

ORDINANCE NO. O-2017-100

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 RELATING TO FENCING STANDARDS AND MATERIALS; FRONT YARD FENCES; DRIVEWAY GATES; SUBDIVISION DESIGN AND IMPROVEMENTS; PLATTING OF REMAINDER TRACTS; TREE CREDITS; STREETS AND THOROUGHFARES AND DEFINITIONS; 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, 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 November 7, 2017, 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 IV., "Subdivision Design and Improvements", Division A., "Subdivisions", is hereby amended by amending Section 10-101 to read as follows:

Sec. 10-101. Applicability

- a. Except as otherwise provided, these regulations apply to all subdivisions of land, located within both the City limits and within the City's extraterritorial jurisdiction.
- b. The following types of subdivision do not require approval by the City. However, the City will not extend utilities or issue building permits for the development of any property which has not received final plat approval, except as otherwise provided by this code.
 1. The division of land into parts greater than five acres, where each part has access and no required public improvement is to be dedicated.
 2. The creation of a remainder of a tract caused by the platting of a portion of the tract, provided the remainder is larger than five acres and subject to the following criteria.
 - a. A valid preliminary plat must be approved for the development.
 - b. The calculation of a remainder area(s) will be determined by the contiguous amount of unplatted developable land.
 - c. Floodplain areas identified on the preliminary plat are not required to be included on a final plat and may not be considered part of the remainder area calculation. In the case a proposed street shown on the preliminary plat or Master Street Plan is adjacent to or crosses a floodplain area, the right-of-way for the street must be dedicated in accordance to the phasing plan on the preliminary plat.
 - d. Any area of land required to be dedicated as Master Street Plan right-of-way or is proposed to remain undevelopable may not be considered part of the remainder area calculation.
 - e. In no case shall a final plat exclude land so as to leave a remainder or portion of a remainder of such size, shape, or location as not to be developable in accordance with the requirements of the Subdivision ordinance, Sec. 10-165 pertaining to reserve strips, or any other section of this ordinance. (Ord. No. 0-2017-100; 11/8/17)

3. and 4. No changes...

c. No changes...

d. No building permit or certificate of occupancy will be issued for any parcel or tract of land inside the City limits until such property has received final plat approval and is in substantial conformity with these subdivision regulations, and no private improvements may take place or be commenced except in conformity with these regulations. (Ord. No. 0-2017-100; 11/8/17)

e. No changes...

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article V., "Streets and Thoroughfares", Division A., "Master Street Plan", is hereby amended by amending Section 10-154, to read as follows:

Sec. 10-154. Street Dedications and Reservations

a. Dedication of Right-of-Way

The developer must provide all right-of-way required for existing or future streets, as shown in the master street plan or other valid development plans approved by the planning and zoning commission or city council as applicable. Greenbelts, buffers, strips of land, open spaces or undevelopable land as shown on the preliminary plat and phasing plan must be platted at the time the adjacent developable lots are platted. In the case of perimeter streets, half of the total required right-of-way for such streets must be provided. However, in some instances more than half will be required depending on the actual or proposed alignment of the street. (Ord. No. 0-2017-100; 11/8/17)

b. through d. No changes...

PART 3: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article V., "Streets and Thoroughfares", Division B., "Street Design Standards", is hereby amended by amending Section 10-165 to read as follows:

Sec. 10-165. Reserve Strips

The creation of reserve strips will not be permitted in such a manner as to deny access from adjacent property to any street, alley, or officially approved place, except as noted in Sec. 10-113 pertaining to double frontage lots. Greenbelts, buffers, strips of land, open spaces or undevelopable land as shown on the preliminary plat and phasing plan must be platted at the time the adjacent developable lots are platted. (Ord. No. 0-2017-100; 11/8/17)

PART 4: 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 10-295 to read as follows:

Sec. 10-295. Landscape Area Requirements

a. through d. No changes...

e. Tree Credits

1. through 3. No changes...

4. Each existing tree or newly planted tree which is maintained in a living and growing condition may be credited towards the required number of shrubs according to the following schedule:

Existing Saved Trees	Credit
3 2" – 6" DBH	4 shrubs
7" – 9" DBH	6 shrubs
10" – 12" DBH	8 shrubs
15" or greater DBH	10 shrubs

Credit in areas zoned R-MF, AR, PMF, PMXD-1, PMXD-2, and may not exceed 50% of the required trees or shrubs.

Credit for saving an existing tree cannot count toward more than one landscape element for which such credit is granted in this chapter, i.e., double counting of tree credits is not allowed. (Ord. No. 0-2017-100; 11/8/17)

5. No changes...

f. and g. No changes...

PART 5: 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 walls must meet the following:

a. Location and Height

1. No changes...

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. There are certain circumstances, however, whereby the maximum height of a fence erected in the designated front and side yards of a lot which is zoned residential may exceed the four foot maximum height limitation. In these circumstances, 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)

(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. Fencing requirements for commercial, industrial and other non-residential districts:

(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, are restricted to a maximum height of eight feet. (Ord. No. 0-2017-100; 11/8/17)

(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 15 feet. (Ord. No. 0-2017-100; 11/8/17)

b. Fence Materials

1. Composition of fences is restricted to materials commonly used in fence construction, e.g., wood, chain link wire materials (e.g. chain link, chicken wire, hog wire, etc.), brick, wrought iron or other iron material, stone, pipe, and concrete. Chain link wire materials and pipe fencing is prohibited within the front yard setback in residential districts including "AR". (Ord. No. 0-2017-100; 11/8/17)
2. Fences composed of tires, bumpers or other new or used materials, not commonly used in fence construction, are prohibited in all zoning districts.
3. The use of barbed wire, razor wire, concertina wire, or similar materials is prohibited in all zoning districts with the exception of on the top of the fence in all yards for uses in the M-1 and M-2 districts, the top of the fence in the rear yard for C-2 districts, for bona fide agricultural uses and in any district where state or federal law requires facilities to install such fencing. The Planning Director may grant a property owner permission to use such fencing materials on a limited basis and in areas where there will be little or no visibility from the public right of way. (Ord. No. 0-2017-100; 11/8/17)

c. through e. No changes...

PART 6: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VIII., "Development Approval Procedures", Division D., "Subdivisions", is hereby amended by amending Section 10-630 to read as follows:

Sec. 10-630. General

a. No changes...

b. Exceptions

The following types of subdivision do not require approval by the City. However, the City may not extend utilities or issue building permits for the development of any property which has not received final plat approval, except as otherwise provided by this development code.

1. The division of land into parts greater than five acres, where each part has access and no required public improvement is to be dedicated.
2. The creation of a remainder of a tract caused by the platting of a portion of the tract, provided the remainder is larger than five acres and subject to the following criteria.
 - a. A valid preliminary plat must be approved for the development.
 - b. The calculation of a remainder area(s) will be determined by the contiguous amount of unplatted developable land.
 - c. Floodplain areas identified on the preliminary plat are not required to be included on a final plat and may not be considered part of the remainder area calculation. In the case a proposed street shown on the preliminary plat or Master Street Plan is adjacent to or crosses a floodplain area, the right-of-way for the street must be dedicated in accordance to the phasing plan on the preliminary plat.
 - d. Any area of land required to be dedicated as Master Street Plan right-of-way or is proposed to remain undevelopable may not be considered part of the remainder area calculation.
 - e. In no case shall a final plat exclude land so as to leave a remainder or portion of a remainder of such size, shape, or location as not to be developable in accordance with the requirements of the Subdivision ordinance, Sec. 10-165 pertaining to reserve strips, or any other section of this ordinance. (Ord. No. 0-2017-100; 11/8/17)
3. and 4. 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 the following definitions to read as follows, in the appropriate alphabetical order, with no other changes to the Division except as shown:

Land, Developable

Land that is suitable for the construction and use of structures which are compliant with the development provisions of this code. This term does not apply to existing and proposed rights-of-way, flood areas, easements, buffers and any other conditions which restrict the placement of a structure (see undevelopable land). (Ord. No. 0-2017-100; 11/8/17)


Land, Undevelopable

Land that is not reasonably suitable for the construction and use of structures which are compliant with the development provisions of this code. Conditions which may be considered to determine whether land is undevelopable include severe grade changes; flood areas; conditions that isolate one portion of a property from another portion where access is not dedicated to the undeveloped portion; or existing and proposed setbacks, easements, buffers, or any other site restrictions that prohibit development of a given area by law, ordinance or private agreement. (Ord. No. 0-2017-100; 11/8/17)

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, November 10, 2017.

PASSED AND APPROVED this the 8 day of November, A.D., 2017.




MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:


DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2017-100
EXHIBIT "A"
UPDATE MATRIX
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UDC AMENDMENT RECOMMENDATIONS			
Section	Item Changed	How Changed	Whose Suggestion Potential Effect
SUBSTANTIVE AMENDMENTS			
Article I Introductory Provisions			
Article II Zoning Districts			
Article III Use Regulations			
Article IV Subdivision Design and Improvements			
10-101	Subdivisions	Clarify exemptions, revise 20+ acre remainder exemption from plating	Reduce exemption to five acres subject to criteria intended to ensure connectivity, Master Street Plan dedication, and prevent the creation of reserve strips
			Allow for smaller updated setbacks that are not intended to circumvent code requirements and setbacks.
			Development Community
Article V Streets and Thoroughfares			
Article VI Development Standards			
10-331	Fences and Walls a. Location and Height	Residential front yard fences require Special Use Permit approval.	Remove the requirement for Special Use Permit approval of front yard fences in residential establishments permissible materials, establish driveway gate setback, clarify where material fencing in industrial and commercial districts.
			Allow for front yard fencing in residential districts without SUP, prohibit chainlink in front yards, setback for gates on individual lots.
			City Council
Article VII Environmental Regulations			
Article VIII Development Approval Procedures			
Article X Administration and Enforcement			
Article XI Historic Preservation			
Article XII Annexation			
Article XIII Definitions			

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EXHIBIT "A"
UPDATE MATRIX
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UDC AMENDMENT RECOMMENDATIONS		How Changed	New	Whose Suggestion	Potential Effect
Section	Item Changed	Old	New		
UDC Review Committee recommendations highlighted in yellow					
CLARIFICATION AMENDMENTS					
Article I Introductory Provisions					
Article II Zoning Districts					
Article III Use Regulations					
Article IV Subdivision Design and Improvements					
Article V Streets and Thoroughfares					
10-154	Master Street Plan a. Dedication of Right-of-Way		(add) Greenbelts, buffers, strips of land, open spaces or undevelopable land as shown on the preliminary plat and phasing plan must be planted at the time the adjacent developable lots are planted.	Staff	Prevent reserve strips
10-166	Reserve Strips	The creation of reserve strips will not be permitted in such a manner as to deny access from adjacent property to any street, alley, or officially approved place, except as noted in Sec. 10-113 pertaining to double frontage lots.	(add) Greenbelts, buffers, strips of land, open spaces or undevelopable land as shown on the preliminary plat and phasing plan must be planted at the time the adjacent developable lots are planted.	Staff	Prevent reserve strips
Article VI Development Standards					
10-236	Landscape Area Requirements e. Tree Credits	4. Each existing tree or newly planted tree which is maintained in a living and growing condition may be credited towards the required number of shrubs according to the following schedule: Existing Saved Trees Credit 3" - 6" DBH 4 shrubs 7" - 9" DBH 6 shrubs 10" - 12" DBH 8 shrubs 15" or greater DBH 10 shrubs	4. Each existing tree or newly planted tree which is maintained in a living and growing condition may be credited towards the required number of shrubs according to the following schedule: Existing Saved Trees Credit 3" - 6" DBH 4 shrubs 7" - 9" DBH 6 shrubs 10" - 12" DBH 8 shrubs 15" or greater DBH 10 shrubs	City Staff	Clarity to allow newly planted trees meeting minimum specs to count toward shrubs.
Article VII Environmental Regulations					
Article VIII Development Approval Procedures					
10-530	Subdivisions General b. Exceptions	1. The division of land into two or more parts where all parts are larger than five acres, where each part has access and no required public improvement is to be dedicated.	1. The division of land into two or more parts where all parts are larger than five acres, where each part has access and no required public improvement is to be dedicated. Revise 20 acre exemption per Substantive Amendment	Staff	Consistency with Local Government Code
Article IX Permits and Fees					
Article X Administration and Enforcement					
Article XI Historic Preservation					
Article XII Annexation					
Article XIII Definitions					
	Land, Developable		Land that is suitable for the construction and use of structures which are compliant with the development provisions of this code. This term does not apply to existing and proposed rights-of-way, flood areas, easements, buffers and any other conditions which restrict the placement of a structure (see undevelopable land).	Staff	Clarity