

ORDINANCE NO. 2022-10-___ (R)

AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 106 OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY; AMENDING ORDINANCE 2016-04-032 RELATING TO THE MCKINNEY CONVENTION AND VISITORS BUREAU INC.; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of McKinney, Texas, created the McKinney Convention and Visitors Bureau, Inc., a Texas non-profit corporation in 1999 to increase and encourage tourism and tourism-related business in the City, said corporation now doing business as "Visit McKinney"; and

WHEREAS, the City Council desires to modify the Code of Ordinances relating to the Bylaws and governance of the McKinney Convention and Visitors Bureau.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The Fifth Amended and Restated Bylaws are attached hereto as Exhibit A.

Section 2. Should any paragraph, sentence, subdivision, clause, phrase, or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

Section 3. This Ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE ___ DAY OF OCTOBER 2022.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**EXHIBIT A
FIFTH AMENDED AND RESTATED BYLAWS**

OF THE

**McKINNEY CONVENTION AND VISITORS BUREAU, INC.
DOING BUSINESS AS "VISIT MCKINNEY" (A NONPROFIT CORPORATION)**

**ARTICLE I
PURPOSE AND POWERS**

Section 1. Purpose.

The purposes for which the McKinney Convention and Visitors Bureau, Inc., doing business as "Visit McKinney", ("Visit McKinney") is organized are: (i) to promote the City of McKinney as an attraction to tourists, visitors and individuals as an economic development strategy; (ii) to solicit groups, conventions, meetings, trade shows, exhibits, expositions and special events to convene and take place in the City of McKinney, through advertising, sales contracts, publications and distribution of descriptive material and such other means as may be necessary or expedient to attract such tourists, visitors, individuals, groups, conventions, meetings, trade shows, exhibits, expositions and special events to the City of McKinney; (iii) to develop increased civic interest in the City of McKinney as a visitor attraction; and (iv) to generally do all those things necessary or appropriate to carry out such purposes and thereby relieve the burdens of government.

Section 2. Powers.

In the fulfillment of its corporate purpose, Visit McKinney shall be governed by Chapter 351 of the Texas Tax Code ("Code"), and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Code, and in other applicable law, including but not limited to the Texas Non-Profit Corporation Act, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

Section 3. Fifth Amendment.

This Fifth Amended and Restated Bylaws shall replace and supersede the Fourth Amended and Restated Bylaws adopted effective March 22, 2016.

**ARTICLE II
OFFICES**

Section 1. Principal Office.

The principal office of Visit McKinney in the State of Texas shall be located at 200 W. Virginia Street in the City of McKinney, Collin County, Texas, 75069.

Section 2. Registered Office and Registered Agent.

Visit McKinney shall have and continuously maintain in the State of Texas a registered office and a registered agent, whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be identical with the principal office of the corporation in the State of Texas and the address of the registered office may be changed from time to time by the Board. Currently, the registered agent is Mark S. Houser and the address of the registered office is 740 East Campbell Road, Suite 800, Richardson, Texas, 75081.

**ARTICLE III
MEMBERSHIP**

Visit McKinney shall have no members or stockholders.

**ARTICLE IV
BOARD OF DIRECTORS**

Section 1. Powers, Number and Term of Office.

- (a) The property and affairs of Visit McKinney shall be managed and controlled by a Board of Directors ("Board"). Subject to the restrictions imposed by law, by the Articles of Incorporation, and by these Bylaws, the Board shall exercise all of the powers of Visit McKinney.
- (b) The Board shall be responsible for establishing operating policies for Visit McKinney and for evaluating the progress of Visit McKinney in the attainment of its goals. The Board shall have full and complete power to (i) oversee all business and affairs of the Visit McKinney; (ii) to elect officers; (iii) to select and set the compensation of or remove the Executive Director; and (iv) to authorize the sale, conveyance, transfer, assignment, trade, exchange, lease, mortgage, otherwise encumber or pledge any property, real or personal, of Visit McKinney.
- (c) The Board shall consist of seven (7) Directors each of whom shall be appointed by the City Council of the City of McKinney ("City Council").
- (d) Each member of the Board of Directors shall serve terms consistent with the City Council Policy on Board and Commission Member Appointment and Eligibility or until his or her successor is appointed by the City Council; provided however, upon the death, resignation or removal of a Director, the City Council shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director. Any restriction as to term is governed by the City Council. Unless otherwise provided, terms shall expire on September 30th.
- (e) Any Director, including Board officers, may be removed from office by the City Council at any time without cause.
- (f) The City Council shall appoint persons who are best-suited to fulfill the Purpose of Visit McKinney, as such is described in Article I. As a guideline but not a limitation, the City Council may consider Board member applicants from the following business sectors or any other business sector:
 - i. Hotel/motel/lodging
 - ii. Sales
 - iii. Travel
 - iv. Marketing
 - v. Restaurant
 - vi. Technology
 - vii. Event Planning
 - viii. Sports
 - ix. Professional

A majority (at least 4) of the Board members described in (i)-(ix) above shall be residents of the City of McKinney. Non-resident Board members shall have their primary business or place of employment within the City of McKinney.

Section 2. Regular and Special Meetings.

The Directors shall hold their regular meetings at such place or places within the City limits as the Board or Executive Director may from time to time determine;

provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of Visit McKinney as specified in Article II of these Bylaws. Special meetings of the Board shall be held whenever called by the Chair, by a majority of the Directors, by the Mayor of the City, or by a majority of the City Council. Special meetings of the Board shall be held whenever called by the Chair, by majority of the Directors, by the Mayor of the City, or by the City Council. Special meetings of the Board shall likewise be held within the City limits. In addition to posting a meeting notice in accordance with these Bylaws, a copy of each such meeting notice shall be delivered to each Director not less than seventy-two (72) hours before the time of the meeting. Such additional notice may be waived in writing by a Director at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

Section 3. Notice and Open Meetings Act.

Notice of the time, place and matters to be considered and action taken for each meeting of the Board of Directors shall be posted as required by Texas Government Code, §551.001 et seq. (Texas Open Meetings Act), and written or electronic notice will be provided to individual Board members.

Section 4. Quorum and Voting.

A majority of the duly appointed members of the Board of Directors shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the Board present in person at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by law, by the Articles of Incorporation, or by these Bylaws. In the event that a quorum is not present at any meeting, the Directors present may adjourn the meeting without further notice until a quorum can be properly assembled.

Section 5. Attendance.

Regular attendance is required at all posted meetings called by the Chair, the majority of the Board, or the City Council. Attendance at the Board meetings is required in accordance with the City Council Policy on Board and Commission Member Appointment and Eligibility.

Section 6. Conduct of Business.

- (a) At the meetings of the Board, matters pertaining to the business of Visit McKinney shall be considered in accordance with the rules of procedure as from time to time prescribed by the Board.
- (b) At all meetings of the Board, the Chair shall preside, and in the absence of the Chair, the Vice Chair shall exercise the powers of the Chair.
- (c) The Secretary-Treasurer of Visit McKinney shall act as Secretary of all meetings of the Board; however, the minutes of the meeting shall be recorded by the Board Clerk of Visit McKinney and signed by the Secretary or Chair. In the absence of an assistant to the Executive Director, the presiding officer may appoint any person to record the minutes of the meeting.

Section 7. Sub-Committees of the Board.

The Board may designate not more than three (3) Directors to constitute an official sub-committee of the Board to exercise such authority of the Board as may be specified in any resolution. It is provided, however, that any sub-committee shall function as a recommending body only. Final official action of Visit McKinney may be exercised only by the Board. The sub-committees may include Alternate Board members if such members are approved by a majority of the Board.

Section 8. Compensation.

Officers of the Board shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual and reasonable expenses incurred in the performance of their duties hereafter. Other officers who are not members of the Board may be compensated as directed by the Board.

Section 9. Personnel.

Visit McKinney may establish full-time and part-time personnel positions. Personnel positions so established shall be reflected in the Annual Corporate Budget and approved accordingly, as referenced in Article VI Section 2 of these Bylaws. Personnel shall be employees of the City of McKinney and subject to all provisions of the City personnel policies and the City Charter. The Board may execute an Administrative Services Agreement with the City of McKinney for the provision of such employees. The Executive Director, as established in Section 10, herein, has supervision of and authority regarding such personnel for all purposes.

Section 10. Executive Director.

- (a) The Executive Director shall be a salaried employee of the Board, whose compensation shall be fixed from time to time by the Board, and shall be an employee of the City of McKinney and subject to all provisions of the City Employment Handbook, other personnel policies, and the City Charter. The Executive Director shall be the chief executive officer of Visit McKinney responsible for all daily operations and the implementation of Board policies and resolutions. The Executive Director shall attend all called Board meetings. The Executive Director shall have, subject to the powers of the Board of Directors: (i) general supervision and control over the entire business of Visit McKinney; (ii) employ, fix the compensation of and discharge all employees, including but not limited to an Executive Assistant; (iii) perform all of the duties; and (iv) exercise all of the powers usually incident to the office or which may be assigned to the Executive Director by the Board of Directors. The Executive Director shall be hired based on demonstrated professional qualifications and have the authority to sign all Board-authorized contracts and other written instruments consistent with the annual budget approved by the Board of Directors and the City Council. For expenses outside of the approved budget, the Executive Director may approve up to \$5,000. For expenses outside of the approved budget, the Executive Director, with the joinder of the Chair, may approve between \$5,001 and \$10,000. All expenses outside of the approved budget in excess of \$10,000 shall require Board approval. The Executive Director shall report to the Board at its meetings the progress and affairs of Visit McKinney.
- (b) The Executive Director shall not have been an appointed member of the Board for one (1) year prior to being hired as Executive Director. The Executive Director shall work with the finance committee to prepare the annual budget and shall submit the proposed budget by August 1 to the Board of Directors for approval. Upon approval of the proposed budget by the Board, the Executive Director shall submit the proposed budget to the City Council for review and consideration for final approval. The Executive Director shall also submit to the Board of Directors timely financial statements, including but not limited to a comparative analysis of actual versus budgeted income and expenses.

**ARTICLE V
OFFICERS**

Section 1. Titles and Terms of Office.

- (a) The officers of Visit McKinney shall be a Chair, a Vice Chair, a Secretary-

Treasurer and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the Chair shall not hold any other office.

- (b) Terms of officers shall be one (1) year, ending September 30, with the right of the officer to be re-elected.
- (c) All officers shall be elected by and subject to removal from office at any time by a vote of a majority of the entire Board.

Section 2. Chair.

The Chair shall be a member of the Board and shall:

- (a) Preside over all meetings of the Board.
- (b) Vote on all matters coming before the Board.
- (c) Upon notice to the members of the Board, call a Special Meeting of the Board when in his or her judgment such a meeting is required.
- (d) Appoint, with Board approval, sub-committees to aid and assist the Board in its business undertakings or other matters incident to the operation and functions of the Board.

Section 3. Vice Chair.

The Vice Chair shall be a member of the Board and shall exercise the powers of the Chair during the Chair's absence, refusal, or inability to act. Any action taken by the Vice Chair in the performance of the duties of the Chair shall be conclusive evidence of the Chair's absence or inability or refusal to act at the time such action was taken.

Section 4. Secretary-Treasurer.

The City's Finance Department shall have the responsibility for the disbursement, custody, and security of all funds and securities of Visit McKinney in accordance with these Bylaws and statutes governing Visit McKinney formed under the Act. The Executive Director or his/her designee shall maintain the financial reports provided by the City's Finance Department. The Executive Assistant shall, at the expense of Visit McKinney, give such bond for the faithful discharge of his/her duties in such form and amount as the Board may require. In addition, the Executive Assistant or his/her designee shall prepare the minutes of all meetings of the Board, shall give and serve all notices, may attest to the signature of the Chair and/or Executive Director on all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of Visit McKinney, shall have charge of the corporate books, records, documents and instruments, except the papers as the Board may direct, all of which shall at all reasonable time be open to public inspection upon application at the office of Visit McKinney during business hours.

Section 5. Election of Officers.

The Chair, Vice Chair, and Secretary-Treasurer shall be elected from among the members of the Board at their first meeting after October 1st of each year.

Section 6. Ex Officio Members.

The City Council may designate Ex Officio members from among the City Council members. The Ex Officio members may attend all meetings of the Board or sub-committees, and shall have the right to take part in any discussion, but shall not have the power to vote.

**ARTICLE VI
FUNCTIONAL CORPORATE DUTIES
AND REQUIRMENTS**

Section 1. Annual Report.

Visit McKinney shall prepare an annual report on or before the first day of April of each year for the City Council, outlining the accomplishments of Visit McKinney's activities of the previous fiscal year as they relate to the development of tourism projects and initiatives for the City of McKinney in conformance with the mission and the goals of the Board.

Section 2. Annual Corporate Budget.

On or before August 1st of each year, the Board shall adopt a proposed budget of expected revenues and proposed expenditures of the next ensuing fiscal year. The proposed budget shall not be effective nor shall expenditures occur until the same has been approved by the City Council.

Section 3. Books, Records, Audits.

- (a) The City's Finance Department shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts and financial statements pertaining to its corporate funds, activities, and affairs. Notwithstanding Article V Section 4, Visit McKinney may maintain any financial records solely at the City offices.
- (b) The books, records, accounts, and financial statements of Visit McKinney shall be audited at least once each fiscal year by an outside, independent auditing and accounting firm approved by the City. The audit may be prepared in conjunction with the annual financial audit of the City of McKinney.

Section 4. Deposit and Investment of Corporate Funds.

- (a) All proceeds from the issuance of bonds, notes, or other debt instruments ("Obligations") issued by Visit McKinney shall be deposited and invested as provided in any resolution, order, indenture, or the other documents authorizing or relating to any such issuance.
- (b) All other monies of Visit McKinney shall be deposited, secured and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City and in compliance with the Public Funds Investment Act. The Board shall designate authorized signatures on all payment authorization and/or check requests. The accounts reconciliation and investment of such funds and accounts may be reviewed by the Finance Department of the City, at the City's expense. The Board may maintain a separate City account for revenues which are derived from sources other than municipal hotel occupancy taxes received under the Code.

Section 5. Expenditures of Corporate Money.

The monies of Visit McKinney, including, but not limited to, municipal hotel occupancy taxes collected by the City pursuant to the Code, monies derived from Visit McKinney contracts, monies derived from the repayment of loans, rents or contract revenues received from the lease or use of property, proceeds from the investment of funds of Visit McKinney, proceeds from the sale of property, and proceeds derived from the sale of Obligations, may be expended by Visit McKinney for any purposes authorized by the Code, these Bylaws, or by other applicable laws, including but not limited to the Texas Non-Profit Corporation Act. All proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required in Section 2 of this Article.

Section 6. Conflict of Interest.

The members of the Board are local public officials within the meaning of the Texas Local Government Code, Chapter 171. If a Director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board, the Director shall file an affidavit with the Secretary of Visit McKinney as to the nature and extent of the interest. Such affidavit shall be filed prior to any vote or decision upon the matter of the Board, and the interested Director shall abstain from any vote, decision or discussion upon the matter.

Section 7. Gifts.

The Board may accept on behalf of Visit McKinney, any contribution, gift, bequest, or devise for the general purposes or for any special purposes of Visit McKinney in accordance with the Texas Ethics Commission's Laws for State Officers & Employees.

**ARTICLE VII
COMMITTEES**

Section 1. Finance Committee.

Annually the Chair shall recommend and the Board shall elect the members of the Finance Committee. Each member of the Finance Committee shall be a member of the Board. The Secretary-Treasurer shall be a standing member of the Finance Committee. The Finance Committee shall have three (3) members, as determined by the Board.

The Finance Committee shall oversee the annual audit of Visit McKinney's financial statements prepared by an independent certified public accountant or accounting firm and prepared in accordance with generally accepted accounting principles. Also, the Finance Committee shall oversee the preparation of the annual budget and shall review Visit McKinney's financial position and make recommendations and reports regarding these matters to the Board. The final approval of the annual budget shall remain with the Board and the City Council as stated in Article VI, Section 2.

Section 2. Marketing Committee

Annually the Chair shall recommend and the Board shall elect the members of the Marketing Committee. Each member of the Marketing Committee shall be a member of the Board. The Marketing Committee shall have three (3) members, as determined by the Board.

The Marketing Committee meets on an as-needed basis, to review and discuss: Marketing and/or advertising opportunities to generate increased tourism; website updates and/or design changes; new channels of exposure to generate tourism (i.e. social media influencers). Additionally, the Marketing Committee meets to review the grant applications twice a year and make recommendations to the Board (at the following meeting) on best use of the grant money available for that cycle.

Section 3. Human Resources Committee

Annually the Chair shall recommend and the Board shall elect the members of the Human Resources (HR) Committee. Each member of the HR Committee shall be a member of the Board. The HR Committee shall have three (3) members, as determined by the Board.

The HR Committee is called upon by the Board Chair at times of need related to an Executive Director search, bylaws review, or development or oversight of policies or procedures. The HR Committee Chair shall assist with the annual review of the Executive Director.

Section 4. Other Committees.

The Board may designate by a resolution adopted by a majority of the Directors in office any other committees deemed necessary or prudent. Each such committee shall consist of two (2) or more Board members and such other persons as selected by the Board. Committees designated by this section shall not have or exercise the authority of the Board in the management or operation of Visit McKinney.

**ARTICLE VIII
DISSOLUTION**

Section 1. Procedure.

The Board shall adopt a resolution recommending that Visit McKinney be dissolved. Upon adoption of the resolution by the Board and approval thereof by the City Council, notice of dissolution shall be mailed to each known creditor of and claimant against Visit McKinney.

Section 2. Distribution of Assets.

The assets of Visit McKinney shall be applied as follows: (i) all liabilities and obligations of Visit McKinney shall be paid, satisfied and discharged; and (ii) assets held by Visit McKinney upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements. The remaining assets, if any, shall be distributed to the City, and all financial records and other documents and information held by Visit McKinney shall be transferred to the City.

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

Section 1. Fiscal Year.

The fiscal year of Visit McKinney shall be the same as the fiscal year of the City.

Section 2. Seal.

The seal of Visit McKinney shall be determined by the Board.

Section 3. Resignations.

Any Director or officer may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein; or, if no time be specified, at the time of its receipt by the City Council. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 4. Approval or Advice and Consent by the Council.

To the extent that these Bylaws refer to any approval by the City Council or refer to advice and consent by the City Council, such advice and consent shall be evidenced by a certified copy of a resolution, order or motion duly adopted by City Council.

Section 5. Services of City Staff and Officers.

Visit McKinney shall have the right to utilize the services of City personnel for usual and routine matters, provided that the performance of such service does not materially interfere with the other duties of such personnel of the City. Subject to approval of the City Manager or the City Council, Visit McKinney may utilize the services of City personnel for unusual and non-routine matters. Visit McKinney shall pay reasonable compensation to the City for such services or use of any City personnel.

Section 6. Indemnification of Directors, Officers and Employees.

- (a) As provided in the Articles of Incorporation, Visit McKinney is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.
- (b) Visit McKinney shall indemnify each and every member of the Board, its officers, its employees, its attorneys, each member of City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of Visit McKinney.
- (c) Visit McKinney may purchase and maintain insurance on behalf of any Board member, officer, employee or agent of Visit McKinney, or on behalf of any person serving at the request of Visit McKinney as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such capacity or arising out of any such status with regard to Visit McKinney, whether or not Visit McKinney has the power to indemnify that person against liability for any of those acts.
- (d) Any indemnification or liability insurance provided under this Section may be obtained through the City's general insurance coverage.

Section 7. Legal Construction.

These Bylaws shall be construed in accordance with the laws of the State of Texas. All references in these Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 8. Severability.

If any provision or section of these Bylaws is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision, and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

Section 9. Parties Bound.

The Bylaws shall be binding upon and inure to the benefit of the Directors, officers and agents of Visit McKinney and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise provided herein.

Section 10. Applicability of City Charter, Policies and Procedures.

The City Charter and all duly approved City policies and procedures shall apply directly to Visit McKinney and the Board unless such charters, policies or procedures are superseded by state law or are not related to the functions of the Board. The Board has the discretion, subject to the approval of the City Council, to adopt other policies and procedures in addition to or in place of these policies and procedures of the City.

ARTICLE X
EFFECTIVE DATE, AMENDMENTS

Section 1. Effective Date.

These Bylaws shall become effective upon the occurrence of all of the following events:

- (a) the adoption of these Bylaws by the Board; and
- (b) the approval and adoption of these Bylaws by the City Council.

Section 2. Amendments to Articles of Incorporation and Bylaws.

The Articles of Incorporation of Visit McKinney and these Bylaws may be amended or repealed and amended Articles of Incorporation and Bylaws may be adopted by an affirmative vote of at least four (4) Board members present at any regular meeting or any special meeting, if at least three (3) days electronic notice is given of an intention to amend or repeal the articles of incorporation and bylaws or to adopt new articles of incorporation and bylaws at such meeting. Any amendment of the articles of incorporation and bylaws will be effective upon approval by the City Council.

Adopted this the ____ day of _____, 2022.

By: _____
Name: _____
Chair, Visit McKinney Board of Directors

Attest:

By: _____
Name: _____
Secretary-Treasurer, Visit McKinney Board of Directors