

## ORDINANCE NO. 1410

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REPEALING ORDINANCE NUMBER 1353 OF THE CITY OF MESQUITE AND AMENDING CHAPTER 5B, MESQUITE CITY CODE, BY PROVIDING REGULATION OF AND ESTABLISHING A LICENSE FEE FOR COIN-OPERATED AMUSEMENT ESTABLISHMENTS; PROHIBITING THE PLAYING OR OPERATION OF COIN-OPERATED AMUSEMENT MACHINES BY PERSONS UNDER SEVENTEEN (17) YEARS; PROVIDING EXCEPTIONS; PROVIDING FOR REVOCATION OF LICENSE; PROVIDING A RIGHT AND MANNER OF APPEAL; PROVIDING CERTAIN DEFINITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

WHEREAS, coin-operated amusement establishments have a tendency to attract patrons of tender years, and

WHEREAS, the congregation of youthful patrons creates problems of policing due to the need to protect such patrons from the influences of those who would promote gambling, sale of narcotics and other unlawful activities; and

WHEREAS, it is vital to the safety and welfare of the inhabitants of the City of Mesquite and particularly those of tender years for whom a special duty is imposed upon the governing body to protect, that proper and suitable operators only are licensed to operate coin-operated amusement establishments and that such establishments be regulated to that end; and

WHEREAS, it has been determined that the attraction of such establishment for those under seventeen (17) years of age is detrimental to such persons and to the health and welfare of the inhabitants of the City, generally.

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

SECTION 1. That Ordinance Number 1353 of the City of Mesquite passed on the 7th day of February, 1977, is hereby repealed.

SECTION 2. That Chapter 5B, Mesquite City Code is hereby amended to read as follows:

SECTION 3. It is hereby declared to be unlawful to own, display or operate coin-operated amusement machines or apparatus in the City without a license issued by the City of Mesquite therefor.

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SECTION 4. It is hereby declared to be unlawful to own, operate or maintain a coin-operated amusement establishment in the City without a license issued by the City of Mesquite therefor.

SECTION 5. It shall be unlawful for any owner, operator or displayer of coin-operated amusement machines or coin-operated amusement establishments to allow any person under the age of seventeen (17) years to play or operate a coin-operated amusement machine unless such minor is accompanied by a parent or legal guardian.

SECTION 6. License: Any person desiring to obtain a license for a coin-operated amusement machine may apply to the Assessor-Collector of Taxes of the City of Mesquite on a form to be furnished by the City showing the type of machine to be licensed, serial number, location, name of establishment and name of the owner or person in control of such machine together with the name and title of person making the application if other than the owner.

Upon payment of the license fee, the Assessor-Collector shall issue a license which shall be valid for such machine for one (1) year.

Any person desiring to obtain a license for a coin-operated amusement establishment shall apply to the City Secretary by original and five (5) copies, one of which shall be routed to the City Manager, Chief of Police, Chief Building Inspector and City Planner, for review. The applicant shall accompany the application with a tender of the correct permit fee as hereinafter provided and shall, in addition, furnish the following:

- (1) The type of ownership of the business, i.e., whether individual, partnership, corporation, or otherwise;
- (2) The name under which the business is to be conducted;
- (3) The business address and all telephone numbers where the business is to be conducted;
- (4) The name and residence address of the manager or other person principally in charge of the operation of the business;
- (5) The following personal information concerning the applicant, if an individual; and concerning each stockholder holding more than ten (10) per cent of the stock of the corporation, each officer and each director, if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership; and the holder of any lien, of any nature, upon the business and/or the equipment used therein; and concerning the manager or other person principally in charge of the operation of the business:

- (a) Name, complete residence address and residence telephone numbers,
  - (b) The two (2) previous addresses immediately prior to the present address of the applicant,
  - (c) Written proof of age,
  - (d) Height, weight, color of hair and eyes, and sex,
  - (e) Two (2) front-face portrait photographs taken within thirty (30) days of the date of the application and at least two (2) by two (2) inches in size.
  - (f) The coin-operated amusement or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reason therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation,
  - (g) All criminal arrests other than misdemeanor traffic violations, fully disclosing the jurisdiction in which arrested and the offense for which arrested and the disposition thereof.
  - (h) A complete set of fingerprints taken and to be retained on file by the police chief or his authorized representatives;
- (6) Such other information, identification, and physical examination of the person as shall be deemed necessary by the police chief to discover the truth of the matters hereinbefore required to be set forth in the application;
- (7) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit;
- (8) The names and addresses of three (3) adult residents of the county who will serve as character of references. These references must be persons other than relatives and business associates.

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- (9) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration to be made under oath.

The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude, taking into consideration the attraction by such establishments of those of tender years.

The Chief Building Inspector and City Planner shall determine compliance with applicable building and zoning ordinances of the City.

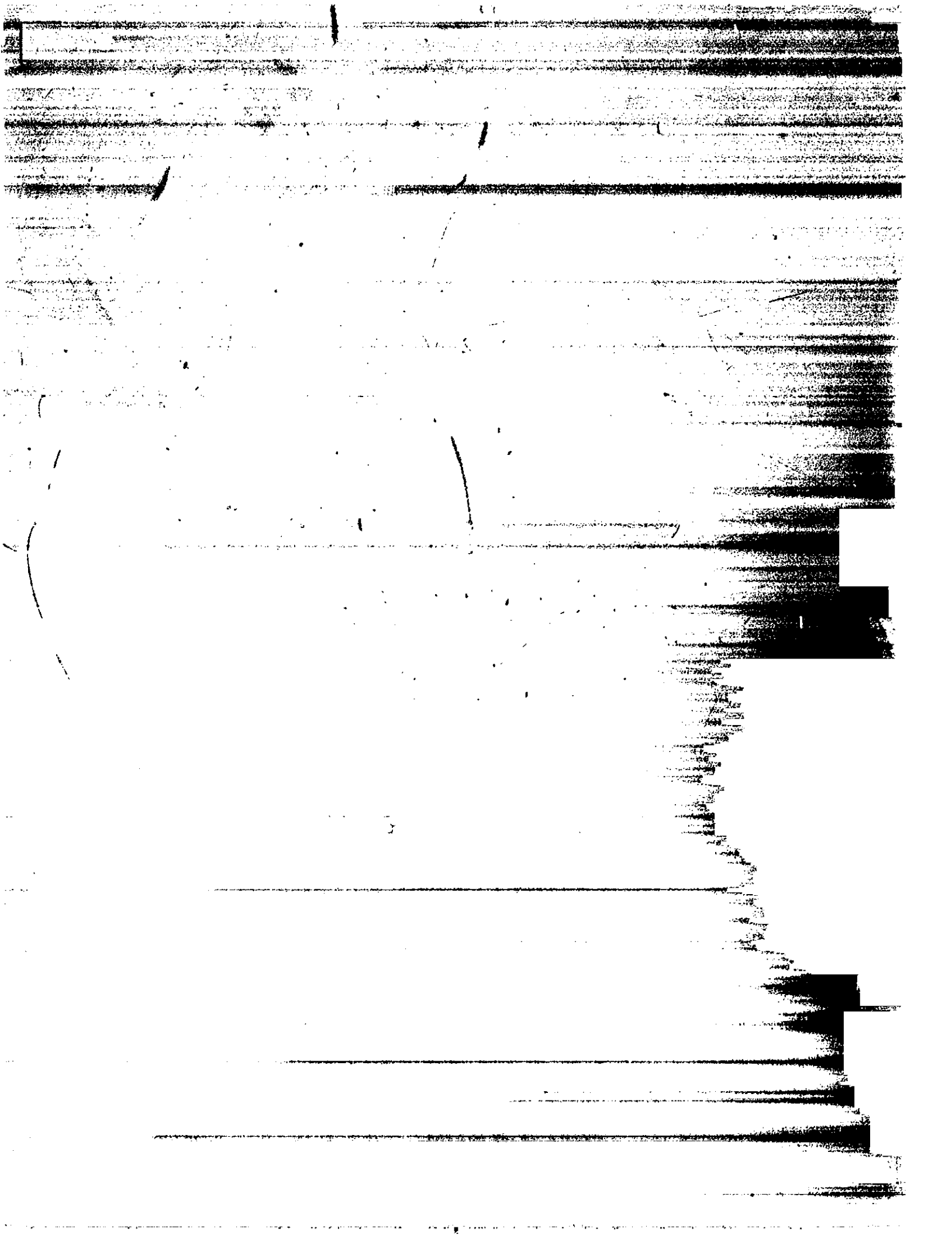
When the City Manager has received the recommendations from the Chief of Police, Chief Building Inspector and City Planner, he shall review such application together with such recommendations as may be furnished and shall approve such application or disapprove same with written notation of his reasons for disapproval.

Upon approval by the City Manager and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferrable.

Upon disapproval, the applicant may make such corrections as noted and request approval, request withdrawal and refund of license fee, or give notice of appeal from the City Manager's decision.

In the event of appeal from the City Manager's decision, the applicant shall give written notice of his intention to appeal within ten (10) days of notice of the City Manager's decision. Such appeal shall be heard by the City Council within thirty (30) days from date of such notice unless a later date is agreed upon by applicant or continuation is necessary to obtain additional information regarding applicant's character.

Upon appeal to the City Council of the City Manager's decision based upon an adverse recommendation by the Chief of Police as to applicant's character, the applicant shall have the same burden as prescribed in Article 305, V.A.C.S. to show to the Council that he or it is of good character as a law abiding citizen to such extent that a license should be issued. In order to discharge such burden, the applicant may be required by the City Council to furnish such information as may be pertinent and relevant to the determination of applicant's character.



**RETAKE  
OF  
PREVIOUS  
DOCUMENT**

The City Attorney is hereby directed to serve notice upon applicant within ten (10) days from date of notice of appeal as to the nature and extent of information to be furnished to the City Council for purposes of the hearing on appeal. Notice of the information required may be supplemental before, during, and after the hearing before the City Council. A determination as to relevancy and need for any particular information in the event of dispute, shall be made by the City Council. The hearing may be continued for the purpose of obtaining additional information should the City Council deem it necessary to consider such information.

Upon hearing, the City Council may reverse the decision of the City Manager in whole or in part or may affirm such decision.

An applicant may appeal such decision to the District Court within thirty (30) days but such appeal shall be upon the substantial evidence rule.

Evidence to be considered upon appeal must be relevant and convincing but need not be in the form required in a suit originating in the District Court but shall be deemed competent evidence if the Court finds that it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

It is recognized that the administrative agency or court reviewing the decision thereof, in general, shall not be the agency responsible for investigation of unlawful activities of a party for the purpose of bringing prosecution and will not have the responsibility for the prosecution or conviction of a party for a criminal offense. Therefore, the administrative official or body or reviewing court shall not be limited in its consideration of character or conduct as a law abiding person to acts for which conviction has been obtained or upon which charges are pending but may consider all evidence tending to prove commission of acts prohibited by law without regard to criminal prosecution. Nor shall an acquittal on a criminal charge, where the burden of proof is different from that required herein, be res judicata of the question to be determined.

Upon the issue of character, all acts and circumstances reasonably tending to prove a lack of good character, particularly in those areas affecting the public interest, shall be considered, including but not limited to, such as an obvious disregard for the laws, rules and regulations imposed by law and other facts indicating a lack of commitment to adherence to rules established by law, together with evidence of any special skill or expertise in criminal conduct as defined in Title

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Section 3735, United States Code; shall be admissible, provided, however, that the administrative officer or body or reviewing court shall be guided by the standards employed by Federal District Courts in their consideration of pre-sentence reports in criminal cases as provided in Title 18, Section 3577, United States Code, Williams V. New York, 337 U.S. 241.

For violation of any of the requirements of this ordinance, the City Manager may, upon three (3) days notice to Licensee, revoke the license granted hereunder. The same rights of appeal shall exist upon revocation as upon disapproval of the original application.

A person licensed hereunder, by acceptance of such license authorizes the City and its designated personnel to make inspections of the premises, facilities, manner of operation and character of any employee.

The holder of a license hereunder shall comply with all ordinances and requirements of the City of Mesquite and all laws of the State of Texas.

SECTION 7. There is hereby levied a license fee of Ten Dollars (\$10.00) for each coin-operated amusement machine and a license fee of One Hundred Dollars (\$100.00) for each coin-operated amusement establishment in the City.

The license of a coin-operated amusement establishment shall not exempt the owner or operator from the license fee of individual machines or obedience to any other ordinance of the City of Mesquite, including the prohibition of pool halls.

SECTION 8. Exceptions: This ordinance shall not apply to any agency of the United States Government, State of Texas or political subdivision thereof.

Any charitable organization operating or displaying such machines in connection with charitable activities on premises exempt from payment of ad valorem taxes under State law because of such charitable activities shall be exempt from the provisions of this ordinance to such extent.

SECTION 9. Definitions: For the purpose of this ordinance, the following words and terms are defined as follows:

Coin-Operated Amusement Machine - Means a machine or apparatus that may be played or operated by the insertion of a coin and on which games or tests of skill, chance or ability are played, including pinball machines, and any machine initiating games of sport, shooting, or guiding objects or any machine designed for amusement or relaxation, but not including machines for vending food, drink and tobacco products, music playing or recording or apparatus commonly known as kiddie rides.



Coin-Operated Amusement Establishment: - Means any business or commercial establishment or other building or location wherein three (3) or more coin-operated amusement machines are displayed.

Character as a law abiding citizen shall mean substantially that standard employed by the Supreme Court of the State of Texas in the licensing of attorneys as set forth in Articles 305 and 306, Vernon's Annotated Civil Statutes but expressly excludes conviction by any parties of traffic violations of a Class C misdemeanor grade.

SECTION 10. Legislative Policy: It is the policy of the City of Mesquite, in the enforcement and interpretation of this ordinance, to discourage and prohibit the operation, control or interference in the operation of coin-operated amusement facilities by organized crime.


The attraction by the vending industry in general and amusement facilities in particular of criminal elements of our society is recognized and such is determined to be contrary to the welfare of the inhabitants of the City of Mesquite.

SECTION 11. That should any paragraph, sentence, subdivision, clause, phrase, section or provision of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of any other provision of the Code of the City of Mesquite.

SECTION 12. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction in Corporation Court shall be subject to a fine not to exceed Two Hundred Dollars (\$200.00) for each offense.

SECTION 13. The fact that the City of Mesquite has no adequate ordinance regulating the operation of coin-operated machines or establishments wherein such machines are located in the City creates an urgency and an emergency and in the preservation of the public health, safety and welfare of its citizens and after its passage and the publication of the caption as the law and charter in such cases provide.

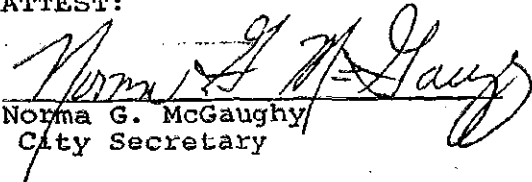
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of December, A.D., 1977.

  
E. J. SMITH  
MAYOR

APPROVED AS TO FORM:

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Elland Archer  
City Attorney

ATTEST:

  
Norma G. McGaughey  
City Secretary

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