

ORDINANCE NO. 2018-02-\_\_\_\_\_

**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, "ALCOHOLIC BEVERAGES," ARTICLE III, "LAWFUL SALE OF ALCOHOLIC BEVERAGES," BY AMENDING SECTION 14-54, ENTITLED "HOURS OF OPERATION," OF THE MCKINNEY CODE OF ORDINANCES TO EXTEND THE HOURS FOR THE SALE OF BEER AND WINE FOR OFF-PREMISE CONSUMPTION, AND THE SALE OF MIXED BEVERAGES IN A RESTAURANT WITH A FOOD AND BEVERAGE CERTIFICATE, AND BY AMENDING APPENDIX A, "FEE SCHEDULE;" ESTABLISHING VIOLATIONS AND PENALTIES; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INJUNCTIONS; PROVIDING FOR 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 Texas Local Government Code and its Home Rule Charter; and

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

**WHEREAS**, voters in the City Council of the City of McKinney, Texas (the "City Council") have previously approved the sale of beer for off-premise consumption, and the sale of mixed beverages in a restaurant with a food and beverage certificate; and

**WHEREAS**, the City Council investigated and determined that there is a demand from mixed beverage permit holders in the City to operate until 2:00 A.M.; and

**WHEREAS**, the City Council has investigated and determined that it is in the best interest of the City and its citizens to authorize extended hours sales for mixed beverage late hours permit holders in the City; and

**WHEREAS**, the City Council is of the opinion that the Alcoholic Beverages Chapter, Chapter 14 of the Code of Ordinances, City of McKinney, Texas, should be amended to authorize the sale of beer and wine by holders of retail dealer's on-premise late hours licenses in a restaurant with a food and beverage certificate between 1:00 A.M. and 2:00 A.M on Sundays and 12:00 P.M. and 2:00 A.M. on any other day and the sale of mixed alcoholic beverages by holders of mixed beverage late hours permits in a restaurant with a food and beverage certificate until 2:00 A.M. on any day in the City provided that such license holders also possess a food and beverage certificate pursuant to Section 105.03(d) of the Texas Alcoholic Beverage Code and as set forth 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 found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Section 14-53, entitled "Permit renewal; permit renewal fee," of Article III, "Lawful Sale of Alcoholic Beverages," of Chapter 14, "Alcoholic Beverages," of the Code of Ordinances of the City of McKinney, Texas, is hereby deleted in its

entirety and replaced with a new Section 14-53, entitled "Permit; permit fee," to hereafter read as follows:

**"Sec. 14-53. Permit; permit fee.**

- (a) All permits shall be issued on an annual basis. All permits shall terminate at midnight on the day before the anniversary date of their issuance and no permit shall be issued covering a term longer than one year.
- (b) The city shall require payment of an annual permit fee by all establishments selling alcoholic beverages within the city. This fee shall be equal to one-half of the state fee required by the state alcoholic beverage commission of every person that may be issued any state permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any beer, wine or mixed beverage, unless a different fee is allowed or required by state law.
- (c) The city secretary may cancel a permit if a permittee fails to pay the permit fee. The city secretary shall send notice of such cancellation to the address on file with the permit application.
- (d) A permittee who sells an alcoholic beverage without first having paid the permit fee under this section commits a misdemeanor punishable by a fine of up to \$200.00."

Section 3. From and after the effective date of this Ordinance, Section 14-54, entitled "Hours of Operation," of Article III, "Lawful Sale of Alcoholic Beverages," of Chapter 14, "Alcoholic Beverages," of the Code of Ordinances of the City of McKinney, Texas, is hereby deleted in its entirety and replaced with a new Section 14-54, also entitled "Hours of Operation," to hereafter read as follows:

**"Sec. 14-54. Hours of Operation.**

- (a) The hours of sales of alcoholic beverages in the city shall comply with state law provisions regarding the sale of alcoholic beverages.
- (b) *Wine and Beer Late Hours.* The holder of a retail dealer's on-premise late hours license issued by the State of Texas may sell and offer to sell and serve beer and wine in a restaurant with a food and beverage certificate between the hours of 1:00 A.M. and 2:00 A.M. on Sunday and between 12:00 P.M. and 2:00 A.M. on any other day, provided that the holder complies with the Texas Alcoholic Beverage Code, as it exists or may be amended.
- (c) *Mixed Beverage Late Hours.* The holder of a mixed beverage late hours permit issued by the State of Texas may sell and offer for sale mixed beverages in a restaurant with a food and beverage certificate between the hours of midnight and 2:00 A.M. on any day, provided that the holder complies with the Texas Alcoholic Beverage Code, as it exists or may be amended."

Section 4. From and after the effective date of this Ordinance, Appendix A, Schedule of Fees, of the Code of Ordinances, City of McKinney, Texas is hereby amended by amending a paragraph entitled "Sec. 14-53. Permit Renewal; Permit Renewal Fee", which shall read as follows:

**“Sec. 14-53. Permit; permit fee.**

The fee for an alcoholic beverage permit shall be equal to one-half of the state fee required by the state alcoholic beverage commission of every person that may be issued any state permit or license for the manufacture, distilling, brewing importing, transporting, storing, distributing or sale of any beer, wine or mixed beverage, unless a different fee is allowed or required by state law.”

- Section 5. 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 1-18 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 6. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.
- Section 7. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- Section 8. 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 9. 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 10. 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 from and after the date of its final passage and publication as provided by law.
- Section 11. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

**DULY PASSED APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 6<sup>th</sup> DAY OF MARCH, 2018.**

CITY OF MCKINNEY, TEXAS

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GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Deputy City Secretary

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

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney