

ORDINANCE NO. 2019-04-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING SECTION 146-134 (PERFORMANCE STANDARDS) OF THE ZONING REGULATIONS; ESTABLISHING PRESUMPTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, the City of McKinney adopted the 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 and the Planning and Zoning Commission have recognized that certain provisions of the Code of Ordinances should be reviewed and updated; and

WHEREAS, amendments to these provisions have been proposed and the City Council and the Planning and Zoning Commission of the City of McKinney are of the opinion that these chapters should be amended.

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

Section 1. That the Code of Ordinances, City of McKinney, Texas, Section 146-134 of the Zoning Ordinance, is hereby amended and shall read as follows:

“Sec. 146-134 – Performance Standards.

All uses in all districts shall conform in operation, location, and construction to the performance standards hereinafter specified.

(1) *Noise.*

- a. At no point at the bounding property line of a residential use shall the sound pressure level of any operation or activity exceed 65 dB(A) for daytime hours and 58 dB(A) at nighttime. At no point at the bounding property line of a non-residential use shall the sound pressure level of any operation or activity exceed 70 dB(A) for daytime hours and 60 dB(A) at nighttime.
- b. *Daytime hours.* Daytime shall refer to the hours between 6:00 a.m. and 9:00 p.m. on any given day.
- c. *Boundary property line.* The bounding property line shall be the nearest property line of the property on which the noise is being generated.
- d. *Noise measurement.* Measurement of noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute.
- e. *Exemptions.* The following uses and activities shall be exempt from the noise level regulations herein specified:
 1. Noises not directly under control of the property user;
 2. Noises emanating from construction and maintenance activities during daytime hours;
 3. Noises of safety signals, warning devices, and emergency pressure relief valves;
 4. Transient noise of moving sources such as automobiles, trucks, airplanes, and railroads;
 5. Noises necessary to immediately and reasonably prevent the threat of bodily injury, death, or loss of property;
 6. Noises produced by lawfully scheduled events in full compliance with all issued permits including, but not limited to:

- a. A stadium or sporting event;
 - b. A school-sponsored event;
 - c. An amphitheater event;
 - d. A musical performance;
 - e. An event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the city; and
 - f. A special event as defined by the Code of Ordinances.
7. Reasonable activities conducted in public parks, public playgrounds, or public or private school functions; and
 8. Noises produced as part of the provision of municipal services.

(2) *Smoke and particulate matter.*

- a. No operation or use in any district shall cause, create, or allow the emission for more than three minutes in any one hour of air contaminants, which at the emission point or within the bounds of the property are:
 1. As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mines Information Circular 7118, or in violation of the standards specified by the state air control board regulations for the control of air pollution as published by the state department of health or as such regulations may be amended; or
 2. Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke or contaminants in the standard prescribed in subsection (2)a.1 of this section, except that when the presence of uncombined water is the only reason for failure to comply or when such contaminants are emitted inside a building, which prevents their escape into the outside atmosphere, the standards in subsection (2)a.1 of this section shall not apply.
- b. The open storage and open processing operations, including on-site transportation movements, which are the source of wind or airborne dust or other particulate matter, or which involve dust or other particulate air contaminant generating equipment such as used in paint spraying, grain handling, sand or gravel processing, or storage or sandblasting shall be so conducted that dust and other particulate matter so generated are not transported across the boundary line of the tract on which the use is located in concentrations exceeding four grains per 1,000 cubic feet of air.

(3) *Odorous matter.*

- a. No use shall be located or operated in any district, which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located.
- b. The odor threshold as herein set forth shall be determined by observation by a person or persons. In any case, where uncertainty may arise or where the operator or owner of an odor-emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures as specified by the American Society for Testing Materials ASTM D1391-57 entitled "Standard Method for Measurement of Odor in Atmospheres" shall be used and a copy of ASTM D1391-57 is hereby incorporated by reference.

(4) *Fire and explosive hazard material.*

- a. No use involving the manufacture or storage of compounds or products, which decompose by detonation shall be permitted in any district except that chlorates, nitrates, perchlorates, phosphorus and similar substances and compounds in small quantities for use by industry, school laboratories, druggists, or wholesalers may be permitted when approved by the fire department.

- b. The storage and use of all flammable liquids and materials such as pyroxylin plastics, nitrocellulose film, solvents, and petroleum products shall be permitted only when such storage or use conforms to the adopted fire codes and building codes of the city.
- (5) *Toxic and noxious matter.* No operation or use shall emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter which will exceed ten percent of the concentration (exposure) considered as the threshold limit for an industrial worker as such standards are set forth by the state department of health in Threshold Limit Values Occupational Health Regulation No. 3, a copy of which is hereby incorporated by reference and is on file in the office of the chief building official of the city.
- (6) *Vibration.* No operation or use shall at any time create earthborn vibration, which, when measured at the bounding property line of the source of operation, exceeds the limits of displacement set forth in the following table in the frequency ranges specified.

Frequency (cycles per second)	Displacement (inches)
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and over	0.0003

- (7) *Waste materials.* No use or operation shall discharge into the open, onto the ground, or into any drainageway, open pit, or pond any waste materials, liquids, residue, or by-products for storage, decomposition, disposal, or fill, unless approved by the chief building official.
- (8) *Allowable construction hours.* Allowable construction hours in all zoning districts shall be as follows:

Monday through Friday	6:00 a.m. to 9:00 p.m.
Saturday	8:00 a.m. to 5:00 p.m.
Sunday	1:00 p.m. to 5:00 p.m.”

Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. That 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. 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 16th DAY OF APRIL, 2019.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
MELISSA LEE
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney