

ORDINANCE NO. O-2011-8

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 AMEND REGULATIONS RELATING TO USE REGULATIONS, DEVELOPMENT STANDARDS AND 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, 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 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 April 23, 2008, the City Council adopted Ordinance No. 0-2008-48, which amended Tyler City Code Chapter 10 by adopting the Unified Development Code governing zoning, subdivision, development and other land use regulations; and

WHEREAS, it is important to amend and update existing sections of the Unified Development Code; and

WHEREAS, the appointed UDC Steering Committee reconvened to review and recommend proposed changes to the Unified Development Code; and

WHEREAS, most of the recommended amendments to the Unified Development Code were presented to the Developers Roundtable; and

WHEREAS, the Planning and Zoning Commission initially reviewed proposed standards to the Unified Development Code ordinance on September 7, 2010 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, "Tyler Unified Development Code", Article III., "Use Regulations", Division A., "Use Table Overview", is hereby amended by amending the Table in Section 10-49, "Retail Sales and Service", by including a category for "Outdoor Vending Machine" to allow for such use in "C-1", "C-2", "DBAC", "PMXD-1", "PMXD-2", "PCD", "M-1", and "M-2" districts, with no other changes to Section 10-49, as follows:

	C-1	C-2	DBAC	PMXD-1	PMXD-2	PCD	M-1	M-2
Outdoor Vending Machine	X	X	X	P	P	P	X	X

Add to bottom of Table: (Ord. No. 0-2011-8; 1/26/2011)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division E., "Off-Street Parking and Loading", is hereby amended by amending the following portions of Table 10-360 of Section 10-360 as follows, with no other changes:

Table 10-360 Off-Street Parking Requirements

Use Category	Specific Use	General Requirement	Additional Requirement
Residential Uses			

Household Living	Dwelling unit in DBAC	1/DU	
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Required off-street parking may be accomplished through the submittal of appropriate documentation demonstrating that the off-street parking is provided within the downtown area.

Public and Civic Uses

Medical Facilities

4/1 patient bed

(Ord. No. 0-2011-8; 1/26/2011)

PART 3: 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 adding a new Section 10-458 to read as follows:

Sec. 10-458 Outdoor Vending Machines

These guidelines are intended to minimize the visual impacts within commercial areas and maintain the aesthetic within neighborhood commercial areas.

a. Outdoor vending machines shall be placed under roof overhangs or awnings to minimize their visibility from the street as well as provide protection from inclement weather to customers utilizing such devices.

b. A maximum of two outdoor vending machines are allowed per businesses with exterior property frontages of up to 100 feet. No more than three outdoor vending machines are allowed per location.

c. Outdoor vending machines located within the “C-1”, Light Commercial Districts are allowed as an accessory use only.

d. No outdoor vending machine shall be placed in a location so as to impede pedestrian access, block parking areas or create an unsafe condition. Vending machines shall not be installed in the public right-of-way or immediately adjacent so as to require customers to stand in the public right-of-way in order to use the machine.

e. No vending machine shall exceed eight feet in height, three feet in depth, or six feet in width.

f. Outdoor vending machines may be externally illuminated to provide security at night. Illumination shall comply with Article VI. Development Standards, Division J. Outdoor Lighting.

g. All outdoor vending machines selling entertainment media must comply with all applicable sexually oriented businesses and zoning regulations. Outdoor vending machines shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing light.

(Ord. No. 0-2011-8; 1/26/2011)

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 definition in the appropriate alphabetical order to read as follows:


Outdoor Vending Machine

Any self-contained machine and/or storage container located outside or in a non-enclosed space that dispenses or provides storage of a product or service. Newspaper racks, phones, and fixed automatic teller machines are not considered or regulated as vending machines as part of these guidelines. (Ord. No. 0-2011-8; 1/26/2011)

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 after 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 January 28, 2011.

PASSED AND APPROVED this 26th day of January, A. D., 2011.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



GARY C. LANDERS, CITY ATTORNEY