

**ORDINANCE NO. O-2018-83**

**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 REGULATIONS RELATED TO LANDSCAPING EXEMPTIONS FOR CERTAIN NON-CONFORMING DEVELOPMENTS, LANDSCAPING INSTALLATION CERTIFICATION, FENCES, OFF-STREET PARKING, TEMPORARY SIGNAGE, AND DEFINITIONS, INCLUDING THE DEFINITION OF SEXUAL ENCOUNTER CENTER; 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**, State law, at Texas Local Government Code Chapter 243, authorizes a municipality to adopt regulations regarding sexually oriented businesses as the municipality considers necessary to promote the public health, safety, and welfare; 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 certain provisions in the Unified Development Code in City Code Chapter 10; and

**WHEREAS**, the Unified Development Code Review Committee has reviewed the proposed changes; and

**WHEREAS**, on October 2, 2018, the Planning and Zoning Commission reviewed the proposed changes;

**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 VI., "Development Standards", Division A., "Landscaping and Tree Preservation", is hereby amended by amending Section 10-300 to read as follows:

**Sec. 10-300. Landscape Requirements for Nonconforming Uses**

- a. No changes...
- b. Regulation of Nonconforming Developments

1. The Planning Director is authorized to approve an alternative compliance parking plan allowing shared parking arrangements for nonresidential uses with different hours of operation.

2. The Planning Director may permit up to 100 percent of the parking required for one use to be supplied by the off-street parking spaces provided for another use if the Planning Director determines that the various activities will have peak parking demands at different periods of the day or week.

3. In order to approve an alternative compliance parking plan for shared parking, the Planning Director must find, based on competent evidence provided by the applicant, that there is no substantial conflict in the principal operating hours of the uses for which the sharing of parking is proposed.

4. Regardless of any exemptions in part 3, non-conforming developments which contain parkways with impermeable surfaces shall be planted with grass or other typical permeable landscaped ground cover and left unpaved except for sidewalks and driveways with any expansion of existing buildings or construction of new buildings in the street yard. The established Master Street Plan right-of-way width will determine the maximum parkway width for the purposes of this requirement. (Ord. No. 0-2018-83; 10/24/18)

**PART 2:** That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division A., "Landscaping and Tree Preservation", is hereby amended by amending Section 10-307 to read as follows:

**Sec. 10-307. Landscaping and Tree Preservation Compliance**

- a. All required landscaping and screening must be installed as part of the project construction. Upon installation, the general contractor shall submit to the Building Official a signed certification stating that all required landscaping, buffering and screening has been installed in accordance with the approved plan. If the installed landscaping is not in compliance with the approved plan, a final "As-Built" plan shall be submitted to the Planning Department for review per Section 10-294. The City reserves the right to verify all landscaping installations before or after the issuance of a Certificate of Occupancy or final inspection. (Ord. No. 0-2018-83; 10/24/18)
- b. through f. No changes...

**PART 3:** That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division C., "Fences and Walls", is hereby amended by amending Section 10-331 to read as follows:

**Sec. 10-331. Required Conditions**

a. Location and Height

1. through 2. No changes...

3. Fencing requirements in residential districts including "AR":

(a) Fences located in the front yard, along the front property line and/or the side property line(s), to a depth less than or equal to the required front yard setback of shall be restricted to a maximum height of four feet. Such fences shall be at least 50 percent open and any concrete or masonry footing, not including any required retaining walls, shall be limited to 24 inches from grade. Fence materials shall be in accordance with subsection b. of this Section. For Key Lots as defined in this Chapter, the maximum height of a fence erected in the designated front and side yards of a lot which is zoned residential and is adjacent to the rear yard of an abutting lot, may exceed the four foot maximum height limitation. This does not apply to fences spanning the width of the front yard. Where applicable, all fencing or walls must not interfere with traffic sight visibility or public safety. (Ord. No. 0-2010-119; 11/11/10) (Ord. No. 0-2017-100; 11/8/17) (Ord. No. 0-2018-83; 10/24/18)

(b) Fences located in the rear or side yards, along the rear property line or the side property line(s), at a depth greater than the required front yard setback, are restricted to a maximum height of eight feet.

(c) Driveway gates shall not be built within the required front yard setback in residentially zoned districts, unless in accordance with a "PUR" final site plan. Legal nonconforming driveway gates must be replaced within six months of removal to maintain nonconforming status. (Ord. No. 0-2017-100; 11/8/17)

4. No changes...

b. through e. No changes...

**PART 4:** 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 Section 10-351 to read as follows:

**Sec. 10-351. General Requirements**

a. and b. No changes...

- c. Except in DBAC, INT (not on arterial streets), PMXD-1, and PMXD-2, no parking or maneuvering will be allowed within the street right-of-way between the curb, improved roadway, or travel portion of the rights-of-way and the common right-of-way property line, unless approved by the planning director. It is the responsibility of the property owner to certify at the time formal application is made for a building permit or certificate of occupancy and compliance that the site provides sufficient space and facilities necessary to assure that no vehicle parking or maneuvering activity will take place on public right-of-ways or on private property not under the property owner's control.
- d. Except in DBAC, INT (not on arterial streets), PMXD-1, and PMXD-2 no public street, right-of-way, or public property may be used to gain direct access to a parking space except that an alley may be used for maneuvering space to reach a parking space, and public streets may be used to gain direct access to residential usage. (Ord. No. 0-2018-83; 10/24/18)
- e. through i. No changes...

**PART 5:** 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 Section 10-362 to read as follows:

#### **Sec. 10-362. Shared Parking Arrangements**

- a. No changes...
- b. Authorization and Criteria
  - 1. through 3. No changes other than to revise planning director to Planning Director...
  - 4. A request for approval of a shared parking arrangement must be accompanied by such information determined by the Planning Director as necessary to evaluate the peak parking demand characteristics or difference in hours and/or days of operation, including, but not limited to, a description of the uses, the space occupied by each use, and their operational characteristics, a site plan, nearest transit stop, and a parking study prepared by a licensed professional traffic engineer or equivalent qualified professional which justifies the reduction in parking requested. (Ord. No. 0-2018-83; 10/24/18)
- c. No changes...
- d. Agreement
 

An agreement providing for the shared use of parking areas, executed by the parties involved, must be filed with the Planning Director, in a form approved by the City Attorney and recorded at the Smith County Land Records office by the applicant. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. Agreements must guarantee long-term availability of the parking, commensurate with the use served by the parking. (Ord. No. 0-2018-83; 10/24/18)
- e. No changes...

**PART 6:** 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 10-416 to read as follows:

#### **Sec. 10-416. Temporary Signs and Holiday Decorations**

- a. No changes...
- b. Temporary Sign Types

- 1. Commercial Banners and Coroplast Signs

Commercial banners and coroplast signs are subject to the requirements set forth in the table in Sec. 10-409 and of this section. There are three types of commercial banners:

- i. Ground-mounted banners and signs:

Ground-mounted banners and signs shall be supported by two posts implanted into the ground.

ii. Pole-mounted banners: Displayed vertically, mounted on two rods that extend perpendicularly to a pole. Such banners may be part of an overall exterior signage package.

iii. Wall mounted banners: Displayed horizontally on a exterior building wall, face, or side. Wall mounted banners typically display information regarding commercial events, such as grand openings, sales, or property leasing information.

For the purposes of this section, a set or group of up to 10 pole-mounted banners will be considered a single banner. (Ord. No. 0-2010-119; 11/10/10) (Ord. No. 0-2018-83; 10/24/18)

- 2. No changes...
- 3. No changes...

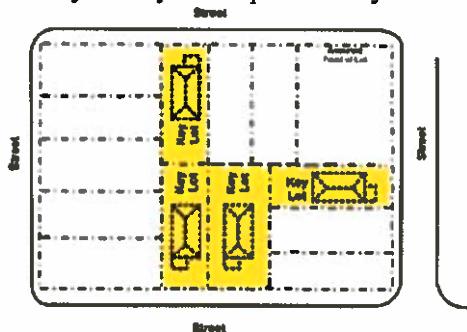
**PART 7:** That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XIII., "Definitions", Division A., "Definitions", is hereby amended by adding or amending the following definitions to read as follows, in the appropriate alphabetical order, with no other changes to the Division except as shown:

**Day Care Center (Children)**

A child care facility, licensed by the state, without a State certified curriculum under public or private auspices, which cares for six (6) or more children under sixteen (16) years of age who are apart from their own family or relatives during a part of the day. The term "day care center" shall not include overnight lodging, medical treatment, counseling or rehabilitative services and does not apply to any school. (Ord. No. 0-2018-83; 10/24/18)

**Lot, Key**

Any lot, the side property line of which abuts the rear property line of one or more lots and which are not separated by an alley or any other public way.



(Ord. No. 0-2018-83; 10/24/18)

**Pre-School**

A publicly certified or privately accredited facility for children typically ranging from three to four years of age. (Ord. No. 0-2018-83; 10/24/18)

**School**

A public, private or parochial educational facility, that provides a curriculum of elementary and/or secondary academic instruction, including pre-school/kindergartens, elementary schools, junior high/middle schools and high schools. (Ord. No. 0-2018-83; 10/24/18)

**Sexual Encounter Center**

a. A business or commercial enterprise that, as one of its primary business purposes and on premises owned, controlled or associated with such business or commercial enterprise, offers, for any form of consideration, one or more of the following activities to occur on-site:;

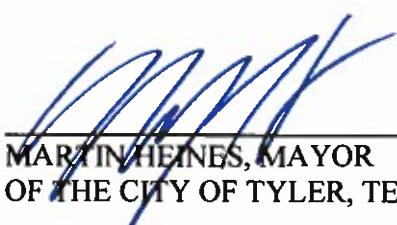
1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one or more of the employees of the establishment is in a state of nudity or semi-nude; or
3. The fondling or other erotic touching of robots, machines, devices, dolls, models, mannequins, toys or other products, including but not limited to those representing human beings, the specified anatomical areas of human beings, animals or plant-life species; or
4. Sexual activities between person(s) and robots, machines, devices, dolls, models, mannequins, toys or other products, including but not limited to those representing human beings, the specified anatomical areas of human beings, animals or plant-life species.

b. For purposes of subsections 3. and 4. above, the term "robot" shall mean a machine resembling a living creature (fictional or non-fictional, real or imagined), and able to replicate certain movements or functions of such living creature. (Ord. No. 0-2018-83; 10/24/18)

**PART 8:** 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 9:** 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, October 26, 2018.

**PASSED AND APPROVED** this the 24<sup>th</sup> day of October, A.D., 2018.

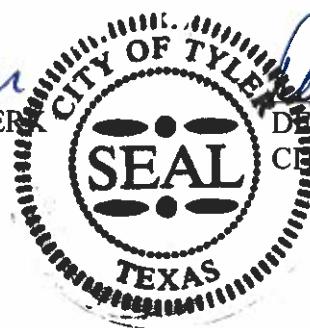
  
MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

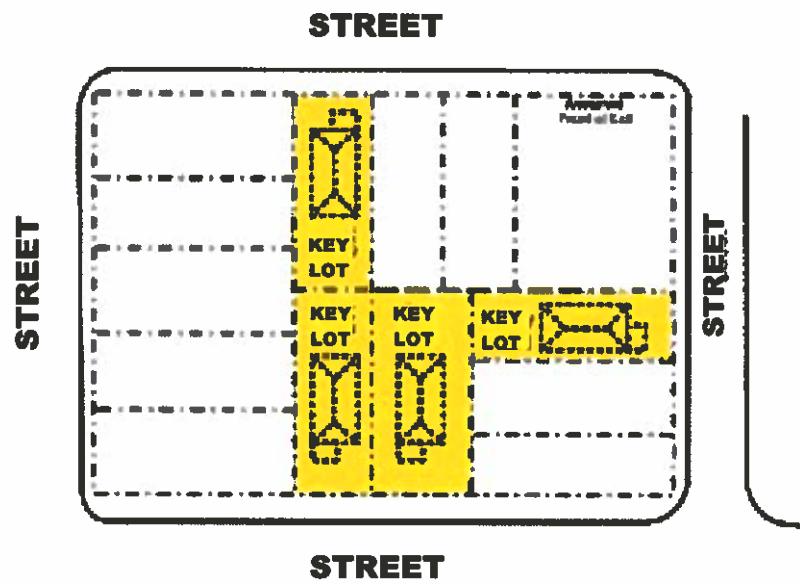
*Cassandra Brager*  
CASSANDRA BRAGER, CITY CLERK

APPROVED:

*Deborah G. Pullum*  
DEBORAH G. PULLUM,  
CITY ATTORNEY



ORDINANCE NO. O-2018-83  
EXHIBIT "A"  
KEY LOT ILLUSTRATION



**ORDINANCE NO. O-2018-83  
ATTACHMENT "B"  
UPDATE MATRIX  
1 of 5**

**ORDINANCE NO. O-2018-83  
ATTACHMENT "B"  
UPDATE MATRIX  
2 of 5**

**ORDINANCE NO. O-2018-83**  
**ATTACHMENT "B"**  
**UPDATE MATRIX**  
**3 of 5**

UDC AMENDMENT RECOMMENDATIONS		UDC Review Committee recommendations highlighted in yellow		How Changed	Whoever	Safeguards	Potential Effect	Staff Notes	Draft Ordinance
Section	Item Change	On	Clarification Amendments						
			<p>c. Except in UDCAC, PFDOD-1, and PFDOD-2, no parking or maneuvering will be allowed within the street right-of-way between the curb, in the street right-of-way between the curb, inner curb roadway, or travel portion of the right-of-way and the common right-of-way property line, unless approved by the property owner. It is the responsibility of the property owner to certify at the time formal application is made for a building permit or certificate of occupancy and compliance that the site provides sufficient space and facilities necessary to ensure that no vehicle parking or maneuvering activity will take place on public right-of-ways or on private property not under the property owner's control.</p> <p>d. Except in UDCAC, UDC (Techno) Indicator to construct, PFDOD-1, and PFDOD-2, if public street, right-of-way, or public property may be used to gain direct access to a parking space larger than an ally may be used for maneuvering space to reach a parking space, and public streets may be used to gain direct access to residential units.</p>						
10-301	On-Street Parking and Loading (General Requirements)	Shared Parking Arrangements						Staff	County
10-302								Community	County

**ORDINANCE NO. O-2018-83  
EXHIBIT "B"  
UPDATE MATRIX  
4 of 5**

**ORDINANCE NO. O-2018-83  
EXHIBIT "B"  
UPDATE MATRIX  
5 of 5**