

ORDINANCE NO. 4850
Zoning Text Amendment No. 2021- 01

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE, AS PREVIOUSLY AMENDED, BY REPEALING AND REPLACING SECTION 1-402 “NOISE” IN PART 1 “GENERAL PROVISIONS” WHEREBY THIS ZONING TEXT AMENDMENT REMOVES NOISE VIOLATIONS AND INSTEAD CROSS REFERENCES TO THE CITY CODE; AND AMENDING THE MESQUITE CITY CODE, AS PREVIOUSLY AMENDED, BY REVISING CHAPTER 8 “LICENSES, PERMITS AND BUSINESS REGULATIONS” TO INCLUDE A GENERAL APPEAL PROCESS APPLICABLE TO SPECIAL EVENT PERMITS AND TEMPORARY NOISE PERMITS IN ARTICLE I, DIVISION 2; AND REVISING CHAPTER 8, ARTICLE XV “SPECIAL EVENTS” TO REMOVE THE SPECIFIC APPEAL PROCESS FOR SPECIAL EVENT PERMITS AND INSTEAD CROSS REFERENCE TO THE NEW GENERAL APPEAL PROCESS IN ARTICLE I, DIVISION 2; CREATING NEW ARTICLE XVII TO BE TITLED “NOISE: TEMPORARY NOISE PERMIT AND NOISE VARIANCE” RELATING TO THE PROCESS AND PROCEDURES FOR ISSUANCE OF SAID NOISE PERMITS OR VARIANCES; REPEALING AND REPLACING CHAPTER 10, ARTICLE III “NOISE” THEREBY UPDATING CERTAIN VIOLATIONS AND OFFENSES REGARDING NOISE DISTURBANCES AND VIBRATION OFFENSES; REVISING APPENDIX D – COMPREHENSIVE FEE SCHEDULE TO PROVIDE FEES FOR TEMPORARY NOISE PERMITS AND NOISE VARIANCES, AND A FEE FOR THE GENERAL APPEAL PROCESS FOR APPEALING CERTAIN ADMINISTRATIVE DECISIONS TO THE CITY COUNCIL UNDER CHAPTER 8; AND PROVIDING A REPEALING CLAUSE; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, these Mesquite Zoning Ordinance and Mesquite City Code text amendments provide for updates to the existing noise and vibration violation provisions; and

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 Article 11, [Section 5](#) of the Texas Constitution and [Chapter 9](#) of the Texas Local Government Code; 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, 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 Article III, [Section 2](#) of the Mesquite City Charter; 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, on **February 8, 2021**, 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; and

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

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

SECTION 1. **Recitals Incorporated.** The City Council hereby finds and determines the recitals made in the preamble of this ordinance are true and correct, and hereby incorporates such recitals here in the body of this ordinance as if copied in their entirety.

SECTION 2. **MESQUITE ZONING ORDINANCE TEXT AMENDMENT:**
Revising Section 1-402 of the Mesquite Zoning Ordinance.

The Mesquite Zoning Ordinance, as previously amended, is hereby amended, as identified in **EXHIBIT A**, thereby repealing Section 1-402 “Noise” in its entirety and replacing it with a citation reference to instead see the City Code for the respective requirements and regulations for noise. Said exhibit is attached hereto and made a part hereof, and in all other respects said Zoning Ordinance, Parts, and Sections shall remain in full force and effect.

SECTION 3. MESQUITE CITY CODE AMENDMENT: Revising Chapter 8 of the Mesquite City Code.

The Mesquite City Code, as amended, is hereby amended by revising various articles, divisions, and sections within Chapter 8, “Licenses, Permits, and Business Violations” as identified in **EXHIBIT B** regarding a general appeal process applicable to Special Event Permits and Temporary Noise Permits, and the process and procedures for issuance of a Temporary Noise Permit and Noise Variance. Said exhibit is attached hereto and made a part hereof, and in all other respects, said Code, Chapters, Articles, Divisions, and Sections shall remain in full force and effect.

SECTION 4. MESQUITE CITY CODE AMENDMENT: Revising Chapter 10 of the Mesquite City Code.

The Mesquite City Code, as amended, is hereby amended as identified in **EXHIBIT C**, thereby repealing and replacing Chapter 10, Article III. “Noise” thereby updating certain violations and offenses regarding noise disturbances and vibration offenses. Said exhibit is attached hereto and made a part hereof, and in all other respects, said Code, Chapters, and Articles shall remain in full force and effect.

SECTION 5. MESQUITE CITY CODE AMENDMENT: Revising Appendix D – Comprehensive Fee Schedule.

The Mesquite City Code, as amended, is hereby amended as identified in **EXHIBIT D**, thereby revising certain sections of the Comprehensive Fee Schedule. Said exhibit is attached hereto and made a part hereof, and in all other respects, said Code, Chapters, and Articles shall remain in full force and effect.

SECTION 6. Repealing Clause. 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 7. Conflicts Resolution Clause. 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 8. Severability Clause. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, the Mesquite City Code, as hereby or previously amended, or the Mesquite Zoning Ordinance, as hereby or previously amended, which shall remain in full force and effect.

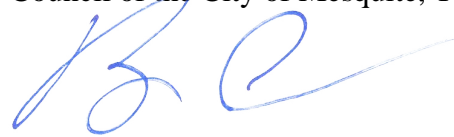
SECTION 9. Penalty Clause. Generally. Nothing in this ordinance prohibits the City from pursuing civil and criminal enforcement remedies and penalties concurrently or availing itself of any other remedy allowed by law. **Criminal.** Any violation of the provisions or terms of this ordinance by any “person,” (as defined in Mesquite City Code, Chapter 1, [Section 1-2](#)) shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be

subject to a penalty of fine not to exceed TWO THOUSAND DOLLARS (\$2,000.00) for each offense, as provided in Mesquite City Code, Chapter 1, [Section 1-6](#), as amended. **Civil.** The City may also file a civil action for enforcement of this ordinance. **Maximum penalties.** If the maximum penalties provided for by this ordinance for an offense or civil action is greater than the maximum penalty provided for the same offense or civil action under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense or civil action shall be the maximum penalty provided by the laws of the State of Texas.

SECTION 10. Publication. This ordinance shall be published in the City's official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

SECTION 11. Effective Date. This ordinance after its passage and publication shall take effect on, and be in force from and after, five (5) days after publication thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on this the **15th day of March 2021**.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A
To Ordinance No. 4850

ZTA 2021-01

Mesquite Zoning Ordinance

* * *

PART 1. – GENERAL PROVISIONS

* * *

1-400 – PERFORMANCE STANDARDS

* * *

[Editor's NOTE: Repeal Section 1-402 in its entirety and replace with the following text.]

1-402 – Noise.

See City Code for the respective requirements and regulations for noise.

City Code Cross references –

Temporary Noise Permit, Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.

Noise Variance, Chapter 8, Article XVII, Division 3 – Noise Variance.

Noise from the idling of commercial motor vehicles, Chapter 9, Article XI, [Section 9-342](#).

Noise, Chapter 10, Article III.

Noise made by Animals, Chapter 4, Article VII, [Section 4-266](#).

State law reference – Disorderly Conduct, V.T.C.A. Penal Code, Title 9, Chapter 42, § 42.01.

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EXHIBIT B

To Ordinance No. 4850

Chapter 8, Articles I, XV, and XVII.

Chapter 8 – LICENSES, PERMITS AND BUSINESS REGULATIONS

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Chapter 8 – LICENSES, PERMITS AND BUSINESS REGULATIONS

ARTICLE I. - IN GENERAL

DIVISION 1. - RESERVED

Secs. 8-1—8-10. - Reserved.

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DIVISION 2. - APPEAL OF CITY MANAGER’S DECISION TO CITY COUNCIL

Sec. 8-11. Purpose.

An applicant, permittee, or other interested party may appeal certain administrative decisions of the City Manager or his/her designee to the City Council as herein identified in this article.

Sec. 8-12. Appeals of certain administrative decisions of the City Manager.

- (a) The following administrative decisions of the City Manager, or his/her designee, may be appealed to the City Council in accordance with this article:
- (1) Special Event Permits (Ch. 8, [Article XV](#) – Special Events and Parades); and
 - (2) Temporary Noise Permits (Ch. 8, Art. XVII, Division 2 – Temporary Noise Permit).
- (b) The following, in associated with the decision(s) in sub-section (a) above, may be appealed:
- (1) approval,
 - (2) denial,
 - (3) modification,
 - (4) condition(s),
 - (5) time period,
 - (6) revocation, and
 - (7) requests for refunds of deposits.

Sec. 8-13. Persons authorized to make an appeal.

An applicant, permittee, or other interested party (“Appellant”) may appeal the City Manager’s administrative decision (or his/her designee’s decision) as authorized in Sec. 8-12 and as herein described in this division.

Sec. 8-14. Deadline.

For an appeal to be considered by the City Council, the notice of appeal must be filed not later than the tenth (10th) day after the date the City Manger’s decision is made. The date the decision is made shall be considered Day Zero (0).

Sec. 8-15. Initiating an appeal.

- (a) *Notice of appeal.* A notice of appeal (“appeal”) shall be in writing and may be on forms provided by the City.
- (b) *Filing with City Secretary.* The appeal shall be filed with the City Secretary or his/her designee.
- (c) *Fee.* Unless otherwise herein authorized, an appeal must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule (Section 1-105). There are no fee requirements if an appeal is filed by any officer, department, board, bureau, or commission of the City.
- (d) *Appellate burden.* The appellant is responsible for establishing the decision being appealed is contrary to the applicable approval standards, law, or other regulations.

- (e) *Contents of notice of appeal.* A notice of appeal (“appeal”) shall identify the following information (when known) and the grounds for the appeal:
- (1) The name, mailing address, physical address, e-mail address, and telephone number of the appellant.
 - (2) The name of the original applicant, if the appellant is not the original applicant.
 - (3) A description of the appellant's status as a person authorized to make an appeal.
 - (4) The decision being appealed.
 - (5) The date of decision.
 - (6) The reasons the appellant believes the decision is in error and does not comply or is contrary to the applicable approval standards, law, or other regulations of this City Code.
 - (7) The requested relief the appellant is seeking from the City Council.

Cross reference— The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Section 1-105 Appeals.

Sec. 8-16. Acceptance and processing of appeal.

- (a) An appeal is considered accepted and officially filed upon the City Secretary or his/her designee’s receipt before 5:00 p.m. on a business day during normal office hours.
- (b) Any appeal received on or after 5:00 p.m. on a business day or on Saturday, Sunday, or holidays shall not be considered officially accepted and filed until the next business day following the date the information was received or entered.
- (c) *Officially filed or rejected.* An appeal shall not be considered accepted and officially filed unless it is accompanied by the required fee(s), or the fees shall be paid in accordance with the terms of any City-issued invoice.
 - (1) *Accepted – officially filed.* After the City Secretary or his/her designee preliminarily accepts the appeal and fee, if it is determined the appeal was received prior to the deadline and in accordance with this division, the City Secretary or his/her designee shall mark the notice of appeal submitted by the appellant as “ACCEPTED – Officially Filed on: _____ [Insert Date].”
 - (2) *Rejected – not filed.* After the City Secretary or his/her designee preliminarily accepts the appeal and/or fee, if it is determined the appeal was received after the deadline and contrary to the terms in this division, the City Secretary shall mark the notice of appeal submitted by the appellant as “REJECTED – Not Filed” and shall refund any fees to the applicant, if paid.

Cross reference— The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Section 1-105 Appeals.

Sec. 8-17. Scheduling of public hearing.

- (a) A public hearing on an accepted and officially filed appeal shall be scheduled for the first available regular City Council meeting for which notice of the public hearing can be timely provided.
- (b) A public hearing at the City Council meeting shall not be rescheduled within ten (10) days of an officially filed appeal. The public hearing may be scheduled on the eleventh (11th) day or thereafter. The date the appeal is considered officially filed is considered Day Zero (0).

Sec. 8-18. Notice.

- (a) *Notice.* Notice shall be provided to the appellant and any parties in interest regarding an appeal. Parties in interest, including the City Manager, shall be given ten (10) days’ notice prior to scheduling a public hearing in accordance with Sec. 8-17 (Scheduling of public hearing).

- (b) *Public notice pursuant to the Open Meetings Act.* All public hearings scheduled pursuant to this division shall be held at public meetings of the City Council. The public notice for meetings shall comply with the Texas Open Meetings Act.

State Law reference— V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.

State Law reference— V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.

Sec. 8-19. Action by the City Secretary.

The City Secretary, or his/her designee, shall take the following actions upon the City's acceptance and the official filing of the notice of appeal:

- (a) Upon receipt of a notice of appeal, the City Manager or his/her designee from whom the appeal is taken shall be immediately notified. The City Manager and/or his designee(s) shall immediately transmit to the City Secretary all the papers constituting the record of the action that is being appealed including a summary of the record for transmission and presentation to the City Council.
- (b) The City Secretary shall schedule the appeal for a public hearing on the next regular meeting of the City Council for which notice of the public hearing can be timely provided.

Sec. 8-20. Approval standards to modify or reverse administrative decision.

In order to grant an appeal modifying or reversing the City Manager's administrative decision (or his/her designee's decision)

- (a) the appellant must establish the administrative official's decision being appealed is contrary to the applicable approval standards (for originally approving the permit), or is contrary to law, or other regulations; and
- (b) the City Council must:
- (1) find the administrative decision is erroneous; and
 - (2) provide a statement of grounds in support of the finding; and
 - (3) state what the Board determines to be the correct interpretation of the matter at issue in the appeal.

Sec. 8-21. Action by the City Council.

- (a) *Public meeting.* After receipt of an accepted and officially filed notice of appeal, the City Council shall hear and decide the appeal at a public meeting and hold a public hearing in accordance with this division.
- (b) *Public hearing, record, and testimony.* The City Council will evaluate the appeal based upon the record and any supplemental testimony made during the public hearing. At the public hearing, the appellant shall have the opportunity to present all relevant arguments and may be represented by legal counsel. The appellant, or his/her legal counsel, may present evidence, witnesses, and may cross-examine any of the City's witnesses. The City shall be represented by the City Attorney or his/her designee. The public hearing shall take no longer than one (1) day, unless the City Council grants an extension upon a simple majority vote of its members, present and voting, to meet the requirements of due process and proper administration of justice for the appellant.

- (c) *City Council decision.* Utilizing the approval standards (Sec. 8-20), the City Council may:
- (1) Affirm;
 - (2) Modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the City Council has the same authority as the administrative official;
 - (3) Reverse; or
 - (4) The City Council may also, including but not limited to:
 - a. Postpone holding the public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed; or
 - b. Continue an opened public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.
- (d) *Vote Required.*
- (1) *Motion to affirm, in whole, the administrative decision.* The concurring vote of a simple majority of the City Council is required to affirm in whole, an administrative decision of an administrative official.
 - (2) *Motion to modify the administrative decision.* The concurring vote of two-thirds (a "super-majority") of the City Council is required to modify an administrative decision of the City Manager or his/her designee. If less than all members of the City Council are present, but in no case less than a quorum, the concurring vote of two-thirds of the City Council members, present and voting, shall be required.
 - (3) *Motion to reverse, in whole, the administrative decision.* The concurring vote of two-thirds of the City Council members, present and voting, is required to reverse in whole, an administrative decision of the City Manager or his/her designee. If less than all members of the City Council are present, but in no case less than a quorum, the concurring vote of two-thirds of the City Council members, present and voting, shall be required.
 - (4) *All other motions.* A simple majority vote of the City Council is be required to approve any motion other than a motion to modify or a motion to reverse.

Sec. 8-22. City Council decision; and appeals.

- (a) *Issuance of written decision.* Within five (5) days after the public hearing whereby the City Council made its decision, the City Secretary shall issue the City Council's written decision (the "Record of Decision of the City Council") dated as of the date the City Council made the decision in a public meeting.
- (b) *Contents of the written record of decision.* The written "Record of Decision of the City Council" shall include the specific reasons for the City Council's decision, pursuant to this article and the statements made during the public meeting. The "Record of Decision of the City Council" shall also include the right of any party to appeal the decision to a court of competent jurisdiction as provided herein in this article.
- (c) *Delivery of written record of decision.* The "Record of Decision of the City Council" shall be delivered to the appellant and any parties in interest by e-mail and U.S. certified mail return receipt requested.
- (d) *Appeal of the City Council's decision.* Any appeal of the City Council's decision to a court of competent jurisdiction must be filed within thirty (30) days of the date of the City Council's decision as identified in the "Record of Final Decision of the City Council."

Secs. 8-22—8-25. - Reserved.

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ARTICLE XV. - SPECIAL EVENTS AND PARADES

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[Editor's Note: Repeal and replace Sec. 8-904 and re-title it as follows.]

Sec. 8-904. Appeal of City Manager's decision.

- (a) A decision of the City Manager regarding a Special Event Permit or any associated deposit may be appealed to the City Council within ten (10) days of the issuance, denial, or revocation of a permit in accordance with the process and procedures identified in Article 1, Division 2 (Appeal of the City Manager's Decision to City Council).
- (b) The date of the City Manager's decision is considered Day Zero (0). The date of the City Manager's decision will be identified on either the City Manager-approved Special Event Permit or in the case of a denial, on the "Record of Decision of the City Manager".
- (c) If no appeal is received by the City Secretary within ten (10) days of the administrative decision regarding a parade or special event in accordance with this article, the City Manager's decision (or his/her designee's decision) shall be deemed a final decision on the eleventh (11th) day.

Cross reference – Appeal of City Manager's decision to City Council; Chapter 8, Article 1, Division 2.

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Secs. 8-919—8-960. - Reserved.

[Editor's Note: Add NEW Article XVII to Chapter 8 as set out below.]

ARTICLE XVII. - NOISE: TEMPORARY NOISE PERMIT & NOISE VARIANCE

DIVISION 1. - IN GENERAL

Sec. 8-961. Purpose.

The purpose of this article is to identify the process and procedures for the request, review, and issuance of decisions regarding temporary noise permits and noise variances.

Secs. 8-962 —8-980. - Reserved.

DIVISION 2. - TEMPORARY NOISE PERMIT**Sec. 8-981. In General.**

A temporary noise permit is an administrative approval, reviewed and approved by the City Manager or his/her designee, allowing noise during days and times in which noise may not otherwise be permissible or to allow noise to exceed the permissible decibel limitations of this article on a temporary basis.

Sec. 8-982. Purpose.

The purpose of a temporary noise permit is to allow, on a temporary basis, noise to exceed the permissible levels when an event or activity is in the public interest, in cases of urgent necessity, or in the interest of public safety and convenience.

Sec. 8-983. Authority.

- (a) *Parades or special events with a Special Event Permit.* The City Manager or his/her designee may review applications for parades and special events and approve or deny a Special Event Permit in accordance with the process and procedures identified in Chapter 8, [Article XV](#). Excess noise, in connection with a parade or special event, shall only be allowed if approved in connection with the Special Event Permit and is not taken up in this division.
- (b) *Other events and activities.* The City Manager or his/her designee may review applications for temporary noise permits and approve or deny a Temporary Noise Permit in accordance with this article for events and activities not requiring a Special Event Permit, but that may generate noise in violation of this City Code.

Sec. 8-984. Effect.

- (a) *Noise authorized.* Issuance of the temporary noise permit does not authorize the event or activity generating the noise; a temporary noise permit only provides authorization to generate noise as may be authorized under the permit.
- (b) *Affirmative defense.* Issuance of a temporary noise permit provides the applicant with an affirmative defense to prosecution if a noise disturbance or vibration offense citation is issued.

Cross references –

Noise and Vibration Offenses, Chapter 10, Article III, Section 10-71.

Affirmative defenses, Chapter 10, Article III, Section 10-73.

Sec. 8-985. Application, fee, and initiation process.

- (a) *Application.* An applicant shall submit an application for a temporary noise permit on forms and in such quantity, and with any supplemental materials, as may be required by the application instructions.
- (b) *Fee.*
 - (1) Unless otherwise herein authorized, each application must be accompanied by the required application processing fee(s) as set in the City of Mesquite Comprehensive Fee Schedule ([Section 12-100](#)).

- (2) There are no fee requirements if an application is submitted by any officer, department, board, or commission of the City.
- (c) *Complete application.* A complete application includes, but may not be limited to:
 - (1) Required forms;
 - (2) All information, plans, and data as specified in the application requirements; and
 - (3) The appropriate fee(s).
- (d) *Initiation.* An applicant shall submit a complete application, including the fee, to the Department of Planning and Development Services.
- (e) *Action by Director.* The Director of Planning and Development Services or his/her designee shall process the application and payment of fees. When a complete application is received, the Director or his/her designee shall forward the application to the City Manager or his/her designee for review and decision.

Cross reference— The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, [Section 12-100](#).

Sec. 8-986. Approval standards.

The City Manager or his/her designee may grant a temporary noise permit if the City Manager or his/her designee finds that the event or activity, that may potentially cause a noise disturbance or vibration offense, is an event or activity:

- (1) in the public interest, or
- (2) is of urgent necessity, or
- (3) in the interest of public safety and convenience, or
- (4) is otherwise necessary for the protection of the public health, safety, and welfare.

Sec. 8-987. City Manager review and decision.

- (a) *In general.* The City Manager or his/her designee upon receipt of a completed application from the Director of Planning and Development Services shall review the application and make a decision.
- (b) *Action by the City Manager.*
 - (1) The City Manager or his/her designee must review the application and pursuant to the approval standards of this division (Section 8-986) may take any of the following actions regarding the decision on an application for a temporary noise permit:
 - a. Approval;
 - b. Approval with modifications (modified from what was requested in the application); or
 - c. Denial.
 - (2) The City Manager may require that any temporary noise permit be:
 - a. Revocable;
 - b. Effective for a specified time period; or
 - c. Subject to one or more conditions.
 - (3) *Modifications and conditions.*
 - a. *Granting a temporary noise permit approval with a modification.* The City Manager or his/her designee may grant a temporary noise permit that is less than that requested in

the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

- b. *Granting a temporary noise permit with conditions and restrictions.* The City Manager or his/her designee may impose such conditions and restrictions upon the temporary noise permit as may be deemed necessary for the protection of the public health, safety, and welfare.

- (4) *Decision.* The City Manager's decision shall be forwarded to the Director of Planning and Development Services.

Sec. 8-988. Issuance of permit or notice of decision.

The Director of Planning and Development Services or his/her designee shall issue the City Manager-approved permit or in the case of a denial, the Director shall issue a written "Record of Decision of the City Manager" to the applicant.

- (a) *Issuance of permit.* If the application for a temporary noise permit is approved, the permit shall be issued with an issuance date and shall contain the terms of the approval in accordance with this article.
- (b) *Notice of decision.* If the application for a temporary noise permit is denied, the "Record of Decision of the City Manager" shall provide notice of the decision and state the reasons for denial. The record of decision shall be in writing and shall be sent to the applicant by e-mail (if an e-mail address has been provided by the applicant) and certified mail, return receipt requested, through the United States Postal Service or hand delivered.

Sec. 8-989. Appeal of City Manager's decision.

- (a) A decision of the City Manager regarding a Temporary Noise Permit may be appealed to the City Council within ten (10) days of the issuance, denial, or revocation of a permit in accordance with the process and procedures identified in Article 1, Division 2 (Appeal of the City Manager's Decision to City Council).
- (b) The date of the City Manager's decision is considered Day Zero (0). The date of the City Manager's decision will be identified on either the City Manager-approved Temporary Noise Permit or in the case of a denial, on the "Record of Decision of the City Manager".
- (c) If no appeal is received by the City Secretary within ten (10) days of the administrative decision regarding a Temporary Noise Permit in accordance with this division, the City Manager's decision (or his/her designee's decision) shall be deemed a final decision on the eleventh (11th) day.

Cross reference – Appeal of City Manager's decision to City Council; Chapter 8, Article 1, Division 2.

Secs. 8-990—8-1020. - Reserved.

DIVISION 3. - NOISE VARIANCE**Sec. 8-1021. In General.**

A noise variance is a suspension of the literal enforcement of the noise provisions and requirements as may be identified in this City Code. Noise variances are reviewed and approved by the Board of Adjustment in accordance with the approval standards herein identified and may be applied for and reviewed in accordance with the process and procedures for variances granted by the Board of Adjustment.

Sec. 8-1022. Purpose.

A noise variance is intended to address unnecessary hardships or practical difficulties resulting from the strict application of the noise provisions and requirements as may be identified in this City Code. The purpose of the noise variance process is to provide a narrowly limited means by which relief may be granted under certain circumstances this City Code.

Sec. 8-1023. Authority.

- (a) *Authority of Board to hear and decide this matter.* The City Council grants authority to the Board of Adjustment to hear and decide a noise variance as authorized by this division.
- (b) *Variance from the terms of this City Code.* The Board of Adjustment may, in specific cases, after written notice and a public hearing, authorize a noise variance from the terms of this City Code in accordance with the approval standards as identified in this division.
- (c) *Use variances prohibited.* The Board shall not grant “use” variances. A use variance is a request for a variance to allow a use that is not listed as a permitted use within a zoning district as identified in the Mesquite Zoning Ordinance (“MZO”).

State Law reference— Authority of Board, V.T.C.A. Local Government Code, § 211.009.

Sec. 8-1024. Effect.

Approval of an application for a noise variance entitles the applicant to deviate from the strict terms of this City Code as authorized by the terms in the noise variance.

Sec. 8-1025. Application, fee, and initiation process.

A property owner, or person expressly authorized in writing by the property owner, may request a pre-application conference and/or submit an application and fee for a noise variance in accordance with Mesquite Zoning Ordinance [Section 5-202](#) (Application Procedures).

Cross reference— The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, [Section 12-116](#).

Sec. 8-1026. Notice.

Notice, in accordance with Mesquite Zoning Ordinance [Section 5-203](#) (Notice), shall be provided to the public regarding a request for a noise variance and any associated public hearing.

Sec. 8-1027. Public Hearing.

A public hearing, in accordance with Mesquite Zoning Ordinance [Section 5-204](#) (Public Hearing), shall be conducted to determine whether the request for a noise variance should be granted.

Sec. 8-1028. Action by the Director.

All applications for noise variances, along with the associated fees, must be submitted to the Department of Planning and Development Services in accordance with Mesquite Zoning Ordinance [Section 5-202](#) (Application Procedures). The Director or his/her designee shall take the following actions upon the City's acceptance and the official filing of the application:

- (a) Upon receipt of an accepted and officially filed application the Director shall review and produce a staff report for presentation to the Board. The staff report shall include a summary of the requested noise variance, staff comments, and a staff recommendation.
- (b) The Director shall schedule the application for a public hearing and consideration by the Board.
- (c) The Director shall provide notice in accordance with Mesquite Zoning Ordinance [Section 5-203](#) (Notice).

Sec. 8-1029. Approval standards and considerations.

- (a) *Approval standards.* In order to grant a noise variance from the terms of this City Code the Board must find that:
 - (1) The noise levels, as may be authorized, will not constitute a danger to public health; and
 - (2) Compliance with the City Code noise provisions would impose a significant burden on the applicant; and
 - (3) The noise variance is not contrary to the public interest.
- (b) *Considerations in determining whether a noise variance is contrary to the public interest.* When evaluating whether or not the noise variance is contrary to the public interest, the Board may consider the proximity to residential dwellings at which persons with ordinary sensibilities would be disturbed by the noise.
- (c) *Restrictions.* No noise variance shall be approved for the operation of sound equipment at nighttime hours from a Motor Vehicle.

Sec. 8-1030. Action by the Board of Adjustment.

- (a) *Public hearing and consideration of the application.* After receipt of an accepted and official filed application and staff report from the Director, the Board shall hold a public hearing, at a public meeting, in accordance with Mesquite Zoning Ordinance [Section 5-204](#) (Public Hearing) and consider the application for a noise variance.
- (b) *Actions.*
- (1) The Board must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards (Section 8-1029) and other conditions of this division and may take any of the following actions regarding the application for a noise variance:
 - a. Approval;
 - b. Approval with modifications;
 - c. Denial; or
 - d. The Board may also, including but not limited to:
 1. Postpone holding the public hearing and consideration of the application to a later date; or
 2. Continue an opened public hearing and consideration of the application to a later date.
 - (2) The Board may require a noise variance be:
 - a. Effective for a specified time period; or
 - b. Subject to one or more conditions.
 - (3) The Board shall require a noise variance be revocable.
 - (4) *Granting a noise variance approval with a modification.* The Board may grant a noise variance that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.
 - (5) *Granting a noise variance with conditions and restrictions.* The Board may impose such conditions and restrictions upon the noise variance as may be deemed necessary for the protection of the public health, safety, and welfare.

Sec. 8-1031. Vote required.

The concurring vote of four (4) members of the Board is required to grant a request for noise variance.

Sec. 8-1032. Rules for motions, decisions, request for reconsiderations, and appeals to court.

See Mesquite Zoning Ordinance, Part 5, 5-200, [5-208](#) Rules for motions, decisions, request for reconsiderations, and appeals to court.

Sec. 8-1033. Revocation of a noise variance.

The noise variance shall be revoked by the Board of Adjustment after a public hearing, upon the concurring vote of four (4) members of the Board, if:

- (1) the terms of the noise variance are violated; or
- (2) if it is learned that there were material misrepresentations made in the application for noise variance; or
- (3) if there is a material change in any of the circumstances relied upon by the Board of Adjustment in granting the noise variance.

EXHIBIT C

To Ordinance No. 4850

Chapter 10, Article III. – Noise.

Mesquite City Code

* * *

Chapter 10 – OFFENSES–MISCELLANEOUS

* * *

Article III. – NOISE

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Chapter 10 – OFFENSES–MISCELLANEOUS

* * *

ARTICLE III. - NOISE

Sec. 10-66. - Short title.

This article may be cited as the “Mesquite Noise Ordinance.”

Sec. 10-67. - Purpose.

This article is adopted to prevent unlawful noise disturbances and excessive vibration to protect the general health, safety, and welfare of the City's inhabitants and is also intended to safeguard the well-being, quality of life, and tranquility of the community.

Sec. 10-68. - Enforcement.

This article may be enforced by peace officers and other enforcement officials or enforcement agents as may be authorized by law or as may be designated by the City Manager.

Cross reference—Authority to issue citations to appear in Municipal Court; Chapter 1, [Section 1-7](#).

Sec. 10-69. - Abbreviations and acronyms.

The following abbreviations and acronyms may be used within this chapter or other City resource materials:

1. dB: Decibel or Decibels
2. dB(A) or dBA: A-weighted Sound Level
3. dB(C) or dBC: C-weighted Sound Level
4. Leq or LAeq: Equivalent Continuous Sound Pressure Level

Sec. 10-70. - 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:

A-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighted network and the Fast response setting. This level is designated dB(A) or dBA.

Background sound pressure level shall mean that measured value which represents the summation of the sound from all of the discrete sources affecting a given site at a given time, exclusive of extraneous sounds and the specific sound from the source under investigation.

Background sounds are those that are relatively constant at the point of measurement.

Boundary line shall mean the line along the ground surface and its vertical extension which separates the real property owned, leased or occupied by one person from that owned, leased, or occupied by any other person and

the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

C-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the C-weighted network and the Fast response setting. This level is designated dB(C) or dBC.

Construction shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition.

Construction-related activities shall mean and involve construction, demolition, excavation, or repair, of any nature, of a building, structure, or flatwork.

Daytime shall mean the hours between 7:00 a.m. and 10:00 p.m.

Decibel shall mean a logarithmic unit of measure often used in measuring magnitudes of sound. Represented by the symbol dB.

Demolition shall mean any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property, but excluding construction.

Enforcement Agent means any authorized person designated by the City Manager, in accordance with City Code [Section 1-7](#), to enforce and administer this article and includes Peace Officers.

Extraneous sound shall mean a short-duration or intermittent sound that is neither part of the background sound, nor comes from the sound source under investigation.

Holidays shall mean any holiday observed by the City of Mesquite.

Impulsive sound shall mean sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

Industrial shall mean any premises where manufacturing, processing or fabrication of goods or products takes place.

Leq: shall mean an average measure of continuous noise that has the equivalent acoustic energy of the fluctuating signal over the same period. The time period of monitoring will be continuous over a minimum of fifteen (15) minutes and will use the A-weighting network reported in decibel units.

Nighttime shall mean the hours between 10:01 p.m. and 6:59 a.m.

Noise shall mean any **specific sound** which:

- (1) is done, accomplished, or carried on in such a manner, or with such a loud volume, intensity, or with continued duration, so as to exceed what is usual, necessary, or normal; or
- (2) is louder than permitted in this chapter.

Noise disturbance. A **noise disturbance** is an offense (Section 10-71) in violation of this article.

Noise variance. A **noise variance** is a suspension of the literal enforcement of the noise provisions identified in this City Code. Noise variances are reviewed and approved by the Board of Adjustment in accordance with the process and procedures identified in Chapter 8, Article XVII, Division 3 – Noise Variance.

Noise Zones are established based on the use of the property as may be described in this Article. Noise Zones are *not* associated to zoning districts established in the Mesquite Zoning Ordinance.

Person shall have the meaning assigned in Chapter 1, [Section 1-2](#) of the Code.

Plainly audible means any **noise** that can be detected by a peace officer or other enforcement agent using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible noise. The peace officer or other enforcement agent need not determine the title, specific words, or the artist performing the song.

Pure tone shall mean any sound that can be distinctly heard as a single pitch or a set of single pitches.

Sound shall mean an oscillation in pressure, stress, particle displacement and particle velocity which induce auditory sensation. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound level meter device for measuring the level of noise, music, and other sounds.

Sound pressure level shall mean twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of a sound to the reference pressure of twenty (20) micronewtons per square meter (20×10^6 Newtons/meter²).

Specific sound shall mean any sound that is clearly distinguishable from the background sounds.

Temporary noise permit. A **temporary noise permit** is an administrative approval, reviewed and approved by the City Manager or his/her designee, allowing noise during days and times in which noise may not otherwise be permissible or to allow noise to exceed the permissible decibel limitations of this article on a temporary basis. Temporary noise permits are issued in accordance with the process and procedures identified in Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.

Vibration means a temporal and spatial oscillation of displacement, velocity or acceleration in a solid material.

Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

Sec. 10-71. - Offenses.

- (a) *Noise Disturbance.* A person commits an unlawful *noise disturbance* in violation of this article, unless otherwise provided, if the person makes, causes to be made, or allows any *noise*
- (1) such that it is a nuisance that annoys, distresses, or disturbs the quiet, comfort, or repose of any reasonable person with ordinary sensibilities
 - a. located on the receiving property (at the curb line or *boundary line* of the receiving property), or
 - b. located on the *boundary line* closest to the source of the sound; or
 - (2) such that it is *plainly audible* by any peace officer or other enforcement agent
 - a. located on the receiving property (at the curb line or *boundary line* of the receiving property), or
 - b. located on the *boundary line* closest to the source of the sound, or
 - c. located at fifty (50) feet, or more, from where the source of the sound is generated, if in a space accessible to the public or a public right-of-way; or
 - (3) which exceeds the maximum permissible sound levels identified in Section 10-75.
- (b) *Other Noise Offenses.*
- (1) *Noise made by animals.* See Chapter 4 “Animals”, Article VII, [Section 4-266](#) (Noise made by animals), or successor, and as amended.
 - (2) *Muffler required.* See Texas Transportation Code, Title 7, Subtitle C, Chapter 547, Subchapter K, [§ 547.604](#) (Muffler required), or successor, and as amended.
 - (3) *Noise from the idling of commercial motor vehicles.* The City’s authority to enforce control requirements for idling of commercial motor vehicles is derived from the Texas Administrative Code, Title 30, Part 1, Chapter 114, Subchapter J, [Division 2](#) “Locally Enforced Motor Vehicle Idling Limitations”, [Rule § 114.510](#) et seq. See also, Mesquite City Code, Chapter 9 “Motor Vehicles and Traffic”, Article XI, [Section 9-342](#) (Noise from the idling of commercial motor vehicles), or successor, and as amended.
 - (4) *Disorderly conduct.* See Texas Penal Code, Title 9, Chapter 42, [§ 42.01](#) (Disorderly Conduct), or successor, and as amended.
- (c) *Vibration Offenses.*
- (1) *Vibrations exceeding the maximum permissible level.* A person commits an offense if the person makes, causes to be made, or allows any *vibration* exceeding the maximum permissible sound level, as identified in Section 10-75.
 - (2) *Vibrations exceeding the vibration perception threshold.* A person commits an offense if
 - a. the person makes, causes to be made, or allows any vibration, and
 - b. such vibration is above the vibration perception threshold of a reasonable person with ordinary sensibilities,
 1. located on the receiving property (at the curb line or *boundary line* of the receiving property), or
 2. located on the *boundary line* closest to the source of the sound, or
 3. located at fifty (50) feet, or more, from where the source of the sound is generated, if in a public space or public right-of-way.

Cross reference – General penalties; applicability; continuing violations, Chapter 1, [Sec. 1-6](#).

State law reference – Disorderly conduct, V.T.C.A., Penal Code, Title 9, Chapter 42, [§ 42.01](#).

Sec. 10-72. - Presumptions.

The following acts are presumed to be prohibited *noises* or excessive vibrations and are therefore declared to be an unlawful *noise disturbance or vibration offense*, in violation of this article:

1. **Advertising or attracting attention.** The crying, calling, or shouting, in person or by mechanical device, or the use of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, loudspeaker, with or without amplifier, hand organ, or other devices or instruments, musical or otherwise, for the purpose of advertising any candidates for elective office, any goods, wares, or merchandise, or for the purpose of attracting attention to or inviting persons to any place of amusement, to any performance or show, or to any business or similar activity.
2. **Yelling, shouting, etc.** The raucous shouting, whistling, yelling, singing, hooting, or crying of peddlers, hawkers, vendors or any other persons.
3. **Motor vehicle exhaust system.** Discharging, or permitting to be discharged into the open air, the exhaust of a motor vehicle or other vehicle except through a muffler, or similar device, which will effectively and efficiently prevent loud and unreasonable noises.
4. **Motor vehicles out of repair.** Operating or permitting to be operated any motor vehicle or other vehicle so out of repair or overloaded in such a manner, which emits or creates a loud and unreasonable noise.
5. **Motor vehicle horn or other signal device.** The continued or frequent sounding of any horn or other signal device on any automobile or vehicle, motorcycle, bus or other vehicle, except as a danger or warning signal.
6. **Loudspeakers used on vehicles.** The use of mechanical loudspeakers or amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale or display of merchandise, or any other purpose.
7. **Stereo or other sound systems: Stationary or within a motor vehicle.** The playing of any stereo or other sound system, whether stationary or located within a motor vehicle, in such a manner or with such volume so as to create a loud and unreasonable noise or vibration which is above the vibration perception threshold.
8. **Radios, musical instruments, and similar devices.** The playing or permitting or causing the playing of any radio, television, stereo system, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound in a manner that creates a loud and unreasonable noise or vibration which is above the vibration perception threshold.
9. **Any noise exceeding 85 dB(A) with notice.** Any noise exceeding 85 dB(A) after the person making the noise receives notice from a Peace Officer or City Enforcement Agent that the noise is a public nuisance.
10. **After-hours construction-related activities near residential dwellings.** Noise created by, nonemergency or not otherwise approved, after-hours construction-related activities, as defined in this article, within five hundred (500) feet of an occupied residential dwelling at any time between the hours of:

Before 7:00 A.M.	or	After 8:00 P.M.	Monday thru Friday
Before 9:00 A.M.	or	After 8:00 P.M.	Saturday–Sunday & Holidays

Cross references – Definitions, Section 10-70; Offenses, Section 10-71; Affirmative defenses, Section 10-73.

Similar State law provision – Disorderly conduct, V.T.C.A., Penal Code, Title 9, Chapter 42, § 42.01.

Sec. 10-73. - Affirmative defenses.

It shall be an affirmative defense to prosecution under this article that:

1. The emission of sounds for the purpose of alerting persons to an emergency.
2. The noise was produced by an authorized emergency vehicle.
3. The noise generated by any vehicle of the City while engaged in necessary public business.
4. The noise generated by any governmental body in the performance of a governmental function.
5. The noise generated by any activity regulation thereof that has been preempted by state or federal law, including, but not limited to, noise produced by aircraft in flight.
6. The noise is produced by the lawful operation of a motor vehicle under the Texas Transportation Code.
7. The noise generated by the normal maintenance of private- or public- real or personal property provided the activities take place during daytime hours, as defined in this article.
8. The noise was produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger following fire, accident, or natural disaster.
9. The noise is produced from any activity in which has received written approval from the City, or has been approved by a state or federal authority, or is reasonably necessary due to an emergency or recovery therefrom.
10. The noise generated by any church or clock carillons, bells, or chimes provided the noise does not cumulatively exceed five (5) minutes duration in any one-hour period.
11. The noise generated in the discharge of weapons from a historical reenactment or a fireworks display permitted by the City.
12. The noise is produced from construction-related activity, as defined in this article, at any time between the hours of:

7:00 A.M.	until	8:00 P.M.	Monday thru Friday
9:00 A.M.	until	8:00 P.M.	Saturday–Sunday & Holidays

13. Any outdoor event, race, festival, or concert that was sponsored or co-sponsored by the City, or that has received authorization via a City-issued permit, or that is conducted on a premises authorized for such use, as may be identified on the Certificate of Occupancy or in accordance with the Mesquite Zoning Ordinance; except, that if an unreasonable noise disturbance or violation offense were created by any such activities herein identified, the noise disturbance shall be abated if a request for abatement is made by a City Enforcement Agent or Peace Officer.
14. The noise generated from reasonable activities conducted at public parks and on public playgrounds and public or private school grounds, included but not limited to, school athletic and school entertainment events.
15. The noise generated by any other lawful activity that constitutes protected expression pursuant to the First Amendment of the United States Constitution. By this exception, it is not intended to restrict or extend the rights of citizens to the valid expression of their rights and beliefs. Any protected expression retains

with it the responsibility to exercise such expression with regard to the rights and sensibilities of others, and within reasonable time and place limitations imposed by other legal standards.

16. The noise is generated by a parade, or the spectators and participants on the parade route, or the noise is generated by a special event, or the spectators and participants of the special event, when the parade or special event have been approved and received a Special Event Permit, as authorized by Chapter 8, [Article XV](#); except, that if an unreasonable noise disturbance or vibration offense were created by any such activities herein identified, the noise disturbance shall be abated if a request for abatement is made by a City Enforcement Agent or Peace Officer.
17. The noise is produced by an event or activity or from property that has received a Temporary Noise Permit, as authorized by Chapter 8, Article XVII, Division 2 – Temporary Noise Permit, granted by the City Manager or his/her designee allowing the noise that would otherwise be prohibited.
18. The noise is produced by an activity or from property that has received a noise variance, as authorized by Chapter 8, Article XVII, Division 3 – Noise Variance, granted by the City's Board of Adjustment allowing the noise that would otherwise be prohibited.

Cross references –

Offenses, Section 10-71.

Temporary Noise Permit, Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.

Noise Variance, Chapter 8, Article XVII, Division 3 – Noise Variance.

Sec. 10-74. - Designated noise zones.

Noise Zones are established based on the use of the property as may be described in this Section. Noise Zones are *not* associated to zoning districts established in the Mesquite Zoning Ordinance.

[TABLE 01: DESIGNATED NOISE ZONES ON NEXT PAGE]

EXHIBIT C TO ORDINANCE NO. 4850
Mesquite City Code. CHAPTER 10, ARTICLE III – NOISE
City Council Meeting Date: March 15, 2021

TABLE 01: DESIGNATED NOISE ZONES		
Noise Zone No.	Designated Properties Within the Noise Zone	Description
Noise Zone 1	All RESIDENTIAL properties or other properties as herein described.	Residential properties shall mean any premise where single or multiple dwelling units exist such as: Single-Family Homes, Apartments, Townhomes, Condos; and shall also include: Schools, Libraries, Churches, Hospitals, Nursing Homes, and similar institutional facilities. Residential properties also include any commercial premise where the "use" of twenty-five percent or MORE (≥ 25%) of the gross floor area meets the description of residential property. (However, motels and hotels shall be considered commercial properties.)
Noise Zone 2	All COMMERCIAL and MIXED-USE properties as herein described.	Commercial properties shall mean any premise where offices, shopping, and service establishments or similar retail establishments exist including, for example: Clinics, Hotels & Motels, Kennels, Shopping Malls, Offices, Reception Facilities, Restaurants, Service Stations; and shall also include: Mixed-Use properties whereby different uses are combined such as retail, residential, offices, and similar other uses.
Noise Zone 3	All INDUSTRIAL, MANUFACTURING, or GOVERNMENTAL properties as herein described.	Industrial & manufacturing facilities. Governmental properties include all City, County, State, and federal facilities, except if otherwise specifically designated in another Noise Zone. For example: Schools are designated in Noise Zone 1.
Noise Zone 4	All ENTERTAINMENT properties as herein described.	Properties where entertainment is considered a primary use of the property.

Cross reference – Maximum permissible sound levels, Section 10-75.

Sec. 10-75. - Maximum permissible sound levels.

- (a) *Maximum permissible sound levels.* The following Table 02 identifies the maximum permissible sound levels that shall apply to the properties in each designated noise zone (Section 10-74), unless otherwise indicated in this article or by the issuance of a temporary noise permit or a noise variance (Section 10-78).

TABLE 02: MAXIMUM PERMISSIBLE SOUND LEVELS		
	TIMEFRAME & SOUND LEVELS	
NOISE ZONE DESIGNATIONS	DAYTIME 7:00 am to 10:00 pm	NIGHTTIME 10:01 pm to 6:59 am
Noise Zone 1 (Residential)	60 dB(A) -or- 70 dB(C)	50 dB(A) -or- 60dB(C)
Noise Zone 2 (Commercial & Mixed-Use)	70 dB(A) -or- 80 dB(C)	60 dB(A) -or- 70 dB(C)
Noise Zone 3 (Manufacturing, Industrial, Governmental)	70 dB(A) -or- 80 dB(C)	65 dB(A) -or- 75 dB(C)
Noise Zone 4 (Entertainment)	Day & Night 7:00 am to 1:00 am	Late Night – Early Morning 1:01 am to 6:59 am
	80 dB(A) -or- 90 dB(C)	60 dB(A) -or- 70 dB(C)

- (b) *Background sound level.* If the background sound level exceeds the applicable standard, the background level shall be the standard.
- (c) *Maximum permissible sound levels apply to the property where the sound is being received.* The dB(A) or dB(C) maximum permissible sound levels set forth in this section apply to the property within the Noise Zone where the sound is being received.
- (d) *Location of sound level measurements.* Sound level measurements shall be conducted at:
- (1) the receiving property (at the curb line or *boundary line* of the receiving property), or
 - (2) the *boundary line* closest to the source of the sound.

Cross references –

- Offenses, Section 10-71.
 Designated Noise Zones, Section 10-74.
 Method of sound measurement utilizing sound level meter, Section 10-76.
 Temporary Noise Permit, Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.
 Noise Variance, Chapter 8, Article XVII, Division 3 – Noise Variance.

Sec. 10-76. - Method of sound measurement utilizing sound level meter.

- (a) *Sound level meter.* Whenever portions of this article prohibit sound levels over a certain decibel limit, measurement of said sound levels shall be made with standardized sound meters, using the A-weighted network and/or the C-weighted network meeting the standards prescribed by the American National Standards Institute (“ANSI”).
- (b) *Calibration.* The instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every sampling event.
- (c) *Measurements utilizing a sound level meter.* Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. Windscreens shall be used whenever appropriate.
- (d) *Background sound level measurement.*
 - (1) When the sound under investigation can be discontinued, the background sound shall be measured at the same location where the total sound was measured.
 - (2) When the sound under investigation cannot be reasonably discontinued, the background sound may be measured at an alternative location. The alternative location should be as close as feasible to the location of the total sound measurement, but so located that the source under investigation has no effect on the background sound level measurement. The size and distribution of buildings in the vicinity, the local topography, and the traffic at the alternate location should be reasonably similar to the conditions at the location of the total sound level measurements.

Cross references –

Designated Noise Zones, Section 10-74.

Maximum permissible sound levels, Section 10-75.

Sec. 10-77. - Noise abatement studies.

- (a) *Existing facilities.* An existing facility which perpetually exceeds the maximum permissible sound levels, as identified in Section 10-75, may be required by the City's Director of Planning & Development Services, or his or her designee, ("Director") to submit a noise abatement study to the City that details the steps that will be taken to bring the facility into compliance. The study must be conducted by a qualified person approved by the Director. The study must contain at a minimum the following:
- (1) A description of the existing facility.
 - (2) An analysis of the source of the noise.
 - (3) An analysis of the abatement measures necessary to bring the existing facility into compliance.
 - (4) A noise abatement measures implementation schedule not to exceed a time frame of six (6) months without the written permission of the Director.
 - (5) Any other items required by the Director, pursuant to the Director's written request.
- (b) *Proposed new facilities or proposed new business within an existing facility.* A proposed new facility or a proposed new business within an existing facility that has the potential to exceed the maximum permissible sound levels, as identified in Section 10-75, may be required by the City's Director of Planning & Development Services, or his or her designee, ("Director") to submit a noise abatement study to the City, prior to the issuance of any building permits or certificate of occupancy, that details the steps that will be taken to ensure the facility will be in compliance. The study must be conducted by a qualified person approved by the Director. The study must contain at a minimum the following:
- (1) A description of the proposed new facility or proposed new business within an existing facility.
 - (2) An analysis of the proposed source of the noise.
 - (3) An analysis of the abatement measures necessary to ensure the proposed new facility or proposed new business within an existing facility is in compliance.
 - (4) A noise abatement measures implementation schedule not to exceed the facility's construction schedule without the written permission of the Director.
 - (5) Any other items required by the Director, pursuant to the Director's written request.
- (c) *Appeals.*
- (1) The City Council grants authority to the Board of Adjustment to hear and decide an appeal of the Director's decision under this section.
 - (2) A person may appeal the Director's request(s) or decision(s) with regard to this section to the Board of Adjustment in accordance with the process and procedures identified in the Mesquite Zoning Ordinance, Part 5, 5-200, [Section 5-210](#).
- (d) *Offenses.*
- (1) *Failure to submit a noise abatement study.* Failure to submit a noise abatement study as requested by the Director is a violation of this article and an offense punishable in accordance with [Section 1-6](#) of the City Code.
 - (2) *Failure to abide by schedule.* Unless otherwise authorized, failure to abide by the Director approved noise abatement implementation schedule is a violation of this article and an offense punishable in accordance with [Section 1-6](#) of the City Code.
 - (3) *Failure to implement noise abatement measures.* Unless otherwise authorized, failure implement any Director approved abatement measures is a violation of this article and an offense punishable in accordance with [Section 1-6](#) of the City Code.

Cross references –

General penalties; applicability; continuing violations, Chapter 1, [Sec. 1-6](#).

Maximum permissible sound levels, Section 10-75.

Appeals of Administrative Decisions to Board of Adjustment, Mesquite Zoning Ordinance, Part 5, 5-200, [Section 5-210](#).

Fee for Appeals of Administrative Decisions to the Board of Adjustment; Appendix D – Comprehensive Fee Schedule, [Section 12-116](#).

State law reference – Authority of Board, V.T.C.A. Local Government Code, § 211.009.

Sec. 10-78. - Temporary noise permits and noise variances.

- (a) *Temporary noise permit.* A temporary noise permit is an administrative approval, reviewed and approved by the City Manager or his/her designee, allowing noise during days and times in which noise may not otherwise be permissible or to allow noise to exceed the permissible decibel limitations of this article on a temporary basis. Temporary noise permits are issued in accordance with the process and procedures identified in Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.
- (b) *Noise variance.* A noise variance is a suspension of the literal enforcement of the noise provisions identified in this City Code. Noise variances are reviewed and approved by the Board of Adjustment in accordance with the process and procedures identified in Chapter 8, Article XVII, Division 3 – Noise Variance.

Cross references –

Temporary Noise Permit, Chapter 8, Article XVII, Division 2 – Temporary Noise Permit.
Noise Variance, Chapter 8, Article XVII, Division 3 – Noise Variance.

EXHIBIT D

To Ordinance No. 4850

Mesquite City Code, Appendix D – Comprehensive Fee Schedule.

Mesquite City Code

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APPENDIX D – COMPREHENSIVE FEE SCHEDULE

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[Editor's Note: Add new Sec. 1-105 titled "Appeals" as follows.]

Sec. 1-105. - Appeals.

Appeals of City Manager's Administrative Decision to City Council under City Code, Chapter 8:

Appeals of Special Event Permits\$250.00
Appeals of Temporary Noise Permits\$250.00

City Code cross references –

Appeal of City Manager's decision – Special Events and Parades; Sec. 8-904.
Appeal of City Manager's decision – Temporary Noise Permit; Sec. 8-989.

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[Editor's Note: Make the following revisions to Sec. 12-100 identified in green font.]

Sec. 12-100. - Building permits.

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Commercial amusement\$100.00

Special event and parade application fee based on estimated attendance:

<200 or special promotion with \$100 deposit\$50.00
201-500 with \$500 deposit\$100.00
501-1,000 with \$500 deposit\$150.00
1,001-5,000 with \$1,000 deposit\$200.00
>5,000 with \$2,000 deposit\$250.00
Expedited application fee\$50.00

Special Events and Parades - Appeals of City Manager's Administrative Decision to City Council; See Sec. 1-105.

Temporary Noise Permit\$50.00

Temporary Noise Permit - Appeals of City Manager's Administrative Decision to City Council; See Sec. 1-105.

Irrigation system\$150.00

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[Editor's Note: Make the following revisions to Sec. 12-116 identified in green font.]

Sec. 12-116. - Board of Adjustment fees.

Special exceptions\$200.00

Special Exception, for a reasonable accommodation\$200.00

Variances:

Variance (Residential)\$200.00

Variance (Non-residential)\$500.00

Noise Variance (Residential)\$200.00

Noise Variance (Non-residential)\$500.00

Sign variances\$500.00

Request for reconsideration\$150.00

Request for extension of time period\$150.00

Appeals of administrative decisions to the Board of Adjustment\$500.00

Termination of nonconforming situations—Request to establish compliance date\$4,300.00

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