

EMERGENCY

City of Cincinnati
An Ordinance No. 224 -2006

MODIFYING the provisions of Chapter 713 “Fountain Square, Convention Hall” by amending existing Section 713-1, Section 713-3, Section, 713-4, Section 783-5, and Section 713-9 to reflect the changes that have occurred to Fountain Square During its redevelopment to allow for the efficient administration of the permit process for the use of Fountain Square.

WHEREAS, the redevelopment of Fountain Square is nearing completion and significant changes to Fountain Square have occurred during its redevelopment; and

WHEREAS, it is anticipated that there will be significantly increased interest in scheduling use of Fountain Square, based on the improvements made to the physical structure of the Square; and

WHEREAS, it is the intent of the city of Cincinnati to provide for the efficient administration of the permit process by the persons who will be providing management of the Square on behalf of the City, ad who will also be overseeing the scheduling and recruiting of many of the programs for Fountain Square; now therefore,

BE IT ORDAINED by the Council of the city of Cincinnati, State of Ohio:

Section 1. That Section 713-7 of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 713-1. Legislative Findings and Declaration.

It is hereby found and determined by the Council of the city of Cincinnati that in order to effectively manage the carious uses of Fountain Square it is appropriate to adopt a permit and regulation process. The permit process and rules and regulations for the use of Fountain Square shall be adopted and implemented to protect the public’s use and enjoyment of the Square, to Coordinate multiple uses of a limited public space, to assure preservation of the Fountain Square facilities, to prevent uses that are dangerous, unlawful, or impermissible under the ****1**** city manager’s rules and regulations, and to provide the City of Cincinnati with advance notice of requirements for police, fire, sanitation, emergency, health, or transportation services. The permit and regulation process for the use of Fountain Square is hereby reserved to the City of Cincinnati, and shall be implemented by the ****2**** city manager or his or her designees. The city manager my designate a third party who has lawfully entered into an agreement for the management of Fountain Square to administer the Fountain Square permitting process.

Any third-party with whom the ***3** city manager lawfully enters into an agreement for the management of Fountain Square must recognize and expressly agree to respect and honor the City's obligation to maintain Fountain Square as a public forum that is open and available to all members of the public pursuant to the constitutions of the United States and the State of Ohio. **4**

Section 2. That Section 713-2 of the Cincinnati Municipal Code is hereby amended to read as follows:

Section 713-2. Definition—Fountain Square.

For purposes of this chapter, Fountain Square is defined to include the area between Fifth Street, Walnut Street, Sixth Street and Vine Street, including all appurtenances, and the public ways adjacent hereto, Tyler Davidson Fountain, the Fountain Square Pavilion, and second level pedestrian walkways between Central Avenue on the west, Central Parkway on the north, Eggleston Avenue on the east and the Ohio River on the south which are open to the public, regardless of whether the property is public or private. The definition of Fountain Square does not include completely enclosed private property. **5**

Section 3. That Section 713-3 of the Cincinnati Municipal code is hereby amended to read as follows:

Section 713-3. Use of Fountain Square.

The use of Fountain Square will be preserved primarily for the peaceful and orderly enjoyment of the square, its facilities, appurtenances, landscaping, and the Tyler Davidson Fountain by the general public.

Any other use of the Fountain Square by a person or group of persons will not be permitted except in accordance with the terms of a permit issued by the director of public services or the city manager's designee in strict compliance with the conditions set forth hereinafter.

(a) The city manager shall promulgate rules and regulations governing the use of Fountain Square that are consistent with sections 713-1 through 713-9 of this chapter, and he or she may appoint a substitute to carry out any of the duties of the director of public services as provided in this chapter and the city manager's rules and regulations for the use of Fountain Square, including a third party with who the city manager has lawfully entered into an agreement for the management of Fountain Square.

(b) No person or group may erect a display, exhibit, structure or sign on Fountain Square without a permit issued by the director of public services or the city manager's designee in accordance with the rules and regulations for the use of Fountain Square.

(c) Subject to the provisions of this Chapter and the city manager's rules and regulations in effect pursuant to this Chapter, no person or group may hold an event, protest, rally, or meeting or make any other use of Fountain Square involving more than **6** 50 participants without a permit issued by the director or public services or the city manager's designee in accordance with the rules and regulations for the use of Fountain Square.

(d) No displays, exhibits, or gatherings shall be permitted within **7** 20 feet of the Tyler Davidson Fountain.

(e) The provisions of this section are not intended to prohibit the use of Fountain Square as a photographic background by a commercial enterprise when such activities are of a short duration and/or are not disruptive to the normal or other permitted use of Fountain Square and do not require any additional city services of assistance, subject, however to all other provisions of this chapter. Such use does not require a permit except as provided in subparagraph (1) of this subsection. This provision does not prohibit permits for extensive commercial photography, restaurant patios on private property, or signs as authorized in this section.

- (1) The director of public services or the city manager's designee may permit Fountain Square to be used as a background for extensive commercial photography which may temporarily impair, impede or otherwise interfere with the public's enjoyment of Fountain Square and /or requires city support services or assistance. If such a permit is granted, the fee schedule provided in section 713-9 shall apply and the permittee shall be responsible for engaging and paying for and all additional costs incurred by the city.
- (2) The director of public services or the city manager's designee may issue permits for the use of private or public property that is part of Fountain Square for restaurant patio used, including the sale of food and beverages for consumption on the premises, in conjunction with adjoining fully enclosed restaurants. Such permits are subject to other applicable requirements of this section, except that the term of such permits may be for an indefinite time period provided that the permit is revocable upon at least ninety (90) days notice.
- (3) The director of public services or the city manager's designee may issue permits for the use of private or public property that is part of Fountain Square for the sale of food and beverages or the sale of merchandise from and in conjunction with permanent or semi-permanent restaurants, stands, kiosks or booths erected on Fountain Square by the City or pursuant to any agreement for the management of Fountain Square lawfully in effect at the time the permit is issued. Such permits are subject to other applicable

requirements of this section and the city manager's rules and regulations in effect pursuant to this Chapter, except that the term of such permits may be for an indefinite time period provided that the permit is revocable upon at least (90) days

- (4) The director of Public services or the city manager's designee may issue permits for signs on Fountain Square pursuant to any agreement for the management of Fountain Square lawfully in effect at the time the permit is issued. Such permits are subject to other applicable requirements of this section and the city manager's rules and regulations in effect pursuant to this Chapter, except that the term of such permits may be for an indefinite time period provided that the permit is revocable upon no more than ninety (90) days notice.

- (F) To promote security and provide for scheduled maintenance. Fountain Square shall be closed from 3:00 a.m. to 6:00 a.m. except for the purpose of entering and exiting the garage or adjacent buildings.

Section 4. That Section 713-4 of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 713-4 Permit for the Use of Fountain Square.

(a) The director of public service or the city manager's designee will follow the rules and regulations for the use of Fountain Square when granting, denying or revoking a permit. The rules and regulations will also provide for a spontaneous use permit to be granted where space and time are available.

(b) The director of public service or the city manager's designee shall assign a number to each permit.

© A permit may contain specific conditions of use to ensure safety and compliance with this chapter and rules and regulations for the use of Fountain Square.

(d) Any person issued a permit for the use of Fountain Square under the authorization of this section must keep the permit on his or her person during a permitted event on Fountain Square and produce it upon request. In the case of a permit issued to a group for the use of Fountain Square, at least one individual acting as an agent representative of the group must keep the permit on his or her person during a permitted event on Fountain Square and produce it upon request.

(e) All permitted displays, exhibits, or structures must be accompanied by a sign indicating the permit number and date of issuance of the permit. This sign must be legible from at least ten feet in distance.

(f) The director of public services or the city managers designee shall ensure that equal access is available for all lawful uses of Fountain Square in accordance with this chapter and the rules and regulations for the use of Fountain Square.

(g) If The director of public services or the city managers designee denies or revokes a permit for the use of Fountain Square issued pursuant to this chapter on any of the grounds specified in the rules and regulation for the use of Fountain Square, he or she must clearly set forth in writing the grounds for denial or revocation and, where feasible, must propose measures to cure defects in the application.

(h) If, due to space or time limitations, the director of public services or the city manager's designee is unable to offer an applicant, who would otherwise be granted a permit, the date and time requested in the application, the applicant upon being notified of the limitation, may request that the director of public services or the city managers designee review alternative locations and/or dates for the applicant's proposed use of Fountain Square. The director of public services or the city manager's designee will then investigate whether a suitable alternative location and/or time is available.

(i) Any denial or revocation of a permit or the partial denial or revocation of a permit for the use of Fountain Square issued pursuant to this chapter on any of the grounds specified in the rules and regulation for the use of Fountain Square (except for denial or revocation based upon section 713-6(b)) may be appealed in writing to the city manager within five (5) business days of the ****8**** decision of the director of public services or the city manager's designee to deny the permit. Within five (5) business days of receipt of such appeal, or at a mutually agreed time, the city manager or ****9**** a city hearing officer shall conduct a hearing regarding the reasons for the permit denial or revocation and the basis of the protest.

At the hearing, the sole issue to be decided is whether the application meets the requirements of this chapter and the city manager's rules and regulations for the use of Fountain Square. The applicant and the city may present evidence and testimony in support of their positions. And a record of the proceedings shall be kept. The city manager or ****10**** a city hearing officer shall exercise independent, unbiased authority to issue and opinion in compliance with this legislation and the city manager's rules and regulations for the use of Fountain Square.

The city manager or ****11**** a city hearing officer shall render a decision within three (3) business days from the close of the hearing.

The City of Cincinnati will promptly seek judicial review of any intended denial or revocation of a permit for the use of Fountain Square based upon the obscenity, defamation, or "fighting words" prohibitions contained in section 713-6(b). Unless a court issues an order within ten (10) business days of the city's petition declaring that the permit may be lawfully denied or revoked, the permit will be granted.

Section 5. That Section 713-5 of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 713-5 Prohibited Uses of Fountain Square Without a Permit.

Unless expressly authorized by a permit for the use of Fountain Square issued in accordance with this chapter and the rules and regulations for the use of Fountain Square it is unlawful for any person or group to do the following:

(a) Possess on or bring into Fountain Square any poles, sticks, or clubs made of wood, metal, plastic, or any rigid material or any other instrument, device or thing that is capable of inflicting serious physical harm, that is designed or specially adapted for the use as a weapon or that is possessed, carried or used as a weapon. The prohibitions imposed by this Section do not apply to a wooden stick used to elevate or support a sign or banner, provided that such a wooden stick is blunt on both ends and is not more than (2) inches in width or three-quarters (3/4) of an inch in diameter, one-quarter (1/4) of an inch in thickness, and forty (40) inches in length. The prohibitions in this section do not apply to canes, crutches or any other similar device used by persons who are visually or physically impaired, not to law enforcement officers and city employees acting within the scope of their duties.

(b) Display, offer for sale or sell or barter any merchandise on Fountain Square or any public stairway, escalator, passageway or elevator connecting thereto.

© Use any sound-amplifying equipment on Fountain Square.

(d) Play a radio, tape recorder or other electronic sound producing equipment, other than with earphones so that no sound is audible to others.

(e)**12** Take any animal onto Fountain Square, unless such an animal is being or will be used by law enforcement officials engaged in the performance of their duties, or unless such animal is used as a guide for disabled individual or such animal is part of a permitted program and is listed on the application.

(f) Operate or drive any vehicle, including bicycles, skateboards, roller blades, roller skates or scooters on Fountain Square, except city employees or contractors while engaged in their official or contractual duties. This does not prohibit the use of any motorized wheelchair or any vehicle that is specifically approved as a part of a permitted program.

(Sec. 713-9. Fees.)

The fee for the use of Fountain Square as provided in Section 713-3(e)(1) for commercial photography on Fountain Square shall be as follows:

(a) For first hour or portion thereof - \$100.

(b) For each additional one-half or portion thereof - \$50.

The director of public services or the city manager's designee may in accordance with section 713-3(e)(1), establish such additional fees as may be necessary to provide the required level of security or other city services for any such extensive commercial photographic use of Fountain Square.

Section 7. This ordinance is an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for this emergency is

the need to an efficiently system for managing the redeveloped Fountain Square in place prior to the re-opening of Fountain Square in Fall 2006.

Passed: August 6, 2006

Mayor

Attest: _____
Clerk

New Language is underscored. Language deleted is indicated by asterisks:

****1**** City Manager's Rules and Regulations

****2**** City Manager

****3**** City Manager

****4**** Such third-party shall not interfere with or be responsible for any duties related to implementing the permitting process set forth in this section or any rules and regulations for the use of Fountain Square enacted by the City Manager.

****5**** and the sidewalk areas on Walnut Street, Sixth Street and Vine Street

****6**** 15

****7**** 10

****8**** director of public services

****9**** the city manager's designee

****10**** the city manager's designee

****11**** the city manager's designee

****12**** Talking