

ORDINANCE NO. 2020-06-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 14, ENTITLED "ALCOHOLIC BEVERAGES," OF THE CODE OF ORDINANCES, CITY OF MCKINNEY, TEXAS, BY DELETING SECTION 14-20, "ON STREETS," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 14-20 ENTITLED "UNLAWFUL IN CITY-OWNED BUILDINGS, CITY-OWNED STRUCTURED PARKING GARAGES, CITY-OWNED PARKS, AND CITY-OWNED PARK FACILITIES"; BY DELETING SECTION 14-21, "ON PUBLIC PLACES," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 14-21, ENTITLED "LAWFUL ON PUBLIC PLACES"; AND BY DELETING SECTION 14-23, "CONSUMPTION, POSSESSION FOR CONSUMPTION PERMITTED DURING EXTENDED HOURS," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 14-23, ENTITLED "HOURS OF CONSUMPTION"; REPEALING CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has previously established rules and regulations regarding the sale and consumption of alcoholic beverages, which ordinance is codified in Chapter 14 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"); and

WHEREAS, the Texas Alcoholic Beverage Code generally preempts a city's right to regulate the sale, possession, and consumption of alcoholic beverages; and

WHEREAS, the Texas Legislature recently modified the provisions of the Texas Alcoholic Beverage Code regarding the possession of an open container or the public consumption of alcoholic beverages in the city; and

WHEREAS, the City of McKinney's historic downtown business district, identified in the attached Exhibit A, is a source of civic pride and a catalyst for tourism and economic development in the area; and

WHEREAS, the Texas Governor issued certain orders to encourage restaurant patrons to obtain "to go" orders from local restaurants during the COVID-19 pandemic by allowing restaurants, which were closed to dine-in patrons, to sell alcoholic beverages with a food order "to go"; and

WHEREAS, the Texas Governor's orders currently limit the dine-in occupancy of restaurants to fifty percent (50%) of their usual dine-in area; and

WHEREAS, the Texas Governor's orders currently limit the occupancy allowed in the various retail shops and businesses in the historic downtown business district to fifty percent (25%) of their usual sales area; and

WHEREAS, the retail shops, businesses and restaurants in the historic downtown business district, in particular, rely heavily on tourists, visitors from other communities, and residents from other areas of the City of McKinney to remain in business; and

WHEREAS, the COVID-19 pandemic has resulted in a reduction in the number of visitors to the historic downtown business district; and

WHEREAS, amending the City's regulations to allow the possession of an open container or the public consumption of alcoholic beverages in the historic downtown business district will encourage more people to dine, visit, shop, and purchase items in the historic downtown business district and throughout McKinney; and

WHEREAS, the City Council of the City of McKinney finds and determines that certain amendments to the City’s regulations regarding the possession of an open container or the public consumption of alcohol is necessary to remain consistent with the amendments to the Texas Alcoholic Beverage Code, encourage the restart of the economy in the historic downtown business district, and in the best interest of the public health, safety, and general welfare of the citizens of the City of McKinney, as provided herein below.

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

Section 1. All of the above premises are hereby found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 14, “Alcoholic Beverages,” of the McKinney Code is hereby amended by deleting Section 14-20, “On Streets,” in its entirety and replacing said section with a new Section 14-20, entitled “Unlawful in City-Owned Buildings, City-Owned Structured Parking Garages, City-Owned Parks, and City-Owned Park Facilities,” to read as follows.

“Sec. 14-20. – Unlawful in City-Owned Buildings, City-Owned Structured Parking Garages, City-Owned Parks, and City-Owned Park Facilities.

It shall be unlawful for any person to consume any alcoholic beverage in city-owned buildings, city-owned structured parking garages, city-owned parks save and except Mitchell Park and Central Park, and city-owned park facilities with the following specific exceptions:

- (1) *McKinney Performing Arts Center.* The alcoholic beverage is consumed within the McKinney Performing Arts Center at the Historic Collin County Courthouse where the appropriate permit has been obtained from the city secretary and the state when available for purchase;
- (2) *Sidewalk use permit.* A type A sidewalk use and fence permit has been issued in accordance with section 122-181(a) of the Code of Ordinances of the City of McKinney, Texas;
- (3) *Courthouse Square area.* During a Special Event being held in the Courthouse Square area, open containers may not be carried into or carried within and about the Courthouse Square area unless such alcoholic beverage is sold and dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event within Downtown McKinney on the Historic Courthouse Square ("Courthouse Square area"). During a Special Event being held in the Courthouse Square area, any alcoholic beverages that are consumed within the Courthouse Square area must have been sold and dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event within Downtown McKinney on the Historic Courthouse Square ("Courthouse Square area"). The Courthouse Square area shall be depicted on a map which shall be maintained and available in the city secretary's office and shall be made a part of this section by reference as if shown in

its entirety. The Courthouse Square area may include all or part of the McKinney Performing Arts Center at the Historic Collin County Courthouse ("MPAC") as shown on the city's special event permit application. Any such special event may be permitted for alcoholic beverages if such special event is held in conjunction with a city or Main Street sponsored event that allows alcoholic beverages to be dispensed and consumed;

- (4) *McKinney National Airport.* The alcoholic beverage is sold or dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event within the approved areas of the McKinney National Airport. The approved areas for alcohol consumption at the McKinney National Airport shall be depicted on a map which shall be maintained and available in the city secretary's office and shall be made a part of this section by reference as if shown in its entirety; or
- (5) *StarCenter Area.* The alcoholic beverage is consumed on Lot A, Block 7 of the North Texas Athletic Center Addition, including the area within the Dr Pepper StarCenter - McKinney at Craig Ranch between the hours of 5 p.m.—12:00 a.m. M—F and between 12:00 p.m.—12:00 a.m. Sa—Su unless otherwise allowed by a special use permit, where the appropriate permit has been obtained from the city secretary and the state.
- (6) *City-controlled parkland and recreation centers.* The alcoholic beverage is consumed wholly on certain specified "city-controlled parkland," defined hereinbelow, or within certain specified "recreation centers," defined hereinbelow, controlled by the city's parks and recreation department where the appropriate permit has been obtained from the city secretary and the state, if applicable, and approval for the use of the city-controlled parkland or within recreation centers has also been obtained in advance from the director of the city's parks and recreation department, or his/her designee.
 - a. *Recreation center(s).* For purposes of this section, "recreation center" means and includes the Apex Centre, McKinney Community Center, Courts of McKinney Tennis Center, Recreation Center at Old Settler's, or the Senior Recreation Center as well as the parks and recreation administrative offices and are collectively referred to as "recreation centers." Each recreation center shall maintain a separate facility policy establishing the particular rules and regulations governing alcohol sales, dispensing and consumption upon, within and about the recreation center and its appendages, property and grounds (the "policy"). Unless otherwise stated in the policy for a specific recreation center, the following provisions shall apply:
 - i. The beer and/or wine and vinous liquor is sold or dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event, programming activity, and/or management or vendor contract, with the following conditions:
 1. the entire special event and/or programming area, including the area for beer and/or wine and vinous liquor dispensing and consumption, shall

be located in an area with a defined ingress and egress point monitored by off-duty city police officers at a ratio of at least one officer per 100 anticipated patrons, or more or less as determined by the facility manager/supervisor; and

2. the sales, dispensing and consumption of alcohol shall be allowed only between the hours of 12:00 p.m.—12:00 a.m. Monday—Friday, and between 12:00 p.m.—12:00 a.m. Saturday—Sunday unless otherwise allowed by a special event permit, where the appropriate permits have been obtained from the city secretary and the state.
- b. *City-controlled parkland.* For purposes of this section, "city-controlled parkland" means and includes the following city-owned parks and any structures and buildings thereon, unless provided differently in the policy adopted by a recreation center situated within the boundaries of the city-controlled parkland:
- i. *Oak Hollow Golf Course;*
 - ii. *Towne Lake Recreation Area (230 acres);*
 - iii. *Gabe Nesbitt Community Park (160 acres);*
 - iv. *Bonnie Wenk Community Park (168 acres);*
 - v. *McKinney Soccer Complex at Craig Ranch (65 acres);*
 - vi. *Al Ruschhaupt Soccer Complex 1 & 2 (114 acres);*
 - vii. *Old Settler's Park (29 acres);*
 - viii. *Finch Park (32 acres); and*
 - ix. *Central Park (one-half acre); and*
 - x. *Mitchell Park (one acre).*

Unless otherwise stated in the policy for a specific recreation center that is situated within the boundaries of the city-controlled parkland, the following provisions shall apply:

- i. The beer and/or wine and vinous liquor is sold or dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event, programming activity, and/or management or vendor contract, with the following conditions:
 1. The entire special event and/or programming area, including the area for beer and/or wine and vinous liquor dispensing and consumption, shall be located in an area with a defined ingress and egress point monitored by off-duty city police officers at a ratio of at least one officer per 100 anticipated patrons, or more or less as

determined by the director of parks and recreation or his/her designee; and

2. The consumption of alcohol shall be allowed between the hours of 12:00 p.m.—12:00 a.m. Monday—Friday and between 12:00 p.m.—12:00 a.m. Saturday—Sunday unless otherwise allowed by a special use permit, where the appropriate permit has been obtained from the city secretary and the state.”

Section 3. From and after the effective date of this Ordinance, Chapter 14, “Alcoholic Beverages,” of the McKinney Code is hereby amended by deleting Section 14-21, “On Public Places,” in its entirety and replacing said section with a new Section 14-21, entitled “Lawful on Public Places,” to read as follows:

“Sec. 14-21. – Lawful on Public Places.

It shall be lawful for any person of legal age to possess an open container and/or consume any alcoholic beverage in a public place in accordance with applicable provisions and during those times permitted under the Texas Alcoholic Beverage Code, including Section 109.35, as amended, subject to the exceptions and prohibitions set out in Section 14-20.”

Section 4. From and after the effective date of this Ordinance, Chapter 14, “Alcoholic Beverages,” of the McKinney Code is hereby amended by deleting Section 14-23, “Consumption, Possession for Consumption Permitted During Extended Hours,” in its entirety and replacing said section with a new Section 14-23, entitled “Hours of Consumption,” to read as follows:

“Sec. 14-23. – Hours of Consumption.

It shall be unlawful for any person to consume or possess an open container with intent consume any alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon and on any other day between 2:15 a.m. and 7 a.m., as provided by Texas Alcoholic Beverage Code Section 105.06, as amended.”

Section 5. 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 6. 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 7. 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 8. 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 9. This Ordinance shall become effective from and after the date of its final passage 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 2nd DAY OF JUNE, 2020.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney