

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, IMPOSING A MORATORIUM ON APPLICATIONS AND PLANS FOR DEVELOPMENT FOR PERMITS, PLATS, VERIFICATIONS, REZONINGS AND SITE PLANS FOR CONVENIENCE STORES WITHIN THE CORPORATE CITY LIMITS OF MESQUITE; ADOPTING WRITTEN FINDINGS JUSTIFYING THE MORATORIUM; PROVIDING FOR WAIVERS AND LIMITED EXCEPTIONS TO THE MORATORIUM; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, convenience stores are often popular targets for a variety of crimes, including aggravated robbery; and

WHEREAS, in 2018, of two hundred nineteen (219) total robberies in Mesquite, twenty-six percent (26%) of those, or fifty-six (56), occurred at convenience stores. In 2019, of two hundred forty-seven (247) total robberies in Mesquite, nineteen percent (19%), or forty-seven (47), occurred at convenience stores. This data reflects a consistent occurrence of robberies at convenience stores as compared to other retail uses; and

WHEREAS, most convenience store robberies between September 2017 and December 2019 in Mesquite occurred between 10 p.m. and 2 a.m., in the dark when visibility is low allowing for good escape routes, few witnesses, isolation and lone victims; and

WHEREAS, ninety-two percent (92%) of robberies at convenience stores that occurred in Mesquite in 2019 were aggravated offenses; and

WHEREAS, the City Council is committed to protecting the health, safety and welfare of the citizens of the City by reducing the occurrence of crime, reducing the fear of crime, preventing the escalation of crime and increasing the successful prosecution of crime that occurs in convenience stores in the City; and

WHEREAS, the Texas Local Government Code (“LGC”), Subchapter E, “Moratorium on Property Development in Certain Circumstances,” of Chapter 212, “Municipal Regulation of Subdivisions and Property Development,” authorizes a municipality to adopt a moratorium on property development after proper notice and three public hearings; and

WHEREAS, required notices have been properly provided and public hearings were held on the following dates: City Planning and Zoning Commission on January 27, 2020, City Council on January 28, 2020, and the third public hearing will be held by the City Council on February 3, 2020; and

WHEREAS, at the request of the City Council, City staff is currently reviewing and analyzing all properties with zoning permitting convenience store uses, including planned

development zoned properties that include convenience store uses or convenience store components (hereinafter referred to collectively as “Convenience Store Developments”); and

WHEREAS, as part of its review, staff is tasked with determining whether current classifications and standards are in the best interests of the public health, safety and welfare of the City; how best to address the safety issues and other secondary effects created by Convenience Store Developments as required for a moratorium adopted under LGC Section 212.1352; and the effectiveness of various regulations, including a registration program for convenience stores and requirements relating to surveillance camera systems, video recording and storage systems, alarm systems, drop safes, controlled access, theft deterrent devices, security signs, height markers, store visibility, safety training programs, multiple staffing requirements, and trespass affidavits; and

WHEREAS, based upon the information provided by staff, evidence provided by citizens at the public hearings and otherwise, as well as other reasonably available information (the “Evidence”), all of which is incorporated herein by reference, the City Council makes the following findings required by Section 212. 1352 of the LGC:

(1) In 2018 and 2019, one hundred three (103) robberies occurred at convenience stores and ninety-two percent (92%) of all robberies at convenience stores in 2019 were aggravated offenses, endangering the lives of Mesquite workers, citizens and police officers; and

(2) The Evidence demonstrates that the moratorium must apply to Convenience Store Developments and be citywide in its reach because the impacts of Convenience Store Developments cannot be isolated to specific areas of the City; and

(3) The Evidence demonstrates existing regulations applicable to Convenience Store Developments are inadequate to prevent that development from being detrimental to the public health, safety or welfare of the residents of the municipality; and the goal of this moratorium is to identify and adopt regulations that effectively improve public safety at convenience stores; and

WHEREAS, based upon the Evidence, the City Council concludes that it is appropriate and necessary to impose a moratorium on applications and plans for development permits, plats, verifications, rezonings and site plans for Convenience Store Developments within the corporate city limits of Mesquite.

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

SECTION 1. The above premises are hereby found to be true and correct legislative and factual findings of the City Council and they are hereby approved and incorporated into the body of this resolution as if copied in their entirety.

SECTION 2. A moratorium is hereby adopted and imposed on applications and plans for development, permits, plats, verifications, rezonings and site plans for Convenience Store Developments within the corporate city limits of Mesquite, said moratorium to allow the review of the Comprehensive Plan, the Zoning Ordinance, the Code of Ordinances and other

ordinances and regulations of the City to consider appropriate amendments, if any, to the existing regulations for Convenience Store Developments, and whether to adopt any new ordinances or regulations to regulate such uses. No new, expanded or modified Convenience Store Developments are to be allowed within the corporate city limits of Mesquite until said review is completed and the ordinances of the City are amended as necessary, or until this moratorium, including extensions, if any, shall have expired, whichever occurs first.

SECTION 3. Except as otherwise provided herein, after the effective date of, and extending for the duration of this moratorium (including any extensions hereto), no City employee, officer, official, agency, department, board or commission of the City shall accept for filing any application or plan for development for permits, plats, verifications, rezonings or site plans for new, expanded or modified Convenience Store Developments within the corporate city limits of Mesquite. Any City employee, officer, official, agency, department, board or commission of the City in receipt of any such application or plan for development shall forward the same to the Director of Planning and Development Services (the "Director"), who shall review the application or plan for development to determine whether the application or plan for development is subject to this moratorium. Receipt of an application or plan for development for the limited purpose of such review shall not constitute filing or acceptance of the application or plan for development. In the event the Director determines that an application or plan for development is subject to the moratorium, the Director shall take no further action on the application or plan for development and shall reject the same, and shall return the application or plan for development to the person or entity attempting to file the same. Further, due to the inherent limitations for monitoring and oversight of applications submitted through EnerGov, the City's electronic development submittal and review software system, all applications or plans for development for new, expanded or modified Convenience Store Developments shall be submitted exclusively in hardcopy paper format and not through EnerGov for the duration of this moratorium (including any extensions hereto). Any submittal or attempted submittal of any such application or plan for development through EnerGov is hereby rejected, regardless of whether the applicant receives subsequent acknowledgement or notice that such application or plan for development has been rejected, and neither the Director nor any other employee or official of the City shall be obligated to provide acknowledgement or notice of rejection to the electronic applicant.

SECTION 4. An applicant for a Convenience Store Development as described herein may apply for a waiver to this moratorium by submitting a written request for waiver to the City Council, which shall be voted on by the City Council within twenty-one (21) days after receipt of the request, or within ten (10) days after receipt if the request for waiver is based on reasons provided in Section 212.137 of the LGC. The request shall be in writing and submitted to the City Secretary, who shall forward the request to the Director for processing and recommendation to the City Council. The City Council may authorize or deny the requested waiver, and if authorized, direct the applicable City official to accept a completed application and process the application subject to conditions necessary to ensure that the proposed development would not cause adverse effects to the surrounding property or the City's infrastructure and to carry out the spirit and purpose of this ordinance. The City Council should not release the applicant from the requirements of this ordinance unless the applicant first

presents credible evidence from which the City Council can reasonably conclude that (1) the application of this ordinance to the applicant would be likely to deprive the applicant of rights protected by law; or (2) the proposed development is compatible with the land use in proximity to the proposed development and permitting the development to proceed would not cause adverse effects to surrounding property or be contrary to the spirit and purpose of this ordinance; or (3) the waiver is required by Section 212.137 of the LGC.

SECTION 5. The provisions of this ordinance do not apply to any new, expanded or modified development or use that is being constructed or is to be constructed pursuant to an Economic Development 380 Agreement with the City of Mesquite or any completed application or plan for development for a permit, plat, verification, rezoning or site plan for any new, expanded or modified Convenience Store Developments that were filed prior to January 30, 2020, such date being the fifth business day after the date on which the City published notice of public hearings to consider this ordinance.

SECTION 6. The provisions of this ordinance do not apply to applications for roof, electrical, plumbing and mechanical permits for existing Convenience Store Developments if the permits are required solely for property maintenance.

SECTION 7. This ordinance shall expire upon ninety (90) days after its adoption unless extended as allowed by applicable law.

SECTION 8. For purposes of this moratorium, the terms set forth herein shall have the same meanings assigned by Chapter 212, Subchapter E, of the LGC, the Mesquite Zoning Ordinance and Code of Ordinances of the City, except as otherwise provided herein. "Permit" shall mean a license, certificate, approval, registration, consent, permit or other form of authorization required by law, rule, regulation, order or ordinance that a person must obtain to perform an action or initiate, continue or complete a project for which the permit is sought, including a verification, contract or agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated or controlled by a regulatory agency.

SECTION 9. As soon as practical after the adoption of this ordinance, the Director shall publish on the City of Mesquite website an advisory for the convenience of the public, which announces the moratorium on Convenience Store Developments and provides information on the duration and applicability of the moratorium, the opportunity and procedures for submitting a request for a waiver, and other pertinent terms of this ordinance.

SECTION 10. Should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 11. A public hearing and the first reading of this moratorium ordinance occurred at the special meeting of the City Council of Mesquite, Texas, on the 28th day of January 2020.

SECTION 12. This ordinance may take effect if passed and approved on the second reading at a regular meeting of the City Council of Mesquite, Texas, on the 3rd day of February 2020.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney