

ORDINANCE NO. 2012-05-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES SECTION 138-23 PERTAINING TO AUDITS OF PRIVATE CLUBS AND SECTION 138-25 PERTAINING TO REMEDIES FOR NONCOMPLIANCE WITH REQUIREMENTS OF A SPECIFIC USE PERMITS FOR PRIVATE CLUBS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; 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, Section 138, Article II allows for that protection; and

WHEREAS, the City Council has 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 of the City of McKinney is of the opinion that this chapter should be amended.

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

Section 1. Section 138-23 of the Code of Ordinances is hereby amended and shall read as follows:

“Sec. 138-23. - Audit.

(a) The permittee of each private club in the city, which has been in operation for at least six months prior to a December 31st calendar year, shall select and engage a certified public accountant to conduct an annual audit of the operations of such private club during such period. For purposes of this Article, “audit” shall mean a professional report and analysis of the permittee’s gross receipts and sales; however it shall not mean a financial audit or audited financials as such are required under Generally Accepted Accounting Principles (GAAP) or Generally Accepted Auditing Standards (GAAS). The year upon which such audit shall be conducted shall begin January 1 and end December 31. The purpose of this audit shall be to determine whether or not the permittee has complied with the gross receipt requirements of section 138-22(a). The audit shall clearly reflect:

- (1) The total gross receipts of the permittee for the audit year from all operations on the premises for which the special use permit for a private club is issued;
- (2) The percentage of such gross receipts derived from the sale of food; and
- (3) The percentage of such gross receipts derived from the sale of alcoholic beverages.

(b) The audit shall indicate whether or not further inquiry should be made by the city into the permittee's operations to determine whether all other requirements for the operation of a private club were satisfied during the audit year.

(c) The audit shall be completed and a copy furnished to the city council through the city manager's office not later than April 1 of the year following the audit year. The audit shall be performed and a copy furnished to the city manager at the sole expense of the permittee.

(d) If not received by April 1, the city council shall have the right to select and engage a qualified accountant to perform the audit described herein. The permittee shall reimburse the city for all expenses incurred in obtaining this audit.”

Section 2. Section 138-25 of the Code of Ordinances is hereby amended and shall read as follows:

“Sec. 138-25. - Remedies for noncompliance.

- (a) At such public hearing, the permittee may appear in person, or by attorney or representative, and shall further have the right to cross examine witnesses, and to offer such evidence and testimony as he desires with regard to compliance or noncompliance as described above. Upon hearing all evidence with regard to the matter, the city council shall enter an order finding compliance or noncompliance on the part of the permittee. If the order finds compliance, the matter shall be concluded for that audit year.
- (b) If the order finds noncompliance for the audit year, the city council shall further provide for one of the following actions:
 - (1) Immediate suspension of the permittee's operation of the private club on the premises and immediate implementation of procedures to revoke and delete the special use permit for a private club designation from the zoning of the permittee's property; or
 - (2) Establishment of one or more probation period(s) the aggregate of which shall not exceed 12 months during which the permittee may continue operations under its special use permit for a private club. For overlapping reporting periods or sequential permit years of non-compliance, the probationary period(s) may run concurrently for the purposes of determining compliance for all affected periods. The purpose of the probationary period(s) is to allow the permittee to come into compliance with the requirements that were found to be noncompliant as a result of the public hearing. For any period(s) of probation ordered on or after May 1, 2012, compliance with the gross receipt requirements of Section 138-22(a) shall be established when the permittee shall have achieved the required percentage of food sales for not less than 50% of the months contained in the probationary period(s).
- (c) At the end of the probationary period(s), if same is ordered, an additional audit shall be performed at the permittee's expense. The auditor may be internal (staff member) or external and shall be selected and engaged by the City Manager. The purpose of the audit shall be to determine compliance or noncompliance of the permittee during the entire probationary period(s) with all requirements of this article.
- (d) Upon completion of such audit, the original copy shall be furnished to the city council, with a copy to the permittee.
- (e) Upon receipt by the city of an audit of a permittee's probationary period(s), the matter shall be scheduled for consideration at a city council meeting. Written notice shall be given to the permittee. The permittee, his representative or attorney shall have the right to appear at such meeting and to present any testimony or evidence regarding compliance or noncompliance with this article, or even the results of the audit, as may be desired. Upon hearing of all evidence and testimony, the city council shall enter an order finding compliance or noncompliance with the requirements of this article.
 - (1) If the order finds compliance, the probationary period(s) shall be ended and the permittee's operations under the special use permit may be continued.

(2) If the order finds noncompliance, the permittee shall immediately cease the operation of the private club on the premises. Procedures shall immediately be implemented on behalf of the city to revoke and delete the special use permit for a private club designation from the zoning for the permittee's property.

(f) A special use permit for the operation of a private club shall not be issued for a period of one year for an establishment that has had a special use permit revoked pursuant to section 138-22 or section 138-23.”

Section 3. Any person, firm or corporation who violates any section of the Code of Ordinances of the City of McKinney, Texas, as so amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not in excess of \$2,000.00, and assessed court costs as provided by law.

Section 4. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and shall become effective upon such publication.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 1ST DAY OF MAY, 2012.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney