

T A M P A P O L I C E D E P A R T M E N T

LEGAL



BULLETIN

DATE August 16, 2019

TO: ALL SWORN PERSONNEL AND COMMUNICATIONS

FROM: MICHAEL W. SCHMID
Police Legal Advisor

SUBJECT: Handbill (i.e.: pizza flyers) Distribution Investigations in Hotels
Legal Bulletin # 19-14
Supplements Legal Bulletin # 13-15

Distribution of handbills, especially in the form of pizza flyers, has continued to be a problem at hotels within the City of Tampa. Legal Bulletin #13-15, see attached, explains that violations for the illegal distribution of handbills may be investigated under either § 509.144, Florida Statutes, or § 6-171, Tampa Code. If an officer personally witnessed the violation and it occurs at a *public lodging establishment* without written permission of the owner, manager, or agent and a sign is posted prohibiting advertisement or solicitation, then § 509.144(2), F.S., is preferable to § 6-171(a). However, § 6-171(a), Tampa Code, is broader than § 509.144(2), F.S., and can be used if the violation occurs at any *private property* where “No Advertising” or “No Soliciting” signs have been properly posted.

The problem is that the offender is likely to avoid capture. Both § 509.144(3), F.S., and § 6-171(b), Tampa Code, also create a violation when a person or contractor is *directed* by the business to distribute a handbill in violation of the law. However, proof that a person or agent was *directed* is difficult without an admission by the business or statement by an employee or the person being directed. Because § 6-171(b), Tampa Code, also states that a business cannot *encourage or allow* a person or contractor to distribute handbills on private property, proof that a business was in violation of unlawful handbill distribution can be established after a business has received notice of the violations and continues to encourage or allow the unlawful distributions.

The SAO, TPD and the Hillsborough County Hotel & Motel Association have met and discussed a plan to investigate and prosecute violations of unlawful handbill distributions when an individual who distributes handbills is not personally identified but the business is known. This Legal Bulletin will outline the agreed upon enforcement and prosecution plan under this scenario.



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1. A person who wishes to make a complaint will need to first complete a Handbill Distribution Complaint Form (TPD 1063). A copy of TPD Form 1063 is attached.
2. This form can be accessed through TPD website and complaints for Handbill Distribution should be directed to the TPD website and instructed to follow the instructions for completing the complaint. Communications will first direct any complaints to the website link and request the caller to call back when the complaint is completed and an officer will be sent out.
3. TPD officers responding to a hotel located within the City will obtain the completed Handbill Distribution Complaint Form and complete a report.
4. TPD officers will place the items into evidence ensuring at least one of every type of handbill is scanned into the report as an attachment.
5. Officers will route the report to CIB for follow up investigation by the assigned public nuisance conduct officer in CIB (presently MPO Amari Elmore).
6. The assigned CIB officer will generate a letter for the business.
7. Businesses which have been previously warned may have direct charges filed against the businesses. TPD municipal ordinance violations will be referred to the municipal prosecutor for direct fileⁱ or a NTA may be issued if hand delivered to the subject and signed.
8. Violation occurs where the distribution occurred (typically at a hotel).

Please contact me with any questions.

ⁱ Presently the e-cra system can be used for all arrests, including ordinances, or to direct file criminal statute violations. As the e-cra system is not presently set up to allow officers to direct file ordinance violations to the municipal prosecutor, direct filing ordinance violations will have to be completed using a hard copy paper CRA and sent to the municipal prosecutor, TPD Legal, 150D, 10th FL.



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LEGAL



BULLETIN

June 28, 2013

TO: ALL SWORN PERSONNEL
FROM: KIRBY C. RAINSBERGER ^{KCR}
Police Legal Advisor
SUBJECT: **Handbill Distribution in Hotels**
Legal Bulletin #13-15

We have received several complaints from local hotels concerning unauthorized handbill distribution on their property. Most often the offending handbill is advertisement for pizza delivery or other restaurant. Officers responding to these complaints have available tools to address the problem.

Florida Statute Section 509.144 prohibits the distribution of advertising flyers at public lodging establishments without the written consent of the establishment **if** the premises conspicuously displays one or more signs in letters not less than 2 inches in height prohibiting advertising or solicitation. Violation is a first degree misdemeanor and the statute imposes substantial fines. Property, including a vehicle, used in a person's third or subsequent violation of the statute is subject to forfeiture. If the violation is personally witnessed by the officer, that is, if the officer actually observes a subject placing a handbill on hotel property, the subject may be immediately arrested. However, due to questionable language in the current version of the statute, *anyone arrested should be released on their own recognizance at the scene and not jailed.*

Another available tool is Tampa Code Section 6-171 which applies to all private property, not just public lodging establishments. Violations actually witnessed by an officer may result in immediate arrest and, in otherwise appropriate cases, the offender may be booked into jail.

In cases where an officer does not actually observe the commission of the offense, direct file is the appropriate procedure. Copies of the statute and ordinance are attached. Please contact my office with any questions.



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Effective: June 2, 2011

West's Florida Statutes Annotated Currentness

Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)

▣ Chapter 509. Lodging and Food Service Establishments; Membership Campgrounds (Refs & Annos)

▣ Part I. Public Lodging and Public Food Service Establishments

→→ **509.144. Prohibited handbill distribution in a public lodging establishment; penalties**

(1) As used in this section, the term:

(a) "Handbill" means a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about a person, business, company, or food service establishment but does not include employee communications permissible under the National Labor Relations Act, other communications protected by the First Amendment to the United States Constitution, or communications about public health, safety, or welfare distributed by a federal, state, or local governmental entity or a public or private utility.

(b) "Without permission" means without the expressed written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (5).

(c) "At or in a public lodging establishment" means any property under the sole ownership or control of a public lodging establishment.

(2) Any person, agent, contractor, or volunteer who is acting on behalf of a person, business, company, or food service establishment and who, without permission, delivers, distributes, or places, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who, without permission, directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person sentenced under this subsection shall be ordered to pay a minimum fine of \$500 in addition to any other penalty imposed by the court.

(4) In addition to any penalty imposed by the court, a person who violates subsection (2) or subsection (3):

(a) Shall pay a minimum fine of \$2,000 for a second violation.

(b) Shall pay a minimum fine of \$3,000 for a third or subsequent violation.

(5) For purposes of this section, a public lodging establishment that intends to prohibit advertising or solicitation, as described in this section, at or in such establishment must comply with the following requirements when posting a sign prohibiting such solicitation or advertising:

(a) There must appear prominently on any sign referred to in this subsection, in letters of not less than 2 inches in height, the terms "no advertising" or "no solicitation" or terms that indicate the same meaning.

(b) The sign must be posted conspicuously.

(c) If the main office of the public lodging establishment is immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed on a part of the main office, such as a door or window, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(d) If the main office of the public lodging establishment is not immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed in the immediate vicinity of the main entrance to such establishment, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(6) Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

CREDIT(S)

Added by Laws 2005, c. 2005-183, § 2, eff. July 1, 2005. Amended by Laws 2011, c. 2011-119, § 12, eff. June 2, 2011.

Current with chapters in effect from the 2013 1st Reg. Sess. of the 23rd Legislature through June 12, 2013

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Sec. 6-171. - Handbill distribution on private property.

- (a) It is unlawful for any individual to deliver, distribute or place, or attempt to deliver, distribute or place, handbills on private property upon which is posted a reasonably conspicuous sign reading "No Advertising" or "No Solicitation."
- (b) It is unlawful for any business advertising by means of handbills to direct, encourage or allow any individual, employee or independent contractor distributing handbills on behalf of the business to deliver, distribute or place handbills on private property upon which is posted a reasonably conspicuous sign reading "No Advertising" or "No Solicitation."
- (c) Any violation shall be punished as provided in Tampa Code section 1-6
(Ord. No. 97-186, § 5, 9-18-97; Ord. No. 97-213, § 6, 10-16-97)

Sec. 6-172. - Handbill distribution on vehicles.

- (a) It is unlawful for any individual to place, throw, deposit, drop or offer any handbill on or to any motor vehicle, or occupant thereof, in operation or momentarily stopped on any public street within the city, or stopped, standing or parked in any parking space on any city owned or operated parking lot, garage or other property.
- (b) Any violation shall be punished as provided in Tampa Code section 1-6
(Ord. No. 97-186, § 6, 9-18-97; Ord. No. 97-213, § 7, 10-16-97; Ord. No. 98-54, § 1, 3-5-98)

UNLAWFUL HANDBILL DISTRIBUTION COMPLAINT

Instructions (to be completed by person making complaint):

A complaint should be completed when there is a violation of unlawful handbill distribution on private property under Tampa City Code of Ordinances.¹ It is a violation of Tampa City Code of Ordinances for any individual to deliver, distribute, place, or attempt to deliver, distribute or place a handbill on private property upon which is posted a reasonably conspicuous sign reading “No Advertising” or “No Solicitation”. It is also unlawful for any business advertising by means of handbills to direct, encourage or allow any individual, employee, or independent contractor on behalf of the business to deliver, distribute or place handbills on private property which is properly signed. A complaint must be verified and provide sufficient facts to determine whether there has been a violation of section 6-171(a) or (b). Complaints that are not sufficient will be closed without further action. After receipt of a valid complaint, a Tampa Police Department officer will be assigned to review the complaint.

This form must be completed by a manager or person with knowledge who is able to testify as to the time, place, and location of the handbills. Upon completing this complaint, you should contact the Tampa Police Department at (813) 231-3385 and request an officer respond to take the complaint. You must maintain the original flyers, photos, and videos from the event to be provided upon request. You may view the ordinance for unlawful handbill distribution on the [municode.com website](http://municode.com)/

One complaint should be completed for each separate business and for each incident. If multiple businesses are on one flyer, complete a complaint for each business. By submitting this complaint, you agree to appear at any future court hearings upon request and to testify about the facts alleged in this complaint.

Instructions (to be completed by Tampa Police Department Officer):

Officers are to:

- *Collect the Complaint, one original of each type of flyer distributed, and any video/photo.*
- *Verify total flyers of each type collected.*
- *Identify the person turning over complaint and attachments.*
- *Scan and image one of each different type of flyer collected and place into evidence.*
- *Route report to CIB.*

See Power DMS - Handbill Distribution Complaints; and Legal Bulletin 13-15.

¹ An unlawful handbill distribution at a public lodging establishment may fall under Florida State Statute § 509.144.

UNLAWFUL HANDBILL DISTRIBUTION COMPLAINT

Person Making Sworn Complaint Who Has Knowledge of Events:

First Name: _____ Last Name: _____
Email: _____ Daytime Phone: _____
Address: _____ City: _____ Zip/Postal Code: _____
Your Job Description/Relationship to Property Where Handbills Were Distributed: _____

Complete the following about the property where the distribution occurred (if applicable):

Date of Handbill Distribution: _____ Approximate Time of Handbill Distribution: _____
Name of Business: _____
Address of Private Property: _____
Name of Property/Business Manager: _____
Name of Property/Business Owner: _____
Name of Any Witnesses to the Handbill Distribution: _____

Name of Person(s) Who Recovered Handbills: _____
Name of Person Who Maintained Handbills After Collected: _____
Name of the Business Listed on the Recovered Handbills: _____
Physical or E-mail Address of Business Listed on the Flyer: _____
Phone Number of Business Listed on Flyer: _____
Number of Total Handbills Collected for Business: _____
Describe the Locations Where Handbills Recovered: _____
Additional Facts of Handbill Distribution: _____

The following must be checked:

- Handbills were recovered and one original of each will be provided to an officer.
- The above identified person(s) are available for testimony.
- The recovered handbills were secured until released to the Tampa Police Department.
- The Property/Business has posted a reasonably conspicuous sign reading "No Advertising" or "No Solicitation".
- Handbills were distributed without permission of the property owner, business owner, or any one with authority to allow for the distribution of the handbills which are part of this complaint and affidavit.

Check all that apply:

- There is a video of the handbill distribution which will be provided along with the complaint.
- There are photos of the handbill distribution which will be provided along with the complaint.
- The business involved has distributed handbills in the past without permission.

UNLAWFUL HANDBILL DISTRIBUTION COMPLAINT

Oath

I DO HEREBY AFFIRM UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT.

Signature of **Individual** Affiant

BEFORE ME on this ____ day of _____, 20____, personally appeared _____ (Name), who either (check one): ___ produced identification _____ (describe/ID No.), **or** ___ who is personally known to me; and who upon oath, deposes and states that the statements contained herein are true and correct. Sworn to and subscribed before me in Tampa, Hillsborough County, Florida.

Signature Notary Public or Sworn LEO, State of Florida
Commission Expires: _____; or Payroll #: _____