

ORDINANCE NO. 4767

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8 OF THE MESQUITE CITY CODE, AS AMENDED, BY ADDING A NEW ARTICLE XIV TO ESTABLISH CONVENIENCE STORE AND LATE HOURS BUSINESS REGULATIONS; PROVIDING A TRANSITIONAL PROVISION FOR EXISTING CONVENIENCE STORES AND LATE HOURS BUSINESSES; PROVIDING REPEALER, CONFLICTS RESOLUTION, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00 FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas (“**City Council**”) to protect the public health, safety, and welfare; and

WHEREAS, the City of Mesquite, Texas, (“**City**”) is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to the Texas Constitution, Article 11, Section 5 and the Texas Local Government Code Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, Section 51.072(a); and

WHEREAS, a home-rule municipality has general enforcement authority and may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.001, as amended and pursuant to Mesquite City Code, Chapter 1, Section 1-6; and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.004, as amended; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, Section 2; and

WHEREAS, the City shall have the power to license any lawful business, occupation or calling that is susceptible to the control of the police power, pursuant to Article III, Section 28 of the Mesquite City Charter; and

WHEREAS, for at least the last three (3) years, approximately twenty percent (20%) of all robberies in the City were committed at convenience stores and other businesses open during night-time hours (“**late hours businesses**”), and ninety-two percent (92%) of these robberies were aggravated offenses; and

WHEREAS, the Centers for Disease Control and Prevention has recognized convenience store clerks and other retail workers as a group of employees most at risk for workplace violence and homicide, and recommended implementation of barriers and other workplace safety measures for the safety of these employees; and

WHEREAS, the Texas Department of Insurance has recognized that employees of convenience stores and late hours businesses are especially vulnerable to homicides and assaults often linked to robberies, and recommended implementation security cameras, barriers, signage, keeping windows clear of obstructions, alarm systems, increased staffing and other workplace safety measures for the safety of these employees; and

WHEREAS, crimes committed at convenience stores and late hours businesses jeopardize not only the safety and lives of employees of these businesses and the public, but also negatively impacts property values, the local economy and the overall quality of life in the City; and

WHEREAS, the Mesquite Police Department (“MPD”) has studied methods for reducing the occurrence of crime, preventing the escalation of crime and increasing the successful prosecution of crime that occurs at convenience stores and late hours businesses; and

WHEREAS, MPD staff determined in a review of numerous studies, practices of other jurisdictions, its own research and the experience of the MPD that owners of convenience stores and late hours businesses play a key role in promoting safety in their businesses; and

WHEREAS, training employees in safety procedures, posting notice of crime-prevention strategies in use, increasing visibility and utilizing safety devices can increase the safety of employees and customers of convenience stores and late hours businesses; and

WHEREAS, the registration of convenience stores and late hours businesses with the MPD will facilitate the application and enforcement of this ordinance and other laws and the implementation of means and methods for reducing crime and protecting employees and the public; and

WHEREAS, upon the review and consideration of all matters attendant and related hereto, the City Council is of the opinion that this ordinance should be approved and adopted.

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

SECTION 1. The findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. Chapter 8 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by adding a new Article XIV to establish convenience store and late hours business regulations. Such amendments are attached hereto as Exhibit “A,” incorporated herein

by reference and hereby made a part thereof, and in all other respects said Code and Chapter to remain in full force and effect.

SECTION 3. An established convenience store or late hours business having a certificate of occupancy as of the date this ordinance is adopted shall comply with the provisions of this ordinance not later than the sixtieth (60th) day following adoption of this ordinance.

SECTION 4. 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.

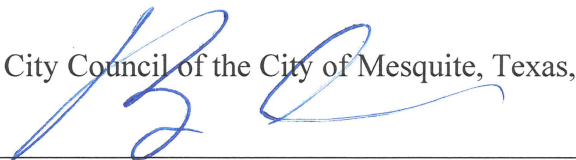
SECTION 5. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 6. 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 7. 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 \$2,000.00 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.


SECTION 8. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of March 2020.




Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

Mesquite City Code

Chapter 8 – LICENSES, PERMITS AND BUSINESS REGULATIONS

ARTICLE XIV. – CONVENIENCE STORE AND LATE HOURS BUSINESS REGULATIONS

Sec. 8-911. – Definitions.

Sec. 8-912. – Registration of convenience stores and late hours businesses.

Sec. 8-913. – Receipt and review of safety training materials.

Sec. 8-914. – Security signs; height strips.

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Sec. 8-917. – Additional Requirements.

Sec. 8-918. – Violation.

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Chapter 8 – LICENSES, PERMITS AND BUSINESS REGULATIONS

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ARTICLE XIV. – CONVENIENCE STORE AND LATE HOURS BUSINESS REGULATIONS**Sec. 8-911. – Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City has the same meaning as defined in Section 1-2 of this Code.

Controlled access window means one of the following:

- (a) a drive-through-type window where the employees remain inside the business and the patrons remains outside the business; or
- (b) a teller-type window where all employees remain behind a transparent barrier separating the employees from patrons inside or outside the business.

Convenience store has the same meaning as defined in Section 6-102 of the Mesquite Zoning Ordinance, Appendix C to this Code.

Covert theft detection device means a small electronic device that includes a silent burglar alarm notification, as defined in Section 8-441 of this Code, and is trackable by the global positioning system.

Drop Safe means a safe that is bolted to the floor with a slot or drawer that allows cash or documents to be put into the safe without opening the safe, and that has a time-delay mechanism programmed for opening at times other than late hours.

Employee means any person who is employed in consideration of direct or indirect monetary wages, commissions, or profits, any contract employee, and any other person engaged in the operation of a convenience store or late hours business.

Health official has the same meaning as defined in Section 8-543 of this Code.

Height strip means markings to aid in estimating the height of suspects.

Late hours means the time between 10:00 p.m. and 5:00 a.m.

Late hours business means any walk-in business having a gross floor area of less than 8,000 square feet and that customarily is open for business with the public, either in whole or in part, one or more hours during late hours, one or more days each week. A late hours business includes any convenience store open during late hours.

Manager means the person(s) designated by the owner to be responsible for the daily operation of a convenience store or late hours business.

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Owner means the person(s) who hold title to or leases property for the purpose of operating a convenience store or late hours business.

Person has the same meaning as defined in Section 1-2 of this Code.

Police Department shall mean the Mesquite Police Department.

Police official means the Chief of Police of the Police Department or person he or she may designate to act as the official primarily responsible for the administration of this article or the official's designees.

Registered agent means the person identified by the owner of a convenience store or late hours business in the registration filed pursuant to this article and that is authorized to receive on behalf of the owner any legal process and/or notice required or provided for in this article. The registered agent for the purposes of this article may or may not be the same person or entity a domestic or foreign filing entity is required to designate with the Texas Secretary of State under the Texas Business Organizations Code.

Safety training materials means the training materials promulgated by the Police Department for convenience stores and late hours businesses.

Sec. 8-912. – Registration of convenience stores and late hours businesses.

- (a) It shall be unlawful for any person to operate a convenience store or late hours business in the city that is not registered as required by this section. No fee shall be charged for such registration.
- (b) The owner of a convenience store or late hours business shall register by providing to the police official the following information regarding the convenience store or late hours business:
 - (1) The name, telephone number, email address and business or residence address of each owner; and, if the owner is a business entity other than general partnership or sole-proprietorship, whether foreign or domestic, the name, telephone number and email address and business or residence address of the owner's registered agent, which address information shall include the street name and number, office or suite number if a business address, and the city, state, and zip code; and
 - (2) The nature and extent of each owner's interest in the business being operated as a convenience store or late hours business. If there is only one owner, the extent of the owner's interest is 100%; and
 - (3) The name, telephone number, email address, and business or residence address, including street name and number, city, state and zip code, of each current manager of the convenience store or late hours business and, if the manager is other than an individual, the name, title, telephone number, email address and business or

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residence address, including street name and number, city, state and zip code, of the individual to be contacted for any purpose under this article relating to the convenience store or late hours business.

- (4) The use of a public or private post office box or other similar address shall not be sufficient for the purposes of complying with this subsection (b).
- (c) Any change of ownership of a convenience store or late hours business, or change of ownership interest, including, but not limited to, the sale of the convenience store or late hours business, shall require the purchaser or transferee to update the information provided under subsection (b) of this section and to file the updated information with the police official within thirty (30) days of the effective date of the ownership change. The same requirement shall apply to any change relating to the owner's registered agent or manager(s). Additionally, a prior owner shall advise the police official that he or she no longer holds any ownership interest in the convenience store or late hours business.
- (d) Compliance with this section is a condition precedent to issuance of a certificate of occupancy for a newly constructed convenience store or late hours business.
- (e) After a convenience store or late hours business complies with the provisions of this section, the police official will provide to the owner of a convenience store or late hours business:
 - (1) A registration compliance decal which shall be displayed at a public entrance door to the convenience store or late hours business; and
 - (2) A registration statement, a true and correct copy of which shall be kept in the convenience store or late hours business at all times.
- (f) Compliance with the requirements of this section shall be deemed to meet the requirements of Sections 250.003 and 250.004 of the Texas Local Government Code.

Sec. 8-913. – Receipt and review of safety training materials.

- (a) All employees, managers, and immediate supervisors of managers of a convenience store or late hours business must receive safety training materials to be provided by the police official and review said materials before reporting for duty.
- (b) All persons who receive and review the required safety training materials shall sign a statement indicating the date, time and place the safety training materials were reviewed. The owner shall keep the statements or copies of the statements on file in the convenience store or late hours business for at least two years and make them available to the police official or the health official immediately upon request.

Sec. 8-914. – Security signs; height strips.

- (a) A convenience store or later hours business shall have posted at all public exits and entrances "No Loitering" and "No Trespassing" signs in lettering two inches or larger, in English and in Spanish. Additionally, a convenience store and late hours business shall post such signs on the front, sides, and rear of the convenience store and late hours business.
- (b) A convenience store or late hours business shall have height strips posted at all public exits.

Sec. 8-915. – Surveillance camera system.

- (a) A convenience store or late hours business shall have a minimum of four (4) color, full high-definition and high-resolution surveillance cameras (minimum 1080p). One camera must have an overall view of the counter/register area. Each entrance area must have a camera with a view of the entrance area and each exit area must have a camera with a view of the exit area.
- (b) The entrance and exit area cameras shall be placed to provide a clear and identifiable full frame of the filmed individual's face.
- (c) All cameras shall accurately display the correct date and time of the recording.
- (d) The cameras shall be activated at all times, including hours when the convenience store or late hours business is not open for business.
- (e) The owner shall maintain on a digital storage device a library of the recorded digital images for not less than ten (10) days.
- (f) Any passwords, user identification or other information necessary to access the digital storage device to recover recorded digital images shall be maintained and accessible at the location of the convenience store or late hours business.
- (g) A convenience store or late hours business shall have posted at all public exits and entrances signs or decals indicating that surveillance cameras are in use.

Sec. 8-916. – Visibility.

- (a) *Requirement.* A convenience store or late hours business shall maintain an unobstructed line of sight allowing a clear view of and from the cash register and sales transaction area through all windows and public access doors. Such windows and doors must be clear of all items that would obstruct a clear view including, but not limited to, permanent tinting, signage, advertisements, shelving and merchandise, but shall not include daytime semi-transparent window shades. Such unobstructed line of sight must, at a minimum, extend from three feet above the ground to at least six feet above the ground.

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- (b) *Exception.* The requirements of subsection (a) shall not apply to a convenience store or late hours business that either:
- (1) maintains a minimum of two (2) employees on-site at all times; or
 - (2) conducts its business at all times through a controlled access window. If business is conducted through a drive-through-type window, the public access doors to the business shall remain locked. If business is conducted through a teller-type window, the area in which the employees are located shall be physically separated from the public and locked against entry by the public.

Sec. 8-917. – Additional Requirements.

- (a) A late hours business shall, during late hours, either:
- (1) maintain a minimum of two (2) employees on-site; or
 - (2) conduct its business through a controlled access window. If business is conducted through a drive-through-type window, the public access doors to the business shall remain locked. If business is conducted through a teller-type window, the area in which the employees are located shall be physically separated from the public and locked against entry by the public.
- (b) In addition to the requirement of subsection (a), a late hours business shall maintain a minimum of one (1) of the following:
- (1) covert theft detection device within reach of the cash register; or
 - (2) drop safe on-site; or
 - (3) silent police alarm system, as defined in Section 8-441 of this Code, approved by the police department and for which a permit has been issued in accordance with Article VII of Chapter 8 of this Code.
- (c) If any of the following are maintained in accordance with this section, the following requirements apply:
- (1) *Drop safe.* If a drop safe is maintained, signs or decals shall be posted at all public exits and entrances indicating that employees cannot open the safe and that employees have minimum cash on hand.
 - (2) *Alarm system.* If an alarm system is maintained, the alarm system shall include a panic button located within reach of the cash register and out of view of the customer and signs or decals shall be posted at all public exits and entrances indicating that a security alarm system is in use.

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Sec. 8-918. – Violation.

Any failure to comply with any applicable provision of this article shall be an offense punishable as provided in section 1-6 of this Code. Nothing in this article prohibits the City from enforcing civil or criminal enforcement remedies and penalties concurrently or availing itself of any other remedy allowed by law.

Secs. 8-919 – 8-950. – Reserved.

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