



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-2

**Date:** June 13, 2007

**Subject:** Request that the City Council consider adopting an Ordinance amending the Land Use Chart in the Zoning Ordinance in Tyler City Code Chapter 10 to allow Fruit and/or Vegetable Sales in a C-1 Zone if approved by a Temporary Use Permit.

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**Item Reference:** Texas Local Government Code Chapter 211; Tyler City Code Chapter 10, Article IV.

State law authorizes municipalities to adopt zoning regulations, and the City of Tyler has adopted a comprehensive Zoning Ordinance in Tyler City Code Chapter 10, Article IV. Section 10-245 of the Zoning Ordinance contains specific special use regulations, including those related to Temporary Use Permits. Such Temporary Use permits are designed to allow temporary uses as long as such uses comply with the City Code, and can govern such things as area, parking, signage, and sanitation. Permitted Temporary Uses are listed in the Land Use Chart in City Code Section 10-203, and violation of a TUP is a violation of the ordinance.

At present, the City Code authorizes roadside fruit and/or vegetable sales, including sale of agricultural products, in the public right-of-way, as long as such use does not present a traffic hazard. In addition, Fruit and/or Vegetable stands are currently permitted as a Temporary Use in some zoning districts.

Tyler City Code Section 10-225 contains the regulations related to C-1 Light Commercial Districts. The C-1 District is designed to provide for commercial development and business activities that are located at the edge of residential areas but which serve an area larger than nearby neighborhoods. C-1 Zones are restricted to commercial activities, and generally do not allow for outdoor display or storage of merchandise except if approved by a Temporary Use Permit.

Fruit and/or Vegetable Stands are not currently allowed in C-1 zones under the current Land Use Chart in City Code Section 10-203. However, the City Council may wish to consider amending the Land Use Chart to allow Fruit and/or Vegetable sales in C-1 zones through a Temporary Use Permit for the following reasons:

1. Roadside Fruit and/or Vegetable Stands are already allowed by right in public rights-of-way, and allowing such sales in a C-1 zone through a Temporary Use Permit would improve safety for the vendors and the public by encouraging sales to occur on public property and out of the public right-of-way.

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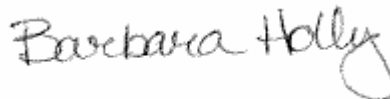
2. Roadside Fruit and/or Vegetable Stands do not currently have time limits, and the City would have additional authority to place time restrictions and other requirements on Fruit and/or Vegetable Sales if conducted in a C-1 Zone pursuant to a Temporary Use Permit.
3. Tyler City Code Section 10-225.c.4(b) already allows other types of temporary sales in a C-1 zone pursuant to a Temporary Use Permit.

### **REVIEW BY PLANNING AND ZONING COMMISSION**

Due to the fact that this involves an amendment to the City Zoning Ordinance, the State law and City Code require Planning and Zoning Commission review. On May 15, 2007, the Planning and Zoning Commission reviewed this proposed Ordinance and voted to recommend approval.

### **RECOMMENDATION:**

It is recommended that the City Council adopt the attached ordinance amending the Land Use Chart in the Zoning Ordinance in Tyler City Code Chapter 10 to allow Fruit and/or Vegetable Sales in a C-1 Zone if approved by a Temporary Use Permit.



**Drafted/Recommended By:**  
**Department Leader Barbara Holly, Planning Director**

**Edited/Submitted By:**  
**City Manager**

**ORDINANCE NO. 0-2007-65**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE ZONING ORDINANCE IN TYLER CITY CODE CHAPTER 10, "PLANNING AND ZONING", ARTICLE IV., "ZONING", BY AMENDING THE LAND USE CHART TO ALLOW FOR FRUIT/VEGETABLE SALES IN A C-1 ZONE IF APPROVED BY A TEMPORARY USE PERMIT; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

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

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

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

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Texas Local Government Code Section 211.003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

**WHEREAS**, Texas Local Government Code Section 211.007(a) authorizes a zoning commission to recommend boundaries for the original zoning districts, and appropriate regulations for each district; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, the Tyler City Council has adopted a comprehensive zoning ordinance in Tyler City Code Chapter 10, Article IV.; and

**WHEREAS**, Tyler City Code Section 10-225 currently allow certain types of temporary uses in a C-1 zone pursuant to a Temporary Use Permit, but the Land Use Chart does not currently authorize Fruit/Vegetable Stands in a C-1 zone; and

**WHEREAS**, Roadside Fruit/Vegetable Sales are already allowed by right in public rights-of-way; and

**WHEREAS**, it is important to protect the public safety by encouraging Fruit/Vegetable Sales to occur on private property in C-1 zones through issuance of a Temporary Use Permit; and

**WHEREAS**, Temporary Use Permits would provide the City an additional tool to place time restrictions and other regulations on Fruit/Vegetable Sales; and

**WHEREAS**, the Planning and Zoning Commission reviewed this proposed ordinance on 05/15/07, and voted to recommend approval;

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

**PART 1:** That Tyler City Code Chapter 10, "Planning and Zoning", Article IV., "Zoning", is hereby amended by amending the reference to Produce Stands (On Site) in the Land Use Chart in Section 10-203.b. to show that Produce Stands (On Site) are to be allowed in a C-1 zone through the issuance of a Temporary Use Permit, as shown on the attached Exhibit "A".

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be June 15, 2007.

**PASSED AND APPROVED** this 13<sup>th</sup> day of June, A. D., 2007.

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JOSEPH O. SEEBER, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

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CASSANDRA BRAGER, CITY CLERK

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CITY ATTORNEY

**EXHIBIT "A" TO ORDINANCE NO. 0-2007-65**

USAGE	AG	R-1a	R-1B	R-1C	R-2	R-3	PMF	R-4	R-4B	R-TH	PUR	RFO	AR	ED	POD	C-1	C-2	C-3	C-4	PCD	CHS	M-1	M-2	M-3
PRIVATE GARAGE (RESIDENTIAL)	X	X	X	X	X	X	P	X	X	X	P													
PRIVATE RECREATIONAL CLUB		S				S	S				S					X	X	X	X	P		X	X	
PRODUCE STAND (ON SITE)	X															<b>I</b>	X	X						
PROTECTION SERVICE OFFICE												X	X		P	X	X	X	X	P				
PSYCHOLOGIST/							X					X	X		P	X	X	X	X	P	X			
PUBLIC FACILITIES	X	X	X	X	X	X		X	X	X	P	X	X	X	P	X	X	X	X	X	X	X	X	X
PULP-PAPER MILL																							X	X
R.V. PARK	S																S							
RACE TRACK (HORSE/DOG)	S																					S	S	S
RACE TRACK (MOTORIZED)																						S	S	S
RAILROAD FREIGHT TERMINAL																							X	X
RAILROAD PASSENGER STATION DEPOT																	X	X	X			X	X	X
RETAIL SALES WITHOUT OUTDOOR DISPLAY OR STORAGE OF MERCHANDISE							S									X	X	X	X	P	X	X		
RETAIL SALES WITH OUTDOOR DISPLAY OR STORAGE OF MERCHANDISE																	X	X	X	P		X	X	
RECREATIONAL FIELD (TEMPORARY)	T	T	T	T	T	T	T	T	T	T	T				T	T	T	T	T	T		T	T	
RECREATIONAL VEHICLE DEALERSHIP																	X	X	X	P		X	X	
RECYCLING CENTER (CANS, GLASS, PAPER)																		X	X			X	X	X

ALLOWED USE   
 SPECIAL USE PERMIT REQUIRED   
 TEMPORARY USE PERMIT REQUIRED   
 EXISTING USE   
 PLANNED USE   
 NOT ALLOWED

