

ORDINANCE NO. 0003-2021

AN ORDINANCE OF THE CITY OF MCFARLAND REGARDING GARAGE SALES/YARD SALES AND AMENDING AND RESTATING TITLE 5, CHAPTER 5.48 OF THE MCFARLAND MUNICIPAL CODE TO AMEND AND RESTATE SECTIONS 5.48.010, 5.48.020, AND 5.48.030, AND ENACT SECTIONS 5.48.040, 5.48.050, 5.48.060, 5.48.070, 5.48.080, 5.48.090, 5.48.100, 5.48.110, and 5.48.120, MCFARLAND MUNICIPAL CODE

Section 1. Recitals.

WHEREAS, The City of McFarland ("City") desires to amend, clarify and codify its Municipal Code Chapter related to Garage Sales/Yard Sales conducted within the City limits;

WHEREAS, The Ordinance Amendment updates the Municipal Code to codify the City's requirements and procedures for residents seeking to conduct a Garage Sale and/or Yard Sale;

WHEREAS, Adoption of this Ordinance will provide uniform and comprehensive regulations and standards related to Chapter 5.48 of the McFarland Municipal Code.

WHEREAS, Adoption of this Ordinance is in furtherance of the City's goals and objectives while reducing the potentially negative impacts arising from incompatible Municipal Code Chapters and state law.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MCFARLAND DOES ORDAIN AS FOLLOWS:

Section 2. Section 5.48.010 of the McFarland Municipal Code is hereby amended and restated to read as follows:

5.48.010 – Purpose and Intent.

The purpose and intent of this chapter is to regulate garage and yard sales of used goods on residential properties and rummage sales on institutional property. Although these types of sales possess commercial characteristics, because of the manner in which conducted or operated, they are generally considered noncommercial in nature. These regulations are intended to prevent the expansion of commercial operations into residential and institutional properties, upgrade the community image, and regulate sales activity outdoors of used personal property so as to keep such sales noncommercial and not in violation of zoning laws. The provisions of this 5.48 are not intended to create a substitute procedure for, or to allow sales regulated by, other Chapters of this Municipal Code, including, but not limited to those Chapters governing outdoor display of merchandise on commercial or industrially zoned property, or Mobile Vendors. Persons who comply with this Chapter 5.48 are exempt from payment of business taxes under Chapter 5.04. Private sales of individual items of personal property which are not displayed outdoors are exempted from the prohibitions or application of this section.

Section 3. Section 5.48.020 of the McFarland Municipal Code is hereby amended and restated to read as follows:

5.48.020 - Definitions.

As used in this chapter:

"Garage sale" means any display and sale conducted by an individual or group of home owners, apartment dwellers or occupants of a residential dwelling for the purpose of disposing of unwanted or surplus household furnishings or other used, personally owned goods (collectively included under the term "used goods" as defined in this section), usually conducted in a garage or driveway on a residential property, for which no inventory is kept and no sales tax is required to be paid on the transaction carried out. The term "garage sale" includes sales of household goods conducted on any portion of a residential premises including a yard, and hence sometimes called a "yard sale."

"Identifiable goods" means any tangible personal property which bears a serial number, personalized initials or inscription and includes secondhand tangible personal property which bears evidence of once having had a serial number or personalized initial or inscription.

"Permit" means a permit issued by the finance department to conduct a garage, yard or rummage sale.

"Rummage sale" means any indoor or outdoor display and sale of "used goods" as defined below, conducted for fund raising purposes by a charitable or fraternal organization that is exempted or qualified for exemption by Section 501(C)3 of the Internal Revenue Code.

"Used goods" means surplus household furnishings or other used, personal goods, clothing and similar personal belongings that are owned by or have been donated to the seller. The term specifically excludes new furnishings, new merchandise or new goods that are being sold at retail or wholesale.

Section 4. Section 5.48.030 of the McFarland Municipal Code is hereby amended and restated to read as follows:

5.48.030 - Permit and fee requirements.

- A. Any resident, or an organization or club of the city on behalf of its members, may conduct a garage sale or rummage sale, respectively, as defined in this chapter; provided, however, that a permit is first obtained from the finance department of the city. The fee for a permit may be established from time to time by resolution of the city council and shall be for one garage sale. An application for a permit may be obtained from city hall. The fee shall be paid at the time the application is filed and shall be nonrefundable whether or not the permit is issued. A permit and fee shall be required for each garage sale.
- B. Applications for a permit must be made at least forty-eight hours prior to the proposed sale. The application shall provide the following information:
1. Name and address of the person(s) or organization(s) wishing to conduct the sale;
 2. The location where the sale is to be conducted;
 3. A general description of the property qualifying as used goods to be offered for sale;
 4. Dates and time period when sale shall be conducted;
 5. Signature of person(s) or agent conducting sale;
 6. Authorization of property owner or managing agent of multifamily apartment or condominium complexes.
 7. A separate permit and fee payment is required for each address at which a sale is to be conducted, except that a single permit fee may be charged when a group of residents arrange a neighborhood garage sale for the collective purpose of funding a neighborhood civic program or activity.

Section 5. Section 5.48.040 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.040 - Regulations on sales.

- A. All used goods being sold must be the property of those conducting the sale or on whose behalf the sale is being conducted.
- B. It shall be presumed that goods on display consisting of three or more products of a similar nature in an original unopened container or packaging constitute new merchandise that is being vended as part of a commercial enterprise and are therefore prohibited under this Chapter 5.48.

- C. Conducting a garage or rummage sale for which no permit was issued counts as a garage or rummage sale for purposes of computation of the annual sales limit. Each sale and each permit is limited to a maximum period of four consecutive days per sale.
- D. In compliance with California Sales and Use Tax Regulations, Article 7, Regulation 1595, no more than two garage sales may be conducted by the same resident of the same address, at the same address, within the same calendar year. Additionally, no person may conduct more than two garage sales within the same calendar year regardless of location.
- E. No more than two rummage sales may be conducted by a qualifying organization during any calendar year.
- F. Special rules for multifamily apartment and condominium complexes: The maximum number of garage sales permitted at any residential apartment complex with three or more units, or in a condominium complex with three or more dwelling units, is limited to a maximum of two sales per calendar year. The property owner, managing agent or management official must co-sign the application to authorize the sale on the premises before a permit will be issued.
- G. Persons displaying or selling goods in violation of Chapter 5.48 shall immediately cease and desist from further sales activity and shall remove all goods and wares from display upon direction of an authorized officer of the city. An enforcement official is authorized to impound goods being displayed or sold in violation of this chapter as evidence pending citation and enforcement.
- H. Except at licensed swap meets, sales of used goods outdoors on property used for commercial or industrial purposes is prohibited, and no permit shall be issued under this Chapter 5.48 for that purpose.
- I. All permits issued by the city shall include written notice of the provisions of this chapter.

Section 6. Section 5.48.050 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.050 - Prohibited items.

It is unlawful for any person to exchange, barter, trade or sell at a garage or rummage sale the following items: firearms, ammunition, explosives, animals and livestock, any identifiable goods, and all other items the sale or possession of which may be prohibited by ordinance or resolution duly adopted by the city council of the city or by the laws of the state or county.

Section 7. Section 5.48.060 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.060 - Advertising signs.

Only one unlighted advertising sign not exceeding six square feet in area may be located on the premises of the sale. The sign must be of a temporary nature, may be displayed not more than one week in advance of such sale, and must be removed upon conclusion of the sale. Signs are prohibited in the public right-of-way.

Section 8. Section 5.48.070 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.070 - Display requirements.

- A. All used goods to be sold must be displayed on property owned or controlled by the permittee or which the permittee is authorized to use by the property owner or manager.
- B. No used goods shall be displayed on streets or public sidewalks.
- C. No used goods shall be displayed on a vacant or undeveloped lot.

Section 9. Section 5.48.080 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.080 - Permit sign.

The finance officer will issue a distinctive permit sign to each permittee. The permit sign must be posted in a conspicuous spot, to be visible from the abutting public right-of-way or access point for enforcement purposes.

Section 10. Section 5.48.090 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.090 - Refunds.

Refunds of any permit fee paid will not be made. A credit will be issued if the permit is physically surrendered to the finance department prior to the first authorized day of the permit. After that date, the fee is non-creditable and the issued permit counts against the number of permits authorized in Section 5.48.040.

Section 11. Section 5.48.100 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.100 - Additional rules.

The finance officer may promulgate additional rules to implement and administer the provisions of this Chapter 5.48.

Section 12. Section 5.48.110 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.110 - Deadlines.

The finance officer shall not issue a permit unless application is made at least forty-eight hours in advance.

Section 13. Section 5.48.120 of the McFarland Municipal Code is hereby adopted and enacted to read as follows:

5.48.120 - Violation—Penalty.

A. It is unlawful:

1. To conduct a garage, yard or rummage sale without a permit;
2. To alter a permit or permit sign;
3. To fail to discontinue operation of an unpermitted sale or to fail to remove displayed goods upon request of an enforcement official;
4. To post signs in violation of Section 5.48.060;
5. To fail to post a permit sign;
6. To sell used goods that are not the property of the permittee or a person on whose behalf the sale is conducted, or to sell other than used goods;
7. To apply for a permit on behalf of a person or organization that is not authorized to conduct a garage, yard or rummage sale;
8. To make a false statement or representation on a permit application; or
9. To display used goods on a street, public sidewalk or vacant lot.

B. Each violation of the provisions of this chapter is an infraction, punishable by a fine not exceeding fifty dollars for a first violation, a fine not exceeding one hundred dollars for a second violation of this section within one year, or a fine not exceeding two hundred fifty dollars for each additional violation of this section within one year.

Section 14. The Amended Chapter 5.48 of the McFarland Municipal Code is set forth in Exhibit "A" to this Ordinance and incorporated herein by reference.

Section 15. NOTICE. The City clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 16. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of McFarland hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

Section 17. Effective Date. This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.

Section 18. Certification; Publication. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of McFarland, California on the 10th day of June 2021, by the following vote:

	Aye	Nae	Abstain	Absent
Sally Gonzalez	√			
Maria T. Perez	√			
Eric Rodriguez				
Saul Ayon	√			
Ricardo Cano	√			



 Sally Gonzalez, Mayor

I hereby certify that the foregoing Ordinance was duly and regularly adopted by the City Council of the City of McFarland by a regular meeting thereof held on June 10, 2021.

ATTEST:



 Francisca Alvarado, City Clerk

APPROVED AS TO FORM:

 Nathan M. Hodges, City Attorney

Posted: June 24, 2021

EXHIBIT A
CHAPTER 5.48 GARAGE SALES

5.48.010 – Purpose and Intent.

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6. Authorization of property owner or managing agent of multifamily apartment or condominium complexes.
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 - 8. To make a false statement or representation on a permit application; or
 - 9. To display used goods on a street, public sidewalk or vacant lot.
- B. Each violation of the provisions of this chapter is an infraction, punishable by a fine not exceeding fifty dollars for a first violation, a fine not exceeding one hundred dollars for a second violation of this section within one year, or a fine not exceeding two hundred fifty dollars for each additional violation of this section within one year.