

ORDINANCE NO. 2014-03-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 14, ENTITLED "ALCOHOLIC BEVERAGES," THROUGH THE AMENDMENT OF ARTICLE II, ENTITLED "UNLAWFUL CONSUMPTION," BY DELETING SECTION 14-21(4), "SIDEWALK USE PERMIT," AND REPLACING SAID SECTION WITH A NEW SECTION 14-21(4), ALSO ENTITLED "SIDEWALK USE PERMIT," TO RELOCATE THE SIDEWALK USE PERMIT PROVISIONS TO ANOTHER CHAPTER; THROUGH THE AMENDMENT OF CHAPTER 122, ENTITLED "CONSTRUCTION REGULATIONS," THROUGH THE AMENDMENT OF ARTICLE IV, ENTITLED "FENCES," BY CREATING SECTION 122-181, ENTITLED "SIDEWALK USE AND FENCE PERMITS," RELATING TO SIDEWALK USE PERMITS AS SET FORTH HEREIN BELOW; AND BY AMENDING APPENDIX A "SCHEDULE OF FEES," TO ESTABLISH ADMINISTRATIVE FEES FOR FENCE INSTALLATION AND SIDEWALK LEASE AGREEMENTS AS PERMITTED UNDER SECTION 122-175, "PERMITS," OF THE CODE OF ORDINANCES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND PROVIDING 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 XI, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City of McKinney adopted a Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

**WHEREAS**, the City Council of the City of McKinney recognizes that the downtown area has been revitalized due to the McKinney Performing Arts Center and the reconfiguration of the downtown square; and

**WHEREAS**, the City Council of the City of McKinney adopted Ordinance No. 2007-06-055 on June 5, 2007, which ordinance was most recently amended by Ordinance No. 2012-03-009, to allow restaurants and wineries holding a valid T.A.B.C. permit to receive a sidewalk use permit in order to serve alcoholic beverages at tables in front of their establishments; and

**WHEREAS**, the City Council of the City of McKinney now desires to allow food service establishments holding a valid food service establishment permit, which do not hold a valid T.A.B.C. permit, to also receive a sidewalk use permit in order to allow outside seating in front of their establishments; and

**WHEREAS**, the City Council of the City of McKinney has determined that it is in the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that the City's Code of Ordinances be amended to promote the purposes described hereinabove.

**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 and factual findings of the City of McKinney and are hereby approved and incorporated into the body of this Ordinance as if restated in their entirety.

Section 2. From and after the effective date of this Ordinance, Section 14-21(4), "Sidewalk Use Permit," of the Code of Ordinances of the City of McKinney,

Texas is hereby deleted in its entirety and replaced with a new Section 14-21(4), also entitled "Sidewalk Use Permit," to read as follows:

"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;"

Section 3. From and after the effective date of this Ordinance, Section 122-181 shall be created to read as follows:

**"Sec. 122-181. Sidewalk Use and Fence Permits.**

(a) Type A Sidewalk Use and Fence Permits. Type A Sidewalk Use and Fence Permits shall be issued in accordance with all of the following requirements:

1. The holder of a valid Texas Alcoholic Beverage Code permit must apply for and receive a Type A Sidewalk Use and Fence Permit pursuant to the process established by the city secretary;
2. The permit applicant must be the owner or lessor of a business located within the Type A Sidewalk Use and Fence Permit Zone;
3. For purposes of this section, the zone in which a Type A Sidewalk Use and Fence Permit may be applied for and granted is hereby set forth in Figure 5 below;

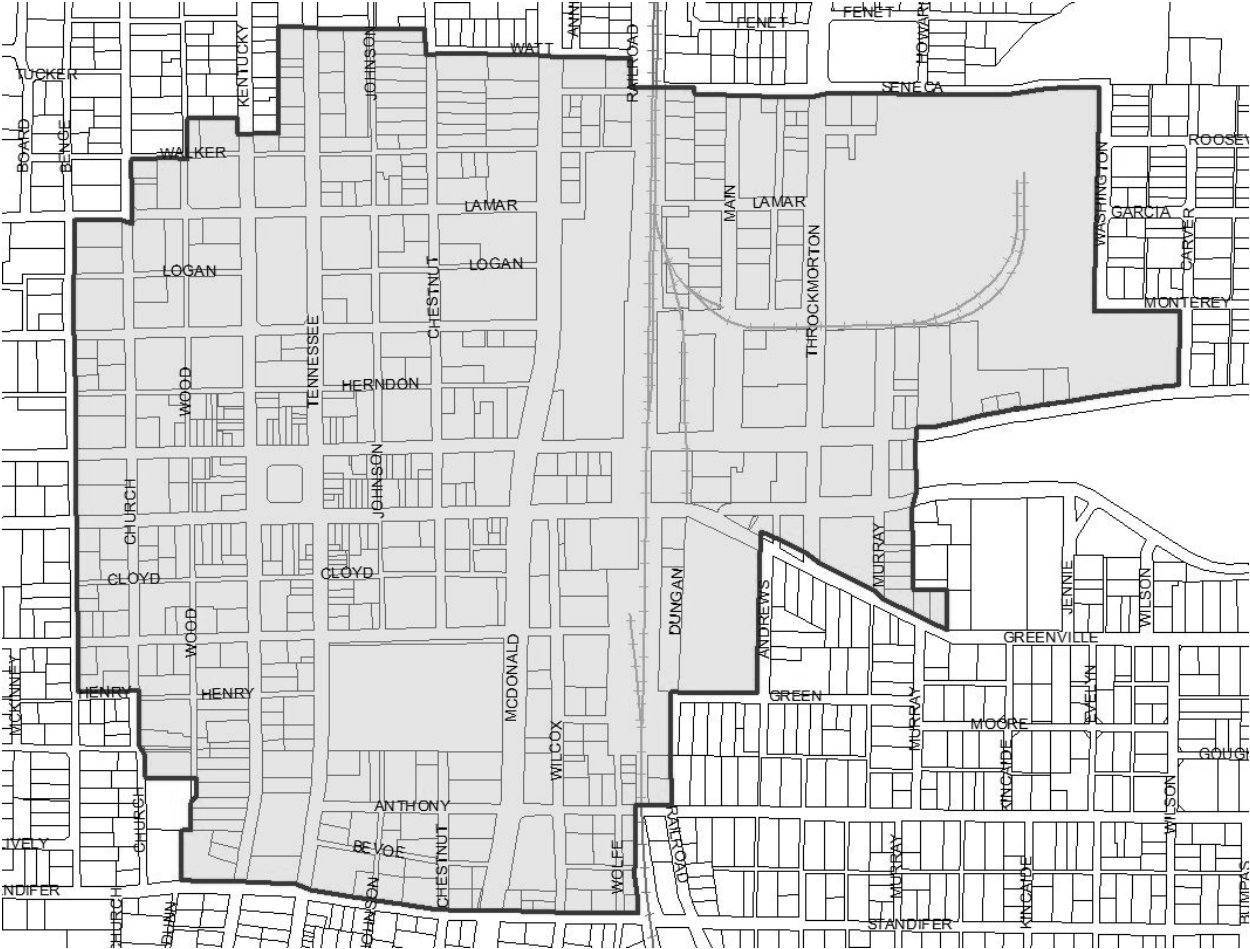


Figure 5

4. A 36-inch tall fence is required around the sidewalk use permit area and must receive a written determination of suitability from the City of McKinney Town Center Development Coordinator prior to installation;
5. Signage must be posted indicating that alcoholic beverages may not be removed from the fenced area;

6. The sidewalk use and fence permit area shall be monitored by an employee at all times to ensure that no alcoholic beverages are removed from the sidewalk use permit area;
7. The sidewalk use and fence permit area must maintain a minimum five-foot (5') wide free and clear pedestrian path between the face of the enclosure and the back of the curb unless otherwise approved, on a case-by-case basis, by the Town Center Development Coordinator or as specifically described in Figure 7 below.
8. The city secretary may revoke a sidewalk use permit at any time. A person/business aggrieved by the revocation of a sidewalk use and fence permit may appeal the revocation to the city manager, whose decision shall be final; and
9. A sidewalk use and fence permit shall expire on the date specified in the executed sidewalk lease agreement, but may be renewed without the necessity of complying with the application process set forth in subsection (a)1 of this section, if the permit holder has not plead guilty or no contest to and/or has not been convicted of any alleged violation of this ordinance.

(b) Type B Sidewalk Use and Fence Permits. Type B Sidewalk Use and Fence Permits shall be issued in accordance with all of the following requirements:

1. The holder of a valid food service establishment permit pursuant to Section 46-2(c) of the Code of Ordinances of the City of McKinney, Texas for which the primary function of the business is the sale and consumption of food must apply for and receive a Type B Sidewalk Use and Fence Permit pursuant to the process established by the City Secretary;
2. The permit applicant must be the owner or lessor of a food service establishment located within the Type B Sidewalk Use and Fence Permit Zone;
3. For purposes of this section, the zone in which a Type B Sidewalk Use Permit may be applied for and granted is hereby set forth in Figure 6 below.

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Figure 6

4. Barriers shall be erected to enclose the sidewalk use permit area and must receive a written determination of suitability from the City of McKinney Town Center Development Coordinator prior to installation. Said barriers may include but not be limited to, fencing that reaches a height of 36 inches, or benches or other barriers that reach a minimum of 20 inches in height and a maximum of 42 inches in height. Living plant screens shall not be an acceptable barrier material;
5. The sidewalk use and fence permit area must maintain a minimum five-foot (5') wide free and clear pedestrian path between the face of the barrier and the back of the curb unless otherwise approved, on a case-by-case basis, by the Town Center Development Coordinator or as specifically described in Figure 7 below.

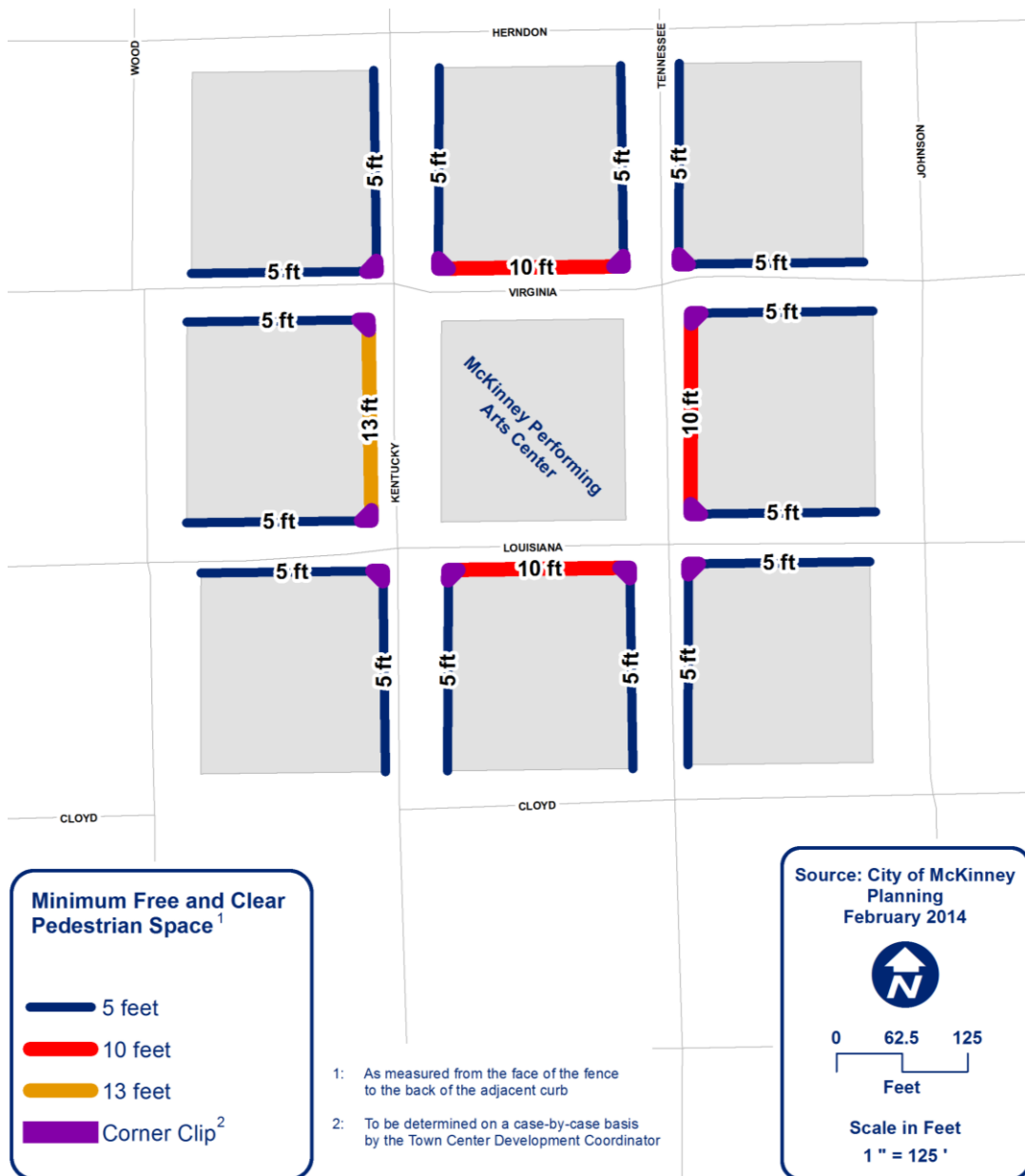


Figure 7

6. Signage must be posted indicating that alcoholic beverages are not allowed within the sidewalk use and fence area;
7. The sidewalk use and fence permit area shall be monitored by an employee to ensure that no alcoholic beverages are brought into the sidewalk use and fence permit area;
8. The city secretary may revoke a sidewalk use and fence permit at any time. A person/business aggrieved by the revocation of a sidewalk use permit may appeal the revocation to the city manager, whose decision shall be final; and
9. A sidewalk use and fence permit shall expire on the date specified in the executed sidewalk lease agreement, but may be renewed without the necessity of complying with the application process set forth in subsection b(1) of this section if the permit holder has not plead guilty or no contest to and/or has not been convicted of any alleged violation of this ordinance."

Section 4. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees, Section 122-175, "Permits," of the Code of Ordinances of the City of McKinney, Texas is hereby amended to add a provision regarding the fee for a Sidewalk License Agreement such that said provision shall hereafter read as follows:

"Sec. 122-175. Permits.

Fence installation permit fee .....20.00  
Sidewalk lease agreement fee .....10.00”

- Section 5. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, Texas, shall be punished by a fine not to exceed the sum of five hundred dollars (\$ 500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- 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. 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 8. 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 9. 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 10. 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 11. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective upon publication.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THIS THE 4<sup>th</sup> DAY OF MARCH, 2014.**

CITY OF MCKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary

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

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney