

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

ORDINANCE NO. 2005- 1858

AN ORDINANCE TO AMEND §15-3.0804 AND RELATED PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR THE ADMINISTRATIVE ISSUANCE OF TEMPORARY USE PERMITS BY THE ZONING ADMINISTRATOR AND DESIGNEES OF THE CITY PLANNING DEPARTMENT AND TO FURTHER SPECIFY THE TYPES OF AND CONDITIONS UPON TEMPORARY USES WHICH MAY BE PERMITTED

WHEREAS, the Plan Commission having considered its experience in the review of applications for temporary uses and the listing of temporary uses which may be permitted as set forth within the Unified Development Ordinance, and having determined that such applications are appropriate for review, issuance and administration by the Planning Department staff in most instances and that the listing of available temporary uses as set forth within the Unified Development Ordinance should be expanded, while at the same time limiting a proposed temporary use to that which may be compatible to the existing use of the subject property and adjoining properties; and

WHEREAS, upon Plan Commission direction, City staff having undertaken the subject Code review and having made recommendations thereon, accordingly; and

WHEREAS, upon petition by the City of Franklin, a public hearing was held before the City of Franklin Plan Commission on the 8th day of September, 2005, the Plan Commission thereafter having determined that the proposed zoning text amendment would promote the health, safety and welfare of the City and having recommended approval thereof to the Common Council; and

WHEREAS, the Common Council having considered the petition and having concurred with the recommendation of the Plan Commission and having determined that the proposed zoning text amendment to §15-3.0804 and related provisions of the Unified Development Ordinance to provide for the administrative issuance of temporary use permits and to further specify the types of and conditions upon temporary uses which may be permitted, would promote the health, safety and welfare of the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §15-3.0804A. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby renumbered to C., and amended only in the following respects: 2. is amended to add “,

except such on-street parking as is regularly permitted”, immediately following “on-site”; 6. is amended to add “or designee of the City Planning Department” immediately after “Zoning Administrator”; 7. is hereby repealed and 8. and 9. are hereby renumbered to 7. and 8., respectively.

SECTION 2: §15-3.0804B. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby renumbered to E., and amended only in the following respect: add to the existing text of 1., the following: “If, in the opinion of the Building Inspector or Zoning Administrator or designee of the City Planning Department, the location of the construction trailer poses a safety hazard it shall be moved to an appropriate location as directed by such officer immediately upon such direction.”

SECTION 3: §15-3.0804C. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby renumbered to F., and amended only in the following respect: add “or designee of the City Planning Department” immediately after “Zoning Administrator”, wherever it appears.

SECTION 4: §§15-3.0804D., E. AND G. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, are hereby renumbered to G., H. AND I., respectively.

SECTION 5: §15-3.0804F. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby renumbered to D., and amended only in the following respect: add to the introduction, immediately after the first sentence: “**A Temporary Use Permit for these uses may only be granted by the Plan Commission.**”

SECTION 6: §15-3.0804 of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended to create the following introductory provision and to recreate A. and B. as follows:

DETAILED STANDARDS FOR TEMPORARY USES

A Temporary Use Permit is required prior to the commencement of and for the duration of any Temporary Use in any zoning district in the City of Franklin. A Temporary Use is an activity that is short-term in nature, will be conducted for only a specified limited period of time, and for a specific use that is not the permanent use of the property, and which use though not already expressly authorized to be an actual use on the property, is incidental to or accessory to and compatible with, as a limited duration use,

the existing use of the property and, as a limited duration use, is compatible with and will not adversely affect adjoining properties.

The Zoning Administrator and designees of the City Planning Department are authorized to issue Temporary Use Permits upon application therefore. An application for a Temporary Use Permit shall be signed by the owner of the land involved, as a responsible party, together with the person applying for the permit, if other than the owner, who shall also be a responsible party by reason of such application. The applicant shall also pay an application fee at the time of filing the application, which fee shall be in such amount as may be approved by and specified within the resolution of the Common Council from time to time and kept on file in the Office of the City Clerk. The form and content of the application shall be as reasonably required by the Zoning Administrator or designee of the City Planning Department so that all information reasonably required by and to effectuate the terms and provisions of this Section shall be provided. Each permit granted shall specify the time period (dates) during which the use may occur and the hours during each day in the period during which the use may occur. A permit shall lapse if not used within the dates approved.

The Zoning Administrator and designees of the City Planning Department may refer any application for a Temporary Use Permit to the Plan Commission for review and approval, where the Zoning Administrator or designee of the City Planning Department determines that the application involves an issue of interpretation as to whether the proposed temporary use is incidental or accessory to the existing use of the property, or is a use which is compatible, as required herein, or that there is a question as to whether the proposed temporary use may adversely affect adjoining property due to the nature of, size or area of, noise, debris, lighting, or the like or other resultant from the proposed temporary use. Plan Commission review and approval is required for any proposed temporary uses of a type not specifically listed below.

Each permit shall be conditioned upon and shall additionally contain such specific conditions to obtain compliance with this Section and the purposes of the zoning district within which the use will be located; the protection of the public health, safety and general welfare; and ensuring that the operation and maintenance of the temporary use shall be in a manner compatible with existing uses upon the subject property and adjoining properties and in the surrounding area.

The uses for which Temporary Use Permits may be issued following administrative review by the Zoning Administrator or designee of the City Planning Department are as follows:

A. Commercial Temporary Outdoors Sales.

A commercial temporary outdoor sale is an outdoor sale of merchandise, upon property supporting an existing retail use principal structure in the B-1, B-2, B-3, B-4 or B-5 zoning districts, and any commercial or retail sales planned development district or commercial or retail sales area of a mixed use planned development district, by either the owner or occupant of the principal structure, of the type of merchandise for sale within the principal structure.

1. **Location.** No display, sales or parking is permitted in any street right-of-way, except such parking on-street as is regularly permitted. In addition, no display, sales or parking shall obstruct pedestrian or vehicular traffic. All display areas or temporary structures shall comply with the minimum required yard setbacks for the zoning district for the property upon which the commercial temporary outdoor sale occurs.

2. **Parking.** All parking shall be on-site, except such on-street parking as is regularly permitted. The applicant must demonstrate that there will be adequate parking for the existing uses as well as the proposed commercial temporary outdoor sale.

3. **Trash and Debris.** The applicant must demonstrate and provide adequate facilities to dispose of all trash or other waste generated by the commercial temporary outdoor sale.

4. **Outdoor Sales Shall be Permitted Only Four (4) Times a per Year per Property.** Each individual outdoor sales event (up to 4 per year, per property) shall be no longer than 14 consecutive days; provided, however, that the total days of such temporary uses during a calendar year shall not exceed 30 calendar days. Owners must obtain a Temporary Use Permit for each such temporary outdoor sale before the use is permitted.

5. **Signage.** All signage shall be in accordance with the sign regulations set forth in this Ordinance.

6. **A Site Plan is Required.** A site plan showing location of existing buildings, locations of proposed structures for the sales/events, locations of parking spaces, signage, hours of operation, what merchandise is being sold and any other information pertinent to the review of the sales/events and as may be so required by the Zoning Administrator or designee of the City Planning Department or the Plan Commission, as applicable, shall be submitted as part of the application for a commercial temporary outdoor sale use.

B. Temporary Miscellaneous Outdoor Sales.

A temporary miscellaneous outdoor sale use includes those activities involving the sales of merchandise from trucks or a temporary outdoor or tented sales area upon property supporting an existing retail use principal structure in the B-1, B-2, B-3, B-4 or B-5 zoning districts, and any commercial or retail sales planned development district or commercial or retail sales area of a mixed use planned development district. Examples include, but are not limited to, flower and plant sales, general apparel and accessories sales, motor vehicle and recreation vehicles sales, and other similar goods and products.

1. **Location.** No display, sales or parking is permitted in any street right-of-way, except such parking on-street as is regularly permitted. In addition, no display, sales or parking shall obstruct pedestrian or vehicular traffic. All display areas or temporary structures shall comply with the minimum required yard setbacks for the zoning district for the property upon which the temporary miscellaneous outdoor sale occurs.

2. **Parking.** All parking shall be on-site, except such on-street parking as is regularly permitted. The applicant must demonstrate that there will be adequate parking for the existing uses as well as the proposed temporary miscellaneous outdoor sale.

3. **Trash and Debris.** The applicant must demonstrate and provide adequate facilities to dispose of all trash or other waste generated by the temporary miscellaneous outdoor sale.

4. **Signage.** All signage shall be in accordance with the sign regulations set forth in this Ordinance.

5. **Temporary Outdoor Structures.** All proposed temporary outdoor structures (tents, canopies) are subject to review and approval of the Fire Inspector and the Building Inspector.

6. **Temporary Miscellaneous Outdoor Sales Shall be Limited to Fourteen (14) Consecutive Days.** Owners must obtain a Temporary Use Permit for each temporary miscellaneous outdoor sale before the use is permitted. Each such uses shall not exceed 14 consecutive calendar days. The total days of such temporary uses during a calendar year shall not exceed 30 calendar days.

7. **A Site Plan is Required.** A site plan showing location of existing buildings, locations of proposed structures for the sales/events, locations of parking spaces, signage, hours of operation, what merchandise is being sold and any other information pertinent to the

review of the sales/events and as may be so required by the Zoning Administrator or designee of the City Planning Department or the Plan Commission, as applicable, shall be submitted as part of the application for a commercial temporary outdoor sale use.

SECTION 7: §15-3.0804 of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended to add the following text immediately following D. and as a preamble to §§E., F., G., H., I. and J., the title of each such subsection to be preceded by an asterisk (*): “*The following temporary uses are allowed without the issuance of a Temporary Use Permit:”

SECTION 8: §§15-3.0804J., K., L. AND M. of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin, are hereby created to read as follows:

J. *Public Interest and Special Events. A public interest event on a commercial property is limited to no more than six (6) times per year and each event shall be no longer than fourteen (14) days. Public interest events shall include but not be limited to outdoor food sale, outdoor car wash, or other gathering for the benefit of the community, a particular service or a non-profit organization.

K. Additional City Department Review May be Required.

Those uses listed above as not required to receive a “Temporary Use Permit” may still be required to receive other use permits/approvals issued by the City of Franklin including, but not limited to an amendment to an existing Special Use Permit for the subject property and approvals such as for “Special Events” as defined in Chapter 121 and “Transient Merchants” as defined in Chapter 237 of the Municipal Code. In addition, food service associated with a temporary outdoor use may be subject to the review and approval of the Health Department. All temporary uses shall otherwise comply in all respects with all applicable governmental laws, statutes, codes, rules, orders, regulations and ordinances.

L. Issuance and Expiration of Permit.

The Zoning Administrator or designee of the City Planning Department(s) shall approve, conditionally approve, deny or refer to the Plan Commission an application for a temporary use permit under this Section within 30 days of its filing in the Planning Department Office. The Plan Commission shall approve, conditionally approve or deny an application within 30 days of the referral of such application to the Commission. Any decision to deny an application under this section shall be in writing, shall set forth the reasons for the denial, and a copy

of such decision shall be mailed by regular mail to the applicant within the aforesaid time limits. Each Temporary Use Permit shall specify the date upon which such use may commence and the date upon which such use shall expire; in no event, except as otherwise specifically and expressly set forth in this Section, shall any temporary use exceed 90 days in duration during any calendar year.

M. Appeal.

An appeal of a decision regarding a temporary use made by the Zoning Administrator or designee of the City Planning Department shall be made in writing and filed with the Office of the City Clerk within 10 days of the date of such decision. The appellant shall also pay an appeal fee at the time of filing the appeal, which fee shall be in such amount as may be approved by and specified within the resolution of the Common Council from time to time and kept on file in the Office of the City Clerk. The grounds for an appeal shall be that the decision was made in error in the administration of this Section to the application and the proposed use and shall be stated in the appeal. The appeal shall be to the Plan Commission, which shall affirm, modify, reverse or remand the decision to the Zoning Administrator or designee of the City Planning Department and such decision shall be made within 30 days of the filing of such appeal, shall be in writing, shall set for the reasons for the decision on appeal, and a copy of such decision shall be mailed by regular mail to the applicant within the aforesaid 30 days. The appellant shall receive written notice of the Plan Commission meeting at which such appeal shall be heard and the applicant and any other aggrieved persons shall provide such information to the Plan Commission as it may determine reasonably necessary to decide such appeal, together with all other persons and information. The rules of evidence shall not apply to such appeal and the decision on appeal shall be made upon the records, files, proceedings and substantial evidence before the Plan Commission. Any appeal from any decision of the Plan Commission under this Section shall be made pursuant to Division 15-10.0500 of this Ordinance.

SECTION 9: §15-10.0104F., of the Unified Development Ordinance, pertaining to the issuance of temporary use permits by the Plan Commission, be and the same is hereby repealed.

SECTION 10: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

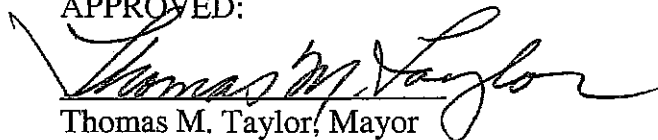
SECTION 11: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 12: This ordinance shall take effect and be in force from and after its passage and publication.


Introduced at a regular meeting of the Common Council of the City of Franklin this 18th day of October, 2005, by Alderman Sohns.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 18th day of October, 2005.

APPROVED:


Thomas M. Taylor, Mayor

ATTEST:


Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0