




MEMORANDUM

November 19, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
Shauna R. Billingsley, City Attorney
Kristen L. Corn, Staff Attorney

SUBJECT: Ordinance 2012-60, An Ordinance to Amend Title 16, Chapter 1, Section 16-101 of the Franklin Municipal Code

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider Ordinance 2012-60, which amends Section 16-101 of the Franklin Municipal Code relative to occupying public streets, alleys, sidewalks or rights-of-way for the purpose of selling or exhibiting any goods, wares, merchandise or materials.

Background

Over the past several years, newspaper merchants have begun selling papers within the City by way of standing on sidewalks, medians, or elsewhere along a public street, and then entering the roadway if a vehicle driver or passenger indicated their interest in buying a newspaper. Because of the City's concerns over the safety hazards that result when a solicitor interacts with occupants of a vehicle within a busy public street, City staff has researched the issue to protect the safety of all involved. After thorough research of other cities, including the City of Brentwood, Tennessee, staff has determined that the proposed code modification will serve to allow these sales and other solicitations to continue in a safer manner.

The proposed amendments to Section 16-101 retain the existing general prohibition against using the public right-of-way (including public streets, alleys or sidewalks) to sell, store or exhibit goods, wares, merchandise and materials. However, an exemption is added for the sale or distribution of newspapers, magazines, periodicals, handbills, flyers and similar materials, as long as the activity is not conducted *within the street itself* and materials are not handed to vehicle occupants. Under this exemption, the sale of newspapers on public sidewalks would be protected. It is also important to note that the City does not regulate or restrict the sale of newspapers on private property, although the vendor would need the property owner's permission. Further, the City will continue to allow newsracks within the City, which may be granted upon application to the Board of Mayor and Aldermen.

Section 16-101, in both its current and proposed forms, also applies to any other type of merchandise or materials. In addition to dealing with the sale of merchandise and materials in the right-of-way, the proposed ordinance prohibits solicitation of donations from vehicle occupants. The code in its current form permits exemptions for City-approved special events, and these exemptions are not proposed to change. The proposed amendment does not affect persons who have a reason for occupying the public right-of-way which furthers necessary City business, such as emergency workers, public works



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employees, utility workers or franchisees, or those who have previously been granted permission to be in the right-of-way as a permitted outdoor café.

It should be emphasized that the City has no interest in prohibiting the sale of newspapers or ceasing contributions to worthy causes. The purpose of the proposed ordinance is to prevent accidents and other safety hazards to motorists and pedestrians and to avoid interference with the safe and efficient flow of traffic on busy streets.

Options

BOMA may adopt, modify or decline to amend the Franklin Municipal Code

Financial Impact

There is little to no anticipated financial impact for adoption of the ordinance as proposed.

Recommendation

Adoption of Ordinance 2012-60, as proposed, is recommended.

ORDINANCE 2012-60

TO BE ENTITLED: "AN ORDINANCE TO AMEND TITLE 16, CHAPTER 1, SECTION 16-101 OF THE FRANKLIN MUNICIPAL CODE RELATIVE TO OCCUPYING PUBLIC STREETS, ALLEYS, SIDEWALKS OR RIGHTS-OF-WAY FOR THE PURPOSE OF SELLING OR EXHIBITING ANY GOODS, WARES, MERCHANDISE OR MATERIALS."

WHEREAS, Title 16, Chapter 1 of the Franklin Municipal Code establishes regulations for the use of the public right-of-way for storing, selling or exhibiting goods, merchandise or materials; and

WHEREAS, such regulations are necessary in order to prevent dangers to persons and property, and to prevent delays and interference with vehicular traffic flow; and

WHEREAS, use of the public right-of-way for solicitation of donations or for the storage, sale or exhibition of merchandise and materials can pose significant hazards to the solicitors, other pedestrians and motorists; and

WHEREAS, such hazards can be created by the actions of either solicitors or occupants of vehicles who want to interact with solicitors; and

WHEREAS, solicitors create a safety hazard for themselves and the motoring public when entering upon public streets, distributing items to vehicle occupants, or receiving money or other items from vehicle occupants; and

WHEREAS, distraction of motorists occasioned by solicitations or by the storage or exhibition of goods and materials in the right-of-way impedes the safe and orderly flow of traffic, causes vehicles to stop unexpectedly, causes vehicles to linger at traffic control devices, and causes motorists to fail to attend to driving; and

WHEREAS, public health, safety and welfare requires the imposition of reasonable manner and place restrictions on solicitation and the storage and exhibition of goods and other materials in the public right-of-way, while respecting the constitutional right of free speech for all citizens; and

WHEREAS, it is in the best interests of the City of Franklin to amend Title 16, Section 1 of the Franklin Municipal Code to address the concerns identified herein.

NOW, THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that Title 16, Chapter 1, Section 101 is amended by deleting the text in ~~strike through~~, and adding the text in **bold** so that it shall read as follows:

"Sec. 16-101. - Obstructing streets, alleys, or sidewalks prohibited.

(a) Except as provided in title 8, chapter 3, no person shall use or occupy any portion of any public street, alley, sidewalk or right-of-way for the purpose of storing, selling, or exhibiting any goods, wares, merchandise or materials, except ~~under the following conditions:~~**that (1) Merchants** may display and sell their goods and wares on and from the streets and/or sidewalks on such special event days or at

other times as are specifically authorized by the board of mayor and aldermen and under such circumstances and conditions at the board of mayor and aldermen shall deem appropriate, considering the health, safety and welfare of the pedestrian and motoring public.

~~(2) News racks or news vending machines may be placed on the sidewalks for the sale or dispensing of newspapers therefrom at such specific locations as are authorized by the board of mayor and aldermen upon application to the board. In granting permits for the placement of news racks or news vending machines on the public sidewalks, the board shall endeavor to minimize their effect on the flow and safety of pedestrian and vehicular traffic.~~

~~(3) Members of nonprofit, charitable organizations may conduct bake sales, sidewalk sales, bazaars, and other activities on public streets, alleys, sidewalks and rights-of-way within the corporate limits of the City of Franklin after obtaining approval of the Police or Chief of the City of Franklin or his designee. Such approval shall specify the location of such activity, and shall be given in accordance with the provisions of title 9, chapter 3 of this Code.~~

(b) No person shall stand on or otherwise occupy any portion of the public right-of-way, including any public street, median, alley or sidewalk for the purpose of soliciting or accepting a donation of money or any other item from the occupant of any vehicle.

(c) Nothing in this section or in any other part of this Code shall be construed as prohibiting the sale or distribution of newspapers, magazines, periodicals, handbills, flyers or similar materials, except that:

(1) Such activity shall be prohibited on any portion of any street within the city.

(2) Such materials shall not be handed to the occupant of any motor vehicle that is on a street, nor shall any action be taken which is intended or reasonably calculated to cause the vehicle occupant to hand anything to the person selling or distributing the materials.

(3) News racks or news vending machines may be placed on the sidewalks for the sale or dispensing of newspapers therefrom at such specific locations as are authorized by the board of mayor and aldermen upon application to the board. In granting permits for the placement of news racks or news vending machines on the public sidewalks, the board shall endeavor to minimize their effect on the flow and safety of pedestrian and vehicular traffic."

SECTION II: If any section, subsection, clause, provision or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this ordinance.

SECTION III: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect from and after its passage on second and final reading, the public health, safety and welfare requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
ERIC S. STUCKEY
City Administrator

BY: _____
DR. KEN MOORE
Mayor

PASSED FIRST READING _____

PASSED SECOND READING _____