

ORDINANCE NO. O-2010-19

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, BY AMENDING ARTICLE VI, "DEVELOPMENT STANDARDS", BY CLARIFYING THE OUTDOOR TRANSIENT VENDOR REGULATIONS RELATED TO ANIMALS AND SPECIFYING CODE ENFORCEMENT DEPARTMENT AUTHORITY TO ENFORCE OUTDOOR TRANSIENT VENDOR REGULATIONS; AND AMENDING ARTICLE IX., "PERMITS AND FEES", BY AMENDING THE OUTDOOR TRANSIENT VENDOR PERMIT FEES; 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 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 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, 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, 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; and

WHEREAS, regulations governing sales of goods by Outdoor Transient Vendors are currently located in the Unified Development Code; and

WHEREAS, adoption of an ordinance amending the Outdoor Transient Vendor provisions to state expressly that the sale of animals is governed by the provisions will provide clarity to the public and will assist the Northeast Texas Public Health District in the exercise of its duties; and

WHEREAS, it is important to amend the fee provisions related to Outdoor Transient Vendor permits;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER:

PART 1: That Tyler City Code Chapter 10, “Tyler Unified Development Code”, Article VI., “Development Standards”, Division K., “Outdoor Sales, Storage, and Display”, is hereby amended by amending Section 10-454 to read as follows:

Sec. 10-454. Outdoor Transient Vendors

An outdoor transient vendor is a person, or the agent, consignee or employee of a person, who at a fixed location within the city engages in the temporary display, exhibition or delivery for the sale or offering for sale of any goods or services, including animals, with the intent of discontinuing such use upon the expiration of a time period not to exceed a maximum of 60 days. Outdoor transient vendor sales are not allowed in residential districts. The outdoor transient vendor regulations do not apply to vendors that are acting with the permission of a business at a fixed location, if such vendor sales occur at that fixed location and if such vendor sales are associated with that business’s primary type of good or services sold. Any person receiving an outdoor transient vendor permit related to the sale or offering for sale of animals shall comply with the vaccination requirements set forth in Tyler City Code Section 14-30 or successor, as applicable, and must be able to show proof of such vaccinations upon request. An outdoor transient vendor must obtain an outdoor transient vendor permit by making application to the Planning and Zoning Department prior to engaging in such activity. The outdoor transient vendor regulations in this section do not apply to fruit/vegetable stands, fruit/vegetable sales (roadside), the giving away of animals at any location, or the sale of animals at private residences. (Ord. No. 0-2010-19; 3/10/10)

a. Transient Vendor Application

Outdoor transient vendor permits are subject to approval of the planning director. A copy of said permit must be displayed prominently at the location.

b. General Requirements

1. Outdoor sales may only be allowed in C-2, DBAC, M-1 and M-2 zoning districts.

2. Each lot is allowed only one outdoor transient vendor at a time.

3. A maximum of two permits for no more than 30 contiguous days each per calendar year per lot/contiguous tract is allowed.

4. Outdoor transient vendors can occupy parking spaces, but only if the minimum number of parking spaces required under this Chapter for the existing business remains available for patrons to park their vehicles.

5. Outdoor transient vendors are not permitted on lots without a principle structure or use that has approved off-street parking and commercial driveways.

c. Penalties

Violation of any provision of this division, or violation of any term, condition, requirement, or duration of an outdoor transient vendor permit issued under this division, is unlawful and shall subject the violator to the penalties set forth in this chapter.

d. Suspension/Revocation

In addition to the penalties listed in subsection C above, an outdoor transient vendor permit may be revoked or suspended by the planning director with appeal to the Board of Adjustment within 10 days of the revocation or suspension.

e. Enforcement

Planning Department personnel, Police Department personnel and Code Enforcement Department personnel have full and complete authority to enforce the provisions of this section to outdoor transient vendors, and have authority to issue citations for violations thereof. (0-2003-38, 7/23/03) (0-2003-61, 11/26/03) (Ord. No. 0-2010-19; 3/10/10)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article IX., "Permits and Fees", Division E., "Fees", is hereby amended by amending the Fee Chart in Section 10-767 by amending the Outdoor Transient Vendor fee provisions as follows:

Zoning Temporary Permit (Outdoor Transient Vendor)	\$150.00
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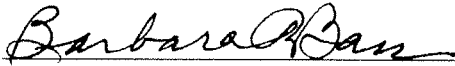
The Outdoor Transient Vendor permit fee shall not be required for a Non-Profit.

Non Profit – An organization or entity formed for the purpose of serving a purpose of public or mutual benefit other than the pursuit or accumulation of profits, i.e., 501(c)(3)s, schools, religious organizations, governmental organizations. Proof of non profit status is required. All other entities/individuals will be charged the Regular rate.
(Ord. 0-2003-38, 7/23/03) (Ord. No. 0-2010-19; 3/10/10)

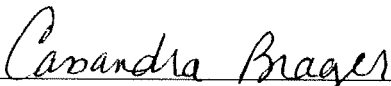
PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: 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 March 12, 2010.

PASSED AND APPROVED this 10th day of March, A. D., 2010.


BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

APPROVED:


GARY C. SANDERS, CITY ATTORNEY

