

ORDINANCE NO. 4930
Zoning Text Amendment No. 2021- 10

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, MAKING A MESQUITE ZONING ORDINANCE TEXT AMENDMENT NO. 2021-10 AMENDING THE MESQUITE ZONING ORDINANCE BY MAKING CERTAIN ADDITIONS AND DELETIONS TO SECTIONS CONTAINED IN PART 5, 5-100 “REVIEW AND ENFORCEMENT PROCEDURES” PERTAINING TO UPDATING THE GENERAL PENALTY PROVISIONS AND INCREASING THE MAXIMUM FINE AMOUNT FOR DUMPING REFUSE TO ALIGN WITH THE MAXIMUM AMOUNT AUTHORIZED UNDER STATE LAW AT FOUR THOUSAND DOLLARS (\$4,000.00); REVISING PART 6, 6-100, SECTION 6-102 “DEFINITIONS;” AND MAKING A MESQUITE CITY CODE TEXT AMENDMENT MAKING CERTAIN ADDITIONS AND DELETIONS TO CHAPTER 1, SECTION 1-2 “RULES OF CONSTRUCTION,” THEREBY REVISING DEFINITIONS, AND REPEALING AND REPLACING SECTION 1-6 TO BE TITLED “GENERAL PENALTIES;” UPDATING THE GENERAL PENALTY CLAUSE, AND INCREASING THE MAXIMUM FINE AMOUNT FOR THE OFFENSE OF DUMPING REFUSE TO ALIGN WITH THE MAXIMUM AMOUNT AUTHORIZED UNDER STATE LAW AT FOUR THOUSAND DOLLARS (\$4,000.00); PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, this text amendment provides updates to the existing general penalty clause, in Mesquite City Code, Chapter 1, [Section 1-6](#), and to the Mesquite Zoning Ordinance, Part 5, [Section 5-103](#), updating the language for clarity and ease of reading, noting that a criminal violation and imposition of a penalty does not bar any other civil remedies or relief for the violation, and updating the maximum fine amount for the offense of dumping refuse to align with the amount authorized under Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Subchapter A, [§ 54.001](#), at FOUR THOUSAND DOLLARS (\$4,000.00); 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 Mesquite City Charter, Article III, [Section 2](#); 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, Subchapter A, [§ 54.004](#), as amended; and

WHEREAS, pursuant to Mesquite City Charter, Article III, [Section 28](#), the City Council shall have the power to provide for the enforcement of all ordinances enacted by the City by a fine not to exceed the maximum amount authorized by State law; provided, that no ordinance shall prescribe a greater or less penalty than is prescribed for a like offense by the laws of this State; and

WHEREAS, on **December 13, 2021**, the City of Mesquite Planning and Zoning Commission considered the herein described 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 amendments to the Mesquite Zoning Ordinance; and

WHEREAS, the City's health and safety ordinances are subject to quasi-judicial enforcement pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Subchapter C, [§ 54.032](#); and

WHEREAS, after having given proper public notice and holding a public hearing, the City Council finds that it is in the best interests of the citizens of the City to amend the Mesquite City Code and Mesquite Zoning Ordinance 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 CITY CODE TEXT AMENDMENT: Revising Chapter 1 of the Mesquite City Code.

The Mesquite City Code, as amended, is hereby amended as identified in **EXHIBIT "A"**, thereby revising Chapter 1, [Section 1-2](#); and repealing and replacing [Section 1-6](#). 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 3. MESQUITE ZONING ORDINANCE TEXT AMENDMENT:
Revising Parts 5 and 6 of the Mesquite Zoning Ordinance.**

The Mesquite Zoning Ordinance, as previously amended, is hereby amended by making certain additions and deletions as identified in **EXHIBIT "B"**, thereby revising certain sections in Part 5, 5-100, and revising Part 6, 6-100, Section 6-102 "Definitions." 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.

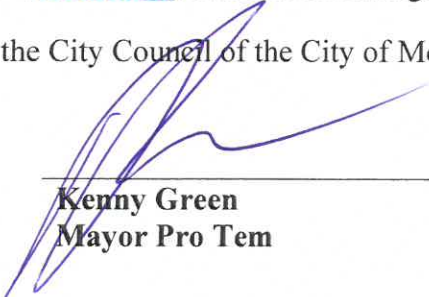
SECTION 4. Conflicts Resolution Clause. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 5. 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 6. Publication. This ordinance shall be published in the City's official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

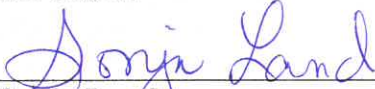
SECTION 7. Effective Date. This ordinance after its passage and publication shall take effect on, and be in force from and after, five (5) days after publication thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on this the **3rd day of JANUARY 2022**.



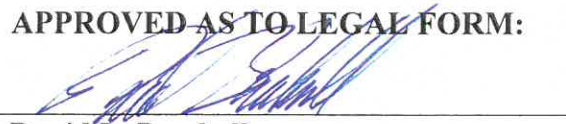
Kenny Green
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

~~APPROVED AS TO LEGAL FORM:~~



David L. Paschall
City Attorney

EXHIBIT A

To Ordinance No. 4930

MESQUITE CITY CODE

Amending Chapter 1, Sections 1-2 and 1-6.

MESQUITE CITY CODE

Chapter 1 – GENERAL PROVISIONS

* * *

[Editor's note: Revise Section 1-2 with the following underlined text.]

Sec. 1-2. – Rules of construction.

* * *

Code. The words "the Code" or "this Code" shall mean the Code of the City of Mesquite, Texas, also cited as Mesquite City Code.

* * *

Person. The word "person" shall extend and be applied to organizations, associations, corporations, limited liability companies, firms, partnerships, business trusts, individual trusts, estates, and bodies politic and corporate, as well as to individuals.

State Law reference— Similar provisions, "Person" defined, V.T.C.A. Government Code, § 311.005(2).

Person in control. "Person in control" is any individual operating in either apparent or actual authority regarding any property or business and includes, but is not limited to, authorized agents, site managers, operators, employees, and workers.

* * *

[Editor's note: Repeal Section 1-6 in its entirety and replace with the following text.]

Sec. 1-6. – General penalties.

- (a) The Code creates an offense when:
 - (1) an act is prohibited, declared to be unlawful, made an offense, or made a misdemeanor;
 - (2) the doing of an act is required, or the failure to do an act is declared to be unlawful, made an offense, or made a misdemeanor; or
 - (3) the violation of a provision of the Code is declared to be unlawful, or made an offense, or made a misdemeanor.

- (b) If the Code does not state a penalty for an offense:
 - (1) if the offense is a violation of an ordinance that governs the dumping of refuse, the offense is punishable by a fine not to exceed \$4,000; or
 - (2) if the offense is a violation of an ordinance that governs fire safety, zoning, or public health and sanitation, the offense is punishable by a fine not to exceed \$2,000; or
 - (3) if the offense is any other violation of an ordinance, the offense is punishable by a fine not to exceed \$500.

- (c) Each violation, and each day any violation of this Code or other ordinance shall continue, shall constitute a separate offense, unless otherwise provided.

- (d) The City dispenses with any culpable mental state requirement except when required by other applicable law.

- (e) Prosecution for violation of a provision of this Code or other ordinance is not a prerequisite or bar to any other remedy or relief for the violation under State law or this Code.

- (f) The imposition of a criminal penalty does not prevent any other relief authorized by law, including but not limited to, injunctive relief, civil or quasi-judicial enforcement and penalties, or the like.

- (g) The imposition of a criminal or civil penalty does not prevent administrative remedies or sanctions, including but not limited to, suspension or revocation of a franchise, license, permit, Certificate of Occupancy ("CO"), or the like.

- (h) Failure to comply with the provisions of this Code or other ordinance shall constitute a basis to deny or disconnect City utilities and to require private utility companies to do likewise.

- (i) In case of a violation of any of the terms or provisions of this Code or other ordinance by any corporation, association, limited liability company, or other business entity (collectively referred to as "business entity" or "entities") the officers and agents actively in charge of the business of any such business entity shall be responsible for such violation and subject to prosecution subject to the limitations set forth in Subchapter B of Chapter 7 of the Texas Penal Code, as the same may be amended from time to time.

EXHIBIT A TO ORDINANCE NO. 4930
Mesquite City Code, Chapter 1 – GENERAL PROVISIONS

City Council Meeting Date: January 3, 2022

- (j) In the event that any such violation is designated as a nuisance under the provisions of this Code or other ordinance, such nuisance may be prevented and summarily abated and/or removed by a peace officer or other authorized enforcement official or enforcement agent as provided by law or may be abated and/or removed by injunctive or other equitable relief.

- (k) The City, a City officer, or City employee does not commit an offense under this Code or other ordinance if said City or said persons (1) fail to perform a ministerial or administrative duty, or fail to take an action required under the Code; or (2) fails to perform an official duty required under the Code unless it is specifically provided that failure to perform the official duty or action is to be punished as may be provided by in this section, or as may be otherwise specifically provided.

Charter references—

Enforcement of ordinances, Art. III, [§ 28](#).

Creation and jurisdiction of Municipal Court; fines; Art. IV, [§ 27](#).

Cross references—

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

Liability of corporate officers for penalty, Chapter 1, [Section 1-8](#).

Burden of proving exception; excuse, etc., in prosecution for violation of Code; Chapter 1, [Section 1-10](#).

State Law references—

Amount of fine or penalty imposed by City, V.T.C.A. Local Government Code, [§ 54.001](#).

Civil action for enforcement of certain ordinances, V.T.C.A. Local Government Code, [§ 54.012](#).

Ordinances subject to quasi-judicial enforcement, V.T.C.A. Local Government Code, [§ 54.032](#).

Alternative Adjudication Process, Local Government Code, Title 2, Subtitle D, Chapter 54, Subchapter C, [§ 54.043](#).

Nuisance, V.T.C.A. Local Government Code, Title 7, Subtitle A, Chapter 217, Subchapter C, [§ 217.042](#).

Jurisdiction of municipal court, V.T.C.A. Government Code, [§ 29.003](#).

Jurisdiction, V.T.C.A. Government Code, Title 2, Subtitle A, Chapter 30, Subchapter A, [§ 30.00005](#).

Jurisdiction of municipal court, V.T.C.A. Code of Criminal Procedure, Title 1, Chapter 4, [Article 4.14](#).

Corporations, Associations, Limited Liability Companies, and other Business Entities, V.T.C.A. Penal Code, [Chapter 7](#), Subchapter B.

Culpable mental state requirement for violation of municipal ordinance with fine exceeding that authorized by Texas Penal Code § 12.23, V.T.C.A. Penal Code, [§ 6.02](#)(f).

Class C Misdemeanor, V.T.C.A. Penal Code, [§ 12.23](#).

EXHIBIT B

To Ordinance No. 4930

ZTA 2021-10

**MESQUITE ZONING ORDINANCE
Amending Certain Sections Contained in
Part 5, 5-100 and Part 6, 6-100**

Mesquite Zoning Ordinance

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PART 5. – ADMINISTRATION

* * *

5-100 - REVIEW AND ENFORCEMENT PROCEDURES

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[Editor's Note: Repeal section 5-103 and replace with the following text.]

5-103. – General penalties.

- A. The Zoning Ordinance creates an offense when:
1. an act is prohibited, declared to be unlawful, made an offense, or made a misdemeanor;
 2. the doing of an act is required, or the failure to do an act is declared to be unlawful, made an offense, or made a misdemeanor; or
 3. the violation of a provision of the Zoning Ordinance is declared to be unlawful, or made an offense, or made a misdemeanor.
- B. If the Zoning Ordinance does not state a penalty for an offense:
1. if the offense is a violation of an ordinance that governs the dumping of refuse, the offense is punishable by a fine not to exceed \$4,000; or
 2. if the offense is a violation of an ordinance that governs fire safety, zoning, or public health and sanitation, the offense is punishable by a fine not to exceed \$2,000; or
 3. if the offense is any other violation of an ordinance, the offense is punishable by a fine not to exceed \$500.
- C. Each violation, and each day any violation of this Zoning Ordinance or other ordinance shall continue, shall constitute a separate offense, unless otherwise provided.
- D. The City dispenses with any culpable mental state requirement except when required by other applicable law.
- E. Prosecution for violation of a provision of this Zoning Ordinance or other ordinance is not a prerequisite or bar to any other remedy or relief for the violation under State law or this Zoning Ordinance.
- F. The imposition of a criminal penalty does not prevent any other relief authorized by law, including but not limited to, injunctive relief, civil or quasi-judicial enforcement and penalties, or the like.
- G. The imposition of a criminal or civil penalty does not prevent administrative remedies or sanctions, including but not limited to, suspension or revocation of a franchise, license, permit, Certificate of Occupancy ("CO"), or the like.

- H. Failure to comply with the provisions of this Zoning Ordinance or other ordinance shall constitute a basis to deny or disconnect City utilities and to require private utility companies to do likewise.
- I. In case of a violation of any of the terms or provisions of this Zoning Ordinance or other ordinance by any corporation, association, limited liability company, or other business entity (collectively referred to as “business entity” or “entities”) the officers and agents actively in charge of the business of any such business entity shall be responsible for such violation and subject to prosecution subject to the limitations set forth in Subchapter B of Chapter 7 of the Texas Penal Code, as the same may be amended from time to time.
- J. In the event that any such violation is designated as a nuisance under the provisions of this Zoning Ordinance or other ordinance, such nuisance may be prevented and summarily abated and/or removed by a peace officer or other authorized enforcement official or enforcement agent as provided by law or may be abated and/or removed by injunctive or other equitable relief.
- K. The City, a City officer, or City employee does not commit an offense under this Zoning Ordinance or other ordinance if said City or said persons (1) fail to perform a ministerial or administrative duty, or take an action required under the Zoning Ordinance; or (2) an official duty required under the Zoning Ordinance unless it is specifically provided that failure to perform the official duty or action is to be punished as may be provided in this section, or as may be otherwise specifically provided.

Charter references—

Enforcement of ordinances, Art. III, [§ 28](#).

Creation and jurisdiction of Municipal Court; fines; Art. IV, [§ 27](#).

Cross references –

Other violations and offenses; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-104.

Enforcement authority; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-105.

State Law references—

Amount of fine or penalty imposed by City, V.T.C.A. Local Government Code, [§ 54.001](#).

Civil action for enforcement of certain ordinances, V.T.C.A. Local Government Code, [§ 54.012](#).

Ordinances subject to quasi-judicial enforcement, V.T.C.A. Local Government Code, [§ 54.032](#).

Alternative Adjudication Process, Local Government Code, Title 2, Subtitle D, Chapter 54, Subchapter C, [§ 54.043](#).

Nuisance, V.T.C.A. Local Government Code, Title 7, Subtitle A, Chapter 217, Subchapter C, [§ 217.042](#).

Jurisdiction of municipal court, V.T.C.A. Government Code, [§ 29.003](#).

Jurisdiction, V.T.C.A. Government Code, Title 2, Subtitle A, Chapter 30, Subchapter A, [§ 30.00005](#).

Jurisdiction of municipal court, V.T.C.A. Code of Criminal Procedure, Title 1, Chapter 4, [Article 4.14](#).

Corporations, Associations, Limited Liability Companies, and other Business Entities, V.T.C.A. Penal Code, [Chapter 7](#), Subchapter B.

Culpable mental state requirement for violation of municipal ordinance with fine exceeding that authorized by Texas Penal Code §12.23,

V.T.C.A. Penal Code, [§ 6.02\(f\)](#).

Class C Misdemeanor, V.T.C.A. Penal Code, [§ 12.23](#).

[Editor's Note: ADD the following new sections.]

5-104. – Other violations and offenses.

- A. A person, business entity, owner, or person in control who builds or alters any building, land, or use in violation of any plan submitted and approved hereunder, commits an offense and upon conviction thereof shall be subject to penalties as provided in this Zoning Ordinance, Section 5-103.
- B. A person, business entity, owner, or person in control of any building, structure, land, or property where a violation exists, and any architect, builder, contractor, agent, or other person who commits or assists in the commission of the violation, shall each have committed an offense and upon conviction thereof shall each be subject to penalties as provided in this Zoning Ordinance, Section 5-103.

Cross references –

General penalties; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-103.

Enforcement authority; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-105.

5-105. – Enforcement authority.

The provisions of this Zoning Ordinance may be enforced by the Building Official, Health Official, Director of Planning and Development Services, Manager of Planning and Zoning, or any other designee or representative of the City as designated by the City Manager and/or a Department Director.

Cross references –

General penalties; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-103.

Other violations and offenses; Mesquite Zoning Ordinance, Part 5, 5-100, Section 5-104.

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PART 6. – DEFINITIONS

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6-102 Definitions

[Editor's NOTE: Add NEW definitions as shown below in alphabetical order within Section 6-102.]

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Person in control: "Person in control" is any individual operating in either apparent or actual authority regarding any property or business and includes, but is not limited to, authorized agents, site managers, operators, employees, and workers.

* * *

Zoning Ordinance: The words "the Zoning Ordinance", or "this Zoning Ordinance", or "this ordinance" shall mean the Mesquite Zoning Ordinance of the City of Mesquite, Texas. Sometimes, the words "the ordinance" may mean the Mesquite Zoning Ordinance, but not when the context suggests otherwise.

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