



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: O-2

Date: November 13, 2012

Subject: Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 10 to adopt zoning regulations to regulate drive-through service areas that allow for passage of motor vehicles and used primarily for the retail sale or delivery of pre-packaged foods or beverages for off-premises consumption, if located in the "M-2", General Industrial District and through issuance of a Special Use Permit. This ordinance will have no effect on restaurant drive-through lanes or existing uses.

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Item Reference: Texas Local Government Code Chapter 211; Tyler City Code Chapter 10

Pursuant to Texas Local Government Code Chapter 211, the City of Tyler has established zoning regulations in the Unified Development Code in Tyler City Code Chapter 10. The City may also adopt reasonable regulations designed to protect the public health, safety and welfare. There are specific safety and traffic concerns associated with allowing a vehicle to drive through an enclosed or unenclosed drive-through service area when a driver can accept delivery of pre-packaged foods or beverages for off-premises consumption. Accordingly, a zoning regulation is adopted to regulate such uses through issuance of a Special Use Permit, following Planning and Zoning Commission review and recommendation. "Pre-packaged" is defined as a food or beverage that is not prepared on-site. Instead, this ordinance is designed to address specifically the safety, pollution and aesthetic issues associated with both enclosed and unenclosed drive-through service areas that are used primarily for the sale or delivery of pre-packaged food or beverages directly to the public for off-premises consumption. Such facilities would be limited to the "M-2", General Industrial District only. The Planning and Zoning Commission considered this Ordinance on November 6, 2012.

This zoning regulation will have no effect on restaurant drive-through lanes or existing uses. All other current drive-through regulations in the Unified Development Code will remain unchanged.

The Planning and Zoning Commission considered this Ordinance on November 6, 2012. A resident, Grant Hudgens, stated he had questions that were previously answered during the presentation.

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Kristi C. Roberts, Coalition Director Next Step Community Solutions (NSCS), wanted clarification on the proposed drive-through ordinance and stated that the coalition is in favor of limiting alcohol-related advertising near schools. No one spoke in opposition to the proposed amendments.

RECOMMENDATION:

The Planning and Zoning Commission, by a 6-0 vote, recommends adoption of the attached ordinance amending Tyler City Code Chapter 10 to adopt zoning regulations to regulate drive-through service areas that allow for passage of motor vehicles and used primarily for the retail sale or delivery of pre-packaged foods or beverages for off-premises consumption, if located in the "M-2", General Industrial District and through issuance of a Special Use Permit. This ordinance will have no effect on restaurant drive-through lanes or existing uses.

**Drafted/Recommended By:
Department Leader**



City Planner

**Edited/Submitted By:
City Manager**

ORDINANCE NO. 0-2012-90

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, “UNIFIED DEVELOPMENT CODE”, ARTICLE III., “USE REGULATIONS”, DIVISION B., “USE CATEGORY DESCRIPTIONS”, OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY ADOPTING ZONING REGULATIONS REGULATING DRIVE-THROUGH SERVICE AREAS THAT PROVIDE FOR PASSAGE OF MOTOR VEHICLES AND USED PRIMARILY FOR RETAIL SALES OR DELIVERY OF PRE-PACKAGED FOODS OR BEVERAGES FOR OFF-PREMISES CONSUMPTION IF LOCATED IN THE “M-2”, GENERAL INDUSTRIAL DISTRICT AND THROUGH ISSUANCE OF A SPECIAL USE PERMIT; 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, 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, under State law, the City of Tyler has established zoning and subdivision regulations in the Unified Development Code in Tyler City Code Chapter 10; and

WHEREAS, an arrangement allowing drive-through retail sales within an enclosed or unenclosed drive-through service area provides the opportunity for traffic conflicts between vehicles and pedestrians both inside and outside of the building, such as carbon monoxide in close proximity to materials designed for human consumption; and

WHEREAS, pursuant to State law, the City of Tyler has established Special Use Permit provisions in the zoning regulations in City Code Chapter 10, Article IX., Division A.; 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, Section 1 of the Tyler City Charter states that the City of Tyler may license, and regulate persons, corporations and associations engaged in any business, occupation, profession or trade; and

WHEREAS, the City Council is acting under authority of Texas Local Government Code Sections 51.001 and 51.072; and

WHEREAS, the City Council is acting under authority of Tyler City Charter Sections 1, 2 and 6;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 10, “Unified Development Code”, Article III., “Use Regulations”, Division B., “Use Category Descriptions”, is hereby amended by amending Section 10-55 to read as follows:

Sec. 10-55. Other Uses Not Yet Categorized

- a. Accessory
No changes...
- b. Drive-through Facilities

1. Facilities used to provide or dispense products or services, through an attendant or a window or an automated machine, to persons remaining in vehicles that are in a designated stacking aisle and not in a building or facility as defined in subsection 2 of this section. A drive-through facility may be in combination with other uses, such as a financial institution, personal service use, retail store, or eating establishment. A drive-through facility does not include a car wash, gas station, or building or facility regulated by subsection 2 of this section.

2. Drive-through service areas used primarily for retail sale or delivery of pre-packaged foods or beverages for off-premises consumption. The use of an enclosed or unenclosed drive-through service area that allows passage of motor vehicles therein for the primary purpose of retail sale of, or retail delivery of, pre-packaged foods or beverages for off-premises consumption, is only allowed through the issuance of a Special Use Permit. For purposes of this subsection, the term “enclosed” means a drive-through service area allowing entry and exit of motor vehicles, that is used primarily for retail sale or delivery directly to the public, and which is completely enclosed or covered by, or the majority of the service area is enclosed or covered by, solid walls, windows or partitions on at least two (2) sides. For purposes of this subsection, the term “pre-packaged foods or beverages” shall include foods or beverages for off-premises human consumption that are not prepared on site at the location. Activity under this subsection is allowed only in the “M-2”, General Industrial District, and only if the City Council approves the issuance of a Special Use Permit pursuant to Chapter 10, Article IX., Division A. (Ord. No. 0-2012-90; 11/13/12)

- c. Home Occupation
No changes...
- d. Wireless Communication Facility
No changes....

PART 2: 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 3: 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 November 15, 2012.

PASSED AND APPROVED this the 13th day of November, A.D., 2012.

BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

GARY C. LANDERS, CITY ATTORNEY