

ORDINANCE NO. O-2013-42

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 DESIGNATING THE CITY PLANNING AND ZONING COMMISSION AS THE AIRPORT ZONING COMMISSION FOR ALL AIRPORT ZONING PURPOSES UNDER TEXAS LOCAL GOVERNMENT CODE CHAPTER 241; AND DESIGNATING THE CITY ZONING BOARD OF ADJUSTMENT AS THE AIRPORT BOARD OF ADJUSTMENT FOR ALL PURPOSES UNDER TEXAS LOCAL GOVERNMENT CODE CHAPTER 241; AND AMENDING CHAPTER 12, "AIRPORT", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY DESIGNATING THE AIRPORT MANAGER AS THE AIRPORT ADMINISTRATIVE AGENCY, ADDING REFERENCES TO THE AIRPORT ADVISORY BOARD, AIRPORT ZONING COMMISSION AND AIRPORT BOARD OF ADJUSTMENT FOR PURPOSES OF AIRPORT ZONING REGULATIONS, AND DELETING PROVISIONS RELATED TO THE INACTIVE JOINT AIRPORT ZONING BOARD; 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, on April 23, 2008, the City Council adopted Ordinance No. O-2008-48, which amended Tyler City Code Chapter 10 by adopting the Tyler Unified Development Code governing zoning, subdivision, development and other land use regulations; and

WHEREAS, on May 25, 2011, the City Council, pursuant to Texas Local Government Code Section 43.102, adopted Ordinance No. O-2011-36 annexing Tyler Pounds Regional Airport and the rights-of-way of public roads and highways connecting the Airport to the City limits by the most direct route; and

WHEREAS, Texas Local Government Code Chapter 241 contains regulations related to municipal zoning authority around airports; and

WHEREAS, Texas Local Government Code Section 241.011(a) provides that to prevent the creation of an airport hazard, a political subdivision in which an airport hazard is located may adopt, administer, and enforce, under its police power, airport hazard area zoning regulations for the airport hazard area; and

WHEREAS, Texas Local Government Code Section 241.012(a) provides that a political subdivision may adopt, administer, and enforce, under its police power, airport compatible land use zoning regulations for the part of the controlled compatible land use area located within the political subdivision if the airport is used in the public interest of the public to the benefit of the political subdivision; and

WHEREAS, Texas Local Government Code Section 241.013(a) provides that a political subdivision with a population of more than 45,000 in which an airport used in the interest of the public to the benefit of the political subdivision is located may adopt, administer and enforce airport hazard zoning regulations applicable to an airport hazard area relating to the airport and located outside the political subdivision; and airport compatible land use zoning regulations applicable to a controlled compatible land use area relating to the airport and located outside the political subdivision; and

WHEREAS, Texas Local Government Code Section 241.015 provides that a political subdivision may incorporate an airport zoning regulation in a comprehensive zoning ordinance and administer and enforce it in connection with the administration and enforcement of the comprehensive ordinance, if the two zoning regulations apply, in whole or in part, to the same area; and the comprehensive zoning ordinance includes, among other matters, a regulation on the height of buildings; and

WHEREAS, pursuant to State law, the City of Tyler previously created a Joint Airport Zoning Board; and

WHEREAS, the Joint Airport Zoning Board has been inactive since the 1980's and since that time, the airport has been annexed as part of the City of Tyler; and

WHEREAS, Texas Local Government Code Section 241.016(a) provides that before an airport zoning regulation may be adopted, a political subdivision must appoint an airport zoning commission; and

WHEREAS, Texas Local Government Code Section 241.016(a) also provides that if the political subdivision has an existing planning commission or comprehensive zoning commission, that commission may be designated as the Airport Zoning Commission; and

WHEREAS, the City Council has created a Planning and Zoning Commission pursuant to Texas Local Government Code Chapter 211 and Tyler City Code Chapter 10; and

WHEREAS, it is important for the City Council to delete the outdated provisions related to the Joint Airport Zoning Board and to appoint the existing Planning and Zoning Commission as the Airport Zoning Commission for all purposes under State law; and

WHEREAS, Texas Local Government Code Section 241.032(a) provides that airport zoning regulations must provide for a Board of Adjustment; and

WHEREAS, Texas Local Government Code Section 241.032(b) provides that if a zoning board of appeals or adjustment exists, it may be designated as the board of adjustment under Chapter 241; and

WHEREAS, the City Council has created a Zoning Board of Adjustment pursuant to Texas Local Government Code Chapter 211 and Tyler City Code Chapter 10; and

WHEREAS, it is important for the City Council to designate the existing Zoning Board of Adjustment as the Airport Board of Adjustment for all purposes under State law; and

WHEREAS, Texas Local Government Code Section 241.031(a) provides that airport zoning regulations must provide for the administration and enforcement of the regulations by an administrative agency; and

WHEREAS, Texas Local Government Code Section 241.031(a)(2) provides that the airport administrative agency may be an existing official, board, or other agency of the political subdivision adopting the regulations; and

WHEREAS, the City of Tyler has established the Airport Advisory Board in Tyler City Code Chapter 12, and the Board's duties include making recommendations to the City Council regarding Airport construction, expansion, improvements, maintenance and operation; and

WHEREAS, it is important for the Airport Advisory Board to review any proposed airport zoning regulations, airport hazard zoning regulations, or compatible land use regulations affecting the Airport;

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 X., "Administration and Enforcement", is hereby amended by amending Section 10-770 to read as follows:

Sec. 10-770. Planning and Zoning Commission

a. Establishment and Membership

There is hereby created a Planning and Zoning Commission which must consist of seven members.

b. Powers and Duties

1. The Planning and Zoning Commission will act and function as the city municipal planning commission. The Commission will have the power and duty to make and adopt rules and regulations governing its procedure.

2. The Commission will make, adopt, and recommend to the City Council a comprehensive (master) plan for the physical development of the city, including any area outside of its boundaries and within five miles thereof which in the Commission's judgment may bear a relation to city planning, subject to state law limitations.

3. The Commission will also act and function as the city zoning commission, and will have all powers granted by state law.

4. The Commission is designated as the Airport Zoning Commission for all airport zoning purposes under Texas Local Government Code Chapter 241 or successor. The Commission shall be responsible for recommending airport zoning regulations, airport hazard zoning regulations, and airport compatible land use regulations, to the City Council. All proposed airport zoning regulations, airport hazard zoning regulations, and compatible land use regulations affecting the airport, shall be also be reviewed by the Airport Advisory Board, which shall provide its recommendations.

5. The Commission will review all proposed annexations and recommend action to the City Council.

c. Comprehensive (Master) Plan

1. Authority

The Planning and Zoning Commission may, from time to time, amend, extend, or add to the comprehensive (master) plan, and will have all of the powers and duties vested, created, and granted by state law.

2. Scope

(a) The comprehensive plan, with accompanying maps, plats, charts, and descriptive matter, must show the Commission's recommendations for city development as well as the extraterritorial jurisdiction.

(b) The Planning and Zoning Commission may, from time to time, adopt and publish a part of the plan covering one or more major sections or city subdivisions or one or more of the aforesaid or other subject matter.

3. Content

The comprehensive plan may include or depict, among other things:

(a) The general location, character, and extent of the streets, viaducts, bridges, waterways, boulevards, parkways, playgrounds, squares, parks, aviation fields and other public ways, grounds and open spaces.

(b) The general location of public buildings and other public property and general location and extent of public utilities and terminals, either publicly or privately owned and operated, water, lights, sanitation, transportation, communication, power and other purposes.

(c) The removal, relocation, widening, narrowing, vacation, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings or property, utilities or terminals.

(d) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises, subject to the limitations set forth in state law.

4. Area development plans. Plans for the specific areas of the City may be established to analyze the needs and opportunities for growth. The recommendations from the area development plans shall be in line with the principles established in the Comprehensive Plan (Ord. No. O-2013-16-16; 2/27/13).

d. Training

Within one year of assuming duties, and on an annual basis thereafter, Commission members must attend at least one training session or seminar that addresses zoning issues. (ORD. 0-97-62, 12/10/97) (Ord. 0-2003-38, 7/23/03) (Ord. No. 0/2010/20, 3/10/10) (Ord. No. 0-2013-42; 5/22/13)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article X., "Administration and Enforcement", is hereby amended by amending Section 10-771 to read as follows:

Sec. 10-771. Zoning Board of Adjustment

a. Establishment, Membership, and Vacancies

There will be a Zoning Board of Adjustment consisting of five members and two alternate members to be appointed by the City Council. An alternate member will serve in the absence of one or more of the regular members. All cases to be heard by the board will always be heard by a minimum of four members or members and alternates.

b. Meetings

The board will adopt rules in accordance with this division. Meetings must be held at the call of the chair and at such other times as it may determine. Such chair, or in the chair's absence the acting chair, may administer oaths and compel the attendance of witnesses. All board meetings must be open to the public. The board must keep minutes of its proceedings, showing all official actions. The minutes must be filed in the planning department.

c. Authority to File

Appeals to the board may be taken by any person aggrieved or affected by any decision of any administrative official. Such appeal must be taken within 30 days, by filing with the planning department and with the board a notice of appeal specifying the grounds thereof. The planning department will forward to the board all papers constituting the record upon which the action appealed from was taken. (Ord. No. 0-2011-45, 6/8/11)

d. Powers and Duties

1. The Zoning Board of Adjustment is empowered to grant the following exceptions to the provisions of the Tyler Unified Development Code:

(a) The reconstruction of a nonconforming building which has been damaged by fire, act of God, or the public enemy to the extent of more than 70 percent of double its assessed value as listed on the records of the city tax department. In granting such an exception, the board must find it necessary for the preservation and enjoyment of a substantial property right and not detrimental to the public welfare.

(b) The erection and use of a building or the use of premises in any location for a public service corporation for public utility purposes which the board deems reasonably necessary for the public convenience or welfare.

2. To authorize a variance from the terms of the unified development code that is not contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship, and so that the spirit of the zoning ordinance shall be observed and substantial justice done.

3. The Zoning Board of Adjustment is designated as the Airport Board of Adjustment for all purposes under Texas Local Government Code Chapter 241 or successor.

e. Public Hearings

1. In exercising the above-mentioned powers, the board may reverse, affirm, or modify the decision appealed.

2. The concurring vote of four members of the board (including alternates when seated) is necessary to reverse any decision of any administrative official, to decide in favor of the applicant, or to effect any variation in such ordinance.

f. Permits

Any special exception or variance authorized by the board will allow for the issuance of a building permit or certificate of occupancy within 90 days of the date of the favorable board action, unless the board grants a longer period.

g. Lapse of Permits; Permission to Reapply for a Permit

1. If a building permit or certificate of occupancy has not been issued within 90 days (or such extended period as the board may grant) the special exception or variance will be deemed waived and all rights there under terminated. Such termination and waiver will be without

prejudice to a subsequent application for a special exception or appeal for a variance to the board in accordance with applicable rules and regulations.

2. No application for a special exception or appeal for a variance to the board may be allowed on the same piece of property for six months from the date of the board's ruling, except in cases where other property in the same zoning district has been altered or changed by a board ruling within the same six-month period.

h. Appeals

Any person(s), jointly or severally, aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board or bureau of the City, may present to a court of record a petition, duly verified setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the Planning Department. (Note) (ORD. 0-97-62, 12/10/97) (Ord. No. 0-2013-42; 5/22/13)

PART 3: That Tyler City Code Chapter 12, "Airport and Transit", Article I, "Airport Boards", is hereby amended by amending Section 12-2 to read as follows, by deleting existing Sections 12-3 and 12-4 in their entireties, and adopting a new Section 12-3 to read as follows:

Sec. 12-2. Advisory Board function.

The Airport Advisory Board shall have the following duties:

1. Make recommendations to the City Council concerning leases and permits;
2. From time to time make such general studies of airport construction and operation as may be useful in keeping the Airport efficient and adequate for the needs of the City and of the air transportation industry;
3. Make recommendations to the City Council with respect to Airport construction, expansion, improvements, maintenance and operation, airport zoning regulations, airport hazard zoning regulations, and airport compatible land use regulations;
4. Inform the City Manager of any failure by Airport personnel to carry out any orders or policies adopted by the City Council; and
5. In an advisory capacity, work toward the general improvement of the Airport and the advancement of the City as an air transportation center. (Ord. No. 0- 97-60; 11/26/97) (Ord. No. 0-2013-42; 5/22/13)

Sec. 12-3. Administrative authority; airport zoning regulations.

The Airport Manager is hereby designated as the Administrative Agency responsible for the administration and enforcement of all Airport zoning regulations pursuant to Texas Local Government Code Chapter 241 or successor statute. Any proposed airport zoning regulations, airport hazard zoning regulations, and compatible land use regulations affecting the airport, shall be reviewed by the Airport Advisory Board, which shall provide its recommendations. The Planning

and Zoning Commission has been designated as the Airport Zoning Commission in Section 10-770. The Zoning Board of Adjustment has been designated as the Airport Board of Adjustment in Section 10-771. (Ord. No. 0-2013-42; 5/22/13)

Secs. 12-4 - 12-10. Reserved.

PART 4: 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 5: 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 May 24, 2013.

PASSED AND APPROVED this 22nd day of May, A. D., 2013.

Barbara D Bass

BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

Cassandra Brager APPROVED:
CASSANDRA BRAGER, CITY CLERK *Gary C. Landers*
GARY C. LANDERS, CITY ATTORNEY

