

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF McALLEN AT CHAPTER 138 (“ZONING”), ARTICLE V (“DISTRICTS”), DIVISION 13 (“HEART OF THE CITY OVERLAY DISTRICTS”) TO CREATE THE MCALLEN ARTS DISTRICT, REGULATE THE USES THEREIN, AMENDING CHAPTER 6 (“ALCOHOLIC BEVERAGES”) AT SECTION 6-2; AND AT SECTION 6-3; TO RESTRICT THE HOURS THAT ALCOHOL CAN BE SOLD; AMENDING CHAPTER 130 (“SIGNS”) TO RESTRICT SIGNS IN THE MCALLEN ARTS DISTRICT; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the arts and cultural endeavors are increasingly recognized as integral and necessary components of the City of McAllen’s social fabric, contribute to the local and regional economy, and enhance our quality of life; and

WHEREAS, a factor in any community’s cultural ecosystem is the allocation of space to provide a foundation for artistic creation and presentation, to offer important focal points for community milestones and events, to allow opportunities for intercultural exchange and dialogue, to protect and nurture cultural resources, to offer social supports and services, and to serve as economic, social, and artistic incubators; and

WHEREAS, such cultural and creative spaces can be catalysts for positive community transformation and development; and

WHEREAS, drawing people into public spaces, accomplishes many goals, including: increased visibility and traffic for businesses, improvement in human health and quality of life, and reductions in crime and air pollution; and

WHEREAS, the Board of Commissioners recognizes that a superior and diverse aesthetic character of McAllen’s built environment is vital to the quality of the life of its citizens, an attraction for visitors, vital to the economic success of its businesses, and will assist the City fulfill its mission of “*providing high quality services and quality of life to all who live, work and visit the City of McAllen*”; and

WHEREAS, investments in culture and creativity are essential to building a vibrant, competitive, and sustainable community for the 21st century; and

WHEREAS, the installation and display of art contributes to the aesthetic character of the built environment and the cultural enrichment of the community at large.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MCALLEN, TEXAS, THAT:

SECTION I: The Code of Ordinances, City of McAllen, Texas, Chapter 138 (“Zoning”), Article V (“Districts”), Division 13 (“Heart of the City Overlay Districts”) is hereby amended to amend the language in Section 138-331; to amend the language in current Section 138-340 and to renumber it as Section 138-333; to amend the language in current Section 138-335 and to renumber it as Section 138-340; to amend

the language in current Section 138-336 and to renumber it as Section 138-341; to renumber current Section 138-333 as Section 138-334, current Section 138-334 as Section 138-335, current Section 138-337 as Section 138-350, current Section 138-338 as Section 138-351, current Section 138-339 as Section 138-352; and to add new Sections 138-336, 138-337, 138-338, and to reserve a new Section 138-339 and Sections 138-342 through 138-349, which said sections shall read as follows:

Sec. 138-331. Definitions.

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

Art, artwork or work of art means any work product of an artist, including performing arts, literary arts, and visual arts, conceived in any medium, material, or combination thereof, including: acting, singing, dancing, music, theater, literature, painting, printing, drawing, engraving, frescos, stained glass, mosaics, mobiles, tapestries, carving, sculpture, murals, fashion design, jewelry design, photography, film, video, digital imaging, bas-relief, high relief, fountains, kinetics, culinary arts, and collages.

Art establishment means an establishment primarily dedicated to the creation, dissemination, teaching or practice of art, its display, exhibition, storage, or offer for sale, and includes but is not limited to antique shops, art galleries, art studios, art supplies stores, bookstores, libraries, theaters, art museums, and schools of music, art, culinary arts or dance, but does not include sexually oriented businesses.

Artist means a person regularly engaged in and who derives a substantial portion of his/her annual income from the creation of art, either written, composed, produced or otherwise executed.

Art gallery means an art establishment dedicated to the promotion and sale of art, open to the public, with standard business hours for more than four (4) days per week.

Art studio means an art establishment used by an artist exclusively for the creation, production, practice, rehearsing, or performance of art, and/or from where art may be promoted, sold or offered.

Bar means an establishment where alcoholic beverages are sold, including any cabaret, dancehall, discotheque, disco, music venue, nightclub or restaurant or other establishment where more than 49 percent of the gross income is derived from the sale of alcoholic beverages.

Cabaret, dancehall, discotheque, disco, music venue or nightclub means an establishment the primary activity of which is the provision musical entertainment and/or permit dancing by its patrons to live or recorded music.

Central Business District means the area of the city lying between U.S. Business 83 and Houston Avenue, from Tenth Street to Bicentennial Boulevard.

Display means to exhibit or show a work of art to the public.

Entertainment or cultural establishment means any of the variety of venues that provide an ongoing activity or business to which the public is invited or allowed to watch, listen, or participate, to divert or amuse guests or patrons, including, but not limited to:

- (1) Presentations by single or multiple performers, such as comedians, musical song or dance acts, plays, concerts, demonstrations of talent, shows, reviews, hypnotists, pantomimes, or any other similar activity which may be attended by members of the public;
- (2) Cabarets, dancehalls, discotheques, discos, music venues, nightclubs, restaurants, bars, and schools of dance.

Heart of the City means that area of the City of McAllen from Hack berry Avenue to Expressway 83 and from Bicentennial Boulevard to Tenth Street.

Performance means any theatrical, musical or cultural appearance, exhibition, display, demonstration, presentation, dance, modeling, preview, play, pantomime, show, skit, film, or entertainment of any kind, whether live or not, that is conducted before an audience, including but not limited to motion pictures, live theater, music concerts, opera, drama, comedy, ballet, modern or traditional dance, as well as book or poetry readings, whether for compensation or without charge but excluding nightclubs, discotheques, discos and dancehalls. This definition does not include sporting events, entertainment or recreational activities offered for public participation, activities offered in arcades or other amusement places, amusement park rides and games, billiards and pool games, or jukeboxes.

Public display means visible to the public at all times.

Retail establishment means an establishment, the primary purpose of which is the sale of goods, services, products or materials directly to a consumer, including personal service establishment but not a bar or restaurant.

Residential permit means the permit that may be issued by the director of planning to a property owner pursuant to the provisions of this division to allow a residential use above a commercial establishment.

Special permit means the permit that may be issued by the director of planning to an establishment pursuant to the provisions of this division. (Ord. No. 2005-95, §1, 11-14-05; ord. No. 2008-30, §2, 4-28-08)

Sec. 138-332. Heart of the City Overlay Districts established; sunset; permit application and fee.

(a) The overlay districts established in this division supersede, modify and/or supplement any conflicting requirements and limitations of Article V ("Districts") otherwise applicable to any underlying base district. All of the Article V requirements and limitations of any underlying base district that do not conflict with those of the overlay district shall continue to apply. In the event of any conflict between the overlay district requirements or limitations and those of Article V, the overlay district requirements or limitations shall prevail.

(b) This Division 13 shall sunset ten years after its effective date. The board of commissioners shall review this division one year prior to its sunset date and consider whether to continue, amend or allow it to sunset. The director of planning in cooperation with the Heart of the City of McAllen Improvement Corporation, Inc., no later than five years after the effective date of this division, shall

conduct an interim study of the effectiveness of the provisions of this division in meeting its stated goals and objectives, on the basis of which it shall report its findings to the planning and zoning commission for its consideration. The planning and zoning commission shall consider the report and hold a public hearing prior to forwarding its interim findings and recommendations to the board of commissioners.

(c) Any establishment that as of the effective date of this division is located or seeks to locate within an overlay district established by this division may apply for any special permit available to it. Any such application must be filed by or with the written consent of the property owner, and shall be filed with the director of planning, together with an application a fee of \$100.00. All such applications shall be reviewed, considered and acted upon by the director of planning. A special permit shall be issued to the establishment specified in the application, will not run with the land, will not transferable and will be subject to revocation as provided in this division.

(d) The denial or revocation of a special permit may be subject to reconsideration under section 138-337, and may be appealed to the board of commissioners pursuant to section 138-338.

(e) In the event this division should sunset or the board of commissioners repeals this division then, except as provided in subsection (f) hereof, the overlay districts established hereunder shall dissolve and no special or residential permits shall be issued or renewed.

(f) Notwithstanding anything to the contrary in this article, any permit issued under this division shall be valid through its expiration date even if it extends beyond any repeal or sunset date. (Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

Sec. 138-333. Board of commissioners to consider chapter 380 agreements.

The board of commissioners may enter into chapter 380 economic development agreements, or agreements authorized by successor statutes ("380 agreements") with enterprises locating in the Heart of the City provided that:

- (1) The enterprise shall locate within any one of the commercial overlay districts created under this division;
- (2) The enterprise shall first apply with the Heart of the City of McAllen Improvement Corporation, Inc. and receives its positive recommendation;
- (3) The commissioners find that entering into a 380 agreement will serve the long term economic interests of the city and promote the development purposes and goals of the Heart of the City.

Sec. ~~138-333~~334. Entertainment and Cultural Overlay District; location; special permits.

(a) An Entertainment and Cultural Overlay District ("ECOD") is hereby established within the City of McAllen encompassing all of Blocks and Lots of the McAllen Addition Subdivision as follows: all of Blocks 1, 2, 3, 4, 5, 9, 24, 25, 40, 41, 56 and 57; Lots 6 through 12 out of Block 10; Lots 6 and 7 out of Block 11; Lots 11, 12 and 13 out of Block 12; Lots 6, 7 and 8 out of Block 13, as well as Lots 7 through 12 each out of Blocks 23, 26, 39, 42, and 55 of the same subdivision, as shown in Map A.

(b) The ECOD shall be indicated on the zoning map with the base district symbol followed by a slash and the ECOD district symbol (i.e., ("R-2/ECOD")).

(c) ECOD special permits may be issued to entertainment or cultural establishments within the boundaries of the ECOD, for a period of five years, subject to the following requirements and limitations:

- (1) The following establishments may not operate within the ECOD without a special permit:
 - a. Any entertainment or cultural establishment seeking to locate within the ECOD, and
 - b. Any entertainment or cultural establishment located within the ECOD on the effective date of this division that applies to the building official for a building permit or a miscellaneous inspection.

The provisions of this section are intended to also apply, without limitation, to any bar, cocktail lounge, tavern, saloon or cantina, and to any nightclub, discotheque, disco or dancehall located in the ECOD after its conditional use permit expires.

- (2) Any bar, cocktail lounge, tavern, saloon or cantina, and any nightclub, discotheque, disco or dancehall that is issued an ECOD special permit does not require a conditional use permit and is exempted from the minimum distance requirements of Chapter 6 ("Alcoholic Beverages"), section 6-2 and of section 138-118(a)(4) of the McAllen Code of Ordinances.
- (3) A special permittee shall make necessary and reasonable efforts to discourage criminal activity and vandalism, both on the site and on adjacent properties. Such measures may include the provision of adequate and sufficient lighting, the elimination of dark areas, and the hiring of security personnel.
- (4) A special permittee shall make necessary and reasonable provisions to keep litter to a minimum, and to keep it from blowing onto or being deposited on adjacent streets and properties.
- (5) A special permit applicant shall submit for approval a plan describing the efforts that will be made and the measures that will be implemented to accomplish the aims of (3) and (4), above. The applicant may amend the proposed plan. If the director of planning is satisfied that the proposed plan, as presented or as amended, reasonably addresses the above aims, it shall be approved, and compliance with the plan shall be made a condition for approval of the special permit.
- (6) A special permittee shall restrict the number of persons within its premises to those allowed by the director of planning at the time of special permit issuance. In determining an establishment's occupancy limit the director of planning shall take into account the recommendations and requirements of the fire marshal and the building official, and such limit shall not exceed the maximum number that may otherwise be provided for in the City Code of Ordinances.

- (7) The director of planning may impose additional requirements or limitations as may be appropriate and reasonable to carry out the purposes of the ECOD and to mitigate any adverse effects that could be generated by the proposed use.
 - (8) An ECOD special permittee, no later than 60 days prior to its expiration, may apply for renewal of its special permit. Special permit renewals shall be processed as an original application.
 - (9) Any change in ownership of an establishment shall cause the special permit to expire, and require a miscellaneous inspection by the building official. It shall be a condition of a special permit that the permittee notify the director of planning in writing of any change in ownership, and further notify any prospective new owner in writing of the requirement to apply for a special permit in order to qualify for the special treatment of subsection (c) hereof, and for the issuance of residential permits under section 138-335.
- (Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

Sec. 138-334335. Downtown Retail Overlay District; location.

(a) A "Downtown Retail Overlay District" ("DROD") is hereby established within the City of McAllen to include the Masso Condos Subdivision and that area of the McAllen Addition Subdivision encompassing all of Lots 1 through 5 out of Block 10; Lots 1 through 5 and 8 through 12 out of Block 11; Lots 1 through 10 and 14 through 18 out of Block 12; Lots 1 through 5 and 9 through 18 out of Block 13; Lots 1 through 12 out of Block 21, and Lots 1 through 6 each out of Blocks 23, 26, 39, 42, and 55; also, all of Blocks 14, 19, 20, 22, 27, 28, 29, 30, 35, 36, 37, 38, 43, 44, 45, 46, 51, 52, 53, 54, 59 and 60, as shown in Map B.

(b) The DROD shall be indicated on the zoning map with the base district symbol followed by a slash and the DROD district symbol (i.e., ("R-2/ DROD")).
 (Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

Sec. 138-336 McAllen Arts District established; location; special permits required.

(a) An overlay district denominated McAllen Arts District ("MAD") is hereby established within the City of McAllen to be located along North Main Street from Pecan Avenue to Business 83 and encompassing the following lots or tracts of land:

- DE SANCHEZ LOT 1-2
- EWING BLOCK 16, LOT 1-6
- EWING BLOCK 17 LOT 1-4
- EWING BLOCK 24 LOT 1-4
- HIDALGO CANAL CO-MC North 85' of South 175.5' of East 140' of LOT 3 BLOCK 9
- HIDALGO CANAL CO-MC North 180' of South 369' of East 302.5' LOT 3 BLOCK 9
- HIDALGO CANAL CO-MC North 289' of LOT 3 BLOCK 9
- HIDALGO CANAL CO-MC Southwest portion of West 9.16 acres of LOT 15 BLOCK 9
- MILMOR BLOCK 1 LOTS 14-18
- MILMOR BLOCK 8 LOTS 1-14
- NORTH MAIN EXC. PLAZA BLDG A UNIT 1-7
- NORTH MAIN OFFICE PARK LOT 1
- NORTH MCALLEN BLOCK 4 LOT 7-12
- NORTH MCALLEN BLOCK 5 LOT 1-6

NORTH MCALLEN BLOCK 12 LOTS 1-6
NORTH MCALLEN BLOCK 13 LOT 7-12
NORTH MCALLEN BLOCK 20 LOT 7-12
NORTH MCALLEN BLOCK 21 LOT 1-6
NORTH MCALLEN BLOCK 28 LOT 1-6
NORTH MCALLEN BLOCK 29 LOTS 7-12
NORTH MCALLEN BLOCK 36 LOTS 7-12
NORTH MCALLEN BLOCK 37 LOT 1-4
NORTH MCALLEN BLOCK 44 LOTS 1-6
NORTH MCALLEN BLOCK 45 LOT 7-12
NORTH MCALLEN BLOCK 52
NORTH MCALLEN TRACT OF LAND North OF MO P TRACKS SOUTH OF
BLOCK 52
NORTH MCALLEN ALL OF BLOCK 53 & A TRACT 40'X8'-ASH STREET AND
ABANDONED ROAD
NORTH MCALLEN 100.12'X300.35' ABANDONED RAILROAD & 50.06'X300.35'
ABANDONED AS
PROFESSIONAL CENTER LOT 1-3

