

ORDINANCE NO. 4820
Zoning Text Amendment No. 2020-05

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE BY AMENDING SECTION 3-203 FOR COIN-OPERATED AMUSEMENT DEVICES OPERATING AS AN ACCESSORY USE AND AS A MAIN USE BY CROSS-REFERENCING APPLICABLE REGULATIONS; AMENDING SECTION 3-507, "COIN-OPERATED AMUSEMENT DEVICES," TO LIMIT MAIN USES TO WHICH COIN-OPERATED AMUSEMENT DEVICES MAY BE AN ACCESSORY USE, ADD APPLICABLE SPACING REQUIREMENTS, MEASUREMENT CALCULATIONS, A COMPLIANCE DATE, DEFINITION, AND A PENALTY AND ENFORCEMENT PROVISION; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

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 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 may regulate the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes pursuant to Texas Local Government Code, Title 7, Subtitle A, Chapter 211, Section 211.003; and

WHEREAS, coin-operated amusement devices such as eight-liners can have adverse effects on nearby properties, compromising the quality of life, property values and the character of surrounding neighborhoods; and

WHEREAS, in recognition of these deleterious effects, Section 2153.452(b) of the Texas Occupations Code expressly authorizes a city to restrict the exhibition of coin-operated amusement machines within 300 feet of a church, school or hospital; and

WHEREAS, the Mesquite Zoning Ordinance contains this spacing requirement when coin-operated amusement devices are operated as a main use in connection with a conditional use permit for a coin-operated amusement gameroom; and

WHEREAS, the City Council finds that it is in the best interests of the City to include the state-authorized spacing requirement indiscriminately to all coin-operated amusement devices regardless of whether they are gamerooms operating as a main use, or accessory to another main use, or located in a planned development or other special district; and

WHEREAS, the City Council desires to clarify how the spacing distance is measured; and

WHEREAS, it is the intent of the City Council to ensure that there be adequate regulations to protect the public health, safety, and welfare concerning the operation of coin-operated amusement devices; and

WHEREAS, the Planning and Zoning Commission gave public notice and held a public hearing regarding proposed revisions and recommended amendment of the ordinance; and

WHEREAS, the City Council gave public notice and held a public hearing regarding the proposed amendment; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City to amend the Mesquite Zoning Ordinance as herein provided.

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

SECTION 1. The statements, facts, findings and recitals contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated herein and adopted as part of this ordinance for all purposes.

SECTION 2. Division I, “Services,” of Section 3-203, “Schedule of Permitted Uses,” of the Mesquite Zoning Ordinance is hereby amended by cross-referencing other applicable requirements in the special conditions under SIC Code 7993 regarding coin-operated amusement devices to read as follows, said Ordinance in all other respects to remain in full force and effect:

<i>SIC CODE</i>	<i>USE DESCRIPTION</i>	<i>O</i>	<i>GR</i>	<i>LC</i>	<i>THN</i>	<i>CV</i>	<i>MU</i>	<i>CB</i>	<i>SS</i>	<i>C</i>	<i>I</i>	<i>PKNG STND</i>	<i>SPECIAL CONDITIONS</i>
7993	Coin-operated Amusement Gameroom (More than two Machines)		C	C			C	C		C	C	11	Requires compliance with 3-507. Requires one customer restroom each for male and female. Requires licensing.

SECTION 3. Division L, “Accessory Uses and Structures,” of Section 3-203, “Schedule of Permitted Uses,” of the Mesquite Zoning Ordinance is hereby amended by cross-referencing other applicable requirements in the special conditions under SIC Code 7 regarding

coin-operated amusement devices to read as follows, said Ordinance in all other respects to remain in full force and effect:

<i>SIC CODE</i>	<i>USE DESCRIPTION</i>	<i>O</i>	<i>GR</i>	<i>LC</i>	<i>THN K20 NGTC 1</i>	<i>CV</i>	<i>MU</i>	<i>CB</i>	<i>SS</i>	<i>C</i>	<i>I</i>	<i>PKNG STND</i>	<i>SPECIAL CONDITIONS</i>
7	Coin-operated Amusement Devices	P	P	P			P	P		P	P		Permits a maximum of two machines. Requires licensing. Requires compliance with 3-507. Classify more than two machines as a primary use under 7993.

SECTION 4. Section 3-507, “Coin-operated Amusement Devices,” of Part 3, “Nonresidential Districts,” of the Mesquite Zoning Ordinance, is hereby repealed and replaced with the following:

In addition to the requirements of Section 3-203, an establishment that includes coin-operated amusement devices, either as a primary use with an approved conditional use permit or as an accessory use permitted by right, shall comply with the following regulations:

- A. *Open gamerooms.* All gamerooms or other areas of an establishment where coin-operated amusement devices are located and offered for the use and enjoyment of patrons or invitees of the establishment shall be kept open and accessible during business hours.
- B. *Primary use to be maintained.* An establishment that includes coin-operated amusement devices as an accessory use permitted-by-right shall at all times actively conduct and maintain the primary use of the establishment as declared on the approved certificate-of-occupancy. The failure to actively conduct and maintain the primary use shall create a rebuttable presumption that the coin-operated amusement devices no longer constitute an accessory use of the premises and the certificate-of-occupancy shall be subject to revocation. For purposes of this Section, “actively conduct and maintain” means to occupy not less than 50 percent of the floor space of the establishment, exclusive of restrooms and storage areas, with displays, racks or shelves stocked with goods, wares, unexpired food or other merchandise for sale to customers or with equipment or furniture necessary for producing goods or providing services to clients in accordance with the approved certificate-of-occupancy. Coin-operated amusement devices shall only be permitted as an accessory use to the following principal uses:

<u>SIC</u>	<u>Use</u>
539	Miscellaneous General Merchandise Stores
541	Grocery Stores
5812	Restaurants
7215	Coin-Operated Laundries / Dry Cleaning
7832	Movie Theaters
793	Bowling Centers
7999b	Indoor Amusement and Recreation Facilities

864a Civic, Social, Fraternal Organizations that include Indoor Amusement

C. *Retrofitting required.* An establishment with coin-operated amusement devices in use on the effective date of this ordinance shall modify or retrofit the premises to comply with the requirements of this Section no later than January 1, 2021.

D. *Location near churches, schools or hospitals.* All coin-operated amusement devices are prohibited within 300 feet of a church, school or hospital, measured from the closest point of the structure where the coin-operated amusement device is located to the nearest property line of the church, school or hospital.

E. *Coin-Operated Amusement Device or Machine* has the same meaning as “Coin-operated machine” in Texas Occupations Code, Section 2153.002(9), as may be amended.

F. *Penalty and Enforcement.*

1. It shall be unlawful and an offense for the proprietor, operator or any on-duty manager of the establishment to:

a. close, conceal or prevent, or attempt to close, conceal or prevent, any person from entering or looking with a direct line of sight into a gameroom or other area containing coin-operated amusement devices by the use of a human or electronic sentinel, or the use of doors, curtains, partitions, walls, counters or other physical or visual obstructions; or

b. display or operate coin-operated amusement devices in conflict with the primary use of the establishment.

2. The failure to actively conduct and maintain the primary use to which two (2) or less coin-operated amusement devices are an accessory use shall create a rebuttable presumption that the coin-operated amusement devices no longer constitute an accessory use of the premises; and:

a. the certificate-of-occupancy shall be subject to revocation; and

b. the Building Official or others authorized to enforce this Code shall be authorized to seal all machines, either illegal or non-compliant with this section, in a manner consistent with Texas Occupations Code, Section 2153.352, as may be amended.

3. Any person violating any provision of this Section shall be guilty of a misdemeanor and, upon conviction, shall be fined as prescribed in Section 1-6 of the Mesquite City Code. Each and every day such violation continues shall constitute a separate offense.

4. In addition to and cumulative of all other penalties and enforcement, the city shall have the right to seek injunctive relief for any and all violations of this article.

SECTION 5. 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 6. Should any word, sentence, clause, paragraph, phrase or section of this ordinance be 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 Mesquite Zoning Ordinance as a whole.

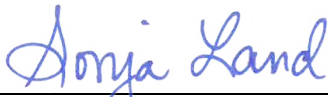
SECTION 7. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney