

ORDINANCE NO. _____
Zoning Text Amendment No. 2021-08

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS,
AMENDING THE MESQUITE ZONING ORDINANCE, AS
AMENDED, BY AMENDING PART 1, 1-300 BY MAKING
REVISIONS AND DELETIONS TO VARIOUS PARTS AND
SECTIONS REGARDING NONCONFORMING SITUATIONS
AND AMORTIZATION OF NONCONFORMING USES;
PROVIDING A REPEALER CLAUSE; PROVIDING A
SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE
IN AN AMOUNT NOT TO EXCEED TWO THOUSAND
(\$2,000.00) DOLLARS; AND DECLARING AN EFFECTIVE
DATE.

WHEREAS, the City of Mesquite, Texas (the “**City**”), is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to the Texas Constitution, Article 11, Section 5 and the Texas Local Government Code, Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, Section 51.072(a); and

WHEREAS, it is the intent of the City Council of the City (the “**City Council**”) to protect the public health, safety, and welfare; and

WHEREAS, the City may regulate the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes pursuant to Texas Local Government Code, Title 7, Subtitle A, Chapter 211, Section 211.003; and

WHEREAS, on September 27, 2021, the City’s Planning and Zoning Commission considered text amendments to the Mesquite Zoning Ordinance (“**MZO**”) 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 MZO as was first presented to the City Council on October 18, 2021; and

WHEREAS, the City Council gave public notice and held a public hearing regarding the proposed MZO text amendments on October 18, 2021; and

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

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

SECTION 1. The statements, facts, findings, and recitals contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated herein and adopted as part of this ordinance for all purposes.

SECTION 2. That the MZO, as amended, be and the same is hereby amended by making certain deletions and additions as identified in Exhibit A. The amended sections of the MZO shall now read as shown in Exhibit B. Said exhibits are attached hereto and made a part hereof, and in all other respects said MZO, parts, and sections shall remain in full force and effect.

SECTION 3. All ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. Should any word, sentence, clause, paragraph, phrase or section of this ordinance be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional and shall not affect the validity of the Mesquite Zoning Ordinance as a whole.

SECTION 5. Any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$2,000.00 for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

SECTION 6. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 18th day of October 2021.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

EXHIBIT A

To Ordinance No. _____

ZTA 2021 – 08.

MESQUITE CITY CODE

* * *

APPENDIX C – MESQUITE ZONING ORDINANCE

* * *

PART 1. – GENERAL PROVISIONS.

* * *

[Editor's Note: Make the following revisions with additions identified in green font and underlined and deletions identified in ~~red font with strikethrough~~.]

1-300. – Nonconforming Situations and Amortization of Nonconforming Uses.

* * *

1-304 – Termination of nonconforming situations.

- A. Change from nonconforming to conforming. Whenever a nonconforming situation has been changed to a conforming situation, such nonconforming situation shall be deemed to be permanently abandoned and shall not be reinstituted on the property.
- B. Discontinuance of nonconforming use or premises. The right to operate a nonconforming use or premises, or a portion thereof, shall terminate if the nonconforming use or premises is abandoned or if it is discontinued for six (6) months or more. The board may determine that a use or premises which remains vacant or unused for six (6) months or more has not been discontinued under the intent of this section if the owner can state unusual circumstances which prevented or precluded use of the property during that period, in which case the property may be reoccupied and the nonconforming use reinstituted in compliance with the other provisions of this section.
- C. Amortization. See Section 1-305 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.~~

1-305 – Amortization.

A.a. Amortization of nonconforming uses.

- 1. In general. Amortization of nonconforming uses is a process whereby specific nonconforming uses, found to have an adverse effect on nearby properties, are given a compliance date and eventually eliminated. The City Council, or 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.
- ~~(1)~~2. Purpose. It is the declared purpose of this Section 1-305 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.
- 3. Request to establish compliance date.
 - a. Request by City Council to establish a compliance date. The City Council may request that the Board of Adjustment ("Board") consider establishing a compliance date for a nonconforming use. There is no fee for a request made by City Council.
 - b. Request by any person who resides or owns real property in the City. ~~In addition, a~~ 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. See Appendix D – Comprehensive Fee Schedule, Section 12-116 (Board of Adjustment Fees) for the fee.

B. Process.

1. Stage 1.

a. Stage 1 - Public Hearing. Upon receiving ~~such~~ a request to establish a compliance date, 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)~~b. Factors to be considered when determining if the continued operation of the nonconforming use will have adverse impacts. 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)~~(1) The character of the surrounding neighborhood.

~~(b)~~(2) The degree of incompatibility of the use with the zoning district in which it is located.