(b) The MAD shall be indicated on the zoning map with the base district symbol followed by a slash and the MAD district symbol (e.g., ("R-2/MAD")).

(c) MAD special permits shall be issued to art establishments within the boundaries of the MAD, for a period of five (5) years ("permit period"), subject to the following requirements and limitations:

- (1) The following establishments may not operate within the MAD without a special permit:
 - a. Any art establishment seeking to locate within the MAD and that requires a certificate of occupancy;
 - b. Any art establishment located within the MAD on the effective date of this division that applies to the building official for any category of building permits.
- (2) A special permittee shall make necessary and reasonable efforts to discourage criminal activity, vandalism, and maintain clean premises, both on the site and on adjacent properties. Such measures may include the provision of adequate and sufficient lighting, the elimination of dark areas, and the hiring of security personnel. Such measures may also include making reasonable provisions to keep litter to a minimum and to keep it from blowing onto adjacent streets and properties. Any special permittee with a business open after 10:00 p.m. that offers alcohol for on-premises consumption shall employ at least one security officer for the period of time it is open after 10:00 p.m., and 30 minutes after closing.
- (3) A special permit applicant shall submit for approval a plan describing the efforts that will be made and the measures that will be implemented to accomplish the aims of subsection (2), above. If the director of planning is satisfied that the proposed plan, as presented or as amended, reasonably addresses the above aims,

it shall be approved, and compliance with the plan shall be made a condition for approval of the special permit.

- (4) The director of planning may impose additional requirements or limitations as may be appropriate and reasonable to carry out the purposes of the MAD and to mitigate any adverse effects that could be generated by the proposed use.
- (5) A MAD special permittee, no later than 60 days prior to its expiration, may apply for renewal of its special permit. Special permit renewals shall be processed as an original application.
- (6) Any change in ownership or occupancy of an establishment shall cause the special permit to expire. The expiration of a special permit for any reason shall require a miscellaneous inspection by the building official. It shall be a condition of a special permit that the permittee notify the director of planning in writing of any change in ownership or occupancy, and further notify any prospective new owner or occupant in writing of the requirement to apply for a special permit in order to qualify for the special treatment of subsection (c) hereof, and subsection (a) of section 138-333.
- (7) The provisions of Sec. 78-1 of this code prohibiting the display or sale of any goods or materials outdoors shall apply within the MAD unless the City Manager or designee issues a Special Events Permit allowing the display or sale outdoors. Any such Special Events Permit shall be made subject to such reasonable conditions and requirements as are deemed necessary or proper for the health, safety and welfare of the persons in the vicinity of the MAD.

Sec. 138-337. Noise disturbances.

In the MAD a noise is a violation of section 46-142 if it exceeds 80 decibels or if the noise is created after 11:00 p.m. and before 7:00 a.m.

Sec. 138-338. Restricted, prohibited uses.

- (a) Bars are prohibited in the MAD.
- (b) Sexually oriented businesses are prohibited in the MAD.
- (c) The following uses are prohibited in the MAD: Adult motion picture theaters, Automotive sales and service, Bowling alleys, Commercial outdoor storage, Marine sales and service, Massage parlors, and Skating rinks.

Secs. 138-339. Reserved.

Sec. 138-~~335~~340. Residential uses permitted in Commercial Overlay Districts.

In an overlay district, residential uses not otherwise permitted in the base district underlying an commercial district ~~either as of right or conditionally~~ shall be allowed upon the issuance of a residential permit by the director of planning, with the following conditions, requirements and limitations:

(1) A residential permit application may be filed with the director of planning only by the property owner; together with an application a fee a fee of \$100.00. is a special permit allowing residential uses in a non-residential district. Each residential unit requires its own residential permit. An application may be filed with the director of planning only by the owner of a property where an establishment has been issued a special permit, together with an application a fee of \$100.00 to help cover the administrative cost per residential unit. A residential permit shall be issued to the property owner for up to the life of the use of the residential unit, conditioned on compliance with all the requirements and limitations hereunder, and will be subject to termination or revocation as provided in this division.

~~(2) Each residential unit requires its own residential permit.~~

(2) The owner of a building, or a tenant or occupant with the consent of the property owner, may apply for approval of a residential permit by filing an application with the director of planning.

(3) The off-street parking requirements of Section 138-336341 shall apply.

~~(4) No residential uses will be allowed on the first floor of a building.~~

(5 4) ~~No residential uses will be allowed on the first floor of the building any floor above the first when the floor also has any non residential use. However, property owners or first floor establishment owners residing in a floor above the first floor may also use part of that floor as an office a home office, provided the same complies with the applicable restrictions and requirements of a home occupation under section 138-118(a)(1).~~

No residential use will be allowed on the first floor of a building. However, in the MAD a mix of commercial and residential uses may be allowed on any floor when the occupant for both uses is the same person.

~~(6 5) Abandonment of a permitted residential use will be cause for revocation of the residential permit. Abandonment shall be presumed whenever any part of the space subject to the residential permit is converted to a non-residential use, except as specifically allowed by the provisions of this division.~~

In any overlay district other than the MAD, property owners on first floor establishment owners residing in a floor above the first floor may also use part of that floor as an office.

(7 6) A violation of any condition, requirement or limitation of this section shall be cause for revocation of the residential permit by the director of planning.

(8 7) Inspections shall be allowed as provided in Section 138-337350.

- (9 8) The denial or revocation of a residential permit may be subject to reconsideration under Section 138-~~337~~350, and may be appealed to the ~~zoning board of adjustments and appeals~~ **board of commissioners** pursuant to Section 138-~~338~~351.

Sec. 138-~~336~~341. Off-street parking requirements.

Retail establishments in the DROD, special permittees in the ECOD, and residential permittees that do not comply with the city's off-street parking ordinance by providing the required minimum number of parking spaces shall in lieu of such compliance pay the applicable fee appearing in the table that follows. Payment of said fee shall be a condition, respectively, for: (i) the issuance of a building permit or the ~~finaling~~ **finalizing** of a miscellaneous inspection by the building official, (ii) the issuance of a special permit, and (iii) the issuance of a residential permit. However, no additional fee shall be required whenever the same permittee applies to the building official for a building permit or a miscellaneous inspection within one year of being issued a special permit or a residential permit. In all cases the applicable fee shall be based on the square footage of any space for which the building official issues a building permit or conducts a miscellaneous inspection:

TABLE INSET:

Gross Square Footage	Fee
Less than 2,500 sq. ft.	\$1,000.00
2,501—5,000 sq. ft.	\$1,500.00
5,001--10,000 sq. ft.	\$2,000.00
10,001--15,000 sq. ft.	\$2,500.00
15,001--20,000 sq. ft.	\$3,000.00
Over 20,000 sq. ft.	\$3,500.00

All such fees shall be deposited into the Downtown Services Parking Fund established by the city for the exclusive purpose of alleviating the parking needs of the Heart of the City. **No exception to offstreet parking requirements apply in the MAD.**

Secs. 138-342-138-349. Reserved.

[...]

Sec. 138-~~337~~350. Enforcement; notice of revocation; reconsideration.

(a) The provisions of this division shall be administered and enforced by the director of planning, and there shall be the right to enter upon any premises at any reasonable time for the purpose of making inspection of buildings or premises necessary to carry out the duties in the enforcement of this division.

(b) Whenever there is reason to believe that any permittee is in violation of any permit condition, requirement or limitation, a notice of violation shall be issued to the permittee, addressed to

the last known address as reflected in the department's files or the city's tax records, advising that on the basis of the violation being alleged the permit shall be revoked as of the tenth calendar day following the date on the said notice.

(c) A permittee whose permit is being revoked may, by the tenth day after the date on the notice and not thereafter, submit anything to the director of planning for reconsideration of the revocation. The director of planning may agree to meet with the permittee to discuss such reconsideration. In the event of such submission or meeting the revocation will not be effective until the tenth day following the director of planning's written determination on the reconsideration. In the event the director of planning fails to respond to a request for reconsideration within ten days of submission, a denial of such request shall be presumed and considered a final action.

Sec. 138-~~338~~351. Appeals.

Any permit applicant whose application is denied, any permittee whose permit is terminated or revoked, and any such person who is aggrieved by any decision of the director of planning may, within ten days of such final action and not thereafter, appeal in writing to the zoning board of adjustments and appeals pursuant to section 138-43, setting forth that such action is in error, in whole or in part, and specifying the grounds of such error.

Sec. 138-~~339~~352. Penalty for violations.

Any person violating any provision of this division shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount as prescribed in section 1-14. Each day that such violation continues shall be a separate offense. Prosecution or conviction under this section shall never be a bar to any other remedy or relief for violations of this article.

SECTION II: The Code of Ordinances, City of McAllen, Texas, Chapter 6 ("Alcoholic Beverages") is hereby amended to amend the language in Section 6-2, which section shall read as follows:

Sec. 6-2. Sale near church, school or hospital prohibited.

(a) Except as may otherwise be specifically provided in this Code, no beer or other alcoholic beverage manufactured in whole or in part by the means of the process of distillation, or liquor composed or compounded in part of distilled spirits, shall be sold within the city by any dealer where the place of business of such dealer is within 300 feet of any church, public or private school or public hospital. The measurements shall be as provided in V.T.C.A., Alcoholic Beverage Code § 109.33.

(b) Except as may otherwise be specifically provided in this Code, permit or license holders under Chapter 25, 28, 32, 69, or 74 of the Texas Alcoholic Beverage Code may not sell any alcoholic beverage within 300 feet of any day-care centers and child-care facilities as those terms are defined by Section 42.002, Human Resources Code, except for those who hold a food and beverage certificate.

(c) Notwithstanding the provisions of subsection (a) or (b), a premise for which a dealer applies for or holds an alcoholic beverage permit that authorizes off premise consumption only or authorizes on premise consumption but would not be considered a bar or similar establishment requiring a conditional use permit under the provisions of Section ~~413~~138-118(a)(4) of the Code of Ordinances may be established, located, sold, leased, transferred or expanded notwithstanding that it is within 300 feet of a church provided that such alcohol beverage permitted premise is or will be located in a C-3, C-4 or

industrial zoned district of the city [and is not located in the McAllen Arts District](#).

(d) The limitations of this section do not apply to the Entertainment and Cultural Overlay District ("ECOD") created under section 138-~~333~~334 of this Code.

(e) The board of commissioners may grant variances to the limitations of this section whenever it determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason which, after consideration of the health, safety, and welfare of the public and the equities of the situation, it determines is in the best interest of the community.

Sec. 6-3. Sale, possession and consumption of alcoholic beverages during extended hours.

(a) [Except in the McAllen Arts District](#), it shall be lawful for the holder of a mixed beverage permit within the corporate limits of the city to acquire a mixed beverage late hours permit and under such mixed beverage late hours permit sell or offer for sale any alcoholic beverages during the extended hours allowed by the state alcoholic beverage code. [In the McAllen Arts District to the extent allowable by law, no one shall sell or offer for sale any alcoholic beverages after 11:00 p.m.](#)

(b) It shall be unlawful for any person within the corporate limits of the city to consume or possess with intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a.m. and 12:00 noon or on any other day between 12:15 a.m. and 7:00 a.m., provided, however, it shall not be unlawful for a person to consume or possess with intent to consume an alcoholic beverage if such alcoholic beverage is within the confines and limits of the premises on which a mixed beverage late hours permit has been issued during the extended hours granted by subsection (a).

(c) A violation of subsection (b) is punishable by a fine of not more than \$50.00.

(d) The penalty provided for in subsection (c) should not be construed as exclusive, and the city hereby provides that any other remedy available to it in the enforcement of this section, in law or in equity, is not intended to be, is not to be, and is not foreclosed by the provision of such penalty.

SECTION III: The Code of Ordinances, City of McAllen, Texas, Chapter 54 ("Health and Sanitation"), Article VI ("Sexually Oriented Business Regulation"), is hereby amended to amend the language in Section 54-157, which said sections shall read as follows:

Sec. 54-157. Exemptions.

It is a defense to prosecution under Section 54-154 that a person appearing in a state of nudity did so in a modeling class [not visible from a public street or right of way](#) operated:

- (1) By a proprietary school, licensed by the State of Texas; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university, and
- (3) [In a permitted art establishment in the McAllen Arts District created under](#)

Chapter 138.

SECTION IV: The code of Ordinances, City of McAllen, Texas, Chapter 130 (“Signs”) Article III (“Prohibited Acts and Signs”) is hereby amended to add Section 130-85 and said section shall read as follows:

Sec.130-85 Sign Regulation in the MAD

All signs requiring permits under this chapter that are located within the McAllen Arts District (“MAD”) established under Chapter 138 of this Code shall meet or comply with the following requirements:

1. No sign shall exceed 17 feet in height as measured from the ground to the top of the sign.
2. No sign shall exceed 50 square feet in area.
3. No pole signs are permitted in the MAD.
4. No changeable electronic variable message signs (CEVMS) are permitted in the MAD.

SECTION V: Upon the conviction for any unlawful violation of the provisions hereof, the court may impose the fine or penalty as provided in Section 1-14 of the Code of Ordinances of the City of McAllen.

SECTION VI: The City Secretary of the City of McAllen is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

SECTION VII: The City Secretary of the City of McAllen is hereby authorized and directed to cause the following language in the McAllen Code of Ordinances, as amended by Section I hereinabove, to be published in the appropriate location in the said Code of Ordinances, to wit: amending Section 138-331; amending Section 138-340 and renumbering it as Section 138-333; amending Section 138-335, and renumbering it as Section 138-340; amending Section 138-336, and renumbering it as Section 138-341; renumbering Section 138-333 as Section 138-134, Section 138-334 as Section 138-135, Section 138-337 as Section 138-350, Section 138-338 as Section 138-351, and Section 138-339 as Section 138-352; and also adding new Sections 138-336, 138-337, 138-338, and reserving a new Section 138-339 and Sections 138-342 through 138-349; and further, amending the language in Sections 6-2 and 6-3 of the same Code, as amended by Section II hereinabove, and adding a new subsection (3) to Section 54-157, as provided in Section III hereinabove.

SECTION VIII: This Ordinance shall be and remain in full force and effect from and after its passage by the Board of Commissioners, and execution by the Mayor.

SECTION IX: If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

CONSIDERED, PASSED and APPROVED this ____ day of _____, 201____, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and

which was held in accordance with Chapter 551 of the Texas Government Code, and Chapter 102 of the Texas Local Government Code.

SIGNED this _____ day of _____, 201__.

CITY OF McALLEN

By: _____
Richard F. Cortez, Mayor

Attest:

Annette Villarreal, City Secretary

Approved as to form:

Kevin D. Pagan, City Attorney