ORDINANCE #778

AN ORDINANCE AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES, MISCELLANEOUS OFFENSES OF THE CITY OF KYLE SO AS TO ADD ARTICLE IX MASS GATHERINGS AND ESTABLISH PERMIT REQUIRMENTS, APPLICATION PROCESS AND REGULATE NOISE LEVELS FROM SUCH EVENTS, DECLARING A PUBLIC PURPOSE, ESTABLISHING A PENALTY AND SETTING AN EFFECTIVE DATE .

WHEREAS, the City Council has determined a municipal need to establish a permit and application process for Mass Gatherings, including but not limited to concerts, revivals and circuses, and to regulate noise levels from such gatherings; and

WHEREAS, the City Council has determined these new requirements are necessary to maintain the health, safety, governance and good order of the City; and

WHEREAS, after publication in the manner prescribed by law the governing body of the City wishes to amend Chapter 23 by adding Article IX, Sections 23-270 to 23-282 of the Municipal Code of Ordinances of the City in the manner and form set forth below;

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS:

SECTION 1. That the existing Chapter 23 of the Code of Ordinances of the City of Kyle entitled "Miscellaneous Offenses" is hereby amended by adding Article IX, "Mass Gatherings," Sections 23-270 to 23-280 to read as follows:

ARTICLE IX. – MASS GATHERINGS

Sec. 23-270. – Definitions.

(a) "Mass gathering" means a gathering that is held inside the limits of the City of Kyle and that attracts or is expected to attract:
  (i) more than 1,000 persons; or
  (ii) more than 500 persons, if 51 percent or more of those persons may reasonably be expected to be younger than 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering; and
  (iii) at which the persons will remain for more than four continuous hours; or for any amount of time during the period beginning at 10 p.m. and ending at 6 a.m.

(b) "Person" means an individual, group of individuals, firm, corporation, partnership, or association.

(c) "Promote" includes organize, manage, finance, or hold.

(d) "Promoter" means a person who promotes a mass gathering.

Sec. 23-271. – Permit Requirement.

A person may not promote a mass gathering without a permit issued under this Article. City Council shall establish cost for such permit.

Sec. 23-272. –Application Procedure.

(a) At least forty five (45) days before the date on which a mass gathering will be held, the promoter shall file a permit application with the City. Applications submitted less than forty five (45) days prior to the event may still be considered; however, the applicant acknowledges that the required inspections and review process may not be completed in time to allow for authorization and permitting.

(b) The application must include:
   (1) the promoter's name and address;
   (2) the name and address of the owner of the property on which the mass gathering will be held;
   (3) an executed copy of the agreement between the promoter and the property owner;
   (4) the location and a description of the property on which the mass gathering will be held;
   (5) the dates and times that the mass gathering will be held;
   (6) the maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;
   (7) a description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;
   (8) a description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;
   (9) a description of the preparations made to provide adequate medical care; and
   (10) a description of the preparations made to supervise minors who may attend the mass gathering.
   (11) adequate assurance of scheduled performers appearance.

Sec. 23-273. –Application Review.

(a) After a permit application is filed with the City, the application shall be sent to the county health authority, the Kyle Fire Department and the Police Chief.

(b) The county health authority shall inquire into preparations for the mass gathering. At least fifteen (15) days before the date of the Mass Gathering, the county health authority shall submit to the Police Chief

a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The Kyle Fire Department Chief or his designee shall investigate preparations for the mass gathering. At least fifteen (15) days before the date of the Mass Gathering, the Fire Department Official shall submit to the Police Chief a report stating whether the Kyle Fire Official believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.

(d) Police Chief, or designee, shall investigate preparations for the mass gathering. At least fifteen (15) days before the date of the Mass Gathering, the Police Chief shall make a determination on whether the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(e) The City Manager may conduct any additional investigation that the Manager considers necessary.

Sec. 23-274. –Decision by Police Chief.

(a) After a review of the reports from the Kyle Fire Department and county health authority, the Police Chief shall either grant or deny the permit. The decision of the Police Chief shall be no later than the 10th day before the date on which a mass gathering will begin

(b) The Police Chief may deny the permit if he finds that:

(1) the application contains false or misleading information or omits required information;

(2) the location selected for the mass gathering is inadequate for the purpose for which it will be used;

(3) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(4) the promoter does not have assurance that scheduled performers will appear;

(5) the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(6) the preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(9) adequate arrangements for traffic control have not been provided;

(10) adequate medical and nursing care will not be available; and

Sec. 23-275. –Permit Revocation.

The Police Chief may revoke a permit issued under this Article if the Police Chief finds that preparations for the mass gathering will not be completed by the time

the mass gathering will begin, for any reason identified in Section 23-274 (b), or that the permit was obtained by fraud or misrepresentation.

Sec. 23-276. – Appeal

A promoter or a person affected by the granting, denying, or revoking of a permit may appeal that action to the City Council or if time does not permit for a City Council meeting to be called, the appeal can be to a district court having jurisdiction in Hays County.

Sec. 23-277. – Inspections.

(a) The county health authority may inspect a mass gathering during the mass gathering to ensure that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders are being maintained. If the county health authority determines a violation of the minimum standards is occurring, the health authority may order the promoter of the mass gathering to correct the violation.
(b) The Kyle Fire Department Official may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders are being maintained. If the official determines a violation of the minimum standards is occurring, the marshal or designee may order the promoter of the mass gathering to correct the violation.
(c) The police chief may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public safety and order prescribed by state and local laws, rules, and orders are being maintained. If the police chief determines a violation is occurring, the police chief may order the promoter of the mass gathering to correct the violation.
(d) A promoter who fails to comply with an order issued under this section commits an offense. An offense under this section is a Class C misdemeanor.

Sec. 23-278. – Indemnity Clause

The applicant shall indemnify and hold the City harmless from all costs, expenses (including reasonable attorney's fees) and damages to persons or property arising directly or indirectly as a result of the mass gathering.
This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the applicant and the City.

Sec. 23-279. – Noise

Any unreasonably loud, disturbing or unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity of the Mass Gathering, or any noise of such character, intensity and continued duration which interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is prohibited and is hereby declared a nuisance. All other regulations in Chapter 23, Article VI of the City Code or Ordinances regarding Noise shall apply to Mass Gatherings.

Sec. 23-280. –Inspection Fees

(a) City Council may establish and collect a fee for an inspection performed under Section 23-277. The fee may not exceed the amount necessary to defray the costs of performing the inspections.
(b) City Council may use money collected under this section to reimburse the county and the Kyle Fire Department, the cost of performing the inspections outlined in Section 23-277.

Sec. 23-281. – Exceptions to Permit and Fee

The following types of mass gatherings are required to notify the Chief of Police ten (10) days prior to the event, but are not required to obtain a Mass Gatherings Permit or to pay any fees established under Section 23-279.

(a) Church events held on church property;
(b) City, school, county or other governmental entity events held on property owned by the governmental entity
(c) Weddings, family reunions, wakes, and funerals; or
(d) Any other exceptions approved by City Council.
(e) An applicant may request, and the Chief of Police may approve an annual or event series permit for a single location hosting repetitive events of similar nature; including but not limited to attendance, hours of operation, and safety measures as described elsewhere in this ordinance.

Sec. 23-282. - Criminal Penalty.

(a) A person commits an offense if the person violates Section 23-271.
(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $1,000.

SECTION 2. SAVINGS CLAUSE: All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not effect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections,

subsections, sentences, clauses or phrases be declared void.

SECTION 5. EFFECTIVE DATE. The Ordinance shall be effective immediately following its publication in the local newspaper as required by the Texas Local Government Code. Thereafter, the rules contained therein will apply within the City of Bulverde.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the 4th day of February, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the 18th day of February, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary