

ORDINANCE NO. O-2021-23

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 SIGNAGE, ADDING PROVISIONS RELATED TO PROJECTED IMAGE SIGNS, DISTINGUISHING BETWEEN THE DEFINITIONS OF BILLBOARD AND PROJECTED IMAGE SIGN; FENCING AND RETAINING WALLS, DRIVEWAYS NEAR RAILROAD QUIET ZONES, BUFFERYARDS, AMENDING THE DEFINITION OF VEHICLE, AND OTHER MINOR 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, 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 March 2, 2021, the Planning and Zoning Commission reviewed the proposed changes; and

WHEREAS, on March 4, 2021, the Construction Board of Adjustment and Appeals reviewed the proposed changes to Sections 10-330 and 10-331 related to retaining walls;

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 V., "Streets and Thoroughfares", Division D., "Private Streets, Alleys, Ways, and Driveways", is hereby amended by amending Section 10-211 to read as follows:

Sec. 10-211. Private Driveways

a. through h. No changes...

i. Driveways within Railroad Quiet Zones

A railroad quiet zone is a defined area where railroads have been directed to cease routine sounding of train horns when approaching public highway-rail grade crossings. No commercial or industrial driveway may be constructed within 60 feet of a railroad gate arm within a defined railroad quiet zone. Railroad quiet zones which have been established within the City are as follows:

Quiet Zone	Extents
Downtown (Union Pacific Railroad)	E Duncan Street (Crossing ID 789810Y) to W Elm Street (Crossing ID 789819K)

(Ord. No. 0-2021-23; 3/24/21)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division B., "Bufferyards", is hereby amended by amending the table in Section 10-321 to read as follows:

Sec. 10-321. General Requirements

a. through d. No changes...

Required Bufferyard Type by Adjacent Zoning District

District	RE, R-1A, R-1B, R-1C, R-1D, PUR	AR, R-2, R-MF, PXR, PMF	C-1, PMXD-1 RPO, INT	C-2, PCD, PMXD-2	M-1, M-2
RE, R-1A, R-1B, R-1C, R-1D, PUR**		Type A	Type B	Type B	Type C
AR, R-2, NR, R-MF, PMF**	Type A		Type A	Type B	Type C
C-1, PMXD-1**, POD**, RPO, INT	Type B	Type A		Type B	Type C
C-2, DBAC*, PCD**, PMXD-2**	Type B	Type B	Type B		Type C
M-1, M-2	Type C	Type C	Type C	Type C	

Note: The more intense use is required to provide the buffer.

*Bufferyards are only required in DBAC when adjacent to residential districts. Requirement may be waived upon the submittal of a letter of support from adjacent, affected property owner.

**Bufferyard types for planned developments may be established per site plan in consideration of approved base zoning.

(Ord. No. 0-2009-19; 3/11/09) (Ord. No. 0-2010-119; 11/10/10) (Ord. No. 0-2011-45; 6/8/11) (Ord. No. 0-2019-87; 10/8/19); (Ord. No. 0-2021-23; 3/24/21)

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 10-330 to read as follows:

Sec. 10-330. Purpose

This division is intended to guide the construction of fences and retaining walls within the city in any of the zoning districts provided that the fences and retaining walls comply with the requirements of this code as to location, height, and composition. (Ord. No. 0-2021-23; 3/24/21)

PART 4: 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

In all cases, fences and retaining walls must meet the following:

a. Location and Height

1. Fences generally may be constructed along the rear and side property lines, if located entirely on private property and not in excess of the maximum height allowed.

2. Fences must not be designed or constructed so as to interfere with traffic sight visibility. Fences determined to cause immediate danger may be removed by the city. (Ord. No. 0-2010-119; 11/10/10) (Ord. No. 0-2013-16; 2/27/13)

a.3 through a.4. No changes...

b. through e. No changes...

f. Retaining Walls

Retaining walls shall be in accordance with the requirements of Chapter 6, Section 6-11 of these Ordinances. (ORD. 0-97-62, 12/10/97); (Ord. No. 0-2021-23; 3/24/21)

PART 5: 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 the Table in Section 10-409 to add new provisions related to projected image signs to the Projecting Signs subsection to read as follows, with no other changes to the Table:

Sec. 10-409. Sign Standards in Nonresidential Districts

Sign Type district/use	Max. Number	Max. Area (sq. ft.) or Max. Width (ft.)	Max. Height (feet)	Max. Projection or Min. Setback (ft)	Additional Requirements
Electronic message center (EMC) on marquee, DBAC	1/ marquee face	40	na	na	Requires Special Use Permit; DBAC properties within the downtown planning area defined in the Comprehensive Plan See Sec. 10-415
Projected Image Sign in DBAC	1/facade	80%	na	na	Requires Special Use Permit, See Sec. 10-419
Roof Sign					

(Ord. No. 0-2019-62; 8/14/19) ; (Ord. No. 0-2021-23; 3/24/21)

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 adding a new Section 10-419 to read as follows:

Sec. 10-419 Projected Image Signs in DBAC

a. Requirements

Projected image signs in DBAC properties within the downtown planning area defined in the Comprehensive Plan may only be permitted through a Special Use Permit approved by City Council and be subject to the following unless further stipulated by City Council:

1. The projected image of a projected image sign is limited to nonresidential and mixed-use properties in DBAC at least four stories or 40 feet in height.
2. The projected image shall not fall onto a surface with a high degree of specular reflectivity, such as polished metal or glass. The image shall be positioned to harmonize with the architectural character of the building(s) to which it is projected, and shall avoid any projection, relief, cornice, column, window, or door opening.
3. A maximum of one projected image may occupy 80 percent of the side or rear wall area of a building. The projected image will be in addition to the allowable permanent signage.
4. The path of the projection shall not cross public rights-of-way or pedestrian pathways at a height of less than seven feet.

5. Projected image signs are subject to the UDC illumination standards unless the City determines that additional illumination will be permitted because it will pose no material detrimental effects on neighboring properties or public rights-of-way due to the location and/or timing of the display.
6. Projected image signs shall contain static messages only, and animated, dissolve, or fade transitions are not allowed. A minimum hold of one minute is required for each message.
7. The source of the projection shall not project any sounds or music.
8. Projected image signs may contain on-premise or off-premise messages unless restricted by City Council. The source of the projection may be from an adjoining property subject to an agreement between property owners. (Ord. No. 0-2021-23; 3/24/21)

PART 7: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XIII., "Definitions", Division A., "Definitions", is hereby amended by amending or adding the following definitions in the appropriate alphabetical location:

Billboard

An off-premise sign used to direct attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located. Billboard face includes the part of the sign that contains the advertising or information contents and all of the interrelated parts and materials, such as beams, poles, braces, apron, catwalk, and stringers, that are used, designed to be used, or intended to be used to support or display a sign face. The term "Billboard" shall not include projected image signs, as defined herein, and that involve off-premise advertising. Projected image signs shall be governed separately under the Unified Development Code. (Ord. No 0-2014-8; 1/22/14); (Ord. No. 0-2021- ; 3/24/21)

Projected Image Sign

A non-animated sign projected on the face of a wall from an electronic device that is not on the plane of the wall. (Ord. No. 0-2021-23; 3/24/21)


Vehicle

A device in or by which a person or property is or may be transported or drawn on a public thoroughfare, other than a device used exclusively on stationary rails or tracks. (Ord. No. 0-2021-23; 3/24/21)

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, March 26, 2021.

PASSED AND APPROVED this the 24th day of March, A.D., 2021.



DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY