

**ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF McALLEN BY AMENDING DIVISION 13 ("HEART OF THE CITY OVERLAY DISTRICTS") ARTICLE V ("DISTRICTS") OF CHAPTER 138 ("ZONING") TO REVISE RESTRICTIONS PERTAINING TO THE "ENTERTAINMENT AND CULTURAL OVERLAY DISTRICT" AND TO RETAIN THE "DOWNTOWN RETAIL OVERLAY DISTRICT;" PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

**WHEREAS**, the Board of Commissioners of the City of McAllen found that it would serve the public interest to support the economic development in the area of the City known as the Heart of the City of McAllen in 2005, and further found that establishing certain zoning overlay districts within the Heart of the City would encourage such economic development, particularly by promoting entertainment and cultural interest, as well as by supporting retail establishments already in place while encouraging a greater variety of such retail establishments; and

**WHEREAS**, certain sections of the Heart of the City are deemed appropriate and suitable for designation as "Entertainment and Cultural" and "Downtown Retail" overlay districts; and

**WHEREAS**, the Board of Commissioners recognized that having a variety of and cultural establishments in the City would promote a richer and more diverse experience for the residents of and visitors to the City, thus enhancing their quality of life; and

**WHEREAS**, the Board of Commissioners adopted the addition of such overlay districts on November 11, 2005. Section 138-332 (b) states that Division 13 shall sunset ten years after its effective date.

**WHEREAS**, discussions concerning the sunset clause took place within City Commissioner workshops, staff meetings, and a public meeting with affected property and business owners. The outcome of such discussions have resulted in proposed added conditions to special permits and retain the "Downtown Retail Overlay District."

**NOW, THEREFORE, IT IS HEREBY 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") is hereby amended by adding a new Division 13 ("HEART OF THE CITY OVERLAY DISTRICTS"), which shall read in full as follows:

**DIVISION 13. - HEART OF THE CITY OVERLAY DISTRICTS**

FOOTNOTE(S):

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**Editor's note** — Map A referenced in this Division 13 is not set out herein, but is on file and available for inspection in the offices of the city.

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:

*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.

**BYOB or BYO means “bring your own bottle”, “bring your own beer”, “bring your own beverage”, or “bring your own booze”.**

*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.

*Entertainment or cultural establishment* means any of a 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 Hackberry Avenue to Expressway 83 and from Bicentennial Boulevard to 10th Street.

*Retail establishment* means an establishment the primary purpose of which is the sale of goods, products or materials directly to a consumer, including personal service establishments 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.~~
- (b)** 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 be transferable and will be subject to revocation as provided in this division.
- (c)** 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
- (d)** In the event ~~this division should sunset~~ or the board of commissioners repeals this division then, except as provided in subsection ~~(f)~~ (e) hereof, the overlay districts established hereunder shall dissolve and no special or residential permits shall be issued or renewed.
- (e)** 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. - 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, 41, ~~56~~ and 57; **Lots 5 through 14 out of Block 4, 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, Lot 1 and the South 22 feet of Lot 2 and Lot 4 out of Block 40, and Lots 1, 3, 4, 5 out of Block 56** 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-2C-3~~/ECOD")).

(c) **BYOB Prohibited: A patron, customer, or guest of a bar, restaurant, entertainment or cultural establishment, or other establishment in the ECOD may not bring wine, malt alcoholic beverages (beer), distilled beverages or other beverages produced through distillation into such establishments.**

(d) ECOD special permits may be issued to entertainment or cultural establishments within the boundaries of the ECOD, for a period of five **three** 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.

**(a). Lighting must be provided at each entrance and exit as well as at the rear of the establishment if adjacent to the alley or on a corner lot.**

**(b). A special permittee holding a Mixed Beverage Late Hours Permit is required to provide security personnel based on the occupancy count provided by the Chief Building Official. There shall be one security personnel per every 75 patrons plus one supervising security personnel for every five security personnel required. All security personnel must be properly identifiable.**

**(c). The installation of security cameras will be required at each entrance and exit to the establishment plus one additional camera for every 500 square feet of floor area. Security cameras must have a minimum retention load of 30 recording days. Dummy cameras are prohibited and signs should be posted that the establishment is under video surveillance. At the City's request the special permittee shall assist the municipality in obtaining authorization from the property owner to place additional video cameras on the exterior of the building.**

**(d). Outdoor amplified music is prohibited.**

**(e). Establishments selling alcoholic beverages with a Mixed Beverage Late Hours Permit (midnight to 2AM) shall restrict occupancy to 21 and over.**

- (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. 138-334. - 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., ("C-3/ DROD")).

(Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

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

Residential uses not otherwise permitted in the base district underlying an overlay 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 of \$100.00. A residential permit shall be issued to the property owner for life of the use, 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.
- (3) The off-street parking requirements of section 138-336 shall apply.
- (4) No residential uses will be allowed on the first floor of a building.
- (5) No residential uses will be allowed on any floor above the first when the floor also has a 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.
- (6) 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.
- (7) A violation of any requirement or limitation shall be cause for revocation of the residential permit by the director of planning.
- (8) Inspections shall be allowed as provided in section 138-337
- (9) The denial or revocation of a residential permit may be subject to reconsideration under section 138-337, and may be appealed to the zoning board of adjustments and appeals pursuant to section 138-338

(Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

Sec. 138-336. - 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 of a miscellaneous inspection by the building official and (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:

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 Development Fund established by the city for the exclusive purpose of alleviating the parking needs and improvements of the Heart of the City.

(Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2006-47, § 1, 5-8-06)

Sec. 138-337. - 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.

(Ord. No. 2005-95, § 1, 11-14-05)

Sec. 138-338. - 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.

(Ord. No. 2005-95, § 1, 11-14-05; Ord. No. 2008-30, § 2, 4-28-08)

Sec. 138-339. - 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.

(Ord. No. 2005-95, § 1, 11-14-05)

Sec. 138-340. - Board of commissioners to consider chapter 380 agreements.

The board of commissioners may enter into chapter 380 economic development agreements with enterprises locating in the Heart of the City provided that:

- (1) The enterprise shall locate within the central business district;
- (2) The enterprise shall first apply with the Heart of the City of McAllen Redevelopment 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.

(Ord. No. 2007-72, § 1, 9-10-07)

Secs. 138-341—138-345. - Reserved.

**SECTION II:** This ordinance shall become effective immediately upon its passage and execution in accordance with the law;

**SECTION III:** The City Secretary of the City of McAllen is hereby authorized and directed to cause the contents of Section I hereof to be added in the appropriate location in the Code of Ordinances of the City of McAllen.

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

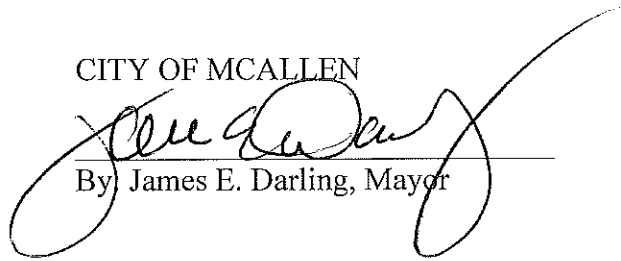
**SECTION V:** Is any part or parts of this ordinance is found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts shall remain in full force and effect, and to that extent this ordinance is considered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

**CONSIDERED, PASSED, and APPROVED** this 23rd day of May 2016 at the regular meeting of the Board of Commissioners of the City of McAllen, Texas at which quorum was present and which was held in accordance to Chapter 551 of the Texas Government Code.



**SIGNED** this 31st day of May, 2016.

CITY OF MCALLEN

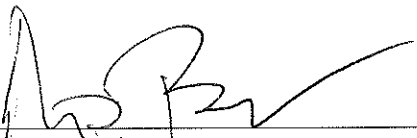
A large, stylized handwritten signature in black ink, appearing to read 'James E. Darling', written over a horizontal line.

By James E. Darling, Mayor

ATTEST:

By: \_\_\_\_\_  
Perla Lara, TRMC/CMC, CPM,  
City Secretary

Approved as to form:

By:  \_\_\_\_\_  
Kevin Pagan, City Attorney