~~(c)~~(3) The manner in which the use is being conducted.

~~(d)~~(4) The hours of operation of the use.

~~(e)~~(5) The extent to which continued operation of the use may threaten public health or safety.

~~(f)~~(6) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

~~(g)~~(7) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

~~(h)~~(8) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

~~(i)~~(9) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

c. Determination by Board of Adjustment regarding Stage 1:

(1) When Board makes determination of adverse impact on nearby properties.

(a) If, based on the evidence presented at the **Stage 1** public hearing, the Board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to **Stage 2** (to establish a compliance date for the nonconforming use).

(b) NOTE: A decision by the Board at the **Stage 1** public hearing, (whereby a determination was made that the continued use will have an adverse effect on nearby properties and thereby the Board grants the request to establish a compliance date), is not a final decision and cannot be immediately appealed. The Board's decision is a "final decision" upon one of the following:

(i) At the conclusion of a **Stage 1** public hearing, the Owner agrees to a compliance date and the Board enters such agreement into the record; or

(ii) At the conclusion of a **Stage 2** hearing, the establishment of a compliance date is decided on by the Board.

~~(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 ten (10) days in accordance with Chapter 211 of the Local Government Code.~~

(2) *When Board does not make a determination of adverse impact on nearby properties.*

If, based on the evidence presented at the **Stage 1** public hearing, the Board did not make a determination that the continued operation of the use will have an adverse effect on nearby properties, it shall not proceed to **Stage 2**, and the BOARD'S DECISION IS FINAL unless appealed to a Court of appropriate jurisdiction within ten (10) days of the decision being filed in the Board's Office. See Tex. Loc. Gov't Code Ann. § 211.011.

2. **Stage 2.**

a. *In general.* Based on the evidence presented at the **Stage 1** public hearing, if the Board determined that continued operation of the use will have an adverse effect on nearby properties, and the Owner does not agree to a compliance date, the Board shall proceed to the **Stage 2** hearing to establish a compliance date for the nonconforming use.

b. *Stage 2 - Hearing.* The hearing procedures for a **Stage 2** hearing, to establish a compliance date, are identified in Section 1-306 (Hearing Procedures for Amortization).

~~(4)c.~~ *Determination of **reasonable** amortization period and setting a compliance date.*

~~(a)~~ (1) *In general.*

(a) ~~If the Board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it~~ The Board 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) *"Owner" means the owner of the nonconforming use at the time of the Board's Final Decision at the conclusion of **Stage 2**, whereby a compliance date for the nonconforming use is set.*

~~(b)~~ (2) *Factors to be considered to determine a reasonable amortization period.* The following factors must be considered by the Board in determining a reasonable amortization period:

~~i.~~ (a) 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.~~ (b) 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.~~ (c) Any return on investment since inception of the use, including net income and depreciation.

~~iv.~~ (d) The anticipated annual recovery of investment, including net income and depreciation.

(3) *Compliance date.* The Board shall set a compliance date after due consideration of the factors to determine a reasonable amortization period.

(4) *Final decision.* Upon the conclusion of a **Stage 2** hearing (whereby the establishment of a compliance date is determined) the BOARD'S DECISION IS

A FINAL DECISION, unless appealed to a Court of appropriate jurisdiction within ten (10) days of the decision being filed in the Board's Office. See Tex. Loc. Gov't Code Ann. § 211.011.

~~(5)~~C. *Compliance requirement.* If the Board establishes a compliance date for a nonconforming use, the use must cease operations on ~~that~~ said date (i.e. the compliance date set by the Board), 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.~~

1-306 – Hearing Procedures for Amortization.

A. Reserved.

B. Procedures for Stage 2 of a compliance hearing before the Board of Adjustment.

1. Exchange of information between parties.

a. At least ten (10) business days before the hearing, each party shall:

(1) Exchange witness lists;

(2) Exchange exhibits; and

(3) Conference with the opposing party to determine:

(a) Stipulations to undisputed facts; and

(b) Stipulations to the admissibility of exhibits.

b. After the exchange of witness lists and exhibits, the parties shall have an additional three (3) business days to supplement. Supplemented witness lists and exhibits shall be provided to the other party.

2. Board submissions required. At least six (6) business days before the hearing, each party shall file with the Board's Office a position statement, which must include:

a. A designation of undisputed facts;

b. A list of witnesses and the estimated time required for the direct examination of each witness; and

c. A list of exhibits.

3. Materials provided to the Board. At least five (5) days before the hearing, the City staff Board Liaison shall provide the Board notices mailed or published by staff and all materials filed by the parties.

4. Conduct of the hearing. The Board may:

a. Allocate an appropriate total time limit for each side's presentation of its case, which shall not exceed thirty (30) minutes unless otherwise approved by the Board. As the hearing progresses, the Board may allow more time for witnesses if it believes doing so would provide necessary and relevant testimony.

b. Allow for opening and closing statements, as well as direct and cross-examination of witnesses.

EXHIBIT A TO ORDINANCE NO. _____; ZTA NO. 2021-08

PART 1, 1-300 Nonconforming Situations and Amortization of Nonconforming Uses
P&Z Meeting Date: September 27, 2021 | City Council Meeting Date: October 18, 2021

- c. Direct witnesses to respond to relevant questions posed at the hearing, provided the witnesses possess personal knowledge and the answers do not include privileged information.
 - d. The Chair may rule on the admissibility of evidence, including the exclusion of:
 - (1) Redundant, irrelevant, or cumulative evidence;
 - (2) Evidence that is not competent or properly authenticated; and
 - (3) Any exhibit not previously exchanged.
5. Other matters.
- a. No party or party representative shall communicate with any Board member regarding the issues involved with a hearing.
 - b. The Board may seek advice regarding its jurisdiction or the nature and extent of its authority from the City Attorney or his/her designee advising the Board.
 - c. Those who are not called as witnesses, but appear to speak at the hearing shall be given an opportunity to do so. The time allowed for each speaker shall be three (3) minutes unless otherwise determined by the Board.

EXHIBIT B

To Ordinance No. _____

ZTA 2021 – 08.

MESQUITE CITY CODE

* * *

APPENDIX C – MESQUITE ZONING ORDINANCE

* * *

PART 1. – GENERAL PROVISIONS.

* * *

1-300. – Nonconforming Situations and Amortization of Nonconforming Uses.

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1-304 – Termination of nonconforming situations.

- A. *Change from nonconforming to conforming.* Whenever a nonconforming situation has been changed to a conforming situation, such nonconforming situation shall be deemed to be permanently abandoned and shall not be reinstituted on the property.
- B. *Discontinuance of nonconforming use or premises.* The right to operate a nonconforming use or premises, or a portion thereof, shall terminate if the nonconforming use or premises is abandoned or if it is discontinued for six (6) months or more. The board may determine that a use or premises which remains vacant or unused for six (6) months or more has not been discontinued under the intent of this section if the owner can state unusual circumstances which prevented or precluded use of the property during that period, in which case the property may be reoccupied and the nonconforming use reinstituted in compliance with the other provisions of this section.
- C. *Amortization.* See Section 1-305 Amortization.

1-305 – Amortization.

- A. *Amortization of nonconforming uses.*
 - 1. *In general.* Amortization of nonconforming uses is a process whereby specific nonconforming uses, found to have an adverse effect on nearby properties, are given a compliance date and eventually eliminated. The City Council, or 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.
 - 2. *Purpose.* It is the declared purpose of this Section 1-305 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.
 - 3. *Request to establish compliance date.*
 - a. *Request by City Council to establish a compliance date.* The City Council may request that the Board of Adjustment ("Board") consider establishing a compliance date for a nonconforming use. There is no fee for a request made by City Council.
 - b. *Request by any person who resides or owns real property in the City.* 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. See Appendix D – Comprehensive Fee Schedule, [Section 12-116](#) (Board of Adjustment Fees) for the fee.
- B. *Process.*
 - 1. **Stage 1.**
 - a. *Stage 1 - Public Hearing.* Upon receiving a request to establish a compliance date, the Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties.

- b. *Factors to be considered when determining if the continued operation of the nonconforming use will have adverse impacts.* The Board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (1) The character of the surrounding neighborhood.
 - (2) The degree of incompatibility of the use with the zoning district in which it is located.
 - (3) The manner in which the use is being conducted.
 - (4) The hours of operation of the use.
 - (5) The extent to which continued operation of the use may threaten public health or safety.
 - (6) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (7) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (8) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (9) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- c. *Determination by Board of Adjustment regarding Stage 1:*
- (1) *When Board makes determination of adverse impact on nearby properties.*
 - (a) If, based on the evidence presented at the **Stage 1** public hearing, the Board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to **Stage 2** (to establish a compliance date for the nonconforming use).
 - (b) NOTE: A decision by the Board at the **Stage 1** public hearing, (whereby a determination was made that the continued use will have an adverse effect on nearby properties and thereby the Board grants the request to establish a compliance date), is not a final decision and cannot be immediately appealed. The Board's decision is a "final decision" upon one of the following:
 - (i) At the conclusion of a **Stage 1** public hearing, the Owner agrees to a compliance date and the Board enters such agreement into the record; or
 - (ii) At the conclusion of a **Stage 2** hearing, the establishment of a compliance date is decided on by the Board.
 - (2) *When Board does not make a determination of adverse impact on nearby properties.*

If, based on the evidence presented at the **Stage 1** public hearing, the Board did not make a determination that the continued operation of the use will have an adverse effect on nearby properties, it shall not proceed to **Stage 2**, and the BOARD'S DECISION IS FINAL unless appealed to a Court of appropriate jurisdiction within ten (10) days of the decision being filed in the Board's Office. See Tex. Loc. Gov't Code Ann. § 211.011.

2. **Stage 2.**

- a. *In general.* Based on the evidence presented at the **Stage 1** public hearing, if the Board determined that continued operation of the use will have an adverse effect on nearby properties, and the Owner does not agree to a compliance date, the Board shall proceed to the **Stage 2** hearing to establish a compliance date for the nonconforming use.
- b. *Stage 2 - Hearing.* The hearing procedures for a **Stage 2** hearing, to establish a compliance date, are identified in Section 1-306 (Hearing Procedures for Amortization).
- c. *Determination of reasonable amortization period and setting a compliance date.*
 - (1) *In general.*
 - (a) The Board 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) "Owner" means the owner of the nonconforming use at the time of the Board's Final Decision at the conclusion of **Stage 2**, whereby a compliance date for the nonconforming use is set.
 - (2) *Factors to be considered to determine a reasonable amortization period.* The following factors must be considered by the Board in determining a reasonable amortization period:
 - (a) 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.
 - (b) 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.
 - (c) Any return on investment since inception of the use, including net income and depreciation.
 - (d) The anticipated annual recovery of investment, including net income and depreciation.
 - (3) *Compliance date.* The Board shall set a compliance date after due consideration of the factors to determine a reasonable amortization period.
 - (4) *Final decision.* Upon the conclusion of a **Stage 2** hearing (whereby the establishment of a compliance date is determined) the BOARD'S DECISION IS A FINAL DECISION, unless appealed to a Court of appropriate jurisdiction within ten (10) days of the decision being filed in the Board's Office. See Tex. Loc. Gov't Code Ann. § 211.011.

- C. *Compliance requirement.* If the Board establishes a compliance date for a nonconforming use, the use must cease operations on said date (i.e. the compliance date set by the Board), and it may not operate thereafter unless it becomes a conforming use.

1-306 – Hearing Procedures for Amortization.

- A. *Reserved.*
- B. *Procedures for Stage 2 of a compliance hearing before the Board of Adjustment.*
 - 1. *Exchange of information between parties.*
 - a. At least ten (10) business days before the hearing, each party shall:
 - (1) Exchange witness lists;
 - (2) Exchange exhibits; and
 - (3) Conference with the opposing party to determine:
 - (a) Stipulations to undisputed facts; and
 - (b) Stipulations to the admissibility of exhibits.
 - b. After the exchange of witness lists and exhibits, the parties shall have an additional three (3) business days to supplement. Supplemented witness lists and exhibits shall be provided to the other party.
 - 2. *Board submissions required.* At least six (6) business days before the hearing, each party shall file with the Board's Office a position statement, which must include:
 - a. A designation of undisputed facts;
 - b. A list of witnesses and the estimated time required for the direct examination of each witness; and
 - c. A list of exhibits.
 - 3. *Materials provided to the Board.* At least five (5) days before the hearing, the City staff Board Liaison shall provide the Board notices mailed or published by staff and all materials filed by the parties.
 - 4. *Conduct of the hearing.* The Board may:
 - a. Allocate an appropriate total time limit for each side's presentation of its case, which shall not exceed thirty (30) minutes unless otherwise approved by the Board. As the hearing progresses, the Board may allow more time for witnesses if it believes doing so would provide necessary and relevant testimony.
 - b. Allow for opening and closing statements, as well as direct and cross-examination of witnesses.
 - c. Direct witnesses to respond to relevant questions posed at the hearing, provided the witnesses possess personal knowledge and the answers do not include privileged information.
 - d. The Chair may rule on the admissibility of evidence, including the exclusion of:
 - (1) Redundant, irrelevant, or cumulative evidence;
 - (2) Evidence that is not competent or properly authenticated; and
 - (3) Any exhibit not previously exchanged.

5. *Other matters.*

- a. No party or party representative shall communicate with any Board member regarding the issues involved with a hearing.
- b. The Board may seek advice regarding its jurisdiction or the nature and extent of its authority from the City Attorney or his/her designee advising the Board.
- c. Those who are not called as witnesses, but appear to speak at the hearing shall be given an opportunity to do so. The time allowed for each speaker shall be three (3) minutes unless otherwise determined by the Board.