

ORDINANCE NO. 1707

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE BY PROVIDING CERTAIN REQUIREMENTS FOR PARKING AND RESTROOMS FOR INDOOR RECREATION FACILITIES AND PROVIDING CERTAIN DEFINITIONS; BY PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. Article 43.013 is hereby amended by adding the following language to the first paragraph:

"and all coin-operated music and skill or pleasure machine shall not be exhibited within three hundred (300) feet of a church, school, or hospital,"

in all other respects said article to remain in full force and effect.

SECTION 2. Article 06 of the City of Mesquite Comprehensive Zoning Ordinance is hereby amended by providing a new Article 06.18, in all other respects to remain in full force and effect:

All business and institutional establishments in which indoor recreational activities are conducted shall provide adequate restroom facilities, parking facilities and clean-up activity so as to not burden other business establishments.

A. For the purpose of this provision, the minimum restroom facilities shall consist of restroom facilities expressly available to customers as follows:

Games, Facilities or machines designed to accomodate players	Restroom Facilities
1-4	0 (May use restroom facilities for employees)
5-20	1 restroom each for male and female customers

20-50

1 restroom each for male and female customers, each room containing at least 2 water closets or 1 water closet and one urinal

Over 50

Separate restrooms for male and female customers as above with one additional water closet or urinal for each 25 players above 50 players

The foregoing minimum requirements are based upon number of players for which the facility is designed; not number of games or machines, and is the minimum number of facilities determined to be necessary to maintain the health and welfare of the City and prevent an unnecessary burden upon other business and institutional establishments and render the facilities of such other establishments inadequate.

B. For purposes of this ordinance, adequate parking facilities shall mean, in the case of indoor recreational use operated incidental to a primary use of other than indoor recreational activity, space over and above that required for the primary use as follows:

Number of players for which indoor recreational facilities are designed

additional parking spaces over and above that required for primary use

1-4
5 or more

0
1 parking space for each 2 players for which facilities are designed

The same requirements as to paving, drive and turning space is required for the spaces required herein as is required for the primary use parking.

C. Cleanup activities. Where parking facilities and open space is shared by more than one business establishment as in a shopping center or other multi-establishment facility it is recognized that additional cleanup activities are required, not only upon the parking area immediately in front of the recreation facility, but also upon areas in front of and adjacent to other business establishments, creating a health hazard and a nuisance, eradication of which is difficult due to lack of clear responsibility.

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It is therefore determined that prior to the beginning of operation of any indoor recreation facility in a shared parking facility a clear statement of responsibility for cleanup activities necessitated by such activity shall be filed with the City Secretary wherein the owner of the shared parking facility, the operator of the indoor recreation facility or operators of one or more of the other business establishments in the shared facility, singly or jointly, shall acknowledge responsibility for daily cleanup of the shared parking and/or open space to the end that the area shall remain free of litter, food residue and broken glass and that such area be maintained in a safe and sanitary condition.

SECTION 3. Definitions. Until such time as the State Legislature shall act in providing definitions as to a "principal use" and "the property where exhibited" as provided in Article 13.14 Taxation-General, Vernon's Annotated Civil Statutes, the City of Mesquite, pursuant to the powers granted to it by Article XI, Section 5 of the Texas Constitution and Article 1175, Vernon's Annotated Civil Statutes, does hereby establish the following definitions for such terms as same are applied within the corporate limits of the City of Mesquite:

1. Principal Use. Recognizing that a particular property may be subject to more than one "principal use" it is hereby determined that a principal use is a use that would generate sufficient revenue and profit, aside from any other use, to make such operation economically feasible, standing alone.

In determining economic feasibility, space rental and utilities may be pro rated but such pro ration shall not reduce this cost, for the purpose of this ordinance, to less than \$300.00 per month. In addition to all other costs of operation, before a use may be determined to be a principal use, there shall be added to cost of operation the minimum wage of a full time employee whose salary shall not be prorated among uses.

Additionally, in determining a principal use consideration shall be given to degree of ownership, control and operation of a particular operation in connection with another use or operation on the same property.

Thus, where a property is utilized for coin-operated pleasure and/or skill machines and sells soft drinks or dispenses food, it may be determined, based upon the foregoing criteria, that: (1) The exhibition of the coin-operated pleasure and/or skill machines constitute a principal use; (2) the sale of food or drink constitutes a principal use; (3) that each use constitutes a principal use; or (4) neither use, standing alone constitutes a principal use, but that the combined operation is a principal use.

Provided, however, that for purposes of zoning action the exhibition of not more than four (4) coin-operated pleasure and/or skill machines upon an enclosed property wherein other business is conducted shall be presumed to be incidental to the other business and shall not require zoning action separate from the other use without regard to the magnitude of the other business.

Provided, further, where more than four (4) coin-operated pleasure and/or skill machines are exhibited the burden shall be upon the operator to demonstrate that such use is not a principal use or obtain zoning action as a principal use.

In establishing the above criteria, it is hereby determined by the City Council that a typical coin-operated pleasure and/or skill machine is capable of generating from five dollars (\$5.00) to nine dollars (\$9.00) per hour under full operation.

It is further determined that supervisory help may be obtained at a rate ranging between \$3.50 and \$5.00 per hour. Actual economic feasibility of an operation will vary according to location, hours of operation and attraction of machines displayed.

It is further determined that in many instances the coin-operated machines are owned by a party other than the owner of another business operated on the same property and a percentage of the revenue from the machines is paid as space rental; that the owner of the other business has little or no control over the type of machine offered and does not maintain the machines.

2. Property where exhibited. The term "property where exhibited" shall be determined to consist of the actual space occupied by the coin-operated pleasure and/or skill machines plus that space necessary to accommodate at least two players plus that area between machines where such machines are grouped in a particular location. Where a separate enclosure separates the machines from other business activity, either by whole or partial wall or other means of designation, the entire area enclosed or designated as an area for such machines and play activity shall constitute the property where exhibited; provided, however, where no more than four (4) coin-operated pleasure and/or skill machines are located under one roof, the entire area under one roof shall constitute the "property where exhibited".

Provided further; that where the coin-operated pleasure and/or skill machines are not separated from other business activity by whole or partial enclosure or other designation the entire property enclosed shall constitute the "property where exhibited" and may or may not, according to the criteria heretofore established, constitute a "principal use".

Examples: A. Aladdin's Castle, Inc. located in Town East Mall comprises only that area leased by Homart to Aladdin's Castle, Inc. B. The enclosed area of Putt Putt Golf Course where coin-operated machines are located comprises the "property where exhibited" therein. C. The partially enclosed area at Sears, Town East Mall, comprises the "property where exhibited". (These locations are cited as examples only and are not subject to this ordinance as they pre-date its effective date.)

SECTION 4. Where a location contains such a number of machines and meets other criteria herein to the degree that the exhibition of coin-operated pleasure and/or skill machines constitutes a principal use and sale of food, drink or other items constitute an incidental use, the location shall require zoning from indoor recreation according to City Code. No zoning for the incidental use shall be required.

Where a location is burdened with two uses, one of which is for pleasure and/or skill coin-operated machines and one for another use and the other use is a principal use and the coin-operated machine use is an incidental use, only the principal use shall require zoning action.

SECTION 5. This ordinance shall be applicable to all establishments of indoor recreation, including establishments exhibiting pleasure and/or skill coin-operated amusement machines beginning operation after the effective date of this ordinance.

SECTION 6. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof not in conflict herewith, the same shall remain in full force and effect.

SECTION 7. That the property described in Section 1 of this ordinance, shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of 1973.

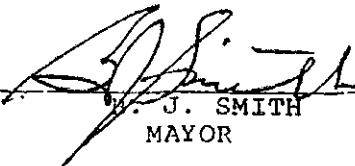
SECTION 8. That the foregoing change shall be, and it is, granted subject to any development of the land herein being developed in conformity with the requirements of current and/or future drainage improvement ordinances of the City of Mesquite, including Ordinance No. 1249 of the Mesquite City Code.

SECTION 9. That should any paragraph, sentence, subdivision, clause, phrase, or section 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 invalid, illegal, or unconstitutional and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 10. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of 1973, of the City of Mesquite, and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Hundred Dollars (\$200.00) for each offense.

SECTION 11. Whereas, the property described in Section 1 of this ordinance requires that it be given the above classification in order to permit its proper development and in order to protect the public interest, comfort, and general welfare of the City of Mesquite, creates an urgency and an emergency for the preservation of the public health, safety, and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

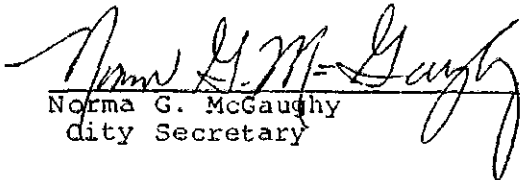
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 3rd day of August, A.D., 1981.



J. SMITH
MAYOR

ATTEST:

APPROVED AS TO FORM:



Norma G. McGaughy
City Secretary

Elland Archer
City Attorney