

ORDINANCE NO. 2421
File No. 2087-3

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF 1973 DULY PASSED BY THE CITY COUNCIL ON SEPTEMBER 4, 1973, BY REVISING ARTICLE 60; PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED (\$200.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Planning Commission of the City of Mesquite and the governing body of the City of Mesquite in compliance with the Charter of the City of Mesquite and State laws with reference to granting of zoning change under the Zoning Ordinance Regulations and Zoning Map, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to the persons interested and situated in area, the City of Mesquite is of the opinion that the change of zoning may be granted herein:

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

SECTION 1: That the Comprehensive Zoning Ordinance of 1973, duly passed by the City Council of the City of Mesquite, Texas, on the 4th day of September, 1973, be and the same is hereby amended as follows, in all other respects to remain in full force and effect:

- A. The existing ARTICLE 60. PERFORMANCE STANDARDS, is hereby deleted and is replaced by Article 60. PERFORMANCE STANDARDS to read as follows:

ARTICLE 60. PERFORMANCE STANDARDS

60.00. COMPLIANCE REQUIRED.

In all zoning districts, any use indicated as a permitted use shall conform in operation, location, and construction to the performance standards hereinafter specified.

- 60.001. Procedures. If in the judgment of the Director of Community Development, there are reasonable grounds to believe that a use proposed by application for a building permit or a Certificate of Occupancy is likely to violate performance standards, the applicant shall be required to submit information to determine how and if compliance will be assured. If the Director of Community Development determines

that compliance cannot be achieved, no building permit or Certificate of Occupancy shall be issued. An applicant may appeal the determination of the Director of Community Development to the City Council.

- 60.002. Enforcement. Even though compliance with performance standards may not be verified in obtaining a building permit or a Certificate of Occupancy, initial and continued compliance with performance standards is required for every use, and provisions for enforcement of continued compliance shall be enforced by the Director of Community Development and the Health Official against any use, if there are reasonable grounds to believe that performance standards are being violated by such use.
- 60.003. Non-Conforming Uses. Certain uses established before the effective date of this ordinance and non-conforming as to performance standards shall be given a reasonable time in which to conform therewith as provided in Paragraph 07.03.
- 60.004. Location For Enforcement. Unless otherwise stated, standards shall apply at the bounding property line and, unless otherwise stated, measurements necessary for enforcement shall be taken at any or all points at the bounding property lines.
- The bounding property line shall be interpreted as being at the near side of any street, alley, stream, or other permanently dedicated open space from the source of the element to be measured when such open space exists between the property line of the source and adjacent property. When no such open space exists, the common line between two parcels of property shall be interpreted as the bounding property line.
- 60.005. Exemptions. The following sources of potentially excessive emissions shall be exempt from these performance standard regulations:
1. The use of any signal, siren, horn, vehicle, or equipment when responding to an emergency situation or when being tested for such emergency use.
 2. The performance of any public safety, public service, or emergency work, including public street, utility and safety operations, acting to protect the health, safety and welfare of the community, and including any training or testing conducted in preparation for such public safety,

service or emergency operations, including fire training exercises.

3. Any activity, permitted or sponsored by a public agency, on a public park, public playground, public street or right-of-way, or public or private school ground including, but not limited to, Parks Department and school sponsored athletic and entertainment events.
4. Any activity legally approved, permitted, and controlled under other provisions of the City Code such as open burning when proper burn permits have been obtained.

60.01. NOISE.

At no point at the bounding property line of any use shall the sound pressure level of any operation or plat exceed the decibel limits specified in the Land Use District designated in the following table:

TABLE 1. LIMITING SOUND LEVELS FOR LAND USE DISTRICTS

<u>Land Use District</u>	<u>Time of Day</u>	<u>Energy Equivalent Sound</u>
Residential *	10:00 p.m. to 7:00 a.m.	52 dB(A)
	7:00 a.m. to 10:00 p.m.	62 dB(A)
Office, Retail Commercial	10:00 p.m. to 7:00 a.m.	62 dB(A)
	7:00 a.m. to 10:00 p.m.	67 dB(A)
Industrial	Anytime	70 dB(A)

* Outside construction activity prohibited on Sunday. The erection, including excavation, exterior alteration/repair of any building in a residential district, or within five hundred (500) feet of any residence, is prohibited on Sunday.

1. It shall be unlawful for any person at any location in the City of Mesquite to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the boundaries of the property for which the noise is produced, or measured within any other residential dwelling unit or commercial space, to exceed:
 - (a) The noise standard in any measurement period not less than 30 minutes; or
 - (b) The noise standard plus 15 dB(A) in any one minute average of a measurement period; or

- (c) The noise standard plus 20 dB(A) at any time in a measurement period.
2. For the purpose of enforcing these provisions a measurement period shall not be less than thirty (30) minutes.
 3. In the event the ambient sound level exceeds the resulting standards, the ambient level shall be the standard.
 4. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient sound level can be determined, the measured sound level obtained while the source is in operation shall be compared directly to the applicable standard in the receiving land use district on which the sound is measured.
 5. Correction for character of sound.
 - (a) For any stationary source of sound which emits a pure tone, cyclically varying sound, or repetitive impulsive sound, the limits set forth in Table 1 shall be reduced by 5 dB(A).
 - (b) Notwithstanding compliance with part (A) of this subsection, it shall be a violation of this ordinance for any person to operate or permit to be operated any stationary source of sound which emits a pure tone, cyclically varying or repetitive impulsive sound which creates a noise disturbance.
 - (c) When the land use district design of the property on which the source of sound originates differs from the designation of the property on which the sound is measured, the maximum permissible sound level of the more restrictive land use district designation shall apply.
 - (d) For sound emitted on public property, the measurement distance shall be fifty (50) feet (15 meters) and the sound level limit for the appropriate land use district shall apply.

60.02. SMOKE AND PARTICULATE MATTER.

No operation or use shall cause, create, or allow the emission for more than three minutes in any one hour of air contaminants

which at the emission point or within the bounds of the property are:

1. As dark or darker in shade as that designated as No. 2 on the Ringleman Chart as published by the United States Bureau of Mines Information Circular 7118.
2. Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke or contaminants in the standard prescribed in 3-1302-1 above except that, when the presence of uncombined water is the only reason for failure to comply or when such contaminants are emitted inside a building which prevents their escape into the atmosphere, the standards specified in 3-1302-1 and -2 shall not apply.
3. The emission of particulate matter from all sources shall not exceed 0.5 pounds per acre of property within the plat site per any one hour.
4. The open storage and open processing operations, including on site transportation movements which are the source of wind or air borne dust or other particulate matter; or which involves dust or other particulate air contaminants, generating equipment such as used in paint spraying, grain handling, sand or gravel processing or storage or sand blasting shall be conducted that dust and other particulate matter so generated are not transported across the boundary line of the tract on which the use is located in concentrations exceeding four grains per 1000 cubic feet of air.

60.03. ODOROUS MATTER.

1. No use shall be located or operated which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located.
2. The odor threshold as herein set forth shall be determined by observation by a person or persons. In any case, where uncertainty may arise or where the operator or owner of an odor emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures specified by American Society for Testing Materials A.S.T.M.D. 1391-57 entitled "Standard Method for Measurement of Odor in Atmospheres" shall be used and a copy of A.S.T.M.D. 1391-57 is hereby incorporated by reference.

60.04. FIRE AND EXPLOSIVE HAZARD MATERIALS.

1. No use involving the manufacture or storage of compounds or products which decompose by detonation shall be permitted except that chlorates, nitrates, perchlorates, phosphorus, and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the Fire Department of the City of Mesquite.
2. The storage and use of flammable liquids and materials such as pyroxylin plastics, nitrocellulose film, solvents, and petroleum products shall be permitted only when such storage or use conforms to the standards and regulations of the Fire Department of the City of Mesquite and applicable State and Federal regulations.

60.05. TOXIC AND NOXIOUS MATTER.

No operation or use shall emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter which will exceed 10 percent of the concentration (exposure) considered as the threshold limit for an industrial worker as such standards are set forth by the Texas State Department of Health in "Threshold Limit Values Occupational Health Regulation No. 3", a copy of which is hereby incorporated by reference.

60.06. VIBRATION.

No operation or use shall at any time create earthborn vibrations which when measured at the bounding property line of the source operation exceed the limits of displacement set forth in the following table in the frequency ranges specified:

<u>Frequency</u> <u>Cycles Per Second</u>	<u>Displacement</u> <u>in Inches</u>
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and over	0.0003

60.07. GLARE.

Any use shall be operated so as not to produce obnoxious and intense glare or direct illumination across the bounding property line from a visible source of illumination of such intensity as to create a nuisance or detract from the use or enjoyment of adjacent property. All outside lights shall be made up of a light source and reflector so selected that acting together the light beam is

controlled and not directed across any bounding property line above a height of three (3) feet. The allowable maximum intensity measured at the property line of a residential use in a residential district shall be 0.25 foot candles.

SECTION 2. 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.

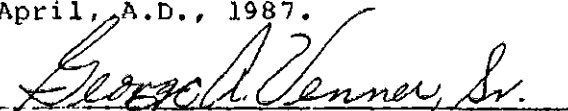
SECTION 3. That the foregoing change shall be, and it is, granted subject to any development of the land herein being developed in conformity with the requirements of current and/or future drainage improvement ordinances of the City of Mesquite, including Ordinance No. 1249 of the Mesquite City Code.

SECTION 4. That should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to 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 5. 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 (\$200.00) Dollars for each offense.

SECTION 6. Whereas, the fact that the present ordinances of the City of Mesquite are not adequate to permit 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 20th day of April, A.D., 1987.


George A. Venner, Sr.
Mayor

ATTEST:


Lynn Prugel
City Secretary

APPROVED AS TO FORM:


Elizabeth A. Lunday
Assistant City Attorney

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