

ORDINANCE NO. O-2013-77

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, SUBDIVISION DESIGN AND IMPROVEMENTS, APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS, HISTORIC PRESERVATION, CERTIFICATES OF APPROPRIATENESS AND DEMOLITION, NATIONAL HISTORIC DISTRICTS, DEVELOPMENT STANDARDS, AND AWNING SIGNS,; 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 IV., "Subdivision Design and Improvement", Division A., "Subdivisions", is hereby amended by amending Section 10-103 to read as follows:

Sec. 10-103. Apportionment of Municipal Infrastructure Costs

a. General

The costs borne by a developer for any municipal infrastructure improvements required as a condition of approval may not exceed an amount roughly proportional to the cost of infrastructure improvements needed to serve the proposed development. This includes payments made via dedication, fees, or the payment of construction costs. The required public improvements will be determined by the developer's professional engineer and approved by a professional engineer retained by the City of Tyler.

b. Determination

Rough proportionality shall be determined by comparing the additional amount of traffic capacity which will be supplied to the transportation network by the requested infrastructure improvements to the number of vehicle trips created by the proposed development. If the traffic demand created by the proposed development is roughly equal to or greater than the increase in traffic capacity supplied by the requested improvements, then the improvements are proportional.

c. Supply Calculation

To calculate the supply being added to the transportation network by the requested improvements, the length of the street adjacent to the subdivision (in miles) is multiplied by the number of additional lanes being added to the system and multiplied by the traffic capacity which the lane can carry. The length of street adjacent to a subdivision shall be determined by a survey provided by the owner. The number of lanes required for a street shall be based on the adopted Master Street Plan. If additional street width is constructed to allow for on street parking, the developer may get credit for an additional lane of traffic provided that the additional street width is at least nine feet wider than the minimum required street width. The capacity of a street is also based on the street's designation in the Master Street Plan. Table 10-103a lists the capacities for different street designations.

Table 10-103a. Roadway Capacity

Roadway Designation	Hourly Vehicle-mile Capacity per Lane Mile of Roadway
Major Arterial	600
Minor Arterial	580
Major Collector	460
Residential Collector	420
Local Street	420

$$\begin{array}{ccccccc}
 \text{Length of Improvement} & \times & \text{Number of Lanes} & \times & \text{Capacity} & = & \text{Supply} \\
 \text{(miles)} & & \text{(lane)} & & \text{(vehicle-miles/lane-mile)} & & \text{(vehicle-} \\
 & & & & & & \text{miles)}
 \end{array}$$

d. Demand Calculation

To calculate the demand created by a site, the peak hour traffic generated by the site is multiplied by the average trip length. According to the latest Tyler and Smith County Texas travel surveys, the average trip length for Tyler/Smith County is 6.1 miles. Many of Tyler's arterial roads are state highways which are maintained by TxDOT. For the proportionality calculation, only impacts to City maintained roads will be considered. To solely account for impacts to the City transportation network, the trip length has been reduced to 1.5 miles. The traffic generated by a site varies based on the use of the land. The peak hour traffic values for different uses are listed in Table 10-103b.

Table 10-103b. Peak Hour Generator Values

Land Use Category	Peak Hour Generator	Per Each
Residential		
Single-Family Detached Home	1.01	dwelling unit
Apartment	0.67	dwelling unit
Condominium/Townhouse (Owner Occupied)	0.52	dwelling unit
Townhouse (Rental)	0.73	dwelling unit
Mobile Home Park	0.60	dwelling unit
Assisted Living	0.38	bed

Land Use Category	Peak Hour Generator	Per Each
Institutional		
Elementary School	1.29	student
Middle School/Junior High	0.53	student
High School	0.41	student
Junior College	0.12	student
University	0.24	student
Library	7.02	1,000 sq.ft. General Floor Area (GFA)
Church	11.76	1,000 sq.ft. GFA
Hospital	1.61	1,000 sq.ft. GFA
Clinic	4.43	Full-Time Doctor
Recreational		
Park	1.59	acre
Marina	0.27	berth
Golf Course	4.59	hole
Movie Theater	45.91	screen
Health/Fitness Club	4.06	1,000 sq.ft. GFA
Recreational Community Center	2.69	1,000 sq.ft. GFA
Office		
General Office	1.55	1,000 sq.ft. GFA
Medical-Dental Office	4.45	1,000 sq.ft. GFA
Commercial		
Apparel Store	4.20	1,000 sq.ft. GFA
Arts and Crafts Store	6.21	1,000 sq.ft. GFA
Bank	53.46	1,000 sq.ft. GFA
Day Care Center	13.91	1,000 sq.ft. GFA
Electronics Superstore	4.50	1,000 sq.ft. GFA
Furniture Store	0.92	1,000 sq.ft. GFA
Gasoline/Service Station with Convenience Market	97.14	1,000 sq.ft. GFA
Hardware/Paint Store	11.18	1,000 sq.ft. GFA

Land Use Category	Peak Hour Generator	Per Each
Home Improvement Superstore	5.40	1,000 sq.ft. GFA
Hotel	0.87	room
Motel	0.76	room
New Car Sales	2.97	1,000 sq.ft. GFA
Nursery/Garden Center	11.00	1,000 sq.ft. GFA
Pharmacy/Drugstore (without Drive-Through)	11.07	1,000 sq.ft. GFA
Pharmacy/Drugstore (With Drive-Through)	9.51	1,000 sq.ft. GFA
Restaurant (Sit-Down)	20.00	1,000 sq.ft. GFA
Restaurant (Fast-Food)	54.81	1,000 sq.ft. GFA
Shopping Center	4.97	1,000 sq.ft. GFA
Supermarket	18.93	1,000 sq.ft. GFA
Toy/Children's Superstore	5.53	1,000 sq.ft. GFA
Tire Store	5.65	service position
Vehicle Lubrication Shop	4.60	service position
Vehicle Parts Sales (without installation)	6.44	1,000 sq.ft. GFA
Vehicle Service Center (with repair)	4.01	1,000 sq.ft. GFA
Industrial		
Light Industrial	1.08	1,000 sq.ft. GFA
Heavy Industrial	0.68	1,000 sq.ft. GFA
Manufacturing	0.75	1,000 sq.ft. GFA
Warehouse	0.61	1,000 sq.ft. GFA
Utilities	0.80	1,000 sq.ft. GFA

$$\text{Total Peak Hour Generator} \quad \times \quad \text{Trip Length} \quad = \quad \text{Demand}$$

(vehicles)

(miles)

(vehicle-miles)

Peak hour generators are based on values from Trip Generation, 7th Edition by the Institute of Transportation Engineers. Any land uses not identified in the table but listed in the appropriate Trip Generation manual may still be accepted. (Ord. No. 0-2013-___; 8/28/13)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article IV., "Subdivision Design and Improvements", Division E., "Participation and Escrow Policies", is hereby amended by amending Section 10-141 to read as follows:

Sec. 10-141. Facilities Eligible for City Participation

The developer is encouraged to inquire about City participation at a time before or upon submittal of the preliminary plat. The City may participate in the costs of installing public improvements according to the following schedule:

(a) through (c). No changes...(Ord. No. 0-2013-___; 8/28/13)

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 10-414 to read as follows:

Sec. 10-414. Awning Signs

a. No changes...

b. No changes...

c. The entire length and height of backlit awnings in which the lighting causes the illumination of the awning, of which the length will be limited to 75 percent of the façade of the building, will be counted toward the allowed square footage of the attached sign. (Ord. No. 0-2009-70, 6/10/09) (Ord. No. 0-2013-___; 8/28/13)

PART 4: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XI., "Historic Preservation", Division B., "Certificate of Appropriateness", is hereby amended by amending Sections 10-785, 10-790, and 10-792 to read as follow, with no other changes to Division B.:

Sec. 10-785. Applicability

No person or entity may construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of a building or structure or relocate any building or structure designated on the Tyler historic landmark register, or within a historic district overlay, unless a Certificate of Appropriateness or Certificate of Demolition has been issued pursuant to this Division. Any proposed construction, alteration, change, restoration, removal or demolition of a building or structure from property within a National Historic District and designated as High or Selected Medium Priority according to the Historic Research Survey, shall be presented to the Planning Department for a non-binding review, but shall not require a Certificate of

Appropriateness or Certificate of Demolition. The Planning Department shall provide suggestions and/or recommendations to the Applicant regarding the proposed activities. The term "exterior architectural feature" shall include, but not limited to, the kind, color and basic texture of all exterior building materials and such features as windows, doors, lights, signs and other exterior features. At least quarterly, Planning Department Staff shall present a report to the Board listing all City-issued building permits for buildings or structures located within a National Historic District and designated High or Selected Medium Priority according to the Historic Research Survey. (Ord. No. 0-2009-99; 9/23/09) (Ord. No. 0-2011-45, 6/8/11) (Ord. No. 0-2013-___; 8/28/13)

Sec. 10-790. Building Permit Issuance

a. Permit applications which require Certificate of Appropriateness or Certificate of Demolition..

Upon completion of the board or City Council hearing and recommendation to the property owner or within 60 days, whichever occurs first, a building permit will be issued in accordance with the application of the property owner, provided that such application complies with the building code and other ordinances.

b. Permit applications which do not require Certificate of Appropriateness or Certificate of Demolition.

Permit applications which do not require a Certificate of Appropriateness or Certificate of Demolition shall be issued a building permit upon application review completion by the Planning Department and/or the Historical Preservation Board and recommendation to the property owner or within 10 business days, whichever occurs first, in accordance with the application of the property owner, provided that such application complies with the Building Code and other ordinances. (Ord. No. 0-98-81, 10/7/98) (Ord. No. 0-2009-99; 9/23/09) (Ord. No. 0-2013-___; 8/28/13)

Sec. 10-792. Alteration or Demolition of Historic Landmarks

a. No person or entity may construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of a building or structure or relocate any building or structure designated as historic landmarks, or structures within local districts, or structures 50 years or older where federal funding is involved unless a Certificate of Appropriateness for Rehabilitation or a Certificate of Demolition has been issued by the Board or City Council, as applicable. The term "exterior architectural feature" shall include, but not be limited to, the kind, color and basic texture of all exterior building materials and such features as windows, doors, lights, signs and other exterior fixtures.

b. Application procedure: Applications for Certificates of Appropriateness and Certificates of Demolition and other required information shall be submitted to the Planning Department which will then submit the documents to the Chief Building Official for a structural and financial feasibility review prior to public hearing before the Historical Preservation Board, except as otherwise directed in this Section.

1. No changes...
2. No changes...
3. No changes...

4. Applications submitted to the Neighborhood Services Director shall be forwarded to the Planning Department which will forward to the Chief Building Official providing a sufficient time for review prior to the hearing scheduled before the Board.

c. Time and Notice of Board Hearing: Within forty-five (45) days of the receipt of a completed Application, the Board shall hold a public hearing, as scheduled by the Planning Department. Property owners and known mortgagees and lien holders shall be notified of the date, time and place of the public hearing. If the subject property was initially tagged as substandard and in violation of the Minimum Urban Standards, Chapter 7, Art. III., or if a Certificate of Demolition is being sought, then property owners and known mortgagees and lien holders shall be notified of the date, time and place of the public hearing by certified mail, return receipt requested, restricted signature, at least ten (10) days prior to the hearing. If the subject property was so tagged as substandard or a Certificate of Demolition is being sought, then the Planning Department shall also send a copy of the notice letter described herein to the Neighborhood Services Director.

d. Procedure for Board Review and Public Hearing before City Council under certain circumstances:

1.(a) through (e). No changes...

2. If the Board's decision on a Certificate of Appropriateness is appealed to the City Council pursuant to Chapter 1, Article IV., or if the Board conducts a hearing on a property that has been tagged as substandard under Chapter 7 or for which a Certificate of Demolition is being sought, then the Planning Department shall place the Board's recommendation on the next available City Council agenda. The Board's recommendations shall be forwarded to the City Council, which shall have final authority to grant a Certificate of Appropriateness for Rehabilitation or Certificate of Demolition, as applicable. If the City Council is considering an appeal of a Certificate of Appropriateness pursuant to Chapter 1, Article IV., then notice of the date, time and place of such hearing before the City Council shall be provided to the property owner. If the City Council is conducting a hearing on a property that has been tagged as substandard under Chapter 7 or for which a Certificate of Demolition is being sought, notice of such hearing before the City Council will be provided to the property owner and known mortgagees and lien holders by certified mail, return receipt requested, restricted signature at least ten (10) days prior to the hearing. At either type of hearing, the City Council shall review the Board recommendation and make a final decision regarding the issuance of a Certificate under this chapter.

3. Following the board's or City Council's decision, as applicable, the Planning Department shall either hand-deliver or forward to the property owner within two (2) days of the hearing, the following:

(a) through (f). No changes. (Ord. 0-99-52, 7/21/99) (Ord. No. 0-2005-70, 9/14/05) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2013-__; 8/28/13)

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

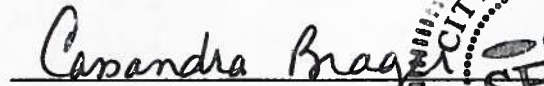
be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be August 30, 2013.

PASSED AND APPROVED this 28th day of August, A. D., 2013.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

APPROVED:


DEBORAH G. PULLUM, CITY ATTORNEY