

ORDINANCE NO. 4345

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 5 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY ADDING A NEW SECTION 5-144(h)(3) THEREBY ADDING REGULATIONS FOR ELECTRIFIED FENCING; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE.

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

SECTION 1. That Chapter 5 of the Code of the City of Mesquite, Texas, is hereby amended by adding a new Section 5-144(h)(3) to read as follows, in all other respects said Code, Chapter and Section to remain in full force and effect:

- (3) *Electrified fencing.* For the purpose of this subsection, “electrified fence” means any barrier, railing, enclosure, palisade, stockade or vertical structure made of conductive material that is connected to a source of electric current or made of any non-conductive material and modified, topped with or extended with a conductive material connected to a source of electric current, that is constructed or installed with the intent to apply an electric shock to human beings who come into contact with the conductive material. An “electrified fence system” shall consist of the electrified fence, perimeter fence or wall, energizing source, the safety devices, equipment and signage required by this subsection, and all other connectors, conductors, components and appurtenances necessary or desirable to operation of the electrified fence. Electrified fences may be constructed to protect outdoor storage areas in compliance with Mesquite Zoning Ordinance Section 3-600, and shall be subject to the restrictions and conditions of this subsection.
- a. Electrified fences may be constructed only within the Industrial and Commercial zoning districts, exclusive of overlay districts. In the Commercial district, electrified fences may be constructed only in conjunction with the following uses:
- i. SIC 15-17 Construction Contractors;
 - ii. SIC 503 Wholesale Lumber Yards; and
 - iii. SIC 505-508 Wholesale Metals, Electrical, Plumbing, Heating, and Machinery Equipment
- b. Electrified fences shall not be installed within 100 feet of a residential district or a public, private or parochial school, day care facility, church or park, nor within five feet of a sidewalk or the public right-of-way.
- c. The use of electrified fencing is prohibited in conjunction with any barbed or razor wire.

- d. An electrified fence system shall be installed and maintained in conformance with the following specifications and standards:
- i. The electrified fence system shall conform to the requirements of the International Electrotechnical Commission (“IEC”) Standard No. 6033502076, and where applicable, the 2011 National Electric Code (“NEC”), as amended by the City. In the event of any conflict between the provisions of this subsection and the provisions of the IEC or NEC, the more restrictive provision shall apply.
 - ii. A perimeter fence shall surround the exterior of the electrified fence. The perimeter fence shall be an approved, non-electrified perimeter fence or wall that is not less than six feet or more than eight feet in height at its highest point. The lowest part of the perimeter fence or wall shall be constructed to follow the natural terrain so as to prevent penetration of the fence or wall at ground level. The perimeter fence or wall shall be separated from the electrified fence by not less than six inches at its closest point, and by not more than five feet at its farthest point, except at gate openings. The zone between the perimeter fence or wall and the electrified fence shall be kept completely clear of landscaping, shrubbery, other fences or other material of any kind. No part of the perimeter fence or wall shall be allowed to be in contact with the electrified fence by any means at any time.

In areas where the electrified fence surrounds a non-electrified structure, the exterior perimeter fence may be designed to terminate in a manner to prohibit contact with the electrified fence without enclosing the structure.
 - iii. The electrified fence shall not exceed eight feet in height at its highest point measured at existing grade.
 - iv. The electrified fence shall be energized only by a storage battery not exceeding a 12-volt direct current, charged primarily with a solar panel or panels. The Building Official may approve a backup charging device, if connected in a manner that ensures the charging device cannot provide a source of power to the fence. An electrified fence shall not be connected to any other electric power source.
 - v. The electrified fence shall have an electric fence controller located in a single accessible location for the entire fence. Such location shall be approved by the Building Official. The single accessible location shall have an automatic gate with remote. Further, the electrified fence shall be equipped with an approved remote power shutdown station, such as a “Knox Remote Shunt Trip Control Station,” containing an electrical shut off switch for emergency

access by Fire or Police personnel during emergency situations. The location of the remote power shutdown station shall be in a single accessible location for the entire fence and shall be illuminated.

- vi. The electrified fence shall be clearly marked with warning signs. The warning signs shall be placed at each entrance to the property and a maximum of 30 feet on center thereafter around the entire perimeter of the electrified fence. The warning signs shall be mounted above the non-electrified perimeter fence or wall and be clearly visible from the ground on both sides of the electrified fence. The warning signs shall be printed on both sides with the words "WARNING: ELECTRIFIED FENCE" and include the international symbol for an electrical hazard. The wording shall be written in both English and Spanish. The signs shall be reflective with a minimum two-inch letter height, minimum stroke of one-half inch and with a contrasting background.
- e. The electrified fence may be energized only during the hours when the general public does not have legal access to the protected property.
- f. No person shall install, construct, operate or maintain an electrified fence in the City of Mesquite without first obtaining a permit from the Building Official for the installation, construction, operation or maintenance of the fence and paying the established permit fee. A complete application for a permit shall consist of such information, plans, specifications and certifications that the Building Official deems necessary and proper to evidence compliance with the provisions of this subsection. Except for testing during installation, no person shall energize or allow another person to energize an electrified fence unless:
 - i. The Building Official has inspected the installation of the complete electrified fence system for compliance with the approved plans and specifications and the provisions of this subsection;
 - ii. The authorized representative of the manufacturer of the electrified fence, equipment and appurtenances has certified in writing that the installation meets all design and safety requirements of this subsection;
 - iii. The property owner or lessee of the protected property has registered the electrified fence with the Building Official, which registration shall be non-transferrable and include, among other things, emergency contact information, evidence of liability insurance coverage, and necessary authorizations for City personnel to gain access to the property; and
 - iv. The owner or lessee of the protected property and the owner of any of the electrified fence system components provide evidence of General Liability Insurance coverage in a minimum amount of one

million (\$1,000,000) dollars in the aggregate each. Proof of insurance shall be underwritten by an organization licensed and authorized to do business in the State of Texas.

- g. Not later than the first anniversary of the date on which the electrified fence is registered, and each year thereafter, the owner or lessee of the protected property shall have the electrified fence system inspected by the Building Official to determine whether the system is operating and being maintained in accordance with the manufacturer's specifications and the requirements of this subsection, and that the system has not been altered or modified from the plans and specifications approved by the Building Official. Any electrified fence system that fails the annual inspection shall be immediately de-energized, and shall not be re-energized, until it has been repaired and passes upon reinspection. Prior to and as a condition precedent to said inspection, the owner or lessee of the protected property shall:
 - i. Submit a written report to the Building Official listing the date of any system malfunction during the preceding year and a description of the repairs made to correct the malfunction;
 - ii. Provide an updated list of emergency contact information; and
 - iii. Pay the established annual inspection or reinspection fee to defray the cost of the inspection.
- h. An electrified fence in active operation and being maintained on the effective date of this subsection may continue to be operated and maintained in accordance with this paragraph. No later than January 1, 2015, the owner or lessee of the protected property shall register the pre-existing electrified fence, have the electrified fence system inspected and approved by the Building Official for compliance with this subsection, pay the established inspection fee to defray the cost of the inspection, and provide evidence of the required liability insurance coverage. As to pre-existing electrified fence systems only, the Building Official may approve alternative system designs and substitute materials or system components, which differ from the requirements of this subsection, provided that such alternative designs and substitute materials or components shall provide a comparable degree of safety and protection for the users of the protected property, the public and emergency responders as a new electrified fence system installed in full compliance with this subsection. After January 1, 2015, any pre-existing electrified fence that fails to comply with this subsection shall be de-energized, or shall not be re-energized, and shall be removed from the property.
- i. Within 30 days after the date that a protected property is vacated, or the protected outdoor storage activity of an on-going use ceases to operate, it shall be the affirmative duty of the owner or lessee of the protected

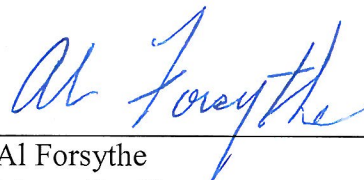
property to remove the electrified fence and system components, except for the perimeter wall or fence.

SECTION 2. That all ordinances or portions thereof 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 are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

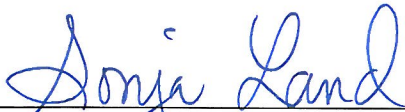
SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 1st day of December, 2014.



Al Forsythe
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

APPROVED:



B.J. Smith
City Attorney