

1-100 GENERAL REGULATIONS

1-101 PURPOSE AND SCOPE

Ord. 2668/4-2-90

An ordinance of the City of Mesquite, Texas, enacted in accordance with a comprehensive plan and for the purpose of promoting the public health, safety, morals, and general welfare, and preserving places and areas of historical, cultural, or architectural importance and significance: Establishing land use classification, dividing the city into districts, imposing regulations, restrictions and prohibitions upon the use and occupancy of real property; limiting the height, area, and bulk of buildings and other structures and providing for yards and other open spaces about them; establishing standards of performance and design; and providing for the administration and enforcement thereof.

1-102 TITLE

Ord. 2268/4-2-90

This ordinance shall be known and may be cited as the Mesquite Zoning Ordinance.

1-103 APPLICATION OF REGULATIONS

Ord. 2268/4-2-90

A. CONFORMANCE REQUIRED

All land, buildings, structures, or appurtenances thereon located within the City of Mesquite, Texas, which are hereafter occupied, used, erected, altered, or converted shall be used, placed and erected in conformance with the regulations for the zoning district in which such land or building is located.

B. REQUIREMENTS AS MINIMUM

The provisions of this ordinance shall be held to be minimum requirements. No required open space for one building or use shall be computed as being the open space, yard, or area requirement for any other building or use. When this ordinance imposes a greater restriction than imposed by other ordinances or laws, the provisions of this ordinance shall govern.

C. INTERPRETATION

Questions of interpretation of this ordinance shall be referred to the City Planner, who shall have the authority to determine the meaning, intent, and interpretation of any provision of this ordinance. Any person aggrieved, or any officer, department, or board of the City affected by any interpretation of the City Planner may appeal such interpretation to the Board of Adjustment, whose determination in the matter shall be final.

D. REQUIRED REVIEWS AND APPROVALS

Site plan approval, issuance of building permits, and Certificates of Occupancy shall be required for all uses and construction to determine that the proposed uses and structures comply with the requirements and provisions of this ordinance and to require compliance therewith. Appeals, Special Exceptions, Variances, and Conditional Use permits require additional approvals in accordance with specified hearing and notification procedures. See Part 5: Administration for specific processing requirements which apply to particular types of uses, applications, and approvals by the Development Review Committee, Board, Commission and/or City Council.

E. PENDING APPLICATIONS

Nothing herein contained shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure, or part thereof, for which official approvals and required building permits have been granted before the enactment of this ordinance, provided substantial construction shall have been accomplished prior to the effective date of this ordinance.

F. STREET USE RESTRICTIONS

A street adjacent to a district in which restrictions as to the use of the street would be applicable shall be considered to be a part of such district. Where a street is adjacent to more than one district, the street shall be considered part of the most restrictive district.

1-104 GENERAL STANDARDS

Ord. 2668/4-2-90

A. ESTABLISHMENT OF A BUILDING SITE

No permit for the construction or expansion of a building shall be issued unless the tract or plot is part of a plat of record, filed in the plat records of the county, thereby establishing a building site. Platting shall be in conformance with the Mesquite Subdivision Ordinance.

B. TRAFFIC VISIBILITY

No fence, structure, or planting shall be erected or maintained which interferes with traffic visibility across a corner. Where no other standard applies, no fence, structure or planting shall be erected or maintained within 25 feet of the corner (i.e. the intersection of the right-of-way lines) unless approved by the Traffic Engineer.

C. PERFORMANCE STANDARDS

Even though compliance may not be expressly required, initial and continued compliance with performance standards is required of every use in accordance with 1-400.

D. OFF-STREET PARKING AND LOADING

In every district and for every use, off-street parking and off-street loading and unloading shall be provided in accordance with the provisions of 2-400 and 3-400.

E. ENCROACHING DOORS AND GATES

No gate, garage door, or other opening mechanism for vehicular entry shall be placed so that it would project beyond any lot line when open or being opened.

F. ACCESSORY USES

Accessory uses shall be permitted only when incidental and secondary to a lawful principal use on the premises.

An accessory building shall be used for permitted accessory uses only, and not for the conduct of or as an integral part of the principal use.

G. AIRPORT HAZARD ZONING

Compliance with the height limits set out in the Mesquite Airport Zoning Ordinance shall be required whenever they are more restrictive than the provisions of this ordinance.

H. HIGH RISK USES (Ord. 2816/6-1-92)

Any use determined by the Health, Fire, or Building Official to be of special health or safety hazard due to excessive or toxic fumes, smoke, gas, or dust; vibration; odor; noise; or danger from fire, explosion or radiation, but which could be operated without hazard under specific standards, shall require approval of a Conditional Use permit in accordance with 5-300, whether or not such approval is otherwise indicated as required. High risk uses shall include, but not be limited to, those listed in National Fire Protection Association Pamphlets 49 and 49M.

I. COMMUNITY APPEARANCE MANUAL (Ord. 3921/12-17-07)

Where applicable, construction shall comply with the principals and requirements for façade design and other standards contained in the Community Appearance Manual, City Code Section 11-500, et seq.

1-200 DISTRICTS AND BOUNDARIES

1-201 DIVISION INTO DISTRICTS

Ord. 2668/4-2-90

For the purpose of this ordinance, the City of Mesquite is divided into zoning districts as set out in Articles 2-100, 3-100, and 4-100.

1-202 DISTRICTS ESTABLISHED

Ord. 2668/4-2-90

The boundaries of the zoning districts are indicated upon the Zoning Map of the City of Mesquite, adopted August 17, 1964. The map, including all notations, references and other information shown upon said map are hereby made a part of this ordinance and shall be considered the same as if they were fully contained and described herein. The map shall bear the title "Zoning Map of the City of Mesquite, Texas"; and shall be attested by the signatures of the Mayor and City Secretary. The original of said map shall be kept in the office of the City Secretary. The official Zoning Map of the City of Mesquite indicating all approved changes and amendments shall be kept in the office of the City Planner.

1-203 BOUNDARIES OF DISTRICTS

Ord. 2668/4-2-90

The district boundaries shown on the Zoning Map are generally along streets, alleys, creeks, property lines or extensions thereof. The following rules shall apply when determining the location of such boundaries. Other questions concerning the exact location of boundaries shall be determined by the Board of Adjustment.

A. APPROXIMATE LINES

Boundaries indicated as approximately following centerlines, creek lines, right-of-way lines, property lines, platted lot lines, or the extension of such lines shall be construed to follow the same, unless otherwise noted.

B. SCALED DISTANCE

Distances not specifically indicated shall be determined by using the scale of the map.

C. DIVIDED LOTS

Where a district boundary divides a platted lot or a tract under single ownership, the entire lot shall be construed to be within the least restrictive district, provided that such lot does not extend more than 50 feet beyond such district line.

D. VACATION

Whenever any street or alley or other public way is vacated by official action, the zoning districts adjoining the side of such street, alley, or public way shall be automatically extended to the center of such vacation and all area included in the vacation shall be subject to all regulations of the extended districts.

1-204 NEWLY ANNEXED TERRITORY

Ord. 2668/4-2-90

All territory hereafter annexed to the City of Mesquite shall be classified as AG-Agricultural until other zoning, where appropriate, is approved in accordance with required procedures. No permit for use of property or erection of structures shall be issued unless such use and structure is permitted in the AG district. Furthermore, erection of any structure other than a single family dwelling or an accessory structure related thereto, shall require approval of a site plan by the City Council, with recommendation from the Planning and Zoning Commission, in compliance with 2-202A.

1-300 NONCONFORMING SITUATIONS

1-301 GENERAL PROVISIONS

Ord. 3981/8-18-08; Ord. 2668/4-2-90

A nonconforming situation shall be a legal use under these provisions, provided that it is conducted in accordance with the regulations prescribed below.

A. NONCONFORMING STATUS

A situation shall be classified as nonconforming and shall be a legal use under these provisions when such situation was in existence and lawfully operating at the time of adoption of the zoning provisions or amendments thereto which created the nonconforming condition, or at the time of annexation to the City, and when such situation has since been in regular and continuous existence. A situation that did not constitute a conforming or a legal nonconforming situation under previous regulations shall not achieve legal nonconforming status due to the adoption of this or subsequent amendments, unless such amendment shall make the situation conforming.

B. TYPES OF NONCONFORMING SITUATIONS

A property may be nonconforming due to the failure of the use, the structure, and/or the premises to conform to the requirements of the district in which it is located.

1. ***Nonconforming Use*** A use that is not a permitted use in the district in which it is located.
2. ***Nonconforming Structure*** A structure that does not conform to the lot, setback, height or other dimensional regulations of the district in which it is located.
3. ***Nonconforming Premises*** A premises that does not conform to the building or development standards (other than dimensional standards) required for the use in the district in which it is located, such as paving, parking, screening, exterior fire resistant construction and similar requirements.

C. EXCEPTIONS

1. ***Single Family Homes*** Single family residences lawfully constructed under previous regulations shall be considered conforming if they continue to comply with the regulations in effect at the time of construction, and shall not be required to comply with subsequent requirements. Additions thereto shall not be required to contain any greater percentage of exterior masonry than the structure in its present existence. Damaged residences may be reconstructed as originally constructed in regard to exterior masonry, unit size, and similar requirements.
2. ***Metal Buildings*** Buildings with metal exteriors which were lawfully constructed without masonry fronts may be enlarged without the construction of masonry fronts, provided none of the enlarged portion faces, sides, or backs to the street, but is entirely shielded from all streets by the existing building.
3. ***Heritage Square*** Buildings fronting the north, south, or west side of Heritage Square, which are nonconforming due to lot coverage and/or lack of required parking, may be reconstructed, provided that the building size is not increased and no greater nonconformity is created.
4. ***Fraternal Organizations/ Bingo*** Fraternal organizations organized for charitable purposes and operating Bingo games at a location prior to January 1, 1980, may continue to operate in the same location without approval of a Conditional Use permit.

5. ***Right-of-Way Acquisition*** (Ord. 3731/5-16-05) A structure or premise shall not be deemed nonconforming when the cause of the nonconformity is due solely to the acquisition of right-of-way for the construction of the LBJ, Phase 2 Project, Mesquite Section. Such premises that do not meet lot coverage requirements and/or parking requirements may be reconstructed, provided that the structure's square footage is not increased, all other development standards are met and no additional nonconformity is created.
6. ***Right-of-Way Acquisition*** -- (Ord. 4252/1-22-13) Thomasson Square A structure or premises shall not be deemed nonconforming under the North Gus Thomasson Corridor Revitalization Code ("the NGTCRC") when the cause of the nonconformity is due solely to the acquisition of right-of-way for the construction of the Thomasson Square Project. Such structure or premises that do not meet building disposition requirements, building configuration requirements and/or parking requirements due to acquisition may be repaired, provided that no additional nonconformity is created. Improvements to the structure or premises shall comply with the NGTCRC if not caused solely by the right-of-way acquisition or if said improvements require retrofitting of the structure or premises pursuant to Section 2.10 of the NGTCRC.

D. DEFINITIONS

1. ***Major Repair, Alteration, Renovation*** Major repair, alteration, or renovation shall mean work estimated to cost in excess of 50% of the appraised value of the nonconforming property.
2. ***Enlargement, Extension*** Enlargement or extension shall mean an increase in the building and/or land area occupied by the nonconforming situation, or an increase in the capacity of processing and operating equipment, machines, or vehicles used, but shall not mean a general increase in business or production resulting from general growth.
3. ***Major Reconstruction*** Major reconstruction, when damage due to fire, wind, or other cause has occurred, shall mean work estimated to cost in excess of 60% of the appraised value of the nonconforming property.

E. REQUIRED COMPLIANCE

1. ***Performance Standards*** All uses which become nonconforming by reason of noncompliance with the provisions of 1-400 regarding performance standards shall adopt necessary measures to conform therewith within 3 years of the adoption or annexation which creates the noncompliance. Appeal of this requirement may be made to the Board of Adjustment and the Board may approve such extension of time as it determines is reasonable due to hardship and/or special circumstances, but which will not jeopardize health or safety.
2. ***Screening of Outdoor Storage*** All outdoor storage areas which are nonconforming due to the lack of the required screening shall provide conforming screening within 3 years of the adoption of this section or of annexation. Provided, however, no property shall be in violation of this section until written notification is sent by registered mail to the owner of record providing a minimum one year period from the date of notification within which to install the required screening. Appeal of this requirement may be made to the Board of Adjustment and the Board may approve such extension of time as it determines is reasonable due to hardship and/or special circumstances, but which will not jeopardize health or safety.

3. ***Location and Screening of Refuse Dumpsters (Ord. 3376/8-7-00; Ord. 3496/4-15-02)*** All refuse containers that are nonconforming with the standards set out in 3-203L due to the lack of required screening or improper location shall provide required screening and a complying location at such time when a new Certificate of Occupancy is required to be issued. Containers which had been legally screened by a solid wood fence shall not require installation of a masonry fence.

1-302 NONCONFORMING USES

Ord. 2668/4-2-90

This section shall apply to any situation where the use is nonconforming, regardless of other nonconformity in the structure and/or premises.

A. CONTINUATION

A nonconforming use may be continued as it exists, unless it is terminated under the provisions of 1-304, but shall not be changed or improved unless otherwise authorized herein, provided however that minor repairs, alteration, renovation, or reconstruction shall be permitted to keep the property in sound condition. No enlargement, extension or major reconstruction shall be permitted.

B. SPECIAL EXCEPTIONS

The Board of Adjustment may authorize the following special exceptions regarding nonconforming uses.

1. ***Substitution of Use*** To allow the substitution of a less objectionable use for the existing nonconforming use where the Board determines that the substitute use will have less adverse impacts on the adjacent properties and will be more compatible with the surrounding neighborhood. When a substitution has been authorized, only the substituted use retains nonconforming status.

1-303 NONCONFORMING STRUCTURES AND PREMISES

Ord. 2668/4-2-90

This section shall apply to those situations where nonconformity exists in the structures and/or premises, but where the use is conforming. If the use is also nonconforming, then 1-302 shall apply.

A. CONTINUATION

A nonconforming structure and/or premises may be continued as it exists, unless it is terminated under the provisions of 1-304. The following changes and improvements shall be permitted.

1. ***Major Improvements and Enlargement of a Nonconforming Structure on Conforming Premises*** Major repair, alteration, renovation, enlargement, or extension of a nonconforming structure shall be permitted, provided that no greater or additional nonconformity is created and that all nonconformity of the premises is eliminated.
2. ***Change of Use*** The use of a nonconforming structure and/or premises may be changed to any conforming use, provided that special conditions for that use do not create greater or additional nonconformity. This provision shall not authorize the conversion of a residence located in a nonresidential district to a nonresidential use, unless the structure and premises are made to conform to all requirements of the nonresidential district.

B. SPECIAL EXCEPTIONS

The Board of Adjustment may authorize the following special exceptions regarding nonconforming structures and/or premises.

1. ***Major Improvements and Enlargement of a Nonconforming Structure on Nonconforming Premises*** To allow major repair, alteration, renovation, enlargement, or extension of a nonconforming structure in situations when all nonconformity in the premises will not be eliminated where the Board determines that the elimination of the nonconformity is not reasonably possible because it cannot be accommodated without adding additional land; without moving a substantial structure on a permanent foundation; without creating an unacceptable situation regarding practical and reasonable utilization of the property, particularly in regard to access and circulation; or without creating a health or safety hazard.
2. ***Major Reconstruction*** To allow the major reconstruction of a structure with dimensional nonconformity on the existing foundation where the Board determines that the structure previously existed without substantial impact on the adjacent properties and that the reconstruction will not create more adverse impacts.

1-304 TERMINATION OF NONCONFORMING SITUATIONS **Ord. 4553/4-16-18; Ord. 2668/4-2-90**

A. CHANGE TO CONFORMING

Whenever a nonconforming situation has been changed to a conforming situation, such situation shall be deemed to be permanently abandoned and shall not be reinstated on the property.

B. DISCONTINUANCE

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 months or more.

The Board may determine that a use or premises which remains vacant or unused for six 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 reinstated in compliance with the other provisions of this section.

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.

1-400 PERFORMANCE STANDARDS

1-401 COMPLIANCE REQUIRED

In all zoning districts, any use indicated as a permitted use shall conform in operation, location, and construction to the performance standards hereinafter specified.

A. PROCEDURES

If in the judgment of the Director of Community Development, there are reasonable grounds to believe that a use proposed by application for a building permit or a Certificate of Occupancy is likely to violate performance standards, the applicant shall be required to submit information to determine how and if compliance will be assured. If the Director of Community Development determines that compliance cannot be achieved, no building permit or Certificate of Occupancy shall be issued. An applicant may appeal the determination of the Director of Community Development to the City Council.

B. ENFORCEMENT

Even though compliance with performance standards may not be verified in obtaining a building permit or a Certificate of Occupancy, initial and continued compliance with performance standards is required for every use, and provisions for enforcement of continued compliance shall be enforced by the Director of Community Development and the Health Official against any use, if there are reasonable grounds to believe that performance standards are being violated by such use.

C. NONCONFORMING USES (Ord. 2816/6-1-92)

Certain uses established before the effective date of this ordinance and nonconforming as to performance standards shall be given a reasonable time in which to conform therewith as provided in Section 1-301E.

D. LOCATION FOR ENFORCEMENT

Unless otherwise stated, standards shall apply at the bounding property line and, unless otherwise stated, measurements necessary for enforcement shall be taken at any or all points at the bounding property line.

The bounding property line shall be interpreted as being at the near side of any street, alley, stream, or other permanently dedicated open space from the source of the element to be measured when such open space exists between the property line of the source and adjacent property. When no such open space exists, the common line between two parcels of property shall be interpreted as the bounding property line.

E. EXEMPTIONS

The following sources of potentially excessive emissions shall be exempt from these performance standard regulations:

1. The use of any signal, siren, horn, vehicle, or equipment when responding to an emergency situation or when being tested for such emergency use.
2. The performance of any public safety, public service, or emergency work, including public street, utility and safety operations, acting to protect the health, safety and welfare of the community, and including any training or testing conducted in preparation for such public safety, service or emergency operations, including fire training exercises.
3. Public or private school sponsored activities conducted on public playgrounds and public or private school grounds including, but not limited to, school athletic and school entertainment events; and special events conducted on public parks. Special event means an event occurring no more than once in a calendar year, being no longer than 5 days in duration and which complies with all park use permit requirements.
(Ord. 3045/8-7-95).
4. Any activity legally approved, permitted, and controlled under other provisions of the City Code, such as open burning when proper burn permits have been obtained.

1-402 NOISE

At no point at the bounding property line of any use shall the sound pressure level of any operation or plat exceed the decibel limits specified in the Land Use District designation in the following table:

TABLE 1: LIMITING SOUND LEVELS FOR LAND USE DISTRICTS

<u>Land Use District</u>	<u>Time of Day</u>	<u>Energy Equivalent Sound</u>
Residential	10:00 pm to 7:00 am	52 dB(A)
	7:00 am to 10:00 pm	62 dB(A)
Office, Retail Commercial	10:00 pm to 7:00 am	62 dB(A)
	7:00 am to 10:00 pm	67 dB(A)
Industrial	Anytime	70 dB(A)

* Outside construction activity prohibited on Sunday. The erection, including excavation, exterior alteration/repair of any building in a residential district, or within 500 feet of any residence, is prohibited on Sunday.

A. LIMITS

It shall be unlawful for any person at any location in the City of Mesquite to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the boundaries of the property for which the noise is produced, or measured within any other residential dwelling unit or commercial space, to exceed:

1. The noise standard in any measurement period not less than 30 minutes; or
2. The noise standard plus 15 dB(A) in any one minute average of a measurement period; or;
3. The noise standard plus 20 dB(A) at any time in a measurement period.

B. ADJUSTMENTS

1. For the purpose of enforcing these provisions, a measurement period shall not be less than 30 minutes.
2. In the event the ambient sound level exceeds the resulting standards, the ambient level shall be the standard.
3. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient sound level can be determined, the measured sound level obtained while the source is in operation shall be compared directly to the applicable standard in the receiving land use district on which the sound is measured.

C. CORRECTIONS FOR CHARACTER

1. For any stationary source of sound which emits a pure tone, cyclically varying sound, or repetitive impulsive sound, the limits set forth in Table 1 shall be reduced by 5 dB(A).
2. Notwithstanding compliance with this subsection, it shall be a violation of this ordinance for any person to operate or permit to be operated any stationary source of sound which emits a pure tone, cyclically varying or repetitive impulsive sound which creates a noise disturbance.
3. When the land use district designation of the property on which the source of sound originates differs from the designation of the property on which the sound is measured, the maximum permissible sound level of the more restrictive land use district designation shall apply.

4. For sound emitted on public property, the measurement distance shall be 50 feet (15 meters) and the sound level limit for the appropriate land use district shall apply.

1-403 SMOKE AND PARTICULATE MATTER

No operation or use shall cause, create, or allow the emission for more than three minutes in any one hour of air contaminants which at the emission point or within the bounds of the property are:

A. DARKNESS

As dark or darker in shade as that designed as No. 2 on the Ringleman Chart as published by the United States Bureau of Mines Information Center Circular 7118.

B. OPACITY

Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke or contaminants in the standard prescribed in 3-1302-1 above, except that, when the presence of uncombined water is the only reason for failure to comply or when such contaminants are emitted inside a building which prevents their escape into the atmosphere, the standards specified in 3-1302-1 and -2 shall not apply.

C. LIMITS

The emission of particulate matter from all sources shall not exceed 0.5 pounds per acre of property within the plat site per any one hour.

D. OPEN PROCESSING

The open storage and open processing operation including on site transportation movements which are the source of wind or air borne dust or other particulate matter; or which involves dust or other particulate air contaminants, generating equipment such as used in paint spraying, grainhandling, sand or gravel processing or storage or sand blasting shall be conducted that dust and other particulate matter so generated are not transported across the boundary line of the tract on which the use is located in concentrations exceeding four grains per 1000 cubic feet of air.

1-404 ODOROUS MATTER

No use shall be located or operated which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located. The odor threshold as herein set forth shall be determined by observation by a person or persons. In any case, where uncertainty may arise or where the operator or owner of an odor emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures specified by American Society for Testing Materials A.S.T.M.D. 1391-57 entitled "Standard Method of Measurement of Odor in Atmospheres" shall be used and a copy of A.S.T.M.D. 1391-57 is hereby incorporated by reference.

1-405 FIRE AND EXPLOSIVE HAZARD MATERIALS

No use involving the manufacture or storage of compounds or products which decompose by detonation shall be permitted except that chlorates, nitrates, perchlorates, phosphorus, and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the Fire Department of the City of Mesquite. The storage and use of flammable liquids and materials such as pyroxylin plastics, nitrocellulose film, solvents, and petroleum products shall be permitted only when such storage or use conforms to the standards and regulations of the Fire Department of the City of Mesquite and applicable State and Federal regulations.

1-406 TOXIC AND NOXIOUS MATTER

No operation or use shall emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter which will exceed 10% of the concentration (exposure) considered as the

threshold limit for an industrial worker as such standards are set forth by the Texas State Department of Health in "Threshold Limit Values Occupational Health Regulation No. 3", a copy of which is hereby incorporated by reference.

1-407 VIBRATION

No operation or use shall at any time create earthborn vibrations which when measured at the bounding property line of the source operation exceed the limits of displacement set forth in the following table in the frequency ranges specified:

<u>Frequency</u> <u>Cycles per Second</u>	<u>Displacement</u> <u>In Inches</u>
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and Over	0.0003

1-408 GLARE

Any use shall be operated so as not to produce obnoxious and intense glare or direct illumination across the bounding property line from a visible source of illumination of such intensity as to create a nuisance or detract from the use or enjoyment of adjacent property. All outside lights shall be made up of a light source and reflector so selected that acting together the light beam is controlled and not directed across any bounding property line above the height of three feet. The allowable maximum intensity measured at the property line of a residential use in a residential district shall be 0.25 foot candles.

1-500 EXTRACTION OF MINERALS

1-501 GENERAL REQUIREMENTS

Any owner, lessee, or other person, firm or corporation, having an interest in mineral lands in any AG, C or I district may file with the City Council an application for authorization to mine minerals therefrom, provided, however, that they shall comply with all requirements of the district in which said property is located and with the following additional requirements.

A. DISTANCE FROM PROPERTY LINE

No quarrying operation shall be carried on or any stock pile placed closer than 50 feet to any property line, unless a greater distance is specified by the City Council where such is deemed necessary for the protection of adjacent property; provided that this distance requirement may be reduced to 25 feet by written consent of the owner of the abutting property.

B. DISTANCE FROM RIGHT-OF-WAY

In the event that the site of the mining or quarrying operation is adjacent to the right-of-way of any public street or road, no part of such operation shall take place closer than 25 feet to the nearest line of such right-of-way.

C. FENCING

Fencing shall be erected and maintained around the entire site or portions thereof where in the opinion of the City Council, such fencing is necessary for the protection of the public safety and shall be of a type specified by the City Council.

D. EQUIPMENT

All equipment and machinery shall be operated and maintained in such a manner as to minimize dust, noise, and vibration. Access roads shall be maintained in a dust-free condition by surfacing or other treatment as may be specified by the City Engineer.

E. PROCESSING

The crushing, washing, and refining or other similar processing may be authorized by the City Council as an accessory use, but such processing shall not be in conflict with the use regulations of the district in which the operation is located.

1-502 APPLICATION

A. APPLICATION REQUIREMENTS

An application for such operation shall set forth the following information:

1. Name of land owner from which removal is to be made;
2. Name of applicant making request;
3. Name of persons or corporation conducting actual removal operation;
4. Location, description, and size of area from which removal is to be made;
5. Location of processing plant;
6. Type of resources or materials to be removed;
7. Proposed method of removal and if blasting or other use of explosives will be required;

8. Description of equipment to be used;
9. Method of rehabilitation and reclamation of the mined area.

B. PUBLIC HEARING

Upon receipt of such application, the City Council shall set a public hearing in accordance with the provisions of Section 5-400 (Amended reference is 5-300).

C. FINANCIAL ABILITY

In accepting such plan for review, the City Council must be satisfied that the proponents are financially able to carry out the proposed mining operation in accordance with plans and specifications submitted.

1-503 REHABILITATION

To guarantee restoration, rehabilitation, and reclamation of mined-out areas, every applicant granted a mining permit as herein provided, shall furnish a surety bond to the City of Mesquite, in an amount of not less than \$2,000, the upper limit to be determined by the City Council, as a guarantee that such applicant, in restoring, reclaiming, and rehabilitating such land, shall within a reasonable time and to the satisfaction of the City Council meet the following requirements:

A. SURFACE REHABILITATION

All excavation shall be made either to a water producing depth, such depth to be not less than five feet below the low water mark, or shall be graded or backfilled with non-noxious, non-flammable and non-combustible solids, to secure that the excavated area shall not collect and permit to remain therein stagnant water or that the surface of such area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions, so as to produce a gently running surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.

B. VEGETATION

Vegetation shall be restored by appropriate seeds, grasses, or planting of shrubs or trees in all parts of said mining area where such area is not to be submerged under water as hereinabove provided.

C. BANKS OF EXCAVATIONS

The banks of all excavations not backfilled shall be sloped to the water line at a slope which shall not be less than three horizontal feet to one foot vertical and said bank shall be seeded.

D. ADDITIONAL REQUIREMENTS

In addition to the foregoing, the City Council may impose such other conditions, requirements, or limitations concerning the nature, extent of the use and operation of such mines, quarries, or gravel pits as the City Council may deem necessary for the protection of adjacent properties and the public interest. The said conditions and the amount of the surety bond shall be determined by the City Council prior to the issuance of the permit.

1-600 TEMPORARY USES AND STRUCTURES

Previous 1-600 UTILITIES/Deleted by Ord. 2632/10-1-89

Notwithstanding other regulations and provisions of this ordinance, the following uses and structures may be permitted on a temporary basis and shall not be deemed violations of this ordinance when in conformance with the limitations, conditions, and approvals stated below.

1-601 GENERAL REQUIREMENTS AND PROCEDURES

Ord. 2654/2-5-90

A. PERMITS

All temporary uses and structures shall require approval of a permit or temporary Certificate of Occupancy with the application to be submitted to the Building Official, unless otherwise noted. The review and approval of permits shall be by the Development Review Committee, unless otherwise specified. The denial of an application may be appealed to the Board of Adjustment.

B. PERMIT FEES

Fees may be required for temporary use permits in the amount set by the City Council for the purpose of defraying the administrative costs of processing the applications.

C. OWNER APPROVAL

Whenever the property owner is different than the applicant, a letter or contract may be required to show the owner's approval to use the location for the stated purpose.

D. SITE PLAN

Applications shall be accompanied by a site plan showing the location of structures, parking, access drives, electrical and utility connections and other information necessary to determine the appropriateness and impacts of the proposal.

E. USE OF PARKING/ LOADING SPACES

No use or structure shall occupy or eliminate any required parking or loading space. Provided further, that no use or structure shall occupy or eliminate any parking or loading space designated on site and/or on the approved site plan, in a shared parking area, unless at least 51% of the tenants/businesses whose parking is provided by the shared parking lot(s) shall sign a letter or other document, which is submitted with the permit application, indicating that they do not object to the proposed temporary occupancy of such spaces. For the purpose of this requirement, shared parking area shall mean any parking where several tenants or businesses have access to common and/or shared spaces. For example, shared parking areas shall include parking where several businesses are located on a tract, such as a shopping center, as well as situations where businesses on separate tracts can access each other's parking due to continuous parking lot design and/or cross-access parking agreements.

F. SETBACKS

No use or structure shall be located in a required front or exterior side yard.

1-602 PERMITTED TEMPORARY USES AND STRUCTURES

Ord. 2654/2-5-90

A. TEMPORARY CONSTRUCTION OFFICE

The location of a temporary office may be permitted on a site for which a building permit has been issued. Such office permit may be issued for no more than one year, but may be extended if the builder maintains active and continuous construction on the site. Temporary construction office shall mean office and/or storage space related to construction activities.

B. TEMPORARY RESIDENTIAL SALES OFFICE

A residential real estate sales office, located on a platted lot, may be permitted within a subdivision for which building permits have been issued and may be located either in a model home, in a temporary building, or in a portable trailer. Such office permit may be issued for no more than one year, but may be extended if the builder maintains active and continuous construction within the subdivision and a minimum of 10 lots in the subdivision remain unsold. Such sales office shall be used for sales in the subject subdivision only and not for sales in any other subdivision.

C. TEMPORARY BATCH PLANT

A temporary concrete or asphalt batch plant may be permitted for use by a contractor for the period of active and continuous construction requiring concrete or asphalt. Such batch plant shall be located at least 500 feet from any occupied residential lot, and shall not be used for construction at any other location than the project for which it is permitted. An application to permit a temporary batch plant shall be submitted to the Engineering Division and shall include a copy of the approved State permit for such operation.

D. TEMPORARY OUTDOOR SALES

Temporary outdoor sales events may be permitted as set out below.

1. ***Sidewalk/ Truckload Sales*** Special outdoor sales of short duration, such as sidewalk or truckload sales, shall be permitted on the site of a lawful business, by that business or by a nonprofit/charitable organization, provided that no more than 4 sales of no more than 4 days each shall be held at a location during a calendar year. No permit shall be required for outdoor sales in accordance with this section, unless compliance with 1-601E regarding use of shared parking is required.
2. ***Christmas Tree Sales Lots*** The outdoor sales of Christmas trees may be permitted for a period of not more than 30 days. The sale of firewood shall be permitted in conjunction with a Christmas tree sales lot. Sales lots located on undeveloped property shall provide adequate off-street parking, loading and electrical connections. Sales lots on developed sites which comply with the requirements for incidental outdoor display shall not require a permit under this section.
3. ***Other Special Outdoor Sales*** All other sales events may be classified as Special Events and permitted under the regulations set out in 1-602E below; provided however, that the 15 day permits for sales events, shall not be combined to create longer event periods and that a minimum 30 day period shall be required between permits. See also 1-603C regarding extended permits.

E. SPECIAL EVENTS (Ord. 3027/4-17-95; Ord. 3020/3-6-95)

Special events on a temporary basis may be permitted as set out below. The conditions and requirements set out in 1-602E.4 below shall apply to all Special Event Permits.

1. ***Commercial Amusement Permits*** Commercial Amusement Permits may be issued for temporary events such as carnivals, circuses, mechanical rides, pony rides, fairs, and petting zoos.
 - a. ***Permit Duration and Frequency:*** Commercial Amusement Permits may be issued for a maximum period of 15 days, including set-up, tear-down, and clean-up time, with a maximum of 2 such permits allowed at a location during a calendar year. A minimum period of 30 days shall be required between permits.
 - b. ***On-site Residence:*** On-site accommodation for a uniformed security officer shall be permitted. No other living quarters shall be permitted on the site of a Commercial Amusement Permit.
 - c. ***Clean-up Deposit:*** A permit application shall include a deposit of \$500 to assure site

clean-up. The deposit shall be refunded in total upon satisfactory and complete clean-up of all trash and debris from the site.

2. ***Special Promotions Permits***

Special Promotions Permits may be issued to establishments and organizations for business advertising and promotion, farmers markets, public festivals and other religious, civic, sports and political events, except those events requiring a Commercial Amusement Permit as described above; provided, however, that any event involving commercial amusements shall require a Commercial Amusement Permit.

a. Permit Duration and Frequency: Special Promotions Permits may be issued for periods not to exceed 15 consecutive days, and for no more than 60 days cumulatively for any establishment, organization or location during a calendar year. Events exceeding these limitations shall require approval by the Board of Adjustment as a Special Exception. See 1-603C.

3. ***Mobile Food Unit Permits***

A Mobile Food Unit Permit may be issued for the temporary operation of a qualifying food truck or trailer in a designated food truck park, on private property within any non-residential district that is occupied by a primary use with a valid certificate-of-occupancy, in conjunction with any other permitted Special Event, or on public property when authorized by the City.

a. Application Required: It shall be unlawful and an offense for any person, his principal or employer to operate a Mobile Food Unit within the City without applying for and receiving a permit prior to operating said unit or to operate after the expiration of the permit. The applicant for a Mobile Food Unit Permit shall submit such information on a form as the Health Official and Building Official deem necessary and proper to ensure compliance with the requirements of this subsection, the rules promulgated pursuant thereto, and applicable rules for the collection and payment of sales tax.

b. Food Sanitation: To qualify for a Mobile Food Unit Permit, the unit shall comply with such rules for food sanitation, waste containment and disposal, insect control, fire safety and inspection as the Health Official may promulgate, and the payment of the fee therefor.

c. Locations Restricted: No Mobile Food Unit shall locate on private property without the written permission of the property owner and must comply if asked to leave by the property owner or a City official. A copy of the written permission to operate from a specific location, signed by the private property owner, shall be kept within the Mobile Food Unit at all times and shall be subject to inspection upon request of any City official. A Mobile Food Unit shall not be operated on private property within one hundred (100) feet of the primary entrance of an open and operating Class I restaurant as defined in the City Health Code without the written permission of such restaurant. A Mobile Food Unit, regardless of location, shall not be operated within 300 feet of a public school during the time school is in session, including one (1) hour before school starts and one (1) hour after school is out.

d. Permit Duration and Frequency: A Mobile Food Unit Permit may be issued for periods not to exceed 15 consecutive days, and for no more than 60 days cumulatively for any establishment, organization or location during a calendar year.

e. Health, Safety and Aesthetics: The following regulations shall apply to all Mobile Food Units:

- (1) Each unit shall be equipped with a portable trash receptacle and shall be responsible for proper disposal of solid waste. All disturbed areas around the unit shall be cleaned daily immediately following use of premises.
- (2) Continuous music or repetitive sounds shall not project from the unit.
- (3) A five-foot (5) clear space shall be maintained around the unit.
- (4) A "No Smoking" sign shall be posted next to the order window.
- (5) A tagged fire extinguisher shall be kept accessible as directed by the Fire Marshal.
- (6) An extinguishing vent hood, Type **** or an equivalent approved by the Building Official shall be required when the cooking process produces grease laden particles within the unit.

c. Insurance: To

*(Definitions: Section 6-100: "Mobile Food Unit" means a food service establishment that is vehicle mounted or wheeled and capable of being readily movable and is used for the sale of prepackaged, prepared or on-site prepared food. A Mobile Food Unit shall include food trucks and concession trailers but shall exclude push-carts, any mobile unit which ***** or individuals selling only non-refrigerated farm products in an unrefined state.)*

4. General Conditions and Requirements

The following provisions shall apply to all special events:

a. Prohibited Events: Special events shall not include any use or activity which is elsewhere classified and regulated in this ordinance, which will be a permanent use of the land, or which will involve a permanent fixture or structure.

b. Gambling: Gambling shall not be permitted in conjunction with a special event.

c. Performance Standards: Noise, glare, odor, and other nuisances shall be controlled as set out in applicable sections of the City Code.

d. Permit Application: Applications for a permit under this section shall include a description of all activities, of fixtures and equipment to be used, of the hours of operation proposed, and of other factors pertinent to evaluating health/safety and the impact on surrounding properties. No Commercial Amusement, Special Promotion or Food Truck Permit shall be approved unless safe and adequate provisions have been made for parking, loading, restrooms, trash containers, electrical connections and any other item deemed necessary by the Building Official.

e. Related Permits: Temporary facilities such as tents, stages, benches, portable trailers, restrooms, electrical supply and connections, food service, etc. may require separate permits, which shall be limited to the duration of the event.

f. Permit Denial: The Building Official shall deny any permit where he deems there is a problem or concern regarding health or safety, or where he feels adverse effects on surrounding properties are likely to occur. Factors such as proximity to residences, use of loudspeakers, use of large portions of required parking, unsafe pedestrian street crossings, awkward circulation patterns, and similar concerns may be cause for permit denial.

F. MOBILE MEDICAL AND PUBLIC HEALTH SERVICES

Ord. 4217/7-2-2012

Mobile medical and public health services may be permitted when conducted from a self-contained unit, whether a vehicle or trailer, or from a temporary building, if the following criteria are met:

1. **Definitions** For the purposes of this Section, the term *mobile medical services* shall mean blood banks, screening for early detection of cancers, or care to the elderly or poor, conducted on a non-profit basis only, but not including veterinary services. The term *public health services* shall mean the provision of out-patient preventive care, diagnosis or treatment of minor medical conditions and auxiliary functions conducted by governmental agencies, but not including hospital trusts or hospital districts, to protect the general health and welfare, or to promote and maintain wellness and readiness of governmental employees and their families.
2. **Permits**
 - a. Mobile medical services conducted from a self-contained unit for a period of one week or less at a site shall not require a permit. Permits may be approved for periods exceeding one week, but not exceeding 30 days, at locations within a nonresidential district or at a public facility, such as a school, library, fire station, or church in a residential district. Mobile medical services shall not be conducted from a temporary building.
 - b. Public health services conducted from a self-contained unit shall not require a permit. Except in the event of public emergencies, a unit shall not remain at a location for a period exceeding one week. A permit and temporary certificate-of-occupancy may be approved for conducting public health services from a temporary building for up to three years and is subject to renewal upon expiration as provided in this Section.
3. **Site Requirements for Temporary Buildings** Temporary buildings for conducting public health services shall be located on public property occupied by a permanent structure with a valid certificate-of-occupancy exclusively for medical purposes. The temporary building and disposition on the site shall comply with applicable codes for setbacks, parking, circulation, electrical and utility connections, accessibility, drainage and fire protection.
4. **Exterior Appearance** Metal exterior siding shall be prohibited on all facades of a temporary building. A permit and temporary certificate-of-occupancy shall not be renewed after the initial three-year period without complying with ordinances for exterior masonry. In lieu of complying with such ordinances, trees and foundation landscaping shall be installed to break the view of the temporary building from public streets and substantially conceal any skirting at the base of the temporary building.

G. TEMPORARY STORAGE VAULTS

The temporary placement of a storage vault shall be permitted on the site of a lawfully zoned business in any nonresidential zoning district, except the O-Office district, subject to the following conditions and requirements. The permanent placement of storage vaults shall be permitted where their placement is in compliance with the regulations governing outdoor storage.

1. **Definition** For the purposes of this Section, the term *storage vault* shall mean a vault, unit, or device designed and used specifically for storage, which is constructed of solid steel or metal construction and which is no larger than 8-1/2 feet in width, 22 feet in length, or 9 feet in height. This section shall not authorize the placement of trailers, trailers with wheels removed, export/shipping containers, or any other device designed and/or intended for transportation purposes or any modification of such device.
2. **Permits** The following types of temporary permits may be issued for storage vaults as indicated below. No permit is required when such vault complies with the regulations for outdoor storage.
 - a. **60 Day Permit:** The Building Official may issue a total of two 60 day permits to a business during a calendar year to allow the placement of a storage vault, subject to

compliance with the conditions and requirements stated below. Such permits may be combined to create one 120 day permit period.

b. Construction Permit: The Building Official may issue a permit for the placement of a storage vault upon issuance of a permit for the construction or expansion of a permanent building or a permit for the repair/rehabilitation of a business which has had extensive damage. When a building permit has been issued, the use of a storage vault may be authorized for the period of active construction on the site.

3. Required Conditions

Storage vaults permitted pursuant to this section shall comply with the following requirements.

a. Location: Storage vaults shall be located in an interior side or rear yard and on an improved surface of concrete or asphalt. No vault shall be permitted in a location which is nearer to a public street than the main building. No vault shall be placed so as to obstruct or eliminate any drive, fire lane, or required parking or loading space.

b. Electrical: No electrical connections or any source of energy (such as self-contained power plants/ generators) shall be permitted.

c. Number: A maximum of one vault per business shall be permitted, except in the following situations where vaults shall be permitted as stated.

(1) Shopping Centers/Multitenant Buildings: On a shopping center or multitenant building site, the maximum number of vaults which may be permitted shall be one vault for each 25,000 square feet of gross floor area in the shopping center. A vault must be located behind or beside the business for which it is permitted and not behind or beside any other business.

(2) Large Businesses: Businesses in excess of 50,000 square feet, whether freestanding or located in a shopping center, shall be permitted a maximum of two vaults.

4. Signage

No signage or advertising shall be permitted on a vault other than identification of the leasing firm, limited to name and telephone number, one time per side, using letters no larger than 3-inch.

5. Screening

A solid 6-foot high wood screening fence shall be provided around the vaults and shall be removed at the end of the permit period. Such screening shall not be required on the side of a vault which is against a building or when the vault is generally not visible from the surrounding streets and parking lots.

1-603 SPECIAL EXCEPTIONS

Ord. 4562/5-7-18; Ord. 2654/2-5-90

The Board of Adjustment may authorize the following exceptions for temporary uses where it determines that such approval can be accommodated without creating adverse impacts on adjacent properties or the surrounding neighborhood. The Board may impose time limitations upon the approval of Special Exceptions for temporary uses and may set out conditions for the termination or extension of such uses.

A. TEMPORARY CLASSROOMS

To allow the use of temporary classroom buildings by elementary and secondary schools, churches, boy/girl scouts and similar organizations. Approval shall be for no more than a three-year period, provided that the Board may specify conditions under which the approval period may be extended. Such temporary buildings shall be considered compatible if the following criteria are met.

1. Permanent Site

A temporary building is prohibited unless it is to be located on a site where an existing permanent building housing an authorized main use is located. For purposes of this

- requirement, an authorized main use is one for which a valid certificate of occupancy has been issued. The use of the temporary building shall be limited to the main use for which a certificate of occupancy has been issued or an authorized use accessory to that main use.
2. ***Proposed Construction*** The applicant shall submit a proposed schedule and a plan of construction/expansion of permanent facilities that eliminate the need for the long-term use of the temporary buildings.
 3. ***Alternate Space*** There are no reasonable alternatives for providing needed space in a functional manner.
 4. ***Site Adequacy*** Parking, circulation, electrical and utility connections, drainage, fire protection and all other health and safety considerations can be accommodated and provided for with the addition of temporary buildings in an orderly and safe manner.
 5. ***Adjacent Properties*** The placement of the temporary buildings on the site will not be injurious to the use and enjoyment of other property in the immediate area for purposes already permitted.
 6. ***Setbacks*** The placement of the temporary buildings on the site will comply with all setback requirements.

B. TEMPORARY RESIDENCES

To permit placement and occupancy of a temporary residence, which may be a mobile home, under the following circumstances. Approval may be for no more than one year, provided that the Board may specify conditions for extension. Temporary residences shall be approved only on a building site of a size sufficient to accommodate such residence and the related construction so as to meet required setbacks and which will not substantially injure the use and enjoyment of other property in the immediate area.

1. ***Emergency Residence*** A temporary residence located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by persons displaced by such disaster during the reconstruction of the permanent residence.
2. ***Construction Residence-Nonresidential*** A temporary residence located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such site.

C. SPECIAL EVENTS-EXTENDED PERMITS

To allow special events and special outdoor sales for periods exceeding the conditions stated in 1-602. The Board shall specify the permitted duration for an event in its approval and such approval shall terminate at the end of that period unless the Board specifies time frames and/or conditions to allow regularly or periodically recurring events.

Previous 1-700 SWIMMING POOLS/Deleted by Ord. 2632/10-1-89

1-700 TELECOMMUNICATIONS TOWERS AND ANTENNAS

1-701 GENERAL PROVISIONS

Ord. 3153/5-5-97

A. PURPOSE AND GOALS

The purpose of this section is to establish guidelines for the siting of wireless telecommunications facilities which protect residential areas from potential adverse impacts; encourage the location of towers in nonresidential areas; minimize the total number of towers throughout the City; encourage the joint use of tower sites; encourage users to locate in areas where the adverse impact is minimal; encourage users to use configurations that minimize the adverse visual impact through careful design, siting, landscape, screening, and innovative camouflaging techniques; enhance the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; and consider the public health and safety of communications facilities.

B. DEFINITIONS

For the purposes of this section, the following terms shall be defined as set out below.

1. ***Antenna*** A transmitting and/or receiving device used in telecommunications that radiates or captures radio signals.
2. ***Height*** Height shall mean the distance from the ground to the top of the entire telecommunications facility, including the support structure and related antenna(s).
3. ***Tele-communications Facility*** An unmanned facility consisting of equipment for the reception, switching and/or receiving of wireless telecommunications. Such facility may be elevated (either structure-mounted or ground-mounted) transmitting and receiving antennas, low power mobile radio service base station equipment, and interconnection equipment. The categories of facility types include: a) roof and/or structure mount facilities, and b) telecommunications towers.
4. ***Tele-communication Tower*** A stand-alone structure consisting of a support structure, antenna and associated equipment. The support structure may be monopole, lattice tower, light standards, or other vertical supports.
5. ***Lattice Tower*** A guyed or self-supporting three-or-four sided, open steel frame structure used to support telecommunications equipment.
6. ***Monopole*** A structure composed of a single spire used to support telecommunications equipment.
7. ***Roof and/or Structure Mount Facility*** A telecommunications facility in which antennas are mounted to an existing structure, including mounting on existing electrical transmission towers.

C. MEASUREMENTS

The following methods of measurement shall apply to the standards set out in this section.

1. ***Lot Size*** For the purpose of determining whether the installation of a tower or antenna complies with development regulations, including but not limited to setbacks, lot coverage, and similar requirements, the dimensions of the entire lot shall control, even though the facility may be located on a leased parcel within such lot.
2. ***Setbacks*** All portions of a facility, including tower base, guys, and anchor guys, shall, at a minimum, comply with all setbacks for principal structures required in the respective

zoning district in which the facility is located, and shall satisfy any additional setback and separation requirements set out in this section.

3. ***Distances*** Distances measured for the purpose of complying with required separations from residential districts and between towers may be measured from the center of the tower or tower base.
4. ***City Boundaries*** For the purposes of measurement, tower setbacks and separation distances shall be calculated and applied irrespective to municipal or county boundaries.

D. REQUIRED COMPLIANCE

1. ***State and Federal Requirements*** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other state or Federal agency with authority to regulate. An applicant for a building permit shall submit an affidavit confirming compliance with applicable regulations.
2. ***Airport Hazard Zone*** All towers erected in the Mesquite Metro Airport Hazard Zone shall be required to obtain a “Permit to Construct in the Airport Hazard Zone” prior to submitting an application for building permit.
3. ***Building Permit*** Construction of all telecommunications facilities requires application for and issuance of a building permit by the City of Mesquite, including compliance with all applicable building codes.
4. ***Inspections*** The City of Mesquite reserves the right to make inspections of any telecommunications facility within the corporate limits of the City to ensure structural integrity. Based upon the results of the inspection, the City may require repair or removal of the facility at the owner’s expense.
5. ***Certified Information*** Information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

E. FRANCHISES

Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the City of Mesquite, if any, have been obtained. Furthermore, the applicant shall certify that all backhaul services are being obtained from companies with valid franchises. Certifications may be made by affidavit or by submission of copies of appropriate franchise documents.

F. GENERAL DEVELOPMENT STANDARDS

1. ***Signs*** No signs shall be allowed on a telecommunications facility.
2. ***Lighting*** Telecommunications facilities shall not be artificially lighted, unless required by the FAA or other applicable authority.
3. ***Aesthetics*** Telecommunications facilities shall meet the following requirements:
 - a. Towers shall either maintain a galvanized steel finish, or subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - b. At the tower site, the design of buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and the surrounding buildings.

- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

G. REMOVAL OF ABANDONED ANTENNAS AND TOWERS

A telecommunications facility shall be considered to be abandoned under the following circumstances: 1) If it is not operated for a continuous period of 12 months; and/or 2) If a code violation exists which is not corrected within a 30 day period after notice by the City. The owner of such facilities shall remove the same within 90 days of receipt of notice from the City of Mesquite notifying the owner of such abandonment. Failure by the owner to remove an abandoned facility within said 90 days shall be grounds for removal by the City, and the owner shall be responsible for all expenses associated with such removal. As compensation for removal expenses, tower sections removed by the City shall become the property of the City if payment of removal expenses is not made by the owner within 180 days of such removal.

H. NONCONFORMING USES

1. ***Not Expansion*** Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming structure.
2. ***Pre-existing Towers*** Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance, including replacement with a new tower of like construction and height, shall be permitted on such pre-existing towers.
3. ***Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas*** Nonconforming telecommunications facilities that are damaged or destroyed may be rebuilt, provided the type, height, and location of the tower shall be the same as the original facility. Building permits to rebuild the facility shall comply with current applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained within such time or if said permit expires, the facility shall be deemed abandoned.

1-702 ACCESSORY TELECOMMUNICATIONS FACILITIES

Ord. 3153/5-5-97

The following situations shall be classified as accessory telecommunication facility uses and shall be permitted in all zoning districts in accordance with the following conditions. All other telecommunications facilities shall be classified as principal uses and shall be regulated by subsequent sections of this regulation.

A. AMATEUR RADIO STATION OPERATORS/RECEIVE ONLY ANTENNAS

Any tower, or installation or antenna, which is operated by a Federally-licensed amateur radio station operator or is used exclusively for receive only antennas shall be permitted in accordance with the standards set out below in any zoning district when said facility is located on a developed building site as an accessory use.

1. ***Permitted Towers/ Antennas*** An accessory tower or antenna shall be permitted if the total height of the facility is 75 feet or less, and the structure is set back from any property line a minimum of 5 feet or one foot for each foot in height over 30 feet, whichever is greater. No portion of any structure or support (guys, anchors points, etc.) shall extend into any required front or exterior side yard. When the antenna is attached to the main structure, an encroachment adequate to allow attachment to the roof eaves shall be permitted into any side or rear yard.
2. ***Special Exception for Oversized Antenna*** The Board of Adjustment, in accordance with 5-200, may authorize the erection of a facility which exceeds 75 feet in height where it determines that the exception will allow greater use and enjoyment of property without creating adverse impacts on adjacent properties and that it will be compatible with the neighborhood.

B. ROOF AND/OR STRUCTURE MOUNT FACILITY

An antenna mounted on a roof or existing structure other than a tower shall be permitted, subject to the following conditions, in any nonresidential zoning district and on any permitted nonresidential use in a residential zoning district, including attachment to electrical transmission towers. Antennas on a rooftop or above the structure shall be constructed and/or colored to match the structure to which they are attached and may not extend more than 20 feet above the highest point of the structure. Antennas mounted on the side of a building or structure shall be painted to match the color of the structure or the background against which they are most commonly seen. Antennas incorporated into flagpole structures shall be permitted as accessory flagpoles. If an accessory structure is present, it must comply with all regulations regarding accessory structures in the respective zoning district, and with the requirements for security fencing, landscaping, and accessory structures as set out in 1-703B.

1-703 PERMITTED TELECOMMUNICATIONS FACILITIES Ord. 3153/5-5-97

Telecommunications facilities which are not classified as accessory under the provisions of 1-702 shall be permitted in accordance with the following conditions and requirements.

A. LOCATIONAL REQUIREMENTS

Telecommunications facilities shall comply with the following requirements regarding location. Facilities which do not comply may be considered as a Conditional Use Permit under the provisions set out in 1-704. An applicant for building permit shall be required to submit an inventory of its existing tower locations in the City of Mesquite and within 1/4 mile of the City Limits.

1. ***Nonresidential Districts and City Property*** The telecommunications facility shall be located either on 1) a tract classified in a nonresidential zoning district or in a Planned Development district designated solely for nonresidential use; or 2) a property owned by the City of Mesquite or the Mesquite Independent School District.
2. ***Separation from Residential Districts*** The tower shall be required to be separated from residential districts as follows: 1) a minimum of at least 3 feet for each foot in height from any existing single family or duplex subdivision in a residential zoning district; and 2) a minimum of a least one foot for each foot in height from all other residential districts, including undeveloped districts zoned for single family or duplex use, and multifamily districts. For the purpose of applying the above separation distances, “residential district” shall exclude nonresidential uses which are permitted in a residential district, such as schools, parks, churches, neighborhood utilities, etc.
3. ***Maximum Height*** The maximum height of facility permitted under this section shall be as follows:
 - a. Single Use Facilities 100 ft
 - b. Two User Facilities 125 ft
 - c. Three or More Use Facilities 150 ft
4. ***Separation Between Towers*** The tower shall be separated from other towers regulated by this section a minimum distance as set out in Table 1 below; provided however, that when a tower is designed to accommodate collocation (2 or more users), the required separation distance may be reduced by 30%.

Table 1: Required Tower Separation

<i>Existing Towers</i> <i>Proposed Towers</i>	<i>Tower More than 125 Feet in Height</i>	<i>Tower 76 Feet to 125 Feet in Height</i>	<i>Tower 75 Feet or Less in Height</i>
<i>Tower More than 125 Feet in Height</i>	1,500 FT	1,250 FT	1,000 FT
<i>Tower 76 Feet to 125 Feet in Height</i>	1,250 FT	1,000 FT	750 FT
<i>Tower 75 Feet or Less in Height</i>	1,000 FT	750 FT	500 FT

B. SITE DEVELOPMENT STANDARDS

1. **Setbacks** Except in the case of towers adjoining residential districts where greater setbacks are required by 1-703A.2 above, towers shall be required to be set back from the respective property lines the same minimum distance required for principal structures on the site.

2. **Screening, Buffering, and Security** Telecommunications facilities shall be required to provide a secured site which is visually screened and buffered from residential districts and from general public view, in accordance with the following guidelines.
 - a. Facilities with minimal visual impact to general public view shall not require special screening or buffering, but shall require security fencing adequate to prohibit general access to the equipment, tower or other parts of a facility, generally a fence at least 6-feet in height. Facilities with minimal visual impact to the general public shall include the following: 1) Where the site is located on a non-arterial street in an industrial or business areas, excluding the Town East Retail and Restaurant Area (TERRA); or Where the site is shielded from the general view on a public street or on a private area which is generally open to the public, such as a retail parking lot, by existing buildings, vegetation, or topography. No site immediately adjoining a residential district shall be considered to have minimal visual impact. A determination by the Development Review Committee regarding *impact on general public view* may be appealed to the Planning & Zoning Commission.
 - b. All other facilities, i.e. those not classified as having minimal visual impact to the general public view shall provide screening, buffering, and security by one of the following means:
 - (1) A solid masonry screening wall, at least 6 feet in height, enclosing the facility on all sides which are open to public view or residential areas; or
 - (2) A security fence, at least 6 feet in height, enclosing the facility on all sides open to public view or residential areas, with a 10 foot landscape buffer strip established surrounding the fencing. The landscape strip shall be planted with shrubs, a minimum 5 gallon size, approximately 3 feet in height at planting, planted on 3 foot centers. The landscape strip shall be irrigated by an automatic underground irrigation system. Landscaping shall be maintained in a healthy, growing manner at all times, to assure effective screening. When necessary, landscape materials shall be replaced in a timely manner.

3. **Accessory Structures** A single-story unmanned accessory building of no more than 300 square feet is permitted to store equipment needed to send and to receive transmissions, but may not include offices or long term storage of vehicles. Buildings or equipment cabinets shall be of a neutral color that is identical to or closely compatible with the color of the supporting or surrounding structures or setting so as to make the structure as visually unobtrusive as possible. The accessory structure must be within the secured area, and within the area for which landscaping and buffering is provided, when required

1-704 OTHER TELECOMMUNICATIONS FACILITIES - CONDITIONAL USE PERMIT REQUIRED

Ord. 3153/5-5-97

Any telecommunications facility which does not meet the conditions and requirements of 1-702 or 1-703 may be requested and approved in any zoning district as a Conditional Use Permit subject to the following requirements and considerations

A. GENERAL PROVISIONS

The following provisions shall govern the approval of Conditional Use Permits for telecommunications facilities.

1. ***Procedures*** Submission, processing and review of requests for approval of a Conditional Use Permit for a telecommunications facility shall be in accordance with 5-300.
2. ***Conditions of Approval*** In granting approval of a Conditional Use Permit, the Council may impose additional stipulations and conditions to the extent that the Council concludes that such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
3. ***Modification of Standards*** All facilities shall comply with the requirements set out in 1-703; provided however, that the City Council may approve modification of the locational and development standards as part of the review and approval of a Conditional Use Permit upon a determination that the modified conditions do not create adverse impacts on the adjacent properties. Proposed modification shall be specified in the required notices as part of the requested approval. When modifying such standards, the Council shall specify the allowed modification in its approval.

B. SUBMISSION REQUIREMENTS

Application for a Conditional Use Permit for a telecommunications facility shall include the following materials and information.

1. ***Site Plan*** A scaled site plan clearly indicating the location, type, and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, landscaping, and fencing, including locations and materials to be used.
2. ***Legal Description*** Legal description of the parent tract and the leased parcel (if applicable).
3. ***Inventory of Existing Sites*** Each applicant shall provide an inventory of its existing telecommunications facilities or sites approved for facilities, that are either within the City of Mesquite or within 1/4 mile of the border thereof, including specific information about the location, height, and design of each tower. The City may share such information with other applicants for the purpose of measuring separations between facilities and for the purpose of encouraging co-location.
4. ***Setbacks from Residential*** The setback distance between the proposed tower and the nearest residential district or use.
5. ***Separation Distances*** The separation distance from other towers.
6. ***Compliance*** A description of compliance with applicable state and federal laws, including appropriate documentation, if requested.
7. ***Collocation Statement*** A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

8. ***Unavailable Site Statement*** A statement regarding the efforts to locate a site which complies with the requirements set out in 1-703, and regarding why such sites are not used.
8. ***Alternatives*** A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
9. ***System Requirements*** A description of the analysis/evaluation of system coverage and/or capacity which necessitates the requested location, generally including propagation or similar maps; and indicating the likely location of known additional towers needed to meet system coverage or capacity needs for the provided.

C. REVIEW CRITERIA

In addition to any standards for consideration of Conditional Use Permits pursuant to 5-300, the following factors shall be considered in determining whether to approval a request.

1. ***Preferred Locations*** Approval of sites should be considered based on the following preferences regarding location.
- a. On existing structures such as buildings or other communications towers.
 - b. In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.
 - c. In nonresidential districts.
 - d. On towers providing for collocation with multiple users.
 - e. In locations providing the maximum separation distance from residential and the maximum separation between towers.
2. ***Review Items*** In reviewing an application for Conditional Use Permit, the following items shall be reviewed as a basis for determining appropriateness and locational preference.
- a. The height of the proposed tower.
 - b. The proximity to residential districts and uses.
 - c. The nature of uses on adjacent and nearby properties, surrounding topography, and surrounding tree coverage and vegetation.
 - d. The design of the proposed tower and site, with particular reference to characteristics which have the effect of reducing or eliminating visual obtrusiveness, such as monopole construction, neutral colors, screening and buffering.
 - e. The proposed ingress and egress to the site.

3. *Availability of Alternatives*

The applicant shall demonstrate that no reasonable alternative that does not require the use of a new tower or structure can accommodate the proposed antenna. The Commission and Council may request information necessary to demonstrate that reasonable alternatives do not exist. Information submitted may consist of any of the following:

- a. No existing towers or structures are located within the geographic area which meets the applicant's engineering requirements.
- b. Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements; or existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
- c. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the existing antennas would cause interference with the proposed antenna.
- d. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- e. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable