

AGENDA RESERVATION REQUEST

CITY OF FRANKLIN COMMON COUNCIL

Please type or print

Date Submitted:	September 17, 2024	Meeting Date:	Oct. 7, 2024
Contact Information:			
Requested by:	Joanna Tennell, Senior Planner		
On Behalf of Organization or Individual: City of Franklin			
Telephone:	317-736-3631		
Email address:	jtennell@franklin.in.gov		
Mailing Address:	70 E. Monroe St., Franklin, IN 46131		
Describe Request:			
Approval of Ordinance 2024-06: Amending Ordinance 2006-15: Illicit Discharge and Connection Stormwater Ordinance and Ordinance 2006-16: Construction Site & Post Construction Site Stormwater Control Ordinance (Public Hearing & Official Action)			
List Supporting Documentation Provided:			
1. Ordinance 2024-06			
2.			
3.			
4.			
Who will present the request?			
Name:	Joanna Tennell & Tyler Urban	Telephone:	(317) 736-3631

The Franklin City Council meets on the 1st and 3rd Monday of each month at 6:00 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 NO. 2024-06
OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA

**AN ORDINANCE AMENDING ORDINANCE NO. 2006-15: ILLICIT DISCHARGE AND CONNECTION
STORMWATER ORDINANCE AND ORDINANCE NO. 2006-16: CONSTRUCTION SITE & POST CONSTRUCTION
SITE STORMWATER CONTROL ORDINANCE**

WHEREAS, The City of Franklin through its Common Council legislates Ordinances pertaining to the health and general welfare of the citizens of the City of Franklin, including Ordinance No. 2006-15: Illicit Discharge and Connection Stormwater Ordinance and Ordinance No. 2006-16: Construction Site & Post Construction Site Stormwater Control Ordinance;

WHEREAS, it is necessary for the City to set certain minimum and maximum fines for purposes of placing the general public on notice of the penalties for violation, and to set a procedure for setting the penalties and further enforcement of Ordinance No. 2006-15 and Ordinance No. 2006-16;

NOW THEREFORE BE IT HEREBY ORDAINED by the City of Franklin as follows:

1. Definition of “Authorized Enforcement Agency” in Section 2 of Ordinance No. 2006-15 and Section 2 of Ordinance No. 2006-16 shall be amended to read as follows:

Authorized Enforcement Agency: employees or designees of the Mayor of the City of Franklin, Indiana including but not limited to staff of the Stormwater Utility, Department of Planning & Engineering, Street Department, Police Department and Fire Department.

2. Definition of “Person” in Section 2 of Ordinance No. 2006-15 and Section 2 of Ordinance No. 2006-16 shall be amended to read as follows:

Person: any individual, association, organization, partnership, firm, corporation, trust, or other entity recognized by law and acting as either the owner or as the owner’s agent.

3. Section 14 thru Section 22 of Ordinance No. 2006-15 and Section 13 thru Section 18 of Ordinance No. 2006-16 shall be repealed in their entirety and replaced with:

A. ENFORCEMENT

1. Applicability and Scope.
 - a. Any action or inaction which violates the provisions of this Ordinance, may be subject to the enforcement actions outlined in this Section.
 - b. Any person who aids or abets a person in a violation of this Article shall be subject to the penalties provided in this Section.

2. Warning Violation.

- a. When an authorized enforcement agency finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order, permit, or regulation issued hereunder, the authorized enforcement agency, in its discretion, may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the violator to immediately cease and bring the violation into compliance. Resolution of the matter in response to the warning notice does not relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of an authorized enforcement agency to take any action, including emergency action or any other enforcement action, without first issuing a warning notice. The issuance of a warning shall not be a prerequisite to the issuance of a notice of violation/citation.

3. Notice of Violation/Citation.

- a. Issuance of Notice of Violation/Citation. If an authorized enforcement agency determines that an applicant or other responsible person has failed to comply with, has violated, or continues to violate any provision of this Ordinance or any order, permit, or regulation issued hereunder, it may issue a written notice of violation to such applicant or other responsible person and the owner of the property. Where a person is engaged in activity covered by this Ordinance without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.
- b. Form and Service of Notice of Violation/Citation. The notice of violation shall be in a form approved by the Board of Public Works and Safety. The notice of violation may be served by personal service, by certified mail, or by placement in a conspicuous place on the property where the violation occurs and shall serve as notice to a person that he or she has committed a violation of this Ordinance.

B. CIVIL PENALTIES FOR VIOLATIONS

1. Any person found in violation of any provision of this Ordinance shall be responsible for a civil penalty and subject to a maximum fine of \$2,500 for each offense, plus costs, damages, and expenses. Each day such a violation occurs or continues shall be deemed a

separate offense and shall make the violator liable for the imposition of a fine for each day.

2. Fines under this Section may be collected in a civil action, along with all costs and expenses involved in the case, including, but not limited to, mediation costs, short-term and long-term mitigation of damages, restoration, restitution, and reasonable attorneys' fees and court costs. In a civil action under this Section, the City has the burden of proving violation of this Ordinance by a preponderance of the evidence.
3. Cumulative Remedies. The rights and remedies provided for in this Section are cumulative and in addition to any other remedies provided by law. Seeking a civil penalty under this Section does not preclude the City from seeking alternative relief from the court in the same action, or from seeking injunctive relief or other remedy in a separate action for the enforcement of this Ordinance. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this Ordinance.
4. Schedule of Fines. The issuance of fines shall be governed by the schedule below.

Stormwater Quantity Management - Table of Fines

Fine Category	Commercial Lot or Multi-Parcel Development (i.e. subdivision, commercial, industrial, institutional)
1st Offense	\$500
2nd Offense	\$1,000
3rd Offense	\$2,500

Construction Activities - Table of Fines

Fine Category	Individual Lot (Residential)	Commercial Lot or Multi-Parcel Development (i.e. subdivision, commercial, industrial, institutional)
1st Offense	\$150	\$500

2nd Offense	\$350	\$1,000
3rd Offense	\$750	\$2,500

Post Construction Maintenance - Table of Fines

Fine Category	Individual Lot (Residential)	Commercial Lot or Multi-Parcel Development (i.e. subdivision, commercial, industrial, institutional)
1st Offense	\$150	\$500
2nd Offense	\$350	\$1,000
3rd Offense	\$750	\$2,500

Connections; Prohibited Discharges - Table of Fines

Fine Category	Individual Lot (Residential)	Commercial Lot or Multi-Parcel Development (i.e. subdivision, commercial, industrial, institutional)
1st Offense	\$250	\$500
2nd Offense	\$500	\$1,500
3rd Offense	\$1,000	\$2,500

5. For purposes of this Section, subsequent offense means a violation of the provisions of this Ordinance committed by the same person within three (3) years of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible.

C. ALTERNATIVE REMEDIES

1. In lieu of and/or in addition to the penalties and remedies authorized by this Ordinance, the Board of Public Works and Safety may require a violator to engage in alternative

remedial actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, public education, or other similar measures.

D. STOP WORK ORDER AND PROTECTIVE MEASURES

1. Issuance of a Stop Work Order. In addition to the penalties listed above, if land disturbance activities are conducted contrary to the provisions of this Ordinance or accepted final stormwater management plans, an authorized enforcement agency may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such persons shall forthwith stop such work until authorized by the Street Department and/or Department of Planning & Engineering to proceed with the work.
2. Form and Service of Stop Work Order. A stop work order shall be in writing and shall state to which land alteration it is applicable and the reason for its issuance. One (1) copy of the order will be posted in a conspicuous place on the site by the authorized enforcement agency, and one (1) copy shall be delivered to the developer and/or property owner and, if applicable, to the person doing the land alteration by personal service and/or certified mail. It is unlawful for any person to remove the order from the site or continue any work on the site without permission from the authorized enforcement agency.
3. Protective Measures. The authorized enforcement agency may also undertake or cause to be undertaken, any necessary or advisable protective measures to prevent violations of this Ordinance or to avoid or reduce the effects of noncompliance herewith. The cost of any such protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work. Any person who neglects or fails to comply with a stop work order shall, upon conviction, be subject to a fine of not less than \$1,000, and such person shall also pay such costs as may be imposed by the court, as well as reasonable attorneys' fees. A permit reinstatement fee may also be assessed by the Board of Public Works & Safety in an amount of \$150.

E. SUSPENSION, REVOCATION OR MODIFICATION OF PERMITS

1. The authorized enforcement agency may suspend, revoke, or modify any existing permit that the violator may also have been previously granted. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured

the violations described therein, upon such conditions as the Board of Public Works and Safety deems necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations. A permit reinstatement fee may also be assessed by the Board of Public Works and Safety in an amount of \$150.

