

ORDINANCE NO. 2019-11-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING SECTIONS 30-2, 30-58, 30-176, AND 30-201 THROUGH 30-205 OF CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY REGARDING MODIFIED AIRPORT MINIMUM STANDARDS AND RULES AND REGULATIONS REGARDING THE CITY'S PROPRIETARY EXCLUSIVE RIGHTS TO PROVIDE CERTAIN AERONAUTICAL SERVICES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES, ORDERS OR RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION; 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 the Texas Local Government Code, and the City's Home Rule Charter; and

WHEREAS, the City owns the McKinney National Airport ("the airport"), a federally obligated airport, and is responsible for establishing airport rules and regulations for the safe operation of the airport and establishing minimum standards for aeronautical activities occurring at the airport; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), possesses, pursuant to applicable federal and state law, the authority to regulate airport operations; and

WHEREAS, the City has elected to provide certain aeronautical services needed by the public at the airport under its proprietary exclusive rights in accordance with the FAA Airport Compliance Order 5190.6B; and

WHEREAS, the City Council finds that the adoption of updated ordinance provisions regarding the City's exercise of its proprietary exclusive rights is in the best interest of the health, safety and welfare of the citizens of the City and of the members of the public who desire to use the airport, and is a means for financing the operation, maintenance and development of the airport and to satisfy the City's obligation under FAA grant assurances to be as self-sustaining as possible under existing circumstances.

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 hereby incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, the Code of Ordinances of the City of McKinney, Chapter 30, is hereby amended by amending Sections 30-2, 30-58, 30-176, and 30-201 through 30-205, which shall read as follows:

"Chapter 30 - AVIATION

* * *

Sec. 30-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Proprietary Exclusive Rights means the city's election, as airport sponsor and owner and operator of the airport, to provide any or all of the aeronautical services needed by the public at the airport in accordance with FAA Airport Compliance Order 5190.6B, as set forth in this chapter for any particular aeronautical activity.

* * *

Sec. 30-58. – Proprietary exclusive rights; overriding right of owner.

(a) As provided for in FAA Airport Compliance Order 5190.6B, the city, as airport sponsor and owner and operator of the airport, has exercised its proprietary exclusive right to provide certain aeronautical activities, including management of all airport property, using its own employees, vehicles, equipment and resources, as set forth in this chapter for any particular aeronautical activity.

(b) Any clause herein to the contrary notwithstanding, the city reserves the right to develop and make any improvement to the airport or to make any repairs to the airport or any facility thereon that it deems is in its and the flying public's best interest without restitution to tenants, and to make any change in any or all of these regulations and minimum standards or leases or rights granted retroactively when required by the FAA for compliance with applicable grant provisions or related governmental policies.

* * *

Sec. 30-176. - Exclusive rights.

(a) As set forth in section 30-58 of this chapter, the city has exercised its proprietary exclusive right to provide certain aeronautical activities.

(b) The city is empowered by the FAA to ensure that no person may be granted in fact or by written instrument any exclusive right prohibited by 49 U.S.C. § 40103(e). Therefore, the city declares that if the state and/or FAA determine any provision of a written instrument or a practice in fact constitutes a grant of a prohibitive exclusive right, such provision or grant shall be deemed null and void for all purposes.

* * *

Sec. 30-201. – All fuel sold by city.

(a) The city, as airport sponsor, owner and operator of the airport, has chosen to exercise its proprietary exclusive right to sell all aviation fuel products at the airport and to be the exclusive developer and operator of fuel farms at the airport. Nothing contained in this chapter shall be interpreted to be a waiver, abrogation, or otherwise inconsistent with such exclusive right.

(b) An aircraft owner may self-fuel his aircraft provided the aircraft owner meets certain specific criteria as established by the FAA and this chapter, including the requirement to first obtain a self-fueling license under this division before engaging in any self-fueling activities.

(c) All aircraft owners and operators, and all self-fuel operators, must obtain their fuel from the city unless otherwise stated by prior agreement with the city, and by compliance by the self-fuel operator with this chapter. Accordingly, the city has adopted a self-fueling license requirement in the interest of preserving the city's policies with regard to having in place the necessary controls to assure that all fueling operations at the airport are conducted to the same minimum level of safety, efficiency, consideration of the environment, and by persons adequately trained in the storage and handling of fuel products, as set forth in this division.

Sec. 30-202. – Self fueling.

An aircraft owner may self-fuel owned or exclusively leased aircraft provided the aircraft owner uses its own employees and equipment, and provided that such operation is conducted in accordance with NFPA 30 and 407, Aircraft Fuel Storage and Servicing, latest adopted edition; FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports; Air Transport Association Standards for Jet Fuel Quality Control at Airports, as applicable and as may be amended; and this division. Self-fueling shall be conducted only in those areas designated by the airport director. Aircraft owners may only conduct self-fueling operations after first obtaining a self-fueling license from the airport director. The granting of a self-fueling license shall not be construed as the release, waiver, abrogation or otherwise inconsistent with the city's proprietary exclusive right to sell all aviation fuel products at the airport. A co-op (an organization formed by several aircraft owners for the purpose of self-fueling) is prohibited from engaging in self-fueling operations.

Sec. 30-203. – Self-fueling license requirements.

1. Application.

(a) An applicant for the issuance or renewal of a self-fueling license shall file with the city an application form provided for that purpose, which must be signed by the applicant.

(b) When an application has been filed with the city, the city shall make an inspection of such equipment and site for the proposed self-fueling operations in order to ensure compliance with all applicable fire and safety laws, ordinances and regulations.

(c) The city may issue or renew a self-fueling license within thirty (30) days of receipt of an application. A self-fueling license shall not be issued if one or more of the following is found to be true:

(1) The applicant has failed to provide required information or has provided false information in his application;

(2) The applicant's proposed self-fueling operations will violate an applicable law, ordinance or regulation;

(3) The applicant has had a self-fueling license revoked or suspended within the two years preceding the date of the application; or

(4) The applicant has failed to meet the minimum requirements of this division.

(d) A self-fueling licensee, by acceptance of the license, acknowledges the city's exclusive proprietary right to sell and dispense aviation fuels at the airport.

2. Display of license. A licensee shall display a self-fueling license issued by the city in a conspicuous place on the licensee's airport premises at all times.

3. Self-fueling requirements.

(a) *No sale of fuel.* No self-fueling licensee may sell any type of fuel used by aircraft or ground vehicles.

(b) *Restrictions on self-fueling licensees.* A self-fueling licensee shall not dispense aircraft fuel to another airport user. Dispensing aircraft fuel under the authority of a self-fueling license is limited to the licensee's exclusive use in aircraft owned or leased by the self-fueling licensee. A self-fueling licensee holds only a non-exclusive, revocable privilege to provide aviation fuel to the licensee's owned or exclusively leased aircraft at the airport. No other aircraft may be fueled by a self-fueling licensee.

(c) *Fuel flowage fees.* All self-fueling licensees shall pay the city the required fuel flowage fees. Those fees shall be adjusted from time-to-time by the city council. The fuel flowage fee shall be calculated and paid monthly based on bulk fuel delivery invoice(s).

(d) *Fuel farm pad fee.* All self-fueling licensees shall pay the city the required fuel farm pad fees. Those fees shall be adjusted from time-to-time by the city council. Payment of fees shall be made to the city on or before the tenth day of each month for the previous month's use without notice or demand. All payments shall be made to the city and sent to the attention of the airport director.

(e) *Facilities and equipment.* The following requirements regarding fueling facilities and equipment are applicable to self-fueling licensees:

(1) Fuel may not be stored in any hangar or aircraft storage facility by any owner or operator;

(2) No one shall transport fuel onto the airport property except as approved by the city and by approved and permitted fuel-transport equipment;

(3) Fueling of aircraft shall conform to the provisions set forth in this division;

(4) All fuel storage locations shall be designated by the city and illustrated on the approved airport layout plan;

(5) A self-fueling licensee shall be allowed to use mobile dispensing trucks (owned by or leased to such self-fueling licensee) to transfer fuel from the city's bulk fuel storage tanks to its owned or leased aircraft;

(6) The self-fueling licensee shall have at least one fuel dispensing truck for each type of fuel used;

(7) A self-fueling licensee shall maintain all fueling equipment in a safe and clean condition equal in appearance and character to other similar airport improvements;

(8) A self-fueling licensee shall promptly repair any property damage caused by the licensee, the licensee's employees, agents, patrons and guests;

(9) A self-fueling licensee shall replace its fueling equipment which has been destroyed by fire, explosion, weather conditions or disaster within sixty (60) consecutive calendar days of such destruction unless waived in writing by the airport director; and

(10) Upon written notice, a self-fueling licensee shall perform any reasonable facility maintenance that the city determines is necessary. If a licensee fails to undertake such maintenance within ten (10) days of receipt of the written notice, the city may perform the maintenance and/or revoke or suspend the self-fueling license. If maintenance is performed by the city, the self-fueling licensee shall reimburse the city for the cost of the maintenance performed.

(f) *Records and monthly reports.*

(1) A self-fueling licensee shall maintain accurate records of all fuel delivered and dispensed and shall allow the city to inspect the licensee's records at any time during normal business hours.

(2) A self-fueling licensee shall, each month, submit to the city a copy of the original report(s) received from the city showing the amount of fuel delivered by the city to the licensee.

(3) A self-fueling licensee shall, each month, submit to the city a report of fuel dispensed.

(4) An applicant for a self-fueling license shall submit to the city the registration numbers of all aircraft owned and leased to be fueled. Upon the receipt of a self-fueling license, the licensee shall submit to the city a report of fuel dispensed by aircraft registration number.

(g) *Audit.* A self-fueling licensee shall allow its records of fueling operations to be audited at any time during normal business hours either by

a representative of the city or by an independently certified public accountant selected by the city.

(h) *Cancellation of license by self-fueling licensee.* A self-fueling licensee may cancel its self-fueling license upon thirty (30) days' prior written notice to the city.

(i) *Assignment and transfer of license prohibited.* A self-fueling license is not assignable or transferable.

(j) *Revocation or suspension of license.* The city may revoke or suspend a self-fueling license if it is determined that:

(1) The self-fueling licensee has violated any provision of this division and has not made needed corrections in a timely manner as directed by the city;

(2) The self-fueling licensee has given false or misleading information to the city during the application process;

(3) The self-fueling licensee has intentionally or knowingly impeded a lawful inspection by the city or other person authorized to inspect the self-fueling operations of the licensee; or

(4) The self-fueling licensee has, within a 12-month period, committed one or more violations of this division and has failed to make needed corrections in a timely manner as directed in writing by the city.

Secs. 30-204—30-233. - Reserved.”

Section 3. 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 4. 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 this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. 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 hereby 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. 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, Texas.

Section 7. 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 8. This Ordinance shall become effective immediately 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 5th DAY OF NOVEMBER, 2019.**

CITY OF McKINNEY, TEXAS

GEORGE FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DANE
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney