

ORDINANCE NO. 4839
Zoning Text Amendment No. 2020-13

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE, AS AMENDED, BY PROVIDING CERTAIN ADDITIONS UNDER SECTION 3-203 "SCHEDULE OF PERMITTED USES," AND SECTION 6-102 "DEFINITIONS," AND AMENDING SECTION 3-500 "SUPPLEMENTARY USE REGULATIONS" TO ADD A NEW SECTION 3-511 "PARAPHERNALIA SHOP," ALL REGARDING BUSINESSES THAT SELL SMOKING PARAPHERNALIA; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) AND DECLARING AN EFFECTIVE DATE.

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 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, 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, businesses selling smoking paraphernalia can have adverse effects on nearby properties, compromising the quality of life, property values and the character of surrounding neighborhoods; 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 paraphernalia shops; and

WHEREAS, on December 14, 2020, the City of Mesquite Planning and Zoning Commission considered text amendments to the Mesquite Zoning Ordinance and after having given proper public notice and holding a public hearing, the Planning and Zoning Commission recommended the City Council adopt the text amendment to the Mesquite Zoning Ordinance as was first presented to the Mesquite City Council on January 4, 2021; and

WHEREAS, the City Council gave public notice and held a public hearing regarding the proposed Mesquite Zoning Ordinance text amendment on January 4, 2021; 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. That the Mesquite Zoning Ordinance, as amended, be and the same is hereby amended by providing certain additions under Section 3-203 “Schedule of Permitted Uses,” Section 3-500 “Supplementary Use Regulations,” and Section 6-102 “Definitions,” to read as follows, said Ordinance in all other respects to remain in full force and effect:

- (1) *Section 3-203.* Amend Section 3-203 by adding a new subsection “g” under SIC CODE 5999 to read as follows:

<i>SIC CODE</i>	<i>USE DESCRIPTION</i>	<i>O</i>	<i>GR</i>	<i>LC</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>
5999	Miscellaneous Retail, NEC (except)											
g.	Paraphernalia Shop								C	C	1	Requires compliance with 3-511.

- (2) *Section 3-500.* Amend Section 3-500 by adding a new Section 3-511 to read as follows:

3-511. Paraphernalia shop.

- A. *Conditional use permit.* Paraphernalia shops require approval of a conditional use permit.
- B. *Primary use.* A paraphernalia shop shall only be a primary use requiring a certificate of occupancy. In no case shall a paraphernalia shop be an accessory use to any principal use.

- C. *Separation requirements.* A paraphernalia shop shall be located a minimum of 500 feet from any other paraphernalia shop, residential zoning districts, public and private schools, and places of worship measured from the closest point of the structure where the paraphernalia shop is located to the nearest property line of a residential zoning district, public and private school, or place of worship.
 - D. *Outside storage and display.* Outside storage or display of products is prohibited.
 - E. *Drive-through and walk-up windows.* A paraphernalia shop shall not have a drive-through or walk-up window.
 - F. *Retrofitting required.* An establishment having smoking paraphernalia, as defined in Section 6-102, as of the effective date of this ordinance, shall comply with this ordinance by March 1, 2021.
- (3) *Section 6-102.* Amend Section 6-102 by adding definitions for “paraphernalia shop” and “smoking paraphernalia” to read as follows:

Paraphernalia shop: An establishment that displays or offers for sale any smoking paraphernalia, as defined in this section.

Smoking paraphernalia: Any equipment, device or utensil that is used, commonly used, commonly known to be used or intended to be used for ingesting, inhaling or otherwise introducing into the human body by smoking tobacco, low-THC cannabis as defined in the Texas Occupations Code, Chapter 169, as amended, any other substance that is smoked or any substance the possession of which is illegal under Texas law. For the purposes of this definition, tobacco cigarettes, rolling papers, tobacco cigars and electronic cigarettes, as defined in Section 10-215 of the Mesquite City Code, are not considered smoking paraphernalia products. Smoking paraphernalia shall include, but not be limited to, the following:

- a. A metal, wooden, acrylic, glass, stone, plastic or ceramic pipe with or without a screen, permanent screen, hashish head or punctured metal bowl;
- b. A water pipe;
- c. A carburetion tube or device;
- d. A smoking or carburetion mask;
- e. A chamber pipe;
- f. A carburetor pipe;
- g. An electric pipe;
- h. An air-driven pipe;
- i. A chillum;

- j. A bong; or
- k. An ice pipe or chiller.

SECTION 3. 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 4. 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 5. 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 6. 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 4th day of January 2021.



Robert Miklos
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney