

ORDINANCE NO. 0-2008-48

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "PLANNING AND ZONING", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY ADOPTING A NEW UNIFIED DEVELOPMENT CODE REGULATING ZONING, SUBDIVISION DESIGN AND IMPROVEMENTS, PLATS, STREETS AND THOROUGHFARES, DEVELOPMENT STANDARDS, PARKING REQUIREMENTS, SIGN REGULATIONS, ENVIRONMENTAL REGULATIONS, PERMITTING PROVISIONS, ADMINISTRATION AND ENFORCEMENT, HISTORIC PRESERVATION, AND ANNEXATION; 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, Texas Local Government Code Section 212.002 states that after a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and

WHEREAS, Texas Local Government Code Section 212.003(a) provides that the governing body of a municipality may by ordinance extend to the extraterritorial jurisdiction of the municipality the application of the municipal ordinance prescribing rules governing plats and subdivisions of land; and

WHEREAS, Texas Local Government Code Section 216.902(a) provides that a municipality may extend provisions of its outdoor sign regulatory ordinance and enforce the area within its areas of extraterritorial jurisdiction; and

WHEREAS, Texas Local Government Code Section 216.902(b) states that if a municipality extends its outdoor sign ordinance within its area of extraterritorial jurisdiction, the municipal ordinance supersedes the regulations imposed by or adopted under Texas Transportation Code Chapter 394; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, on March 18, 2008, the Planning and Zoning Commission reviewed the proposed Unified Development Code ordinance and voted to recommend approval;

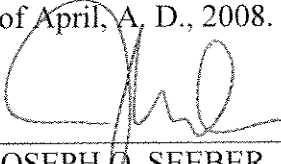
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 10, "Planning and Zoning", is hereby deleted in its entirety and a new Chapter 10 entitled "Tyler Unified Development Code" is hereby adopted to read as set forth in the Notebook attached hereto as Exhibit "A", including the changes shown in the Addendum attached hereto as Exhibit B.

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 can not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas or later. The effective date of this ordinance shall be upon publication, which date is expected to be April 24, 2008.

PASSED AND APPROVED this 23rd day of April, A. D., 2008.




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

ATTEST:

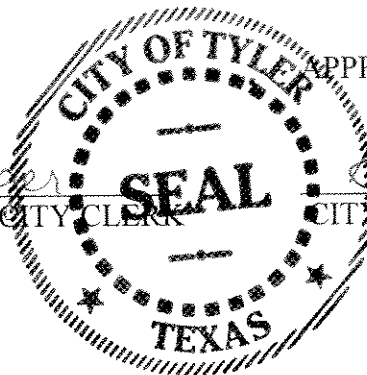


CASSANDRA BRAGER, CITY CLERK

APPROVED:



GARY C. SANDERS, CITY ATTORNEY



UDC ADDENDUM					
Additional Comments from Staff and Interest Groups					
NOTE: * Language in existing Chapter 10					
Recommendations highlighted in yellow					
Section	Item Changed	How Changed		Whose Suggestion	Potential Effect
		Old	New		
Article I Introductory Provisions					
Article II Zoning Districts					
10-23 Table	Residential Districts - Dimensional Standards	R1-D - Rear Setback (25)	R1-D - Rear Setback (15)	Perry Hall	Provided for garden homes
10-25	Commercial and Mixed Use Districts	N/A	Uses may be restricted or specified in planned districts	PZ Staff	Clarification
10-48	Com. Use Table	* N/A	Revival (Outdoor) added as Temp Use for commercial districts	Mark McDaniel	
10-49	Com. Use Table	N/A	Multipurpose Uses Added - Stables, Fish Pond, Tree Farm, Deli, Donut Shop, Restaurant, Theater, Catering Service, Art Studio, Bicycle Shop, Convenience Store, Fruit-Veg Stand, Gift Shop, & Firearms Range.	Mark McDaniel	
10-49	Com. Use Table	AR - Maximum 2 chairs with Special Use Permit	AR - Maximum 2 chairs permitted by right	PZ Staff	F&Z Commission and Council no longer has to approve SUPs
Article III Use Regulations					
10-48/49	10- Res. & Com. Use Table	N/A	Cemetery, Mausoleum, allowed by right in all categories	TABA	Clarification (Per State Law, No new cemeteries allowed within city limits.)
10-66	Limited and Specific Use Standards - Townhouses	N/A	Allow horizontal platting	Perry Hall	
Article IV Subdivision Design and Improvements					
10-102	General Requirements for Public Improvements/Street Access	* Except for lots which are provided access from an approved cul-de-sac	Remove language	TABA	Clarification
10-104 C 1	Waiver of Development Exactions	In no case may the calculation of the capacity used by a proposed commercial or multifamily development be based on development intensities less than the mid-point of intensity allowed by the particular zoning for the property.	In no case may the calculation of the capacity used by a proposed commercial or multifamily development be based on development intensities less than the mid-point of intensity allowed by the particular zoning for the property or the specific use being sought.	Perry Hall	Clarification
10-111	Lot and Block Design Standards/Driveways	N/A	public way... or other legal access	TABA	Clarification
10-114	Blocks	N/A	Block Length	PZ Staff	Clarification

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Article V Streets and Thoroughfares					
10-163	Street Design Standards/Future Connections	except for gated subdivisions	except for subdivisions with private streets	TABA	Clarification
10-167 C	Street Connectivity - Required Subdivision Access Points	Similar to new language	add "... unless extreme natural conditions, as determined by the planning director and the development services engineer, make such connection infeasible.	Ferry Hall	Clarification
10-188	Relation to Adjoining Street Systems	permit-issuing authority	development services engineer	TABA	Clarification
10-210 a	Streets in the Extraterritorial Jurisdiction	N/A	made payable to Smith County with a copy provided to the City	TABA	Clarification
10-264	Thoroughfare Closure Repair	Similar to new language	Coincident with approval of a thoroughfare closure request, the applicant must provide for necessary easements, further the applicant must replat the abandoned right-of-way within six months	PZ Staff	Clarification
Article VI Development Standards					
10-351	Off-Street Parking and Loading - Access to Adjacent Parking Areas	d. Compatible uses under separate ownership must be connected.	d. Compatible uses under separate ownership with public parking lots must be connected.	TABA	Clarification - Allows Industrial Uses the ability to secure their facilities
10-356	Angled Parking Dimensions Table	Similar to existing language	Added "Minimum" to each dimension category	PZ Staff	Clarification
10-409	Sign Regulations - Sign Standards in Nonresidential Districts	Similar to new language - New language didn't clearly identify zoning districts	Clarify Projecting/Blade Signs per district - Identify zoning districts (C-1, C-2, PCD, M-1, and M-2 districts) where projecting/blade signs are allowed as 24 SF and 4 feet in height	PZ Staff	Clarification
10-457	Portable Storage Units	Similar to new language	Clarify street placement and removal responsibility (Placement on local streets allowed for 72 hours without obtaining a permit)	POD Company	Clarification
Article VII Environmental Regulations					
10-529	Clearing and Grading Permit Requirements	* N/A	Add illustration from existing Chapter 10	TABA	Clarification
10-556	Floodplain Regulations Compliance and Development Permit	* made without full compliance with this ordinance and other applicable regulations.	made without full compliance with this article and other applicable regulations.	PZ Staff	Clarification

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Article VIII Development Approval Procedures					
10-590	General/Common Procedures/Review Authority	Table 10-590 Summary of Review Authority	Update table with appropriate information to be utilized as a Review Authority (at-a-glance) table	PZ Staff	Clarification
10-635	Application Procedure and Requirements	*Similar to existing Examples	Include examples of statements (Surveyors, Owners, and Floodway Easement) - removed notary requirement from Surveyor Statement	PZ Staff	Clarification
10-660	Variances	N/A	Include notice requirements and update flowchart accordingly - (15-day mailed notice)	PZ Staff	Clarification - Require P&Z Staff to adjust ZBA Submittal Deadline to meet notice requirements
10-661	Variances	N/A	Allow Planning Director to approve variances that are a 10%	PZ Staff	Provides a mechanism to approve minor amendments (not visually detectible)
10-702	Neighborhood Conservation District Designation/NCD Overlay District Criteria	At least 70 percent of the NCD area must be of residential use and zoned residential/Businesses within the NCD must agree to be part of the district.	At least 80 percent of the NCD area must be of residential use and zoned residential and the remaining may be commercial with voluntary or involuntary inclusion	Historical Preservation Board	Potential compromise to Councilman Chris Simons request for lots abutting or adjoining Historic Districts must be planned. Potential Effect: Increasing the requirement would provide for a district with more residential character/bringing non-residential zoned lots at 20% as voluntary or involuntary would provide additional protection to neighborhoods.
10-703	Neighborhood Conservation District Designation/Authority to Designate	2/3 of all property owners to initiate study	51% of all property owners to initiate study	Historical Preservation Board/PZ Commission	Reducing the requirement would make it easier to initiate an NCD study
Article IX Permits					
10-752	Development Related Permits Establishment of Development Permit	*Similar to existing Examples	See Sections 10-576 and 10-256	TABA	Clarification - Simply reference previous sections.
10-756 a	Grading Permit Requirements Abbreviated Drainage Plans	* as shown in Exhibit "10-130" following	as described in Section 10-529	TABA	Clarification
Article X Administration and Enforcement					
Article XI Historic Preservation					
Article XII Annexation					
Article XIII Definitions					
Article XIII Definitions	Development Permit	N/A	Article IX, Division C	TABA	Clarification
Article XIII Definitions	Projecting Sign	N/A	A sign attached to and projecting out from a building face or wall, generally at right angles to the building	PZ Staff	Clarification