

ORDINANCE NO. O-2016-8

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 DEVELOPMENT STANDARDS, ENVIRONMENTAL REGULATIONS, AND DEVELOPMENT APPROVAL PROCEDURES; INCLUDING REGULATIONS RELATED TO DONATION CONTAINERS, ELECTRONIC MESSAGE CENTER BOARDS, COMMERCIAL PARKING LOTS, SUBDIVISION PLAT SUBMITTALS, DURATION OF TEMPORARY USE PERMITS, AND OTHER CLARIFICATIONS; 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, major recommended substantive amendments to the Unified Development Code were presented to the Developers Roundtable;

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 following portions of the table in Section 10-49 to read as follows, with no other changes:

Sec. 10-49. Nonresidential District Use Table

USE GROUP Use Category Use Sub-Category Specific Uses	AG	AR	RPO	C-1	C-2	DBAC	PMXD-1	PMXD-2	PCD	INT	M-1	M-2	MU	OSP	Use Standards
	Parking Garage/Lot (Commercial)					X	X	P	P	P	X	X	X		

(Ord. No. 0-2009-19, 3/11/09) (Ord. No. 0-2011-8; 1/26/11) (Ord. 0-2011-45, 6/8/11) (Ord. No. 0-2012-38; 4/25/12) (Ord. No. 0-2013-16, 2/27/13) (Ord. No. 0-2014-113; 12/10/14) (Ord. No. 0-2016-8; 1/27/16)

PART 2: That Tyler City Code Chapter 10, “Tyler Unified Development Code”, Article V., “Streets and Thoroughfares”, Division D., “Private Streets, Alleys, Ways, and Driveways”, is hereby amended by amending Section 10-208 to read as follows:

Sec. 10-208. Petition to Convert to Public Streets

A property owner’s association may request that the City accept private streets and alleys and the associated property as public streets and right-of-way. However, in no event will the City be obligated to accept said streets and alleys as public. Should the City elect to accept the streets and alleys as public, it may inspect the private streets and assess the lot owners for the initial expense of needed repairs to bring the streets or alleys up to City standards and concurrent with the City's acceptance of the streets and alleys. The City will be the sole judge of whether repairs are needed. The City may also require, at the association's expense and concurrent with the City’s acceptance of the streets and alleys, the removal of guard houses, access control devices, landscaping or other aesthetic amenities located within the street lot, as a condition of acceptance.

Private ways, as they are not constructed to public street standards, are not eligible for petition to convert to public maintenance. (Ord. No. 0-2014-97; 10/22/14) (Ord. No. 0-2016-8; 1/27/16)

PART 3: That Tyler City Code Chapter 10, “Tyler Unified Development Code”, Article VI, “Development Standards”, Division H., “Sign and Billboard Regulations”, is hereby amended by amending Section 10-415 to read as follows:

Sec. 10-415. Electronic Message Center Signs

a. No changes...

1. through 14. No changes...

15. EMC signs must not face single family zoned property consisting of the following zoning designations: RE, R-1A, R-1B, R-1C, R-1D, R-2, PXR and PUR or property used for single family regardless of zoning. Property used for institutional uses regardless of zoning may face single family zoned property or property used for single family.

(a) Property used for institutional uses regardless of zoning is allowed one EMC sign that shall not exceed 24 square feet; display must be turned off between 9:30 p.m. and 6:00 a.m., and the sign shall utilize amber light only. Signs within 50 feet of a property line of an adjacent residentially-used property are limited to amber light only. (Ord. No. 0-2016-8; 1/27/16)

16. through 17. No changes...

(b) No changes...

(Ord. No. 0-2013-41; 5/22/13)

b. No changes...

(O-2007-94; 7/25/07 (Ord. No. 0-2009-100, 9/23/09) (Ord. No. 0-2011-45, 6/8/11)

PART 4: 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 10-459 to read as follows:

Sec. 10-460 – 10-469. Reserved.

Sec. 10-459. Donation Containers

Donation containers include any structure or container which has four walls, a roof and a floor, not to exceed the dimensions of six feet one inch (6’1”) in width or depth, nor shall exceed seven feet (7’) in height, which is used for the donation of clothing, appliances, or other similar materials or products. Said structure or container shall be of adequate weight to withstand typical weather conditions as to not be moved within a parking lot by wind. The structure or container must be built substantially enough, as to not pose any public threat, and be painted or finished in a way that is visually coherent and conducive to its environment. Any use of such structures within the city not in compliance with this section will be unlawful. Any existing use of such structures prior to the adoption of this section that are not in compliance with this section must comply within 90 days of the adoption of this section.

a. Permit Required

A Temporary Use Permit (TUP) is required for each donation container that is not accessory to the primary use of the property. TUPs issued for donation bins operated by a 501(c)(3) non-profit organizations registered with the State of Texas are exempt from the filing fee. TUPs for donation containers may be issued for an initial 90 day period and may be renewed at the discretion of the Planning Director on an annual basis thereafter. Institutional uses are exempt from the permit requirement, however all other standards of this Section apply. The permittee must have written permission from the property owner on whose property the donation container will be placed.

b. Number of Containers

Donation containers shall be limited to one per acre with a maximum of four regardless of property size.

c. Location of Containers

1. Donation containers shall only be permitted in zoning districts that allow for outdoor display, provided that properties used for institutional uses are exempt from this restriction.
2. Donation containers shall not be located in the streetyard.
3. Donation containers shall not be located in any required landscaped area or bufferyard area, and shall not be located within fifty feet (50') of a property being used for residential purposes.
4. Donation containers shall not be located within a required building setback.
5. Donation containers shall be located on a paved surface at all times.
6. Donation containers shall not be located in any parking space required to meet the minimum parking requirements for a site and may not be located in any platted or dedicated access easements, fire lanes, or mapped floodplains.
7. Donation containers shall not be located on vacant lots.

d. Signage on Container

A donation container shall not be utilized as an off-premise sign. All donation containers not used as accessory structures, shall display, in a manner satisfactory to the Planning Director, information detailing the container's owner and contact information, prohibition of items being placed outside of container, and for-profit/nonprofit status.

e. Maintenance

Such containers must be properly maintained, kept in a condition free from rust, peeling paint, broken portions and deterioration, and must not be allowed to fall into a state of disrepair. The area around the container must be kept clean and free from litter, garbage, and debris.

f. Anchoring in Hazardous Conditions

It will be the obligation of the owner or user of such donation container to secure it in a manner that does not endanger the safety of persons or property in the vicinity of the temporary container. In the event of high winds or other weather conditions in which such container may become a physical danger to persons or property, the appropriate law enforcement officers may require removal within 48 hours of such temporary container by the container's owner. The donation container's owner will be responsible for any fines, fees or additional costs and may be assessed against the property on which the temporary container was located and may be filed as a lien against such property by the City.

g. Prohibited Uses

Such donation containers must not be used as a habitable structure, a detached, permanent storage building or structure, tool house, greenhouse, home workshop, children's playhouse, storage house, garden shelter, or similar purpose. Containers must not be utilized to store materials classified as hazardous by federal, state, or City laws.

(Ord. No. 0-2016-8; 1/27/16)

PART 5: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VIII., "Development Approval Procedures", Division D., "Subdivisions", is hereby amended by amending Section 10-635 to read as follows:

Sec. 10-635. Final Plat

[No changes to graphic...]

a. No changes...

b. Application Procedure and Requirements

A final plat for minor subdivisions may be approved by the Planning Director. A final plat for a major subdivision will require approval by the commission. Final plats must comply with the preliminary plat where applicable. The application must be accompanied by the following:

1. through 9. No changes...

10. The following two signed and notarized certificates placed on the face of the map:

(a), including ATTACHMENT "A". No changes...

(b) No changes to text. Amend ATTACHMENT "B" to read as follows, with no other changes:

**ATTACHMENT "B"
SURVEYOR'S STATEMENT**

I, _____, Registered _____ (Public
Land Surveyor No. _____, do hereby certify that the above plat was
prepared from an actual survey made _____ (by me), or
_____ (under my direction and supervision) on the
ground during _____ (Month and Year).

GIVEN UNDER MY HAND AND SEAL this the _____ day of
_____, 2_____.

(Signature)

(Seal)

11. An area closure computation printout.

c. through k. No changes...

(Ord. No. 0-2006-19; 2/8/06) (Ord. No. 0-2016-8; 1/27/16)

PART 6: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article IX., "Permits", Division B., "Temporary Use Permits", is hereby amended by amending Section 10-742 to read as follows:

Sec. 10-742. Review Criteria

a. through c. No changes...

d. Expiration

The Planning Director must set the time limit of the temporary use permit at the time of approval, but in no case may the initial approval duration exceed 90 days.

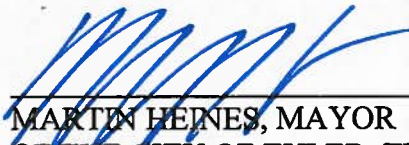
Renewals and their duration shall be at the discretion of the Planning Director.

(Ord. No. 0-2016-8; 1/27/16)

PART 7: 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 8: 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 Friday, January 29, 2016.

PASSED AND APPROVED this the 27th day of January, A.D., 2016.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS


A T T E S T:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2016-8
EXHIBIT "A"
UPDATE MATRIX
 1 of 2

UDC AMENDMENT RECOMMENDATIONS				
UDC Review Committee recommendations highlighted in yellow				
Section	Item Changed	How Changed		Potential Effect
		Old	New	
Whose Suggestion				
SUBSTANTIVE AMENDMENTS				
Article I Introductory Provisions				
Article II Zoning Districts				
Article III Use Regulations				
Article IV Subdivision Design and Improvements				
Article V Streets and Thoroughfares				
Article VI Development Standards				
10-415	Electronic Message Center	15. (a) Property used for institutional uses regardless of zoning is allowed one EMC sign that shall not exceed 24 square feet; display must be turned off between 9:30 p.m. and 6:00 a.m., and the sign shall utilize amber light only.	15. (a) Property used for institutional uses regardless of zoning is allowed one EMC sign that shall not exceed 24 square feet; display must be turned off between 9:30 p.m. and 6:00 a.m. and the sign shall utilize amber-light only. Signs within 50 feet of a property line of an adjacent residentially-used property are limited to amber light only.	Account for changes in technology.
10-459	Donation Containers	New Section	Regulations relating to donation containers. Requiring a permit for containers (nonprofits exempt from fee), standards for locating containers to mitigate potential nuisance.	Addresses standards for donation containers.
Article VII Environmental Regulations				
Article VIII Development Approval Procedures				
Article IX Permits and Fees				
Article X Administration and Enforcement				
Article XI Historic Preservation				
Article XII Annexation				
Article XIII Definitions				

ORDINANCE NO. O-2016-8
EXHIBIT "A"
UPDATE MATRIX
 2 of 2

UDC AMENDMENT RECOMMENDATIONS				
UDC Review Committee recommendations highlighted in yellow				
Section	Item Changed	How Changed		Potential Effect
		Old	New	
CLARIFICATION AMENDMENTS				
Article I Introductory Provisions				
Article II Zoning Districts				
Article III Use Regulations				
10-49	Nonresidential District Use Table	Allow parking lot/garage use in M-2	Development Community	Clarify allowable use.
Article IV Subdivision Design and Improvements				
Article V Streets and Thoroughfares				
10-208	Petition to Convert to Public Streets	Provide further clarification that lot owners may be assessed for the initial expense of bringing streets or alleys up to City standards prior to acceptance.	Legal Staff	Further clarification.
Article VI Development Standards				
Article VII Environmental Regulations				
Article VIII Development Approval Procedures				
10-635	Final Plat Application Procedure and Requirements	Require Area Closure Computation printout for final plats	GIS Staff	Aid GIS Dept. in computing a closure for entry into the parcel database.
10-635	Final Plat Application Procedure and Requirements	Sec. 10-635(B)(10)(b) Engineer's or Surveyor's Statement	Remove "Engineer or" from statement	Only surveyors may sign and seal a plat.
Article IX Permits and Fees				
10-742	Temporary Use Permits	<p>d. Expiration The planning director must set the time limit of the temporary use permit at the time of approval, but in no case must the duration exceed 90 days.</p> <p>d. Expiration The planning director must set the time limit of the temporary use permit at the time of approval, but in no case must the duration exceed 90 days. Renewals and their duration shall be at the discretion of the Planning Director.</p>	Planning Staff	Allow more discretion in length of temporary uses.
Article X Administration and Enforcement				
Article XI Historic Preservation				
Article XII Annexation				
Article XIII Definitions				