

ORDINANCE NO. 0-2008-147

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", ARTICLE II, "ZONING DISTRICTS", AND ARTICLE VIII, "DEVELOPMENT APPROVAL PROCEDURES", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY ADDING REGULATIONS RELATED TO THE ESTABLISHMENT OF HISTORIC DISTRICT OVERLAYS; ESTABLISHING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general 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 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, 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 powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; 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, on April 23, 2008, the Tyler City Council adopted the Unified Development Code, which contains zoning, subdivision, development and other land use regulations; and

WHEREAS, it is important to amend the Unified Development Code to add requirements related to the establishment of Historic District Overlays; and

WHEREAS, on September 3, 2008, the Historical Preservation Board reviewed and approved most of the provisions of this proposed ordinance; and

WHEREAS, on October 7, 2008, the Planning and Zoning Commission reviewed this proposed ordinance and voted to recommend approval;

WHEREAS, on November 5, 2008, the Historical Preservation Board was briefed on additional changes made to the ordinance;

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

PART 1: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article II., "Zoning Districts", Division D., "Overlay and Special Purposes Districts", is hereby amended by amending Section 10-32 by adding a reference at the bottom of the Chart relating to Historic District Overlays, with no other changes to the Chart, as follows:

HD-O Historic District Overlay

(Ord. No. 0-2008-48; 4/23/08) (Ord. No. 0-2008-147; 11/19/08)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article II., "Zoning Districts", Division D., "Overlay and Special Purposes Districts", is hereby amended by amending Section 10-33 by adding a new subsection i. to read as follows:

Sec. 10-33. District Purpose Statements

Subsections a. through h.....No changes

i. HD-O Historic Overlay District

The HD-O district is primarily intended to implement the Tyler 21 Comprehensive Plan by establishing and preserving structures, sites or areas that have outstanding historical and cultural significance. As an overlay district, the HD-O is applied in conjunction with the underlying zoning district(s) for the area. The procedures for enacting the HD-O District are contained in Article VIII., Division J. (Ord. No. 0-2008-147; 11/19/08)

PART 3: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article II., "Zoning Districts", Division D., "Overlay and Special Purposes Districts", is hereby amended by amending the Chart in Section 10-34 to add a reference to the HD-O District as follows:

Sec. 10-34. Dimensional Standards

All development in overlay and special purpose districts must comply with the dimensional standards for overlay and special purpose districts in this chapter:

Table 10-34 Dimensional Standards for Overlay and Special Purpose Districts

Overlay and Special Districts	NC-O	AG	AR	RPO	MU-O	INT	OSP	CC-O	
Minimum lot area (square feet)	Base zone applies	1 acre	7,000	7,000	0	5 acres (for entire campus)	1 acre	Base zone applies	Base zone applies
Minimum street frontage (feet)		35	35	35	0	200		a	
Minimum frontage (feet) to legal access									
Minimum building sep. (same lot)		0	15	25	0	15		a	
Maximum height (feet)		42	42	42	N/A		35	a	
Adjacent to Residential Districts				42	42	42+1' / addl 1' setback	--	42+1' / addl 1' setback	
Adjacent to All Other Districts				60 + 1' / addl 1' front & rear setback	N/A	120 + 1' / addl 1' front & rear setback	--	120 + 1' / addl 1' front & rear setback	
Maximum height (stories)		2.5	2.5	2.5	N/A			a	
Setbacks								a	
Front yard setback		25 res; 100 livestock 50 poultry	25	10	0	25	15		
Rear yard setback		25 res; 100 livestock 50 poultry	25	10	0	10			
Side yard setback, interior		7.5 res only	6	6; 25 for multi-bldg complex	0	5	--		
Side yard setback, corner		12 res only	12	12	0	12			
Adjacent to R district (rear)				25 & b	10	25		25	
Adjacent to R district (side)				B	10	25		25	
Adjacent ROW (side or rear)				B	10	25		25	
Maximum lot coverage (%)		35	60	60	100	60	25		

a. Determined by the developer and subject to approval by the planning and zoning commission and city council as part of the site development plan.

b. See Article VI, Division B for bufferyard requirements.

PART 4: That Tyler City Code Chapter 10, "Unified Development Code", Article VIII., "Development Approval Procedures", is hereby amended by adding a new Division J., "Historic District Overlay Designation", to read as follows:

DIVISION J.

HISTORIC DISTRICT OVERLAY DESIGNATION

Sec. 10-714. Historic District Overlay.

a. Purpose. A Historic District Overlay is intended to establish and preserve structures, sites or areas that have outstanding historical and cultural significance. It is not intended to limit the development of undeveloped lands.

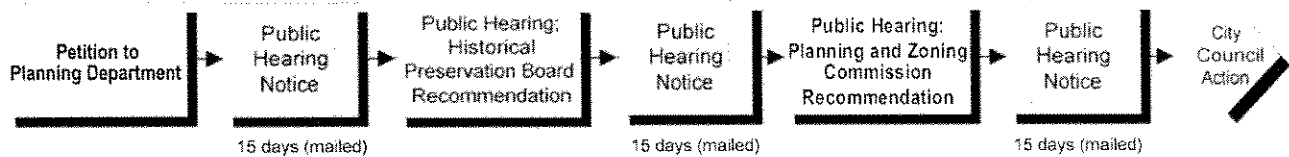
b. Designation. The City Council may designate sites, buildings, structures, landscapes and objects as historic districts, including the public rights-of-way in and surrounding such historic districts, by adopting a zoning district designated as the Historic District Overlay (HD-O) on the City's official zoning map pursuant to the procedures set forth herein. Nothing contained in the designation of a property as a HD-O shall affect the use of the property, and all uses shall be governed by the zoning use districts established by the Unified Development Code. The City is divided into "Zoning Districts" which are restricted to residential use; for office, limited commercial or educational use; for commercial, mixed use or educational, industrial/manufacturing use.

c. Ordinance required. Each HD-O shall be designated by a separate ordinance. Such an ordinance will set forth the boundaries of a HD-O and will include regulatory standards and guidelines applicable to the district.

d. HD-O Criteria. A HD-O may be established to preserve areas of exemplary architectural, archaeological, cultural, or historic value provided such areas are located within a designated Historic District listed in the National Register of Historic Places and meets one or more of the following characteristics:

1. Significance in history, architecture, archaeology or culture.
2. Association with certain events that have made a significant contribution to the broad patterns of local, regional, state or national history.
3. Association with the lives of significant persons in the past.
4. Embodies the distinctive characteristics of an architectural or engineering type, period or method of construction.
5. Represents the work of a master designer, builder or craftsman.
6. Represents an established and familiar feature of the community.

A HD-O must consist of an area of at least one block face, with a minimum of three contiguous properties and with at least three-fourths of the properties that are at least fifty years old. Properties not required to meet the 75% or the block face that do not want to join into the district are not required to become part of the district. Commercial zoned property contained within the district must be at least 75 years old and must be a contributing property or structure as defined in subsection e below. Vacant properties over two acres may not be included in a proposed district unless they are contributing properties. As it relates to this ordinance, a block face consists of a minimum of one side of a street between two boundary streets or a dead end (cul de sac). Once a HD-O is created, adjoining properties may be included by a separate ordinance, and must complete the required process established in subsection f.



e. Guidelines and regulations applicable to HD-O. Design guidelines and other appropriate regulations concerning exterior and site development or redevelopment of the HD-O may be recommended by the Historical Preservation Board and adopted by the City Council as part of the ordinance establishing the HD-O. Interior renovations are exempt from all requirements of the HD-O. Any regulation for a specific HD-O shall apply to all contributing properties or structures wholly contained within the HD-O. As it relates to this ordinance a contributing property or structure is one that by location, design, setting, material, workmanship, feeling and association adds to the district's sense of time and place and historical development. All new additions, exterior alterations or related new construction for non-contributing properties or structures wholly contained within the HD-O must conform and be contextual as it relates in scale, mass, placement and materials to the surrounding properties.

Standards for the HD-O shall be as set out in the following Secretary of Interior Standards for Rehabilitation:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features for elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

5. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
6. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
7. Material and significant archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
8. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with historic materials, features, size, scale and proportion and massing to protect the integrity of the property and its environment.
9. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. New construction, in general, shall be compatible with the existing buildings or structures in the HD-O regarding scale, mass, placement and materials.

Additional guidelines for the HD-O shall be found in the Secretary of Interior Guidelines for Rehabilitating Historic Buildings. A copy of such regulations shall be available in the Planning Department, as well as on the Planning Department website.

f. Authority to designate. Designation of a HD-O may be accomplished by ordinance of the City Council if all of the following requirements are met:

1. A petition to the Planning and Zoning Department containing the signatures of at least 75 percent of the property owners located within the proposed HD-O; and
2. A recommendation for approval by the Historical Preservation Board; and
3. Favorable vote of a supermajority of the members of the City Council.

g. Notice requirements. Notice shall be provided as set forth in Section 10-586.

h. Scope of City Council Review. In its review of the proposed HD-O the City Council may:

1. Revise the proposed regulatory standards or guidelines attached to the proposed ordinance designating a HD-O; and
2. Reduce the boundaries of the HD-O as proposed in the map attached to the proposed ordinance.

The designation, amendment or retraction of a designation will not become effective until a map setting forth the boundaries of the HD-O, or change in the boundaries thereof, has been filed with the Planning and Zoning Department and as listed on the tax rolls of the Smith County Appraisal District (SCAD). (Ord. No. 0-2008-147; 11/19/08)

Sec. 10-715 – 719. Reserved.

PART 5: 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 6: 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 not become effective until 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 November 21, 2008.

PASSED AND APPROVED this 19th day of November, A. D., 2008.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



GARY C. SANDERS, CITY ATTORNEY