

ORDINANCE NO. 2018-05-____

AN ORDINANCE AMENDING CHAPTER 38, "ELECTIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, ARTICLE IV, "ELECTIONEERING," BY REPEALING IN ITS ENTIRETY SECTIONS 38-70 THROUGH 38-74, AND REPLACING THOSE SECTIONS WITH NEW SECTIONS 38-70 THROUGH 38-74; ESTABLISHING RULES AND REGULATIONS REGARDING ELECTIONEERING WITHIN THE CITY; PROVIDING DEFINITIONS; CREATING OFFENSES FOR INDIVIDUALS VIOLATING RULES AND REGULATIONS; PROVIDING ENFORCMENT BY DESIGNATED OFFICIALS AND OFFICERS; PROVIDING A SAVINGS CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas ("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 Council of the City of McKinney, Texas ("City Council"), has authority, pursuant to Section 61.003 and Section 85.036 of the Texas Election Code, to enact reasonable regulations concerning the time, place, and manner of electioneering within the City limits; and

WHEREAS, the City Council now desires to amend the City's Code of Ordinances and establish certain rules and regulations that will govern the time, place, and manner of electioneering within the City; and

WHEREAS, the City Council finds that the adoption of this Ordinance is in the best interests of its citizens and serves a public purpose, and protects the health, safety, and welfare of the citizens of the City of McKinney.

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 38 of the Code of Ordinances of the City of McKinney, Texas, entitled "Elections," Article IV, "Electioneering," is hereby amended by repealing Sections 38-70 through 38-74, and replacing those sections with new Sections 38-70 through 38-74, to read as follows:

"Sec. 38-70. Definitions.

(a) *Early voting period* means:

(1) The period for early voting by personal appearance as prescribed by the Texas Election Code or by other applicable state law.

(2) If because of the date for which an election is ordered it is not possible to begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest date practicable after the prescribed date as set by the authority ordering the election.

- (b) *Electioneering* means the posting, use, or distribution of political signs, literature, or material.
- (c) *Post* or *Posting* means to display a sign by attaching or affixing it to a surface or staking it into the ground. T-posts are not allowed on any City-owned or -controlled property.
- (d) *Prohibited area* means the area within which Texas Election Code § 85.036(a), as amended, prohibits electioneering during the time an early voting place or election day voting place is open for the conduct of early voting or election day voting, respectively.
- (e) *Voting period* means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later, on election day and any day in an early voting period. The period for a run-off election shall be considered to be a separate voting period.

Sec. 38-71. Purpose and Scope.

- (a) It is the purpose of this article:
 - (1) To provide reasonable regulations for electioneering on City-owned or -controlled public property when such property is used as a polling place location during a voting period.
 - (2) To establish an electioneering-free zone, within one hundred feet (100') of any outside door through which a voter may enter a city building containing a polling place during any voting period, against persons electioneering for or against any candidate, measure, or political party.
 - (3) To prevent damage to public property and to ensure that a polling place location is sufficiently available during a voting period for those who use the facilities other than for election purposes.
 - (4) To protect the public health, safety, and welfare of the City.
 - (5) To protect the voter and the integrity of the election process.
- (b) The provisions of this article shall not be construed in violation of any city ordinance, state or federal statute, or other applicable law.

Sec. 38-72. Administration.

The provisions of this article shall be administered and enforced by the city secretary, a designated election officer, a code enforcement official, or any law enforcement official.

Sec. 38-73. Prohibited Activities and Conduct.

- (a) It shall be unlawful for any person to post a sign during any voting period within a prohibited area on City-owned or -controlled property that is used as a polling place location.
- (b) It shall be unlawful for any person to post a sign on City-owned or -controlled property that is used as a polling place location **other than** during the period beginning twenty-four (24) hours before any voting period begins and ending twenty-four (24) hours after a voting period ends.

- (c) It shall be unlawful for any person to engage in electioneering during any voting period, within a prohibited area on City-owned or -controlled property that is used as a polling place location.
- (d) It shall be unlawful for any person to park or leave a motor vehicle or other vehicle or device customarily used for transportation, with or without an occupant, which displays a sign **during any voting period** within a prohibited area on a City-owned or -controlled property that is used as a polling place is location.
- (e) Signs shall be limited to two-foot by two-foot (2' x 2') signs at each City-owned or -controlled property that is used as a polling place location.
- (f) Tents, awnings, shelters, booths, and tables are not permitted on any City-owned or -controlled property that is used as a polling place location during any voting period unless otherwise authorized by the City Manager.
- (g) Megaphones shall not be permitted within 1,000 feet of any City-owned or -controlled polling place location during any voting period.
- (h) All electioneering shall comply with applicable local, state, and federal election laws.
- (i) The following regulations, adopted for the health, safety, and welfare of the City's residents, shall apply to any person who engages in electioneering outside of a prohibited area during any voting period:
 - (1) It shall be unlawful for any person to engage in electioneering on any driveway of a City-owned or -controlled polling place location or in any area that the Fire Chief or his/her designee determines is unsafe for electioneering or interferes with patrons or City employees and staff who use the areas other than for election purposes.
 - (2) It shall be unlawful to obstruct firefighting or police activities on City-owned or -controlled property.
 - (3) The regulations set forth in this section shall not apply to any City-authorized signs, literature, materials, or other messages on City-owned or -controlled property.

Sec. 38-74. Penalty.

- (a) Any person who violates any provision or term of this article shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be punished by a fine not to exceed the sum of \$500.00 for each offense, and each and every day such violation occurs or continues shall be deemed to constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this article.
- (b) In addition to the imposition of any criminal penalty, the City, without prior notification, may remove or dispose of any sign, in its entirety, which is located or placed in violation of this Ordinance."

Section 3. The Code of Ordinances of the City of McKinney, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 4. Any provision of any prior ordinance of the City, whether codified or uncodified, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 5. It is the intention of the City Council that each phrase, clause, sentence, paragraph and section of this Ordinance is severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or void by any court of competent jurisdiction, such determination shall not affect any remaining phrase, clause, sentence, paragraph or section, since the same would have been enacted by the City Council without incorporating into this Ordinance such unconstitutional or void phrase, clause, sentence, paragraph or section.

Section 6. 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 7. 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 1st DAY OF MAY, 2018.**

CITY OF McKinNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney