

AGENDA RESERVATION REQUEST

CITY OF FRANKLIN COMMON COUNCIL

Please type or print

Date Submitted:	August 10, 2011	Meeting Date:	August 15, 2011
Contact Information:			
Requested by:	Rob H. Schafstall, City Attorney		
On Behalf of Organization or Individual: City of Franklin			
Telephone:	(317) 736-7146		
Email address:	robhschafstall@gmail.com		
Mailing Address:	98 N. Jackson Street, Franklin, IN 46131		
Describe Request:			
Requests approval of Ordinance Number 11-07 (An ordinance regulating Door-to Door and Roadway Solicitation)			
List Supporting Documentation Provided:			
Copy of Ordinance Number 11-07			
Who will present the request?			
Name:	Rob H. Schafstall	Telephone:	(317) 736-7146

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 11-07
OF THE CITY OF FRANKLIN, INDIANA**

An Ordinance Regulating Door-to-Door and Roadway Solicitation

WHEREAS, the Common Council of the City of Franklin, Indiana, has determined that the municipal regulations relative to door-to-door and roadway solicitation should be revised in order to prevent fraud and to protect the privacy of the City's residents; protect first amendment speech; and protect the safety of travelers;

WHEREAS, the Common Council of the City of Franklin, Indiana, has determined that the previous ordinance needs revised and updated;

Now, Therefore, the Common Council of the City of Franklin, Indiana, Ordains and Enacts the following:

1) Definitions.

- a) **Door-to-door.** "Door-to-door" is defined for the purposes of this Ordinance as the method of vending products or property by solicitation of sales, contributions, support, endorsements, or other benefits, from Franklin residents, occupants, or tenants, by going to the door of their residence and seeking such benefits without having been invited to do so.
- b) **Exempt Persons.** Franklin resident minors and any not-for-profit or nonprofit organizations and associations which are exempt from the Indiana Gross Retail Tax under Indiana Code § 6-2.5-5-26, as amended from time to time. In addition, the term Exempt Persons includes any persons or organizations which, pursuant to applicable law, are exempt from local licensing and bonding requirements of a vendor as set forth herein.
- c) **Vendor.** Any person, partnership, sole proprietor, corporation, business, or other entity engaging in the activity of selling, soliciting, canvassing, peddling, merchandising, promoting, or otherwise brokering products or property, whether real or personal, tangible or intangible, to the general public.

2) Licensing for Vendors.

- a) **License Required for Vendors.** Every vendor, including their agents, servants, or employees, desiring to engage in a door-to-door activity

within the limits of the City shall first obtain from the office of the Clerk-Treasurer a license permitting such door-to-door sales.

- b) **Form Questionnaire Application.** The Clerk-Treasurer shall provide each applicant with a form questionnaire application to be processed by the Clerk-Treasurer's office. The form questionnaire application will be created and periodically revised by the Franklin Board of Works. The application shall contain questions regarding the applicant's principal place of business, nature of sales and product, background and history, and such other information as the Board of Works deems relevant.
 - c) **Limited Criminal History.** The application shall also require the applicant to obtain and attach thereto a copy of the applicant's limited criminal history, which the applicant shall obtain from the Indiana State Police Department. The Clerk-Treasurer shall submit each completed application to the Franklin Police Department for review.
 - d) **Bond.** The application shall also require the applicant to obtain and attach thereto a cash or surety bond in the penal sum of Five Hundred Dollars (\$500.00) from a surety company approved by the City or from two (2) responsible city property-owners. The bond will ensure and guarantee that all goods, wares, merchandise, and the like sold by the Vendor will be as represented and that a refund in full will be promptly given for any goods, wares, merchandise and the like which are not as represented by the Vendor. Any person aggrieved by the Vendor's actions or inactions may petition the Franklin Board of Works for recovery on the bond as appropriate.
 - e) **License Issued.** A license shall be issued by the Clerk-Treasurer upon the applicant satisfactorily completing the application, confirmation by the Franklin Police Department that the applicant has no felony or misdemeanor convictions which would constitute crimes of moral turpitude, and receipt from the applicant of the appropriate license fee.
 - f) **I.D. Card Required.** Each vendor shall openly display upon his person while engaging in door-to-door sales activity an I.D. card issued by the Clerk-Treasurer. It shall be illegal to transfer the license to any other person not listed on the application.
- 3) **Procedure for Exempt Persons.** Each exempt person (other than Franklin resident minors) desiring to engage in door-to-door activity shall first deliver to the office of the Clerk-Treasurer the following information:
- a) Principal place of business address;

- b) Description of the nature of the business;
- c) Proof of exempt status reasonably satisfactory to the Clerk-Treasurer;
- d) Copies of all written information which is intended for distribution to the public;
- e) The anticipated time frame (days, weeks, etc.) and duration of the door-to-door activity; and
- f) A list of names of all persons who will be representing the exempt person.

The exempt person shall cause those persons representing it to display in conspicuous view while engaging in the door-to-door activity, an I.D. card, issued by the Clerk-Treasurer, identifying the name of the exempt person. The Clerk-Treasurer shall issue the I.D. cards within five business days of receipt of the required information.

- 4) **Inapplicability of Licensing and Disclosure Requirements for Protected First Amendment Speech.** Religious, political, and other protected First Amendment speech that does not involve “door-to-door” selling, soliciting, canvassing, peddling, merchandising, promoting, or the brokering of products or property is not subject to provisions of this Ordinance relative to Licensing and Permitting.

5) **Restrictions on license.**

- a) Each licensee and exempt person shall be restricted to conducting door-to-door activities between the daytime hours of 9:00 a.m. and 6:00 p.m. during any weekday or weekend day.
- b) “No Soliciting”. Each licensee and exempt person is prohibited from door-to-door activities at a residence if a sign has been posted by the owner or occupant of the residence on either the front door or other conspicuous place that reads “No Soliciting”.
- c) Each licensee and exempt person is required to provide to each purchaser a written confirmation of any purchase order made, specifying the terms of the order and amount paid, if any.
- d) Each license shall be valid for a specified period of time. Upon the expiration of the license, the vendor shall either reapply to the Clerk-Treasurer or cease its activity.

- e) Each vendor shall comply with all ordinances of the City and statutes of the State of Indiana relating to the license or its use, and failure of a license holder to do so may result in revocation of the license.
- f) Exempt persons shall comply with all ordinances of the City and statutes of the State of Indiana as it conducts door-to-door activity.

6) Revocation or refusal to license.

- a) If the Clerk-Treasurer determines the applicant for a door-to-door license has caused any of the following, then the Clerk-Treasurer shall notify the Mayor, or his designee, who shall refuse to issue the license or shall revoke an issued license:
 - i) Put false information on the application;
 - ii) Been convicted of a felony or serious misdemeanor amounting to moral turpitude;
 - iii) Violated an ordinance of the City, State of Indiana, or Johnson County relating to the license or its use;
 - iv) Violated the restrictions of the license;
 - v) Failed to display the permit or license;
 - vi) Transferred the license to a non-approved person;
 - vii) The Clerk-Treasurer receives more than one verifiable complaint of rudeness, forcible tactics, refusal to leave, or other undesirable behavior from a resident of the City concerning the applicant's use of the license.
- b) Notice of revocation shall be made in writing by the Mayor and may be served either by mail or by personally serving the licensee with the written notice of revocation.
- c) Denial or revocation of a license by the Clerk-Treasurer or the Mayor of the City, or his designee, shall entitle the applicant, upon written request within seven days of the issuance of the denial, to appeal the decision to the next regularly scheduled meeting of the Franklin Board of Public Works.

- 7) **Revocation of License.** If the Clerk-Treasurer determines that the exempt person has caused any of the following, then the Clerk-Treasurer shall notify the Mayor or his designee, who shall cause the exempt person to either cease the door-to-door activity or to apply for a license as a vendor:
- a) Delivered false or incomplete information as required above; and/or
 - b) Violated any section of this Ordinance or any other ordinance of the City.
 - c) All decisions made by the Mayor or his designee shall be made in writing and delivered to the exempt person at the address provided by such person to the Clerk-Treasurer. Any decision by the Clerk-Treasurer that an applicant is not an exempt person as defined hereunder, any decision to require cessation of door-to-door activity or to require application for a license may be appealed to the Board of Public Works and Safety if notice of appeal is given to the Mayor or his designee within seven days of the applicant's receipt or refusal of the Clerk-Treasurer's determination that it is not an exempt person (in the case of an exempt person), or the exempt person's receipt or refusal of a decision to cease activity or apply for a license.
- 8) **License Fee.** The fee for obtaining a license is \$50.00 per applicant.
- 9) **Appeal Process.** The Board of Public Works shall hear any properly requested appeal at a regularly scheduled meeting within 15 business days following receipt of such appeal request and shall make a determination at the meeting at which it hears the appeal or at its subsequent regularly scheduled meeting. Until the Board of Public Works rules on an appealed decision, the decision issued by the Clerk-Treasurer or the Mayor (or his designee) shall govern.
- 10) **Prohibited Activities in the Roadway.** It shall be unlawful for a pedestrian to sit, stand, or move within or upon a roadway, or a median between two roadways, for the purpose of or while engaged in:
- a) Soliciting, peddling, selling, advertising, donating, or distributing any product, property, or service, including but not limited to tickets, handbills, newspapers, or other printed material, to or from an occupant of a vehicle in the roadway; or,
 - b) Conversation or discourse with an occupant of a vehicle in the roadway.
- 11) **Interference with Vehicular Traffic.** It shall be unlawful for a person to solicit, peddle, sell, advertise, donate, or distribute any product, property,

or service, including but not limited to tickets, handbills, newspapers, or other printed material, to an occupant of a vehicle within or upon a roadway, or to engage in conversation or discourse with an occupant of a vehicle within or upon a roadway, so as to:

- a) Endanger the safety or welfare of an occupant of a vehicle within or upon a roadway, or a pedestrian within the immediate vicinity;
- b) Impede the free flow of vehicular traffic on the roadway; or,
- c) Obstruct or distract the view of the driver of any such vehicle within or upon a roadway

12) **Waiver by Board of Works:** A person or entity otherwise prevented from engaging in the activities prescribed by paragraph nine (9) ("Prohibited Activities in the Roadway") and/or paragraph ten (10) ("Interference with Vehicular Traffic") may petition the Board of Works for a special exemption granting said Petitioner the right to engage in the otherwise prohibited activities, subject to all other applicable laws, rules, and restrictions, including those imposed by the Board for such activities. The Board of Works may require the Petitioner to appear at a Board of Works meeting to explain the proposed activities, including the date, duration, location, and other relevant information. A Petitioner, whether a person or entity, may receive a special exemption only once each calendar year.

13) **Penalties.**

- a) Any violator of this Ordinance shall be subject to a fine of One Hundred Dollars (\$100.00) per day up to an annual maximum of Two Thousand Five Hundred (\$2,500.00).
- b) The City may, through its legal department or other appropriate agency, seek a temporary restraining order and/or permanent restraining order against the offender in any court of competent jurisdiction.
- c) The City's remedies shall be cumulative and pursuit of one remedy shall not preclude another.
- d) 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 in obtaining a restraining order or other necessary remedy.
- e) These penalties shall likewise apply to exempt persons.

- 14) **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;
- 15) **Repeal of Conflicting Ordinances.** The provisions of all other ordinances, specifically Ordinance 03-04, in conflict with the provisions of this ordinance are of no further force or effect, and are now repealed;
- 16) **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;
- 17) **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) on day of 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 _____. A motion to consider same on the First Reading or day of introduction was [not offered].

DULY PASSED on this ____ day of _____ 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:

Dr. William T. Murphy, President

Dr. William T. Murphy, President

Joseph Abban

Joseph Abban

Joseph R. Ault

Joseph R. Ault

Kenneth W. Austin

Kenneth W. Austin

Ann Gordon

Ann Gordon

Stephen D. Hougland

Stephen D. Hougland

Steve Barnett

Steve Barnett

Attest:

Janet P. Alexander, 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 _____, 2011 at ____ o'clock a.m./p.m.

Janet P. Alexander, Clerk-Treasurer

This ordinance having been passed by the legislative body and presented to me [Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1)] [Vetoed, pursuant to Indiana Code § 36-4-6-16(a)(2)], this ____ day of _____, 2011 at ____ o'clock a.m./p.m.

Fred L. Paris, Mayor
City of Franklin, Indiana

Attest:

Janet P. Alexander,
City Clerk-Treasurer

Prepared by:

Robert H. Schafstall
Atty. No.: 16944-41