

ORDINANCE NO. 2021-07-\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 70, ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS" OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF EXISTING ARTICLE V, ENTITLED "NOISE" BY AMENDING SUBPARAGRAPH 70-120(b)(6)e. AND SUBPARAGRAPH 70-120(b)(6)f. TO AUTHORIZE THE DIRECTOR OF ENGINEERING OR CHIEF BUILDING OFFICIAL TO ALLOW THE PLACEMENT OF CONCRETE OUTSIDE OF A QUIET ZONE BETWEEN 9:00 PM AND 6:00 AM; AS SET FORTH HEREIN BELOW; REPEALING ALL CONFLICTING ORDINANCES; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City adopted the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), for the protection of the public health and general welfare of the people of the City; and

**WHEREAS**, the City Council of the City of McKinney, Texas (the "City Council") enacted Chapter 70 of the McKinney Code, making it unlawful for any person or entity to make, cause to be made, or allow any loud or unreasonably loud and disturbing noise of such character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the inhabitants of the city, and/or which renders the enjoyment of life, health or property uncomfortable or interferes with public peace and comfort; and

**WHEREAS**, the City Council now recognizes that modifications to requirements are necessary to facilitate construction activity where there is minimal impact on the surrounding area; and

**WHEREAS**, the City Council finds and determines that amending Section 70-120 of the McKinney Code to allow the Director of Engineering and the Chief Building Official to grant an exception to permit concrete placement between 9:00 p.m. and 6:00 a.m. in certain circumstances (1) on public rights-of-way or public easements and (2) on private property, respectively, is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if set forth in their entirety, and that the Code of Ordinances, City of McKinney, Texas, is hereby amended as follows.

Section 2. From and after the effective date of this Ordinance, Chapter 70 "Offenses and Miscellaneous Provisions" is hereby amended by deleting Subparagraph (b)(6)e. of Section 70-120, "Specific Noise Disturbance Prohibited" in its entirety and replacing said subparagraph with a new Subparagraph (b)(6)e to read as follows:

“e. The Director of Engineering or his designee may grant an exception to the provisions of Section 70-120(b)(6)b. to allow for concrete placement between the hours of 9:00 PM and 6:00 AM if the construction is not within a quiet zone and the construction is in the public right of way or easement, or if denial of an exception will cause an adverse impact to public safety.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.”

Section 3. From and after the effective date of this Ordinance, Chapter 70 “Offenses and Miscellaneous Provisions” is hereby amended by deleting Subparagraph (b)(6)f. of Section 70-120, “Specific Noise Disturbance Prohibited” in its entirety and replacing said subparagraph with a new Subparagraph (b)(6)f to read as follows:

f. The Chief Building Official or his designee may grant an exception to the provisions of Section 70-120(b)(6)b. to allow for concrete placement between the hours of 9:00 PM and 6:00 AM if the construction is not within a quiet zone and is on private property, or if denial of an exception will cause an adverse impact to public safety.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.

Section 4. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 5. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 7. All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this Ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 8. Any violation of this Ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Ordinance or in the Code of the City of McKinney.

Section 9. Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-

18 of the McKinney Code; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 10. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 11. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 6<sup>TH</sup> DAY OF JULY, 2021.**

CITY OF MCKINNEY, TEXAS

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GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

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EMPRESS DRANE  
City Secretary  
JOSHUA STEVENSON  
Deputy City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney