

ORDINANCE NO. O-2009-70

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, TO CLARIFY CAP AND REDUCTION REQUIREMENTS FOR BILLBOARDS, AND TO ESTABLISH AWNING AND CANOPY MAINTENANCE REQUIREMENTS AND RELATED DEFINITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR 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 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, it is important to amend and update the sign regulation sections of the Unified Development Code;

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 VI., "Development Standards", Division H., " Sign Regulations", is hereby amended by amending the title of Division H. to read as follows:

DIVISION H. Sign and Billboard Regulations

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", is hereby amended by deleting a portion of Division I., and amending Division H. by combining Sections 10-431 and 10-432 into Section 10-430, and amending Section 10-430 to read as follows:

Sec. 10-430. Billboards

Billboards, off-premise signs, and similar outdoor advertising are allowed in M-1 and M-2 districts in the city and commercial properties in the ETJ provided the billboard meets all federal, state, and city requirements.

a. General Requirements.

All billboards located within the city limits and extraterritorial jurisdiction must adhere to the following requirements. The city's regulations herein governing billboards in the extraterritorial jurisdiction hereby supersede the regulations imposed by or adopted under Chapter 394 of the Texas Transportation Code.

1. Billboards may be up to 35 feet in height, measured from the highest point of the sign to ground level.

2. Billboards must not be located so as to create a safety hazard, or to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct the driver's view of approaching, merging, or intersecting traffic, or to be likely to cause a driver to be unduly distracted in any way.

3. Billboards may not be located within 1,500 feet any public park, public forest, public playground or scenic area, designated as such by the city or any other governmental agency.

4. Billboard faces may not contain any flashing, fluttering, undulating, swinging, rotating, or other moving elements or any reflective material such as foil, that may simulate movement or that is intended to distract drivers or passers by. (Ord. No. 0-2009-70; 6/10/09)

b. Allowed Area and Height

1. The sign area of a billboard must be calculated as the area enclosed within the outer edge of the frame (border) of each sign face, multiplied by the number of faces.

2. The maximum area for any one billboard must not exceed 672 square.

3. Billboard panels may not be stacked, or placed side by side.

4. Billboards may have an interior angle with a maximum 15 foot separation at outer edge.

5. Billboards greater or equal to 400 square feet in gross area must observe the following location retirements:

(a) Spacing: The minimum sign separation is 750 feet from any other billboards. Separation between billboards will be measured by the linear distance on the same side of the street.

(b) Setback: A minimum distance of twice the sign height must be observed from any residentially zoned district.

6. Billboards less than 400 square feet in gross area must observe the following location requirements:

(a) Spacing: The minimum sign separation will be 300 feet from any other billboards. Separation between billboards will be measured by the linear distance on the same side of the street.

(b) Setback: A minimum distance of twice the sign height from any residentially zoned district.

7. Any spherical, free-form, sculptural, or other non-planar sign element protruding outward, above, below, or to either side of the billboard will be measured as 50 percent of the sum of the areas of the four vertical sides of the smallest four-sided polyhedron that will encompass the protruding element. Inclusion of such elements will reduce the overall permitted size of the billboard.

8. Billboards that are illuminated, may be lighted only by lights that are properly installed, shaded or concealed, and are aimed so that the light will project onto the sign face and will not interfere with the vision of motor vehicle operators, nor shine directly onto nearby residential property located in any residentially zoned district. Illumination of such signs must not be flashing or intermittent.

9. Billboards will be considered a structure and must observe all setbacks and structure separation requirements of the zoning district in which they are located.

10. Any non-conforming billboard that is damaged or deteriorated to an extent where restoration costs exceed 60% of the cost of erecting a new sign of the same type at the same location, must be removed. (Ord. 0-98-41, 5/27/98) (Ord. No. 0-2009-70; 6/10/09)

c. Billboard Cap and Reduce

The number of billboards in the City is limited to the number of such signs in existence on April 24, 2008. To encourage the reduction of billboards, the owner of a sign that was lawfully erected in compliance with all standards then in effect or lawfully in place at the time it was annexed into the City, or that owner's designee, may be awarded credit for removing such sign.

1. One credit will be awarded for each face that is removed from a lawfully existing billboard. In order to receive a permit for the erection of a billboard, two credits must be used per each new face.

2. The City shall issue a permit to any billboard owner or designee holding sufficient credits, for erection of an billboard in a location approved by the City, in its sole discretion according to the requirements set forth in this section. The permit must state the number of faces to be erected and must address all requirements set forth in this section.

3. Credits are transferable.

4. Credit is received when a billboard owner or designee removes a sign voluntarily, even if the reason is loss of the lease. No credit may be awarded for the removal of a billboard that was in violation of Federal, State, or City laws when erected.

5. To be awarded a credit under the incentive program, a sign owner or designee must notify the City within 60 days of the removal of a billboard and receive a letter issued by the City awarding a credit. Failure to apply for a credit within 60 days from removal of a sign bars the

awarding of credit for that sign. Any unused credits will be held in reserve indefinitely, in order to give incentive for immediate removal of current faces. (Ord. No. 0-2009-70; 6/10/09)

Sec. 10-431- 439. Reserved

PART 3: That Tyler City Code Chapter 10, "Tyler Unified Development Code, Article VI., "Development Standards", Division H., "Sign Regulations", is hereby amended by amending Section 10-414 and adding a new subsection b. to read as follows:

Sec. 10-414. Awnings, Awning Signs, and Canopies

a. The copy/artwork on an awning or canopy must not exceed the area and size that is allowed for a wall sign on the wall to which it is attached. However, the total area of wall signs, canopy signs, and awning signs on any wall must not exceed the area and size allowed for a single wall sign and must not extend more than 75 percent of the length of the awning.

b. All awnings and canopies have the potential to be signs and are therefore subject to Sign Construction and Maintenance Standards set forth in Section 10-406. (Ord. No. 0-2009-70; 6/10/09)

PART 4: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XIII., "Definitions", Division A., "Definitions", is hereby amended by adding the following new definitions in the appropriate alphabetical order to read as follows:

Awning

An architectural projection that provides weather protection, identity, or decoration and is wholly supported by the building to which it is attached. An awning is comprised of a lightweight, rigid skeleton structure over which a rigid covering is attached. (Ord. No. 0-2009-70; 6/10/09)


Canopy

An architectural projection that provides weather protection, identity or decoration and is supported by the building to which it is attached and at the outer end by not less than one stanchion. A canopy is comprised of a rigid structure over which a rigid covering is attached. (Ord. No. 0-2009-70; 6/10/09)

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 June 12, 2009.

PASSED AND APPROVED this 10th day of June, A. D., 2009.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



AMY C. SANDERS
CITY ATTORNEY

