




# MEMORANDUM

February 5, 2013

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.

In late 2012, the City staff proposed amendments to existing municipal code to address these issues. 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 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.

Following the first reading vote on the proposed amendment, the Board of Mayor and Aldermen held a public hearing on January 22, 2013. The hearing included comments from approximately 20 citizens. Most of the citizen comments at the hearing centered around one specific entity operating within the City's right-of-way, *The Contributor*. On January 30, 2013, Mayor Moore and City Administrator Eric Stuckey met with representatives of *The Contributor*, Executive Director Tasha French and Director of Vending Tom Wills. They indicated an interest in finding opportunities to improve the safety of vendors while also continuing to facilitate "in-vehicle" sales. Specifically, *The Contributor* representatives indicated that sales to the curb lane adjacent to the sidewalk to the passenger-side window would be an acceptable option from their perspective. In fact, they indicated that newspaper sales from the median were prohibited within their vendor guidelines.

City staff was also asked to research accident data related to vendor activity in and around roadways. The Franklin Police Department made a query into the TITAN reporting system (Tennessee's Integrated Traffic Analysis Network). TITAN consists of a centralized data and document repository for public safety information managed by the Department of Safety and Homeland Security; it includes submission of all traffic safety related data in Tennessee. While there have been a number of anecdotal reports of vendor activity or impact related to "distracted driving," staff was unable to locate any accident reports that list vendors as a causal factor.

### **Options**

BOMA may adopt, modify or decline to amend the Franklin Municipal Code. Four possible options for the Board to consider at this point follow:

1. **Adopt the ordinance as proposed.** The proposed amendment would continue the general prohibition on the sale of goods and services in the public right-of-way while providing for the sale/distribution of print content (non-commercial speech) on public sidewalks.

#### Advantages:

- The amendment provides the opportunity for sales/distribution of publications that does not exist in the current ordinance.
- By restricting all vehicle sales in the roadway this amendment provides the greatest improvement in safety for vendors and the public.
- Similar language included in this ordinance has been upheld through judicial review.

#### Disadvantages:

- This amendment will make sales transactions for publications less convenient. *The Contributor* indicates that in-vehicle sales are their most popular sales method.

2. **Amend the ordinance to allow sales to the passenger side of stopped vehicles located in the curb lane adjacent to the sidewalk.** This approach would allow limited in-vehicle sales of publications allowing the transactions only to the passenger side of stopped vehicles in the lane adjacent to the sidewalk. If this option were pursued, it is recommended that certain intersections be restricted from sales due to volume, configuration and traffic signal pattern (i.e. – continuous right turn). This is similar to the approach the City took with u-turns where they are generally permitted but prohibited at certain intersection due to safety considerations.

Advantages:

- This option would allow for limited in-vehicle sales of publications. *The Contributor* has indicated that this would be an acceptable approach and is consistent with the guidelines they provide their vendors.
- This option prohibits sales from medians, to the driver side and in other areas of the roadway which should improve safety.

Disadvantages:

- There is the potential that vendors will be entering the roadway to complete transactions, which can pose a safety threat to vendors and the public.
- This option presents more “gray area” in terms of enforcement and understanding of the ordinance by vendors and the public.
- City staff has not identified a similar ordinance implemented in another community that provides for this approach to the sale/distribution of publications in this manner. It is an “untested” approach.

3. **Restrict the hours and time of year for sales.** This option would entail a limit to the time of day and/or time of year that transactions would be permitted. Specifically, the prohibition of sales would align with busy traffic times such as morning and evening peak (“rush hour”) or the holiday shopping season.

Advantages:

- This option would allow for limited in-vehicle sales of publications and could be combined with the restrictions described in option #2 (sales from the curb lane to the passenger side of vehicles).

Disadvantages:

- The time limitation does not necessarily translate into improved safety. In fact, the case could be made that less congested times of day could present greater safety risks as traffic is flowing a higher rates of speed, leaving less time to react to vendors in and around the roadway.
- Depending on the nature of restrictions, there is the potential that vendors will be entering the roadway to complete transactions, which can pose a safety threat to vendors and the public.
- City staff has not identified a similar ordinance implemented in another community that provides for this approach to the sale/distribution of publications in this manner. It is an “untested” approach.

4. **Do nothing.** BOMA also has the option to decline to approve Ordinance 2012-60 and not amend the current code at all. This would mean that, as it currently reads, Section 16-101 of the Municipal Code would continue to prohibit all sales of goods, wares, merchandise or



materials in the public right-of-way unless one of three exceptions (previously approved special events, newsracks or news vending machines approved by BOMA, or nonprofit or charitable sales when approved by the Police Chief).

Advantages:

- This option would be easy to enforce as the restrictions against sales in the right-of-way are applied generally, regardless of type of vendor or type of good, ware, merchandise or material.
- Newspapers would still permitted to be sold in the right-of-way by way of a newsrack or news vending machine.

Disadvantage:

- This option is also “untested” and the code in this format has not been before a court of law for consideration.
- The existing ordinance provides for permitted charitable sales in roadways as a (temporary) permitted activity as approved by the Police Chief. Allowing nonprofit or charitable sales directly in the roadway represents a safety risk to both vendors and the public.

**Financial Impact**

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

**Recommendation**

It is recommended that the existing ordinance prohibiting all transactions in the public right-of-way be amended to provide for improved safety for vendors and the public. Adoption of Ordinance 2012-60, as proposed (Option #1), is recommended at this time as it provides limited permission for sales/distribution of publications while also providing the most protection to the public and vendors. While there have not yet been accidents within the City related to the sale of publications in the streets, it is reasonable to identify a real threat to vendors and the public with a high volume of traffic experienced on City streets. The City has a responsibility to anticipate potential threats to the public and to take reasonable action to prevent them.

**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 ~~strikethrough~~, 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                          December 11, 2012

PUBLIC HEARING HELD                                  January 22, 2013


PASSED SECOND READING                          \_\_\_\_\_

## MEMORANDUM

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November 19, 2012

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Shauna R. Billingsley, City Attorney  
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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.

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### **Options**

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### **Financial Impact**

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### **Recommendation**

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