F. EMERGENCY CEASE AND DESIST ORDERS

1. When an authorized enforcement agency finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order, permit, or regulation issued hereunder, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the authorized enforcement agency may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to immediately comply with all requirements of this Ordinance and take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order directed to him/her under this subsection shall immediately comply and stop or eliminate the endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the authorized enforcement agency may take such steps as deemed necessary, in its discretion, to prevent or minimize harm to the stormwater drainage system or waters of the United States, and/or endangerment to persons or to the environment. The authorized enforcement agency may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the authorized enforcement agency that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Ordinance. A person who is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Board of Public Works & Safety within five (5) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

G. SUSPENSION DUE TO ILLICIT DISCHARGES

1. Suspension Due to Illicit Discharges in Emergency Situations. An authorized enforcement agency may, without prior notice, suspend stormwater drainage system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater drainage system or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the stormwater drainage system or waters of the state, or to minimize danger to persons.
2. Suspension Due to the Detection of Illicit Discharge. Any person discharging to the stormwater drainage system in violation of this Ordinance may have his/her stormwater drainage system access terminated if in the determination of the authorized enforcement agency such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its stormwater drainage system access by written notice. The violator may petition the Board of Public Works & Safety for reconsideration. A person commits an offense if the person reinstates stormwater drainage system access to premises terminated pursuant to this Section, without the prior approval of the Board of Public Works & Safety.

H. COST OF ABATEMENT OF THE VIOLATION

1. In addition to any other remedies, should any owner fail to comply with the provisions of this Ordinance, the authorized enforcement agency may, after giving notice and opportunity for compliance, have the necessary work done, and the owner shall be required to promptly reimburse the City for all costs of such work. If the amount due for abatement of the violation is not paid within thirty (30) days or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and the City Attorney shall file all necessary documentation to allow the Johnson County Treasurer to place the amount on the property tax bill for the property.

I. APPEAL OF NOTICE OF VIOLATION/CITATION

1. If a person believes that the warning ticket or citation received results from an incorrect interpretation of the Franklin Municipal Code by a municipal official, the aggrieved person may file an administrative appeal of the decision for a hearing by the Board of Public Works and Safety.

2. Form of Appeal. Said appeal shall be in writing on the form prescribed by the Board and approved by the City Attorney. A person who elects to file such an appeal shall indicate this intent in writing to the issuing agency. A person shall have ten (10) working days after issuance of the notice of violation/citation to file the appeal, and additional monetary fines as prescribed in this section shall be stayed upon the filing of such appeal, as long as the violation does not continue at the real estate. A person who files the appeal within said time period shall pursue the appeal in an expeditious fashion.
3. Hearing. Upon filing, the appeal shall be placed on the agenda of following public meeting of the Board of Public Works and Safety. At said public meeting, the person and/or entity filing the appeal, an agent of the person and/or entity filing the appeal, the authorized enforcement agency, and any person affected by the request shall be permitted to appear and give evidence.
4. Decision of Board. All decisions of the Board of Public Works and Safety regarding an appeal shall be made in writing, stating the reasons for the decision, and provided to the person and/or entity who filed the appeal. The action taken by the Board of Public Works and Safety after a hearing shall be final.
5. If the Board denies the appeal of the notice of violation/citation, and the applicable violation of this Ordinance and/or the Stormwater Ordinance persists, then a lawsuit may be commenced by the designated enforcement entity in a court of competent jurisdiction in Johnson County, Indiana.

J. ENFORCEMENT MEASURES AFTER APPEAL

1. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five (5) days of the decision of the Board upholding the decision of an authorized enforcement agency, then representatives of the Street Department and/or Department of Planning & Engineering may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Street Department and/or Department of Planning & Engineering or its designated contractor to enter upon the premises for the purposes set forth above. The property owner shall be required to promptly reimburse the city for all costs of such work as stated in this Section.

K. VIOLATIONS DEEMED A PUBLIC NUISANCE

1. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
4. 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.
5. 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.
6. 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.
7. 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 _____ Day of _____, 2024

DULY PASSED on this _____ day of _____, 2024, by the common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote of _____ in Favor and _____ Opposed.

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

Voting Opposed:

Kenneth Austin

Kenneth Austin

Anne McGuinness

Anne McGuinness

Irene Nalley

Irene Nalley

Jennifer Price

Jennifer Price

Josh Prine

Josh Prine

Todd Shuck

Todd Shuck

Shawn Taylor

Shawn Taylor

Attest:

Jan Jones, Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana code § 36-4-6-15,16, this ____ day of _____, 2024 at _____ o'clock a.m./p.m.

Jan Jones, City Clerk-Treasurer

This ordinance having been passed by the legislative body and presented to me and [Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)2)], this ____ day of _____, 2024 at _____ o'clock a.m./p.m.

Mayor of City of Franklin, Indiana

Attest:

Jan Jones, City Clerk-Treasurer