

ORDINANCE NO. 2021-01-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 146, "ZONING REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF ARTICLE IV, "SPECIAL REGULATIONS," BY AMENDING SECTION 146-134, "PERFORMANCE STANDARDS," BY AMENDING PARAGRAPH NO. (1), ENTITLED "NOISE," BY AMENDING PARAGRAPH 6 OF SUBPARAGRAPH (e), "EXEMPTIONS," BY DELETING "A MUSICAL PERFORMANCE" FROM THE LIST OF NOISES PRODUCED BY LAWFULLY SCHEDULED EVENTS THAT ARE EXEMPT FROM THE NOISE LEVEL REGULATIONS AND RE-NUMBERING THE REMAINING EXEMPTIONS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; 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 Council of the City of McKinney, Texas ("City Council"), enacted Article IV of Chapter 146 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), to identify and regulate certain lawful uses and activities of one parcel of land that might negatively impact or rise to the level of a nuisance that interferes with the lawful use of another parcel of land including, but not limited to, regulating noise levels at the boundary lines of property at certain times of the day and/or night; and

WHEREAS, the City Council finds that amending Section 146-134(1)e.6. of the McKinney Code to remove "a musical performance" from the list of noises produced by lawfully scheduled events that are exempt from noise level regulations at a parcel's boundary line is in the best interest of the health, safety and welfare of the citizens of the City.

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

Section 1. FINDINGS

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. CHAPTER 146, "ZONING REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, IS HEREBY AMENDED BY AMENDING SECTION 146-134, "PERFORMANCE STANDARDS," BY AMENDING PARAGRAPH NO. (1), ENTITLED "NOISE," BY AMENDING PARAGRAPH 6 OF SUBPARAGRAPH (e), "EXEMPTIONS," BY DELETING "A MUSICAL PERFORMANCE" FROM THE LIST OF NOISES PRODUCED BY LAWFULLY SCHEDULED EVENTS THAT ARE EXEMPT FROM THE NOISE LEVEL REGULATIONS AND RE-NUMBERING THE REMAINING EXEMPTIONS

From and after the effective date of this Ordinance, Section 146-134, "Performance Standards" is hereby amended by deleting the exemption for "a musical performance" in Section 146-134(1)e.6.(iv) and re-numbering the remaining exemptions such that Section 146-134(1)e.6. hereafter reads as follows:

- “6. Noises produced by lawfully scheduled events in full compliance with all issued permits including, but not limited to:
- (i) A stadium or sporting event;
 - (ii) A school-sponsored event;
 - (iii) An amphitheater event;
 - (iv) An event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the city; and
 - (v) A special event as defined by the Code of Ordinances.”

Section 3. **REPEALER CLAUSE**

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 4. **SEVERABILITY CLAUSE**

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 5. **IMMUNITY**

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 6. **INJUNCTIONS**

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 7. **PENALTY**

Any person, firm or corporation violating or failing to comply with any of the provisions of this ordinance shall be subject to the penalty provisions set forth in Section 70-124 of the McKinney Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Section 8. **PUBLICATION OF THE CAPTION**

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. **EFFECTIVE DATE**

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 ____ DAY OF JANUARY, 2021.

CITY OF MCKINNEY, TEXAS

GEORGE FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney