

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: August 4, 2015		DATE SUBMITTED: July 17, 2015	
DEPARTMENT OF ORIGIN: Water Serv. /Dev. Serv.		SUBMITTED BY: M. Jurica/M. Zimmermann	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of an ordinance amending the text of Bryan Code of Ordinances Chapter 38, Environment, and Chapter 130, Zoning, clarifying the definition of “residential outdoor storage,” permitting residential outdoor storage only in certain areas under certain conditions, and removing provisions in conflict therewith.			
SUMMARY STATEMENT: City staff is proposing that the City Council authorize removal of provisions governing residential outdoor storage from Bryan Code of Ordinances Chapter 130, Zoning, and to authorize adoption of provisions governing residential outdoor storage to Bryan Code of Ordinances Chapter 38, Environment. Outdoor storage within a residentially zoned area is currently prohibited by the Zoning Ordinance (Chapter 130) which states, “Outdoor storage is prohibited (except for materials for the resident’s personal use or consumption, i.e. firewood, gardening materials, etc.)”. This language as written limits staff’s ability to enforce outdoor storage violations due to the mention of “personal use or consumption” within the provision. Staff has consulted with the City’s Legal Department about this matter and was advised that a prosecutor may experience difficulty in prosecuting an outdoor storage case because a defendant can claim that the alleged outdoor storage violation was for personal use or consumption.			
<p>Staff also recommends adopting new standards addressing residential outdoor storage into Chapter 38, Environment. The proposed new standards continue to prohibit residential outdoor storage but differ from the current standards in that:</p> <ol style="list-style-type: none"> (1) a time element is built into the ordinance for which an item may be continuously stored outdoors (24 hours); (2) outdoor storage is permissible if the items are stored behind privacy screening and do not present a health and sanitation concern; and (3) only items built for outdoor environments and use may be stored outdoors is clarified. <p>Staff believes adopting the recommended provisions provides necessary language for the more likelihood of success at prosecution of ordinance violations regarding residential outdoor storage. The change also may reduce hardships for citizens and staff alike by providing needed leniency for outdoor storage when practiced in accordance with ordinance requirements.</p> <p>City Council consideration of this request has two focuses: firstly, on removal of residential outdoor storage from Chapter 130, Zoning, of the Bryan Code of Ordinance; Secondly, this request focuses on adopting standards for residential outdoor storage within Chapter 38, Environment, of the Bryan Code of Ordinances. To prevent a conflict within the Code of Ordinances, City Council must consider approving removal of standards governing residential outdoor storage from Chapter 130, Zoning, and simultaneously adopting language for inclusion of such standards into Chapter 38, Environment. Background concerning the recommended ordinance changes was included in a code</p>			

enforcement presentation made by staff during the March 24, 2015, and May 26, 2015, City Council workshop meetings.

The draft ordinance attached to this Council Action Form assumes another ordinance that includes non-substantive clean-ups and corrections to Chapter 130 and which is also scheduled for City Council consideration on August 4, 2015, is approved. Any modifications to that proposed ordinance may require changes to this draft ordinance as well.

STAFF ANALYSIS AND RECOMMENDATION: Staff believes that adoption of the recommended provisions will provide necessary language for the more likelihood of successful prosecution of ordinance violations regarding residential outdoor storage. The change also may reduce hardships for citizens and staff alike by providing needed leniency for residential outdoor storage when practiced in accordance with ordinance requirements. The basis of this recommendation centers on the fact that the Zoning Ordinance has established review and approval processes for commercial outdoor storage through the Site Development Review Committee (SDRC). Residential outdoor storage is not a planned activity applicable to SDRC review and is not a best-fit for enforcement through the Zoning Ordinance.

On July 16, 2015, the Planning and Zoning Commission concurred with staff and unanimously **recommends approval** of the proposed amendments to the Bryan Code of Ordinances concerning residential outdoor storage.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve proposed ordinance changes
2. Do not approve the proposed ordinance changes and provide alternative direction to staff

ATTACHMENTS:

1. draft ordinance
2. excerpt from July 16, 2015, Planning and Zoning Commission regular draft meeting minutes
3. memorandum to Planning and Zoning Commission regarding the proposed ordinance changes

FUNDING SOURCE: N/A

APPROVALS: Kevin Russell, 7-21-15; Joey Dunn, 7-21-15; Hugh R. Walker, 07/22/2015

APPROVED FOR SUBMITTAL: CITY MANAGER

APPROVED FOR SUBMITTAL: CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, ENVIRONMENT, OF THE BRYAN CITY CODE OF ORDINANCES, BY ADDING A NEW SECTION 38-2, ARTICLE I AND A NEW ARTICLE III; CLARIFYING THE DEFINITION OF RESIDENTIAL OUTDOOR STORAGE; PERMITTING RESIDENTIAL OUTDOOR STORAGE ONLY IN CERTAIN AREAS AND UNDER CERTAIN CONDITIONS; AND AMENDING CHAPTER 130, ZONING, OF THE BRYAN CITY CODE OF ORDINANCES BY REMOVING REGULATIONS CONCERNING RESIDENTIAL OUTDOOR STORAGE; PROVIDING FOR EXCEPTIONS AND DEFENSES; RESERVING ADDITIONAL SECTIONS AS NEEDED; PROVIDING FOR CODIFICATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, residential outdoor storage, when not handled appropriately, can be both unattractive and dangerous to individuals living on neighboring properties; and

WHEREAS, the City's current residential outdoor storage language is broad and can be confusing; and

WHEREAS, the City Council wishes to preserve the City's overall beauty and the quality of life for all citizens of Bryan by ensuring that neighborhoods are free from debris and inappropriately stored items, while still allowing citizens to utilize their property for appropriate storage; and

WHEREAS, residential outdoor storage restrictions are generally enforced by City Code Enforcement staff; and

WHEREAS, the City Council desires to create a new, clarified residential outdoor storage definition, to simplify citizen communication and improve ordinance enforceability; and

WHEREAS, these requested changes to Chapter 38, Environment, and Chapter 130, Zoning, were recommended for approval by the Bryan Planning and Zoning Commission during its regular meeting on July 16, 2015;

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

Section 1.

That Chapter 38, Environment, Article I, Section 38-2 of the Bryan Code of Ordinances is hereby added as follows:

“Sec. 38-12. Definition of Residential Outdoor Storage. *Residential outdoor storage* means the placement of an item which is not customarily used or stored outside and/or which is not made of a material that is resistant to damage or deterioration from exposure to the outside environment in an

unenclosed area for a continuous period in excess of 24 hours on a property where residential use has been authorized.”

Section 2.

That Article III, to be entitled “Residential Outdoor Storage,” is hereby created in Chapter 38, Environment, of the Bryan Code of Ordinances.

Section 3.

That Chapter 38, Environment, new Article III, Section 38-126 of the Bryan Code of Ordinances is hereby added as follows:

“Sec. 38-126. Requirements.

Residential outdoor storage shall be prohibited in front of the primary structure of the lot, under a carport, on a front porch, driveway, or any open and unenclosed area visible from any public right-of-way on any property where residential use has been authorized. Residential outdoor storage shall be screened from adjacent properties, streets and alleys by a six-foot-high opaque screening fence, using materials listed in City of Bryan Code of Ordinances Section 130-37(b)(5). Residential outdoor storage shall not exceed the height of the required screening fence.”

Section 4.

That Chapter 38, Environment, new Article III, Section 38-127 of the Bryan Code of Ordinances is hereby added as follows:

“Sec. 38-127. Exemptions.

Firewood stored in rear or side yards shall be exempt from the screening requirements.”

Section 5.

That Chapter 38, Environment, new Article III, Section 38-128 of the Bryan Code of Ordinances is hereby added as follows:

“Sec. 38-128. Tarps or similar coverings.

Coverage by a tarp or similar covering shall not be a defense to prohibited residential outdoor storage if the items covered otherwise meet the definition.”

Section 6.

That Sections 38-128 through 38-135 of Chapter 38, Environment, new Article III, are hereby reserved for future additions or amendments.

Section 7.

That Sections 38-122 through 38-127 of Chapter 38, Environment, Article I, are hereby reserved for future additions or amendments.

Section 8.

That Chapter 130, Zoning, Section 130-09, A-O Agricultural-Open District of the Bryan Code of Ordinances is hereby amended by removing the following subsection:

(f) Other regulations:

(1) As established by all other applicable sections and/or ordinances.

(2) Where activity has ceased for one or more years on a property where the most recent land use is a permitted use in this district, a site plan shall be filed in accordance with the provisions of nonresidential and multifamily development, article III of chapter 62, before activity on the property may resume. Single-family dwellings, patio homes, townhouses, and duplexes are exempt from this provision.

(3) Wireless telecommunication facilities shall be allowed only as provided for in section 130-35

~~(4) Outdoor storage and display is prohibited, except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc. or as may be provided for in Sec. 130-34(m).~~

Section 9.

That Chapter 130, Zoning, Section 130-10, RD-7 Residential District - 7000 of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Special requirements:

(1) No temporary structures, such as recreational vehicles, travel trailers, construction trailers, or mobile homes may be used for on-site dwelling purposes.

~~(2) Outdoor storage is prohibited (except for materials for the resident's personal use or consumption, i.e. firewood, gardening materials, etc.)~~

Section 10.

That Chapter 130, Zoning, Section 130-11, RD-5 Residential District - 5000 of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Special requirements:

(1) No temporary structures, such as recreational vehicles, travel trailers, construction trailers, or mobile homes may be used for on-site dwelling purposes.

~~(2) — Outdoor storage is prohibited (except for materials for the resident's personal use or consumption, i.e. firewood, gardening materials, etc.)~~

Section 11.

That Chapter 130, Zoning, Section 130-12, MF, Multi-Family Residential District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

- (h) Special district requirements:
 - (1) Single-family units constructed in this district shall conform to RD-5 district standards.
 - (2) No temporary structures, such as travel trailers, recreational vehicles, construction trailers, or mobile homes may be used for on-site dwelling purposes.
 - ~~(3) — Outdoor storage is prohibited.~~

Section 12.

That Chapter 130, Zoning, Section 130-13, C-1, Office District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

- (g) Other regulations:
 - (1) As established by all other applicable sections and/or ordinances.
 - ~~(2) — Outdoor storage and display is prohibited, except as may be provided for in Sec. 130-34(m).~~

Section 13.

That Chapter 130, Zoning, Section 130-14, C-2, Retail District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

- (g) Other regulations:
 - (1) As established by all other applicable sections and/or ordinances.
 - ~~(2) — Outdoor storage and display is prohibited, except as may be provided for in Sec. 130-34(m).~~

Section 14.

That Chapter 130, Zoning, Section 130-14, C-3, Commercial District of the Bryan Code of Ordinances is hereby amended by removing the following subsection:

- (g) Other regulations:

~~(10) — Outdoor storage and display is prohibited, except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc., or as may be provided for in Sec. 130-34(m).~~

Section 15.

That Chapter 130, Zoning, Section 130-17, DT-N, Downtown North District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Other regulations:

~~(1) — Outdoor storage and display is prohibited, except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc., or as may be provided for in Sec. 130-34(m).~~

Section 16.

That Chapter 130, Zoning, Section 130-18, DT-S, Downtown South District of the Bryan Code of Ordinances is hereby amended by removing the following subsection:

(g) Other regulations.

~~(7) — Outdoor storage and display is prohibited, except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc., or as may be provided for in Sec. 130-34(m).~~

Section 17.

That Chapter 130, Zoning, Section 130-19, DT-C, Downtown Civic District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Other regulations:

~~(1) — Outdoor storage and display is prohibited, except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc., or as may be provided for in Sec. 130-34(m).~~

Section 18.

That Chapter 130, Zoning, Section 130-22, SC-R, South College Residential District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Special requirements:

(1) No temporary structures, such as recreational vehicles, travel trailers, construction trailers, or mobile homes may be used for on-site dwelling purposes.

~~(2) — Outdoor storage is prohibited (except for materials for the resident's personal use or consumption, e.g., firewood, gardening materials, etc.).~~

Section 19.

That Chapter 130, Zoning, Section 130-29, MU-1, Mixed Use Residential District of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Special requirements:

(1) All mobile/manufactured homes shall be placed, tied down, and secured according to the standards set forth by the chief building official.

(2) Mobile homes in licensed mobile home parks shall comply with all applicable requirements as stated in the manufactured/mobile home park ordinance (chapter 74).

(3) All mobile/manufactured homes shall be skirted with suitable weatherized material.

~~(4) — Outdoor storage is prohibited (except for materials for the single family resident's personal use or consumption, e.g., firewood, gardening materials, etc.).~~

Section 20.

That Chapter 130, Zoning, Section 130-30, MU-2, Mixed Use District of the Bryan Code of Ordinances is hereby amended by removing the following subsection:

(g) Special requirements:

(1) No temporary structures, such as recreational vehicles, travel trailers, construction trailers, or mobile homes, may be used for on-site dwelling purposes.

~~(2) — Outdoor storage and display is prohibited, except for materials for the single family resident's personal use or consumption, e.g., firewood, gardening materials, etc. or as may be provided for in section 130-34(m).~~

Section 21.

That Chapter 130, Zoning, Section 130-31, R-NC, Residential-Neighborhood Conservation of the Bryan Code of Ordinances is hereby amended by removing the following subsection and renumbering subsequent subsections accordingly:

(g) Special requirements:

(1) No temporary structures, such as recreational vehicles, travel trailers, construction trailers, or mobile homes may be used for on-site dwelling purposes.

~~(2) — Outdoor storage is prohibited (except for materials for the resident's personal use or consumption, i.e. firewood, gardening materials, etc.)~~

Section 22.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 23.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 24.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 25.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

Section 26.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

Section 27.

This ordinance shall become effective after its final passage and publication as required by law.

PRESENTED AND GIVEN first reading the 4th day of August, 2015, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 25th day of August, 2015, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

**EXCERPT FROM DRAFT PLANNING AND ZONING COMMISSION MEETING MINUTES
OF JULY 16, 2015:**

**11. PROPOSED AMENDMENTS TO THE TEXT OF BRYAN’S CODE OF ORDINANCES – A
PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes
recommendation; City Council has final approval).**

a. Bryan Code of Ordinances Chapters 38 and 130

A recommendation to the Bryan City Council regarding amendments to the text of Bryan Code of Ordinances Chapter 38, Environment, and Chapter 130, Zoning, clarifying the definition of “residential outdoor storage”, permitting residential outdoor storage only in certain areas under certain conditions, and removing provisions in conflict therewith. (M. Zimmermann/M. Jurica)

Mr. Zimmermann presented the staff report (on file in the Development Service Department). Staff recommends approval of the request.

In response to questions, Mr. Zimmermann responded that the residential outdoor storage regulations will be removed from Chapter 130, Zoning. The language will then be clarified and placed in Chapter 38, Environment, to assist code enforcement staff to be more effective in their efforts.

The public hearing was opened.

No one came forward.

The public hearing was closed.

Commissioner Gutierrez moved to recommend approval of the proposal to amend the text of Bryan Code of Ordinances Chapters 38 and 130, as presented, clarifying the definition of “residential outdoor storage”, permitting residential outdoor storage only in certain areas under certain conditions, and removing provisions in conflict therewith. Commissioner Incardona seconded the motion.

The motion passed unanimously.

Memorandum

To: Planning and Zoning Commission

From: Martin Zimmermann, AICP

Date: July 16, 2015

Re: proposed amendments to the text of Bryan Code of Ordinances Chapter 38, Environment, and Chapter 130, Zoning, clarifying the definition of “residential outdoor storage”, permitting residential outdoor storage only in certain areas under certain conditions, and removing provisions in conflict therewith

City staff is proposing that the City Council authorize adoption of provisions governing residential outdoor storage to Chapter 38, Environment, of the Bryan Code of Ordinances. Outdoor storage within a residentially zoned area is currently prohibited by the Zoning Ordinance which states, “Outdoor storage is prohibited (except for materials for the resident’s personal use or consumption, i.e. firewood, gardening materials, etc.)”. This language as written limits staff’s ability to enforce outdoor storage violations due to the mention of “personal use or consumption” within the provision. Staff has consulted with the City’s Legal Department about this matter and was advised that a prosecutor may experience difficulty in prosecuting an outdoor storage case because a defendant can claim that the alleged outdoor storage violation was for personal use or consumption.

Staff recommends adopting new standards addressing residential outdoor storage into Bryan Code of Ordinances Chapter 38, which also includes nuisance and health and sanitation provisions. The proposed standards continue to prohibit residential outdoor storage but differs from the current Zoning Ordinance in that (1) a time element is built into the ordinance for which an item may be continuously stored outdoors (24 hours), (2) outdoor storage is permissible if the items are stored behind privacy screening and do not present a health and sanitation concern, and (3) clarifies that only items built for outdoor environments and use may be stored outdoors. Staff feels adoption of the recommend provisions as they provide the necessary language for successful prosecution of ordinance violations regarding residential outdoor storage and reduce hardships for citizens and staff alike by providing needed leniency for outdoor storage when practiced in accordance with ordinance requirements.

For the same reasons, staff recommends removal of current residential outdoor storage standards from the Zoning Ordinance (Bryan Code of Ordinances Chapter 130). The basis of this recommendation centers on the fact that the Zoning Ordinance has established review and approval processes for commercial outdoor storage through the Site Development Review Committee (SDRC). Residential outdoor storage is not a planned activity applicable to SDRC review and is not a best-fit for enforcement through the Zoning Ordinance.