

## AGENDA RESERVATION REQUEST

### CITY OF FRANKLIN COMMON COUNCIL

Please type or print

<b>Date Submitted:</b>	June 3, 2014	<b>Meeting Date:</b>	June 16, 2014
<b>Contact Information:</b>			
<b>Requested by:</b>	Joanna Myers, Senior Planner		
<b>On Behalf of Organization or Individual:</b>			
		Department of Planning & Engineering	
<b>Telephone:</b>	317-736-3631		
<b>Email address:</b>	jmyers@franklin.in.gov		
<b>Mailing Address:</b>	70 E. Monroe St., Franklin, IN 46131		
<b>Describe Request:</b>			
Approval of Ordinance 2014-04: Sidewalk Seating & Merchandising Encroachments (Public Hearing)			
<b>List Supporting Documentation Provided:</b>			
1. Ordinance 2014-04			
<b>Who will present the request?</b>			
<b>Name:</b>	Joanna Myers	<b>Telephone:</b>	317-736-3631

*The Franklin City Council meets on the 1st and 3rd Monday of each month at 6:30 p.m. in the Council Chambers of City Hall located at 70 E. Monroe Street. In order for an individual and/or agency to be considered for new business on the agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 12:00 p.m. on the Wednesday before the meeting.*

**ORDINANCE NUMBER 14-04  
OF THE CITY OF FRANKLIN, INDIANA**

**An Ordinance Regulating Sidewalk Seating and Merchandising Encroachments**

**WHEREAS**, the Common Council of the City of Franklin, Indiana, finds that regulating sidewalk seating and merchandising encroachments in the right-of-way will promote the public health, safety, and general welfare by balancing the needs of citizens to use sidewalks with opportunities for businesses:

**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA, ORDAINS AND ENACTS THE FOLLOWING:**

**1) Sidewalk Seating and Merchandising Encroachments**

**A. Definitions:** For the purpose of this ordinance the following definitions shall apply.

1. Applicant: Any person that has applied for or been issued a permit regulated by this ordinance.
2. Board: Board of Public Works and Safety of the City of Franklin.
3. Department: Department of Planning & Engineering of the City of Franklin.
4. Encroachment: Any private or public temporary or long-term use of a sidewalk for purpose other than movement of pedestrians and other ambulatory citizens or other use by the City of Franklin in conducting its business.
5. Merchandising: Any outdoor display of items intended for sale and/or decorative items, including, but not limited to, flowers and plants, by the merchant whose business is located immediately adjacent to the sidewalk on which the items are displayed.
6. Obstruction: Any fixed object on the sidewalk including, but not limited to, street lights and their bases, sign posts, trees, tree and planter plots, landscaping, fire hydrants, street furniture, trash cans, and bicycle racks.
7. Sidewalk: Any walkway or pedestrian corridor within the City of Franklin's right-of-way.
8. Sidewalk Seating: Seating outside of an established place of business whose primary or secondary business is the sale of food, or whose business desires to place sidewalk seating for the convenience of their customers and the general public use and whose business location is immediately adjacent to the sidewalk space requested for use for said sidewalk seating.
9. Staff: Department head of the Department of Planning & Engineering and/or their designees.

## **B. Permit Required**

1. No business may encroach onto the sidewalk for purposes of sidewalk seating or merchandising without a permit granted through the provisions of this ordinance.
2. All permits shall be issued on a calendar year basis. All permits shall be reapplied for annually.
3. The permit shall allow encroachments from April 1 up to and including October 31 of the calendar year for which the permit is issued.

## **C. Permit Fee**

1. The annual fee for a sidewalk seating encroachment permit shall be \$50.00.
2. The annual fee for a merchandising encroachment permit shall be \$20.00 (up to 100 sq.ft.). Each additional sq.ft. above 100 sq.ft. shall be \$0.50 per sq.ft.

## **D. Permit Application**

1. All applicants for permits shall first furnish to the Department of Planning and Engineering the following information:
  - a. Name, street address, and phone number of applicant.
  - b. Business name and street address of the property where encroachment is requested.
  - c. Name, address, and phone number of property owner, if other than applicant.
  - d. A detailed site plan (to scale) of the proposed encroachment.
  - e. Length of time requested for encroachment.
  - f. If applicable, copy of agreement outlined in subsection (F)(4) of this ordinance.
2. The detailed site plan shall include the following:
  - a. The exact dimensions and total square footage of the proposed encroachment.
  - b. The proposed circulation pattern for pedestrians with exact dimensions of the clear straight pathway.
  - c. The proposed use and layout of proposed number of tables, chairs, railings, posts, table umbrellas or other items.
  - d. Relationship of the encroachment, with exact dimensions, to the adjacent building and to any obstructions, including, but not limited to, street lights, power poles, fire hydrants, planters, landscaping, sign posts, newspaper boxes, trash cans, bicycle racks, etc.

## **E. Permit Issuance and Conditions**

1. Once an application has been reviewed and approved by the Department, and permit fee has been paid, a permit shall be issued conditioned on the following:

- a. The applicant has provided the Department with a copy of certificate of insurance establishing proof of a comprehensive general liability policy naming the City of Franklin as an Additional Insured with limits of at least:

\$ 500,000	Each Occurrence
\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$ 500,000	Personal and Advertising Injury

and shall be in effect throughout the term of this authorization.

- b. Each permit shall expire on October 31 of the calendar year of its date of issuance and all encroachments shall be removed from the City's right-of-way no later than November 1.
- c. The permit issued is personal to the applicant only and is not transferrable.
- d. The Board or Department may require the removal, temporary or permanent, of the encroachment when redevelopment of the street, sidewalk, or utility repairs necessitates such action, or when the applicant fails to comply with any provisions of this ordinance.
- e. The City's officers and employees may immediately remove without notice all or parts of the encroachments in an emergency situation. The City, its officers and employees, shall not be responsible for encroachments relocated or damaged during emergencies.
- f. The permit covers only the area specifically described in the application.
- g. Applicant acknowledges that seating and tables are not for the exclusive use of applicant's customers, but may be used by the general public.
- h. The sidewalk seating and merchandising area shall be maintained and kept clean.
- i. All signage must be in compliance with the City of Franklin Zoning Ordinance and Municipal Code.
- j. Any other reasonable conditions of approval which the Department deems appropriate.
- k. The permit does not give the applicant a right to keep the boundaries of the sidewalk seating and merchandising encroachment in the event there is a change in local, state, or federal law, or a public event is being held that would require a wider clear straight pathway or other alteration of the City's right-of-way.
  - 1. Notice should be given to the applicant by the Department at least 72 hours in advance of the public event requesting the temporary modification of the encroachment.

#### **F. Standards for Encroachment**

- 1. A clear straight pathway at least 60 inches wide must be maintained along the sidewalk measured from the innermost edge (building side) of curb, street lights and their bases, sign posts, trees, tree and planter plots, landscaping, fire hydrants, street furniture, trash cans, bicycle racks or any other fixed sidewalk obstruction.

2. Encroachments must be immediately adjacent to the building.
  - a. **EXCEPTION:** Adjacent to planter plots on East & West Court Streets. Encroachment may be immediately adjacent to planter plot in the event that a clear straight pathway at least 60 inches wide is maintained from the edge of the encroachment to the building or outermost edge (street side) of another obstruction.
3. Subject to the other requirements of this ordinance, the encroachment may extend a maximum of ten (10) feet into the sidewalk from the building face, property line, or planter plots on East & West Court Streets.
4. Encroachment may only extend along the sidewalk directly adjacent to applicant's business unless agreed upon by all parties involved, with proof of agreement presented to the Department and with approval of the Department.
5. Objects or items within the encroachment area shall not be placed in such a way that obstructs access to utility meters.
6. If a business is required by any other law, statute or regulation, such as, but not limited to, the rules of the Alcoholic Beverage Commission, to enclose or separate the encroachment from the rest of the public right-of-way, then the method of enclosure or separation shall be provided as required.
7. If an encroachment has fencing adjacent to the clear straight pathway, and an object or fixture, including but not limited to a flower box, is attached to the fencing or used as a base, such objects or fixtures shall be considered part of the encroachment and be included in the measurements pertinent to this ordinance.
8. Any fencing must be freestanding, without any permanent or temporary attachments to sidewalks or other public infrastructure, be durable and of sufficiently sturdy construction as not to blow over with normal winds, and may not exceed 36 inches in height.
9. Materials including, but not limited to, outdoor carpeting and platforms, shall not be affixed to or placed within the public right-of-way.

#### **G. Types of Furniture**

1. All furniture other than tables, chairs, umbrellas, and host/hostess podium are prohibited.
2. Furniture shall be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture shall be durable and of sufficiently sturdy construction as not to blow over with normal winds.
3. Furniture shall not be secured to trees, lampposts, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other such devices, whether during operating hours or at time when business is closed.

4. Umbrellas, market-style only, may be utilized in compliance with the following standards:
  - a. Umbrellas shall be secured within an umbrella base of at least 50 pounds in weight.
  - b. Umbrella fabric shall be of material suitable for outdoor use, canvas type only, and be monochromatic. Color should blend appropriately with surrounding built environment, shall not be of any fluorescent color or include patterns/prints, and shall not include any signage.
  - c. Any part of an umbrella shall not exceed a height of ten (10) feet above the sidewalk.
  - d. When extended, the canopy of the umbrella shall remain parallel to the ground at all times and be at least seven (7) feet above the sidewalk surface.

#### **H. Enforcement Procedures**

1. If staff finds that any provision of this chapter is being violated or that any condition of approval of a permit has not been met, said staff shall issue a Notice of Violation to the applicant.
2. The Notice of Violation shall be in writing and be served to the applicant in one or more of the following manners: delivery in person, First Class mail, and/or placement in a conspicuous place on the property where the violation occurs. The notice shall state:
  - a. The location of the violation;
  - b. The nature of the violation;
  - c. The period of correction;
  - d. The daily fine assessed for the violation during the correction period; and
  - e. That the city may seek additional remedies for violation, if any.
3. If staff determines that the condition of the encroachment causes danger to the health, safety, or welfare of the public, staff may remedy the dangerous condition without notice and the applicant shall be liable for all costs of removal and disposal of said encroachment and the city shall incur no liability for damages associated with removal of the encroachment.

#### **I. Revocation of Permit, or Suspension**

1. Any permit issued under this ordinance may be revoked or suspended by the Department if found that:
  - a. The applicant has willfully violated or has been grossly negligent in violating this ordinance or any rule, order or guidance document adopted by the city;
  - b. The applicant knowingly or intentionally made material misrepresentation to, or concealed material information from the city; or
  - c. Staff determines, after issuance, the permitted encroachment presents a dangerous condition to the public health, safety, and/or welfare.

2. An applicant whose permit is revoked or suspended or whose application for a permit is denied shall have the right to a hearing before the Board, if requested in writing by the applicant.
  - a. When the Board hearing date is set, the applicant shall receive written notice from the clerk-treasurer no less than ten (10) days prior to the hearing date, which notice shall contain charges made, as well as the time and place when the hearing will be held.
  - b. At the hearing, the applicant will be entitled to a reasonable opportunity to be heard and shall have the right to be represented by counsel. Proceedings shall be conducted under oath.

#### **J. Penalties**

1. No fine shall be assessed for a violation that is remedied within 24 hours after issuance of a Notice of Violation, provided that no Notice of Violation has been issued to the applicant within the prior 12 month period.
  2. A fine of One Hundred Dollars (\$100.00) per day shall be assessed for any violation that continues after the 24 hour remediation period or for any violation where a Notice of Violation has been issued to the applicant in the prior 12 month period.
  3. The City's remedies shall be cumulative and pursuit of one remedy shall not preclude another.
  4. Willful or intentional disregard of this ordinance shall entitle the City to collect from the violator its costs of attorney's fees, Court costs, and other reasonable expenses incurred by the City.
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- 2) **Construction of Clause Headings:** The clause headings appearing in this ordinance have been provided for convenience and reference, and do not purport and will not be deemed to define, limit, or extend the scope or intent of the clauses to which the headings pertain.
  - 3) **Repeal of Conflicting Ordinances.** The provisions of all other ordinances in conflict with the provisions of this ordinance are of no further force or effect, and are now repealed.
  - 4) **Severability of Provisions.** If any part of this ordinance is held to be invalid, such part will be deemed severable and its invalidity will have no effect upon the remaining provisions of this ordinance.
  - 5) **Duration and Effective Date.** The provisions set forth in this ordinance become and will remain in full force and effect (until their repeal by ordinance) thirty (30) days after the passage and adoption of this ordinance by signature of the executive in the manner prescribed by Indiana Code §36-4-6-15,16.

Introduced and Filed on the 2nd day of June, 2014. A motion to consider same on the First Reading or day of introduction was [not offered] [sustained by a vote of \_\_\_\_\_ in Favor and \_\_\_\_\_ Opposed, pursuant to Indiana Code § 36-4-6-13].

DULY PASSED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote \_\_\_\_\_ in Favor and \_\_\_\_\_ Opposed.

City of Franklin, Indiana, by its Common Council:

Voting Affirmative:

Voting Opposed:

\_\_\_\_\_  
Steve Barnett, President

\_\_\_\_\_  
Steve Barnett, President

\_\_\_\_\_  
Kenneth Austin, Vice President

\_\_\_\_\_  
Kenneth Austin, Vice President

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Joseph P. Abban, Member

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Joseph P. Abban, Member

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Joseph R. Ault, Member

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Joseph R. Ault, Member

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Robert Henderson, Member

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Robert Henderson, Member

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Stephen Hougland, Member

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Stephen Hougland, Member

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Richard Wertz, Member

\_\_\_\_\_  
Richard Wertz, Member

Attest:

\_\_\_\_\_  
Janet P. Alexander,  
City Clerk Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana § 36-4-6-15, 16 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Janet P. Alexander  
City Clerk Treasurer



This Ordinance having been passed by the legislative body and presented to me was Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16a)(1) Vetoed pursuant to Indiana code § 36-4-6-16(a)(2), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_M.

\_\_\_\_\_  
Joseph E. McGuinness, Mayor

Attest:

\_\_\_\_\_  
Janet P. Alexander,  
City Clerk Treasurer

Prepared by:

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