

ORDINANCE NO. 2017-02-____

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 70, "OFFENSES AND MISCELLANEOUS PROVISIONS" BY DELETING PARAGRAPH (b)(6) ENTITLED "CONSTRUCTION/MAINTENANCE WORK," OF SECTION 70-120, "SPECIFIC NOISE DISTURBANCE PROHIBITED," IN ITS ENTIRETY AND REPLACING SAID PARAGRAPH WITH A NEW PARAGRAPH (b)(6) ALSO ENTITLED "CONSTRUCTION/MAINTENANCE WORK" TO AUTHORIZE THE DIRECTOR OF ENGINEERING AND THE BUILDING OFFICIAL TO GRANT EXCEPTIONS TO ALLOW THE PLACEMENT OF CONCRETE BETWEEN 9:00 P.M. AND 6:00 A.M. IN CERTAIN CIRCUMSTANCES AND TO RECOGNIZE SAID EXCEPTIONS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; 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 Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), enacted Article V of Chapter 70 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), making it unlawful for any person or entity to make, cause to be made or allow any loud or unreasonably loud and disturbing noise of such character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the inhabitants of the city, and/or which renders the enjoyment of life, health or property uncomfortable or interferes with public peace and comfort; and

WHEREAS, the City Council finds that amending Section 70-120 of the McKinney Code to allow the Director of Engineering and the Building Official to grant an exception to permit concrete placement between 9:00 p.m. and 6:00 a.m. in certain circumstances (1) on public rights-of-way or public easements and (2) on private property, respectively, is in the best interest of the health, safety and welfare of the citizens of the City.

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 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, Chapter 70, "Offenses and Miscellaneous Provisions" is hereby amended by deleting Paragraph (b)(6) entitled "Construction/Maintenance Work," of Section 70-120, "Specific Noise Disturbance Prohibited," in its entirety and adding a new Paragraph (b)(6) to read as follows:

“(6) *Construction/maintenance work.*

- a. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance, except

as provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.

- b. Operating or permitting to be operated any gravel pit, rock crusher, or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a residential district or quiet zone, or within 500 feet any residence or quiet zone, in such a manner as to cause a noise disturbance, except as provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- c. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf course or appurtenances thereto within a nonresidential district in such a manner as to cause a noise disturbance, except as otherwise provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134.
- d. Operating or permitting to be operated any gravel pit, rock crusher or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a nonresidential district in such a manner as to cause a noise disturbance, except as otherwise provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134.
- e. The Director of Engineering, or his designee, may grant an exception to this Section 70-120(b)(6) to allow for concrete placements between the hours of 9:00 p.m. and 6:00 a.m. if in the sole judgment of the Director, or his designee, denial of the requested exception will cause an adverse impact to public safety, or if all of the following conditions apply:
 - 1) The concrete placement will take longer than four hours; and,
 - 2) The heat index for the requested day is forecast to be above 100 degrees by noon; and,
 - 3) The concrete placement will take place in the public right of way or a public easement.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.

- (f) The Building Official, or his designee, may grant an exception to this Section 70-120(b)(6) to allow for concrete placements between the hours of 9:00 p.m. and 6:00 a.m. if in the sole judgment of the Building Official, or his designee, denial of the requested exception will cause an adverse impact to public safety, or if all of the following conditions apply:
 - 1) The concrete placement will take longer than four hours; and,
 - 2) The heat index for the requested day is forecast to be above 100 degrees by noon; and,

- 3) The concrete placement will take place on private property; and,
- 4) The job site is greater than 500 ft. from a residence or quiet zone.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.”

Section 3. 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. 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 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 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 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.

Section 7. 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 70-124 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 8. 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 9. 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 ____ DAY OF _____ 2017.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

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

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney