

**ORDINANCE NO. 2019-05-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 14, "ALCOHOLIC BEVERAGES," CHAPTER 74, "PARKS AND RECREATION," AND CHAPTER 87, "SPECIAL PERMITS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF VARIOUS SECTIONS OF EACH SUCH CHAPTER AS IDENTIFIED MORE PARTICULARLY HEREINBELOW REGARDING THE SALE, SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES ON CERTAIN DEFINED "CITY-OWNED PARKLAND" AND "RECREATION CENTERS"; AND FURTHER AMENDING CHAPTER 74, "PARKS AND RECREATION," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE RENUMBERING OF EXISTING SECTIONS 74-80 THROUGH 74-83 AS SECTIONS 74-81 THROUGH 74-84, RESPECTIVELY, THE ADOPTION OF A NEW SECTION 74-80, ENTITLED "CAMPING IN PARKS OR PUBLIC AREAS OTHER THAN DESIGNATED CAMPSITES IN ERWIN PARK PROHIBITED," AND THE AMENDMENT OF OLD SECTION 74-80 WHICH SECTION IS RENUMBERED HEREBY AS SECTION 74-81 ENTITLED "ADDITIONAL PROHIBITED ACTS," ALL AS SET FORTH HEREIN BELOW; REPEALING ALL CONFLICTING ORDINANCES; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; 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 adopted the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), for the protection of the public health and general welfare of the people of the City; and

**WHEREAS,** the City Council of the City of McKinney, Texas (the "City Council") originally prohibited the consumption of alcoholic beverages in and about all of the City's parklands and recreation centers; and

**WHEREAS,** the prohibition against the consumption of alcoholic beverages in and about all of the City's parklands and recreation centers has limited the use of such City-owned recreational facilities for many public events ranging from weddings and wedding receptions, to parties and community celebrations to outdoor concerts and other similar events; and

**WHEREAS,** the City Council now desires to allow for the sale, service and consumption of alcoholic beverages in and about all City-owned parklands and recreation centers in accordance with specific guidelines to protect other parties from any unintended consequences arising out of such availability; and

**WHEREAS,** the City Council finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to amend certain provisions of Chapter 14, "Alcoholic Beverages," Chapter 74, "Parks and Recreation," and Chapter 87, "Special Permits," of the McKinney Code as provided herein below.

**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 incorporated into the body of this Ordinance as if set forth in their entirety.
- Section 2. From and after the effective date of this Ordinance, Chapter 14, "Alcoholic Beverages," of the McKinney Code, is hereby amended by amending Section 14-21, "On Public Places," in part by adding a new Subparagraph (8) entitled "City-controlled Parkland and Recreation Centers," to hereafter read as follows:

**"Sec. 14-21. - On Public Places.**

" . . . .

- (8) *City-controlled Parkland and Recreation Centers.* The alcoholic beverage is consumed wholly on certain specified "City-controlled Parkland," defined hereinbelow, or within certain specified "Recreation Centers," defined hereinbelow, controlled by the City's Parks and Recreation Department where the appropriate permit has been obtained from the city secretary and the state, if applicable, and approval for the use of the City-controlled Parkland or within Recreation Centers has also been obtained in advance from the Director of the City's Parks and Recreation Department, or his/her designee.
- a) *Recreation Center(s).* For purposes of this ordinance, "Recreation Center" means and includes the Apex Centre, McKinney Community Center, Courts of McKinney Tennis Center, Recreation Center at Old Settler's, or the Senior Recreation Center as well as the Parks and Recreation Administrative Offices and are collectively referred to as "Recreation Centers". Each Recreation Center shall maintain a separate facility policy establishing the particular rules and regulations governing alcohol sales, dispensing and consumption upon, within and about the Recreation Center and its appendages, property and grounds (the "Policy"). Unless otherwise stated in the Policy for a specific Recreation Center, the following provisions shall apply:
- i) The beer and/or wine and vinous liquor is sold or dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event, programming activity, and/or management or vendor contract, with the following conditions:
- (1) the entire special event and/or programming area, including the area for beer and/or wine and vinous liquor dispensing and consumption, shall be located in an area with a defined ingress and egress point monitored by off-duty city police officers at a ratio of at least 1 officer per 100 anticipated patrons, or more or less as determined by the facility manager/supervisor; and

- (2) the sales, dispensing and consumption of alcohol shall be allowed only between the hours of 12:00 p.m. —12:00 a.m. Monday — Friday, and between 12:00 p.m.—12:00 a.m. Saturday — Sunday unless otherwise allowed by a Special Event Permit, where the appropriate permits have been obtained from the city secretary and the state.
- b) *City-controlled Parkland.* For purposes of this ordinance, “City-controlled Parkland” means and includes the following City-owned parks and any structures and buildings thereon, unless provided differently in the Policy adopted by a Recreation Center situated within the boundaries of the City-controlled Parkland:
  - i) *Oak Hollow Golf Course;*
  - ii) *Towne Lake Recreation Area (230 acres);*
  - iii) *Gabe Nesbitt Community Park (160 acres);*
  - iv) *Bonnie Wenk Community Park (168 acres);*
  - v) *McKinney Soccer Complex at Craig Ranch (65 acres);*
  - vi) *Al Ruschhaupt Soccer Complex 1 & 2 (114 acres);*
  - vii) *Old Settler’s Park (29 acres);*
  - viii) *Finch Park (32 acres); and*
  - ix) *Mitchell Park (1 acre).*

Unless otherwise stated in the Policy for a specific Recreation Center that is situated within the boundaries of the City-controlled Parkland, the following provisions shall apply:

- i) The beer and/or wine and vinous liquor is sold or dispensed by the holder of a valid, appropriate state alcoholic beverage commission alcoholic beverage permit and city alcoholic beverage permit during a properly permitted special event, programming activity, and/or management or vendor contract, with the following conditions:
  - (1) the entire special event and/or programing area, including the area for beer and/or wine and vinous liquor dispensing and consumption, shall be located in an area with a defined ingress and egress point monitored by off-duty city police officers at a ratio of at least 1 officer per 100 anticipated patrons, or more or less as determined by the Director of Parks & Recreation or his/her designee; and

- (2) the consumption of alcohol shall be allowed between the hours of 12:00 p.m. —12:00 a.m. Monday — Friday and between 12:00 p.m.—12:00 a.m. Saturday — Sunday unless otherwise allowed by a special use permit, where the appropriate permit has been obtained from the city secretary and the state.”

Section 3. From and after the effective date of this Ordinance, Chapter 14, “Alcoholic Beverages,” of the McKinney Code, is hereby amended by amending Section 14-56, “Exemption,” in part by adding a new Subparagraph (b) regarding City-controlled Parkland and Recreation Centers to hereafter read as follows:

**“Sec. 14-56. - Exemption.**

“ . . . .

- (b) Specific events or programming activities not requiring a Special Event Permit and approved by the Director of the Parks and Recreation Department, or his/her designee, to be held on City-controlled Parkland or within Recreation Centers, identified hereinabove, shall be exempt from the permit provisions of this article.”

Section 4. From and after the effective date of this Ordinance, Chapter 74, “Parks and Recreation,” of the Code of Ordinances of the City of McKinney, Texas, is amended by and through the renumbering of current Section 74-80, entitled “Additional Prohibited Acts,” Section 74-81, entitled “Penalty for Violation,” and Section 74-82, entitled “Enforcement of Article,” as Sections 74-81, 74-82 and 74-83, respectively, keeping the same titles and text save and except as further amended herein by this Ordinance.

Section 5. From and after the effective date of this Ordinance, Chapter 74, “Parks and Recreation,” of the Code of Ordinances of the City of McKinney, Texas, is amended by and through the adoption of a new Section 74-80 to be entitled “Camping in Parks or Public Areas other than Designated Campsites in Erwin Park Prohibited,” to hereafter be and read as follows:

**“Sec. 74-80. - Camping in Parks or Public Areas Other Than Designated Campsites in Erwin Park Prohibited.**

(a) In this section:

- (1) “Park” or “parks” means any City-controlled Parkland and Recreation Centers as well as any other parkland owned and controlled by the City for park uses or purposes.
- (2) “Public Area” means an outdoor area accessible to the public including a street, highway, parking lot, parking garage, alleyway, pedestrian way, cycling way, equestrian way, and the common areas, walkways, outdoor areas and court yards of an elementary school, secondary school, college, hospital, apartment building, office building, transport facility, business, or City-owned building or facility.
- (3) “Camp” means the use of a park or public area for living accommodation purposes including:
  - a. storing personal belongings;
  - b. making a camp fire;

- c. using a tent or shelter or other structure or vehicle for a living accommodation;
  - d. carrying on cooking activities; or
  - e. digging or earth breaking activities.
- (b) Except as provided in Subsection (d), a person commits an offense if the person Camps in a Park or Public Area that is not designated as a camping area in Erwin Park by the Parks and Recreation Department.
  - (c) A person is Camping if the person engages in any of the activities listed in Subsection (a)(3) if it reasonably appears, based on the totality of the circumstances, that the person conducting the activity is using a Public Area or Park other than a designated camp site in Erwin Park for living accommodation purposes, regardless of the person's intent or engagement in other activities.
  - (d) This section does not apply to permitted camping or cooking in a designated camping site in Erwin Park in compliance with park regulations.
  - (e) It is an affirmative defense to prosecution that a person owns the property or has secured the permission of the property owner to Camp in an otherwise Public Area."

Section 6. From and after the effective date of this Ordinance, Chapter 74, "Parks and Recreation," of the Code of Ordinances of the City of McKinney, Texas, is amended by amending new Section 74-81, entitled "Additional Prohibited Acts," in part by amending Subparagraphs (3), (12), and (14) to read as follows:

**"Sec. 74-81. - Additional Prohibited Acts.**

. . .

- (3) Consume, sell or possess alcoholic beverages in any park:
  - (a) that is identified as City-controlled Parkland or a Recreation Center unless the appropriate permit has been obtained from the city secretary and the state, if applicable, and approval for the use of the City-controlled Parkland or within Recreation Centers has also been obtained in advance from the Director of the City's Parks and Recreation Department, or his/her designee; or
  - (b) that is not identified as City-controlled Parkland or a Recreation Center."

. . .

- (12) Sell merchandise, food or beverages without a permit from the Director of the City's Parks and Recreation Department, or his/her designee, and the city secretary and the state as required for the consumption of alcoholic beverages, in the park, parkways, recreational facilities or on public streets and rights-of-way within 300 feet of the boundary of the same, except in developed properties zoned retail or commercial;

. . .

- (14) Possess a glass container, unless as a means to transport and consume alcoholic beverages as part of a specific event approved by the city; . . . .”

Section 7. From and after the effective date of this Ordinance, Chapter 87, “Special Events,” of the McKinney Code, is hereby amended by amending Section 87-2, “Definitions,” in part by amending the definition of the phrase “Special Event,” to hereafter read as follows:

“**Sec. 87-2. - Definitions.**

“ . . . .

*Special event* means a temporary event or gathering of 75 or more persons for a common purpose under the direction or control of a person or entity, including a special event parade, using either private or public property, that involves one or more of the following activities, except when the activity is for construction or house-moving purposes only:

- (1) Closing of a public street;
- (2) Blocking or restriction of public property, including public rights-of-way;
- (3) Sale of merchandise, food, or beverages on public property;
- (4) Sale of alcoholic beverages on public or private property where otherwise prohibited save and except to the extent the Director of the City’s Parks and Recreation Department has prohibited, or a Recreational Center Policy prohibits, the sale and use of alcohol on City-controlled Parkland and/or Recreation Centers as requested for such an event;
- (5) Erection of a tent or canopy on public property;
- (6) Installation of a stage, band shell, trailer, van, portable building, grandstand, or bleachers on public property, or on private property where otherwise prohibited by ordinance; and/or
- (7) Placement of temporary informational signs including, but not limited to: no-parking, directional, or identification, special event signs or banners in or over a public right-of-way, or on private property where otherwise prohibited by ordinance.”

Section 8. From and after the effective date of this Ordinance, Chapter 87, “Special Events,” of the McKinney Code, is hereby amended by amending Section 87-4, “Chapter Cumulative,” in part by amending Subparagraph (a) to hereafter read as follows:

“**Sec. 87-4. - Chapter Cumulative.**

- “(a) The provisions of this chapter are cumulative of all city ordinances. Except as provided in building permits, electrical permits, food establishment permits, alcoholic beverage licenses, tent permits and all other permits and licenses required by ordinance or other law for specific activities to be conducted in conjunction with or as part of the special event, such non-special event permits must be applied for separately, in accordance with the applicable ordinance or law. The SEP manager must receive any necessary permit or license in

addition to the special event application in order for an applicant to obtain a special event permit.”

Section 9. From and after the effective date of this Ordinance, Chapter 87, “Special Events,” of the McKinney Code, is hereby amended by amending Section 87-5, “Exemptions,” in part by amending Subparagraph (4) and adding a new Subparagraph (8) to hereafter read as follows:

**“Sec. 87-5. - Exemptions.**

“ . . . .

(4) Activities approved by the Director of the City’s Parks and Recreation Department, or his/her designee, that are held under the control of the City’s Parks and Recreation Department conducted on City-owned property that do not affect public rights-of-way;

. . . .

(8) An event or programming activity approved by the Director of the City’s Parks & Recreation Department, or his/her designee, and wholly located within a City-controlled Parkland and/or a Recreation Center.”

Section 10. From and after the effective date of this Ordinance, Chapter 87, “Special Events,” of the McKinney Code, is hereby amended by amending Section 87-11, “Application Process,” in part by amending Sub-subparagraph (4), “Insurance,” of Subparagraph (b) to hereafter read as follows:

**“Sec. 87-11. – Application Process.**

“ . . . .

(4) Insurance. The permittee shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state and acceptable to the city. The permittee shall furnish to the city certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the special event and be addressed as follows:

City of McKinney  
c/o Risk Manager  
Human Resources Department  
222 N. Tennessee St.  
McKinney, Texas 75069

Or you may deliver such Certificates by facsimile transmission at:  
  
972-547-2608.”

Section 11. 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 12. 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 13. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.
- Section 14. 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 15. 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 16. Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- Section 17. 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 18. 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 MAY, 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:

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MARK S. HOUSER  
City Attorney