

ORDINANCE NO. \_\_\_\_\_  
Zoning Texas Amendment No. 2018-04

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS,  
AMENDING THE MESQUITE ZONING ORDINANCE  
ADOPTED ON SEPTEMBER 4, 1973, AND RECODIFIED ON  
NOVEMBER 21, 1988, BY DELETING SECTION 1-304(C) IN  
ITS ENTIRETY AND ADDING A NEW SECTION 1-304(C)  
THEREBY REVISING THE REGULATIONS PERTAINING TO  
THE AMORTIZATION OF NONCONFORMING USES;  
PROVIDING A REPEALER CLAUSE; PROVIDING A  
SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE  
DATE THEREOF.

WHEREAS, in order that the intended purposes of the Mesquite Zoning Ordinance are best served, it has been determined necessary to amend certain language of said ordinance; and

WHEREAS, the Planning and Zoning Commission did give public notice and did hold a public hearing regarding proposed revisions and has recommended amendment of the ordinance; and

WHEREAS, the City Council did give public notice and did hold a public hearing regarding the proposed amendment.

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

SECTION 1. That the Mesquite Zoning ordinance adopted on September 4, 1973, and recodified on November 21, 1988, be and the same is hereby amended by deleting Section 1-304(C) in its entirety and adding a new Section 1-304(C) to read as follows, said Ordinance in all other respects to remain in full force and effect:

**1-304. Termination of nonconforming situations.**

C. *Amortization.*

1. *Compliance regulations for nonconforming uses.* It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Mesquite Zoning Code, having due regard for the property rights of the persons affected, the public welfare and the character of the surrounding area.

a. *Amortization of nonconforming uses.*

- (1) *Request to establish compliance date.* The City Council may request that the Board of Adjustment ("Board") consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the City may request that the Board consider establishing a compliance date

for a nonconforming use. Upon receiving such a request, the Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the Board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(2) *Factors to be considered.* The Board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (a) The character of the surrounding neighborhood.
- (b) The degree of incompatibility of the use with the zoning district in which it is located.
- (c) The manner in which the use is being conducted.
- (d) The hours of operation of the use.
- (e) The extent to which continued operation of the use may threaten public health or safety.
- (f) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust and odor.
- (g) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (h) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (i) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(3) *Finality of decision.* A decision by the Board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the Board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(4) *Determination of amortization period.*

- (a) If the Board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a

compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

(b) The following factors must be considered by the Board in determining a reasonable amortization period:

- i. The owner's capital investment in structures, fixed equipment and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
- ii. Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases and discharge of mortgages.
- iii. Any return on investment since inception of the use, including net income and depreciation.
- iv. The anticipated annual recovery of investment, including net income and depreciation.

(5) *Compliance requirement.* If the Board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(6) *Definition of owner.* For purposes of this Section 1-304(C), "owner" means the owner of the nonconforming use at the time of the Board's determination of a compliance date for the nonconforming use.

SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph, phrase or section of this ordinance be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional and shall not affect the validity of the Mesquite Zoning Ordinance as a whole.

SECTION 4. That the need to regulate proper development of the City of Mesquite and in order to protect the public interest, comfort and general welfare of the City of

Mesquite, creates an urgency and emergency for the preservation of the public health, safety and welfare and requires that this ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,  
on the 16th day of April, 2018.

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Stan Pickett  
Mayor

ATTEST:

APPROVED:

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Sonja Land  
City Secretary

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Interim City Attorney