bay Minette Public Library and North Baldwin Utilities beginning on the 20 day of November, 2022, with Ordinance 1015 becoming effective on November 27, 2022.


Rita Diedtrich, City Clerk
792363wd