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ORDINANCE NO. 1529

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, TO RESTRICT THE STOPPING, STANDING, OR PARKING OF ANY TRUCK-TRACTOR, ROAD-TRACTOR, TRAILER, SEMI-TRAILER, BUS OR COMMERCIAL MOTOR VEHICLE IN RESIDENTIAL ZONING DISTRICT AND UPON ANY PUBLIC STREET, ALLEY, PARKWAY, BOULEVARD, OR PROPERTY OWNED OR CONTROLLED BY ANY UNIT OF GOVERNMENT, WITHIN THE CITY; PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED (\$200.00) DOLLARS FOR EACH OFFENSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Sections 10-52 and 10-53 of the Code of the City of Mesquite, Texas, be amended to read as follows, in all other respects to remain in full force and effect:

SECTION 10-52. Parking of Commercial Vehicles - Generally.

It shall be unlawful for any person or any owner to leave, park, or stand any truck-tractor, road-tractor, trailer, semi-trailer, bus or any commercial motor vehicle upon any public street, alley, parkway, boulevard or property owned or controlled by any unit of government, provided, that this section shall not apply to street construction, maintenance and repair equipment, trucks, rollers and implements or to trucks, equipment, trailers and vehicles used by public service utility companies engaged in repairing or extending public service utilities or to motorbuses when taking on or discharging passengers at the customary bus stops or any other vehicles designated herein when actually parked at a designated loading zone in those areas of limited parking where loading zones are designated or where it is now lawful to park any commercial motor vehicle for the purpose of then accepting from the immediate shipper or then delivering to the consignee or addressee any transportable thing; provided further, that this section shall not apply to any vehicle defined or designated herein developing a mechanical defect after such vehicle has commenced the run, enroute, making it unsafe to proceed further, and in this event it shall be lawful to stand or park the vehicle during the time necessary to make emergency repairs.

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SECTION 10-53. Same-Within Certain Zoning Districts.

It shall be unlawful for any person or any owner to leave, park, or stand any truck-tractor, road-tractor, semi-trailer, bus, truck or trailer or any other commercial motor vehicle with a rated carrying capacity of two (2) tons or more according to the manufacturer's classification, upon property within any area zoned as residential according to the Zoning Ordinance of the City. Provided, however, this section shall not prevent the parking or standing of the above described vehicles in such zoned areas for the purpose of expeditiously loading and unloading passengers, freight, or merchandise, but not otherwise.

Provided, further, that any person having obtained a permit from the City of Mesquite as provided herein may lawfully park such vehicles under such circumstances as may be provided in the terms of the permit.

SECTION 10-53.1 - Permits: Any person desiring to obtain a permit for the parking of any vehicle listed in Sec. 10-53 in a residential area shall apply to the City of Mesquite in writing for same, indicating in said application the specific location wherein the parking is desired, including address or legal description of property, portion of premises involved, such as rear or side yard, or other, with a photograph of the premises and photographs of particular trucks to be parked, together with current license number and vehicle identification number and manufacturer's rated capacity. Said application shall be accompanied by an application fee of Ten Dollars (\$10.00) to defray cost of inspection and processing and shall not be refunded.

Upon receipt of the application, a member of the staff designated by the City Manager shall investigate the suitability of the issuance of a permit and schedule a conference date and time and give notice to the applicant and property owners or inhabitants within two hundred feet of subject premises, provided that property owners and inhabitants residing on streets other than that of the subject property parallel to the applicant's street other than those fronting the first street to the rear of applicant's property and backing up toward applicant's street shall be deemed more than two hundred feet without measurement.

At said conference, the City Manager's designate shall announce his findings and tentative recommendation and shall provide opportunity for the applicant and interested property owners and inhabitants to be heard. He shall record those opposed to and in favor of his findings.

Upon conclusion of the conference, or as soon thereafter as practical, the Manager's designate shall announce his recommendation with notice to applicant and any party in opposition thereto if the recommendation is favorable, together with notice of either party's right of appeal.

SECTION 10-53.2 - Appeal: An applicant or any party opposed to the issuance of a parking permit may appeal the staff recommendation to a committee designated by the City Council, which may, in the discretion of the City Council, consist of a committee of the Council as a whole, some lesser number or such other body as the Council may appoint, including, but not limited to, existing boards and commissions of the City or members thereof, to the end that a fair determination of the interests of the applicant, interested parties and the City as a whole may be reached.

SECTION 10-53.3 - Procedure for Issuance or Denial of Permits: After the applicant and/or interested parties have been given notice as provided herein of the manager's designate's recommendation, unless notice of appeal is given as provided herein, the City Manager shall act upon said recommendation by issuance or denial of the permit application with any modification recommended, upon the expiration of ten days from the mailing of said notice or verbal notice if given at the conference.

If any party has given notice of appeal as provided herein, the City Manager shall not act upon the recommendation, but shall schedule a hearing for said appeal at the earliest practical date. Notice of such hearing shall be given to those parties noted at the conference and upon appeal the appellate body shall hear the applicant, staff and interested parties and shall render a decision consistent with the interests of the parties and the City as a whole.

SECTION 10-53.4 - Criteria to be Considered: The City Manager's designate and the appellate body, in determining whether to approve, deny or modify the application shall consider the following criteria:

1. Relative hardship of Applicant. It is recognized that some residents have utilized their residence for long periods of time for the temporary parking of trucks and strong consideration should be given to the problem of discontinuance of long standing practice acquiesced in by the City. Every effort should be made to avoid such disruptions where such activity will not work a hardship upon neighboring residents. Where reasonable modification of an existing practice can alleviate or reduce complaints, modification should be sought rather than denial.

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2. Type of Premises and Neighborhood. While favoring the upgrading of all areas of the City, it is recognized that certain types of premises in certain types of neighborhoods lend themselves less readily to the parking of trucks than others. Particularly, areas having small lots, limited parking space and standard building line set back as characterized by more recent subdivision planning pose greater problems to other residents from truck parking than in areas having rural type lots, deep building setbacks and existing non-conforming status.

3. Persons affected. Bona fide objections of residents in an area must be taken into consideration. Nevertheless, experience has shown that at various persons similarly affected may react differently to identical situations. One may be long-suffering and kindly disposed toward a neighbor while another may object quickly or be less charitable toward a neighbor. The neighbor who values the goodwill of this truck-owning neighbor is entitled to the same protection from annoyance and loss of property value as the more outspoken neighbor and the truck-owning resident near the more outspoken neighbor is entitled to the same treatment from his City as the more fortunate truck-owning resident who receives no complaints.

Thus, complaints, or the lack thereof are an important factor to the extent that they indicate the degree of annoyance or detriment, but not where they are the result of diverse natures of individuals. The degree that complaints or the lack thereof indicate the degree of annoyance or degree property is affected can best be determined through review of complaints or the lack thereof, of all similarly situated circumstances so that the diverse natures of individuals will more or less average out and the overall complaints or lack thereof for similar situations will give a true indication of the real effect upon other persons; thus providing at the same time, protection for those slow to complain and equal treatment for truck-owners similarly situated.

4. Other criteria as may be promulgated from time to time by the City Council including effect upon traffic patterns, street deterioration and efforts to improve particular areas of the City. Zoning changes may be considered, where applicable, as they occur.

It is the intent of this ordinance to restrict the widespread proliferation of truck parking in the City through a system of permits without creating any unnecessary hardship upon those that earn their living by operating a truck. It is not intended to promote or allow large scale commercial trucking activity in a residential area or the parking of large trailer-truck combinations.

SECTION 10-53.5 - Duration of Permits: Permits shall be on an annual basis and are non-transferrable. The granting of a permit shall not be construed to grant any vested interest and shall not bind the city for any subsequent year.

Permits shall be renewable without hearing unless applicant is notified that a hearing is required.

The staff may require a hearing on renewal where additional complaints have been received, applicant's manner of operation has changed or conditions in the area have changed or are expected in the near future to change. The staff may also require a hearing on a renewal application where the applicant has failed to abide by the conditions of his permit.

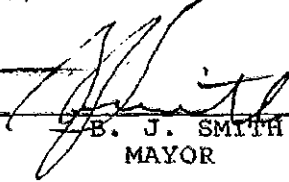
SECTION 10-53.6 - Date for Repeal of Permit Provisions:
Provisions relating to the issuance of initial permits in Section 10-53.1 through 10.53.4 herein shall be in effect for a period of ninety (90) days from the date of enactment of this ordinance, at which time said permit provisions shall be abolished and of no force and effect, and the provisions of sections 10-52, 10-53 and 10-53.5 shall govern the parking of the vehicles enumerated above.

SECTION 2. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction therefor, shall be subject to a fine not to exceed two hundred (\$200.00) dollars for each offense.

SECTION 3. That should any word, sentence, clause, paragraph, or provisions 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 or adjudged to be unconstitutional, illegal, or invalid and shall not affect the validity of any other provision of the Code of the City of Mesquite, Texas.

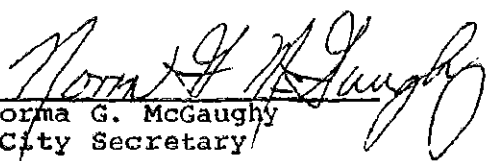
SECTION 4. The fact that present ordinances of the City of Mesquite regulating the stopping, standing, or parking of certain trucks, trailers, and other similar motor vehicles are inadequate to accomplish the purpose creates an urgency and an emergency for the preservation of the public health, safety, and welfare of its citizens and requires that this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance, as the law in such cases provides.


DULY PASSED by the City Council of the City of Mesquite, Texas, on the 16th day of July, A.D., 1979.


E. J. SMITH
MAYOR

ATTEST:

APPROVED AS TO FORM:


Norma G. McCaughey
City Secretary


Elland Archer
City Attorney

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