ACTION FORM
BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING:	June 11, 2013	**DATE SUBMITTED:**	May 7, 2013
DEPARTMENT OF ORIGIN:	Development Services	**SUBMITTED BY:**	Randy Haynes

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**	**STRATEGIC INITIATIVE:**
☐ **BCD**	☐ **PUBLIC HEARING**	☐ **1ST READING**	☐ **PUBLIC SAFETY**
☐ **SPECIAL**	☐ **CONSENT**	☒ **2ND READING**	☒ **SERVICE**
☒ **REGULAR**	☐ **STATUTORY**		☒ **ECONOMIC DEVELOP.**
☐ **WORKSHOP**	☐ **REGULAR**		☐ **INFRASTRUCTURE**
			☒ **QUALITY OF LIFE**

AGENDA ITEM DESCRIPTION: Consideration of an ordinance to amend the text of Bryan Code of Ordinances Chapter 130, Zoning, by deleting the existing definition for "open storage", adding new definitions for "sidewalk display", "outdoor display", "limited outdoor storage", "general outdoor storage" and "industrial outdoor storage" and determining in which zoning district said uses will be permitted, and by amending existing zoning district regulations accordingly.

SUMMARY STATEMENT: The Zoning Ordinance's strict limits on outdoor storage, which is currently only allowed in Industrial zoning districts, has placed orderly development and the ability to reasonably expand area business at cross purposes. For example, the Zoning Ordinance allows manufacturing uses in the C-3 (Commercial) zoning district, but currently prohibits manufacturing operations to have any outdoor storage on C-3-zoned properties. Staff believes that it is unreasonable to assume that all manufacturing operations allowed in C-3 Districts can operate entirely within buildings. In order to be allowed outdoor storage, such businesses would either have to relocate to an Industrial zoning district or request a rezoning of their property to Industrial District. Staff believes that this can potentially lead to the emergence of Industrial zoning districts, which allow unsightly or even noxious activities at locations that are not ideal for such activities, for the sole purpose of allowing outdoor storage.

In an effort to remedy the situation, staff proposes a text amendment to define various types of outdoor storage and specify the zoning districts and conditions that each may be employed. The proposed amendment endeavors to arrange the diverse types of outdoor storage in a manner that recognizes the needs and current practices of business while balancing the desire of the community expressed in the two most recent Comprehensive Plan updates for improved public image and aesthetics.

STAFF ANALYSIS AND RECOMMENDATION:

Staff finds that the existing definition dealing with outdoor storage and display is overly broad, limiting this type use to only one zoning district. Staff further finds that the Zoning Ordinance is too restrictive in the area of regulation of outdoor storage and display. Due to the fact that the current text of the Zoning Ordinance relating to the regulation of outdoor storage and display neither adequately defines real world uses nor properly regulates such activity, staff recommends repealing the existing definition of outdoor storage and adopting definitions of several types of commercial storage/display activity in a manner that will permit continued legal operation of existing business practices and regulate new development in a fashion intended to encourage orderly growth.

During its regular meeting on April 18, 2013, the Planning and Zoning Commission recommended approving the proposed text amendment by a vote of 7 to 1.

OPTIONS (In Suggested Order of Staff Preference

1. approve the proposed ordinance text amendment,
2. approve the proposed ordinance text amendment with modifications, which may require consideration at a future City Council meeting; or
3. reject the proposed text amendment.

ATTACHMENTS: 1. draft ordinance; 2. Exhibit "A" to draft ordinance (full text of Chapter 130 with strike-outs and additions as separate Word document); 3. staff memorandum to P&Z, April 18, 2013; and 4. excerpt from the P&Z's regular meeting minutes of April 18, 2013
FUNDING SOURCE: N/A
APPROVALS: Joey Dunn, 5-16-13; Hugh R. Walker, 05/13/2013
APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 05-17-2013
APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 05-20-2013

Revised 04/2013

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 130, ZONING, OF THE CITY OF BRYAN CODE OF ORDINANCES, DEFINING NEW USE CATEGORIES IDENTIFIED AS "SIDEWALK DISPLAY", "OUTDOOR DISPLAY", "LIMITED OUTDOOR STORAGE", "GENERAL OUTDOOR STORAGE" AND "INDUSTRIAL OUTDOOR STORAGE"; REPEALING THE DEFINITION OF "OPEN STORAGE (ALSO OUTSIDE STORAGE) "; ADDING SPECIFIC STANDARDS BY WHICH THE NEWLY DEFINED USE CATAGORIES MUST BE REGULATED; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan has adopted Chapter 130, Zoning, of the City of Bryan Code of Ordinances, which divides the City of Bryan into various zoning districts and allows land uses within each of those districts; and

WHEREAS, the City Council recognizes the need from time to time to amend the Zoning Ordinance so as to provide for new forms of land use that either were not or could not have been anticipated at the time zoning regulations were adopted; and

WHEREAS, the Comprehensive Plan calls to reevaluate the current zoning code to provide for an efficient development process and facilitate orderly, efficient and attractive development, redevelopment to City of Bryan regulations; and

WHEREAS, the Planning and Zoning Commission recommended during its April 18, 2013 regular meeting that the City's zoning regulations be amended by repealing the existing definition of "Open storage (also outside storage) and to add new definitions and regulations for "Sidewalk Display", "Outdoor Display", "Limited Outdoor Storage", "General Outdoor Storage", "Industrial Outdoor Storage" and "Industrial Outdoor Storage"; and repealing all ordinances or parts of ordinances in conflict therewith;

WHEREAS, the City Council has held a public hearing on the proposed amendment to Bryan Code of Ordinances Chapter 130, Zoning, for which notice was published at least fifteen days prior to the hearing date;

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

1.

That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this ordinance.

2.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by deleting the definition of *Open storage (also outside storage*) in Section 130-3 (Definitions) as follows:

~~*Open storage (also outside storage)* shall mean the keeping, displaying, or storing, outside a building, of any new or used goods, material, merchandise, or equipment on a lot or tract for more than 24 hours.~~

3.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by adding the definitions of Sidewalk Display, Outdoor Display, Limited Outdoor Storage, General Outdoor Storage and Industrial Storage, to Section 130-3 (Definitions), as follows:

Display, Sidewalk shall mean a display of goods and wares on a private or public sidewalk for retail sale to the public by the owner or manager of a business located in a directly adjacent, permanent, established structure which has received a certificate of occupancy and complies with all current applicable zoning, building codes, and site development requirements of the City.

Display, Outdoor shall mean the display of sample inventory, merchandise, or other items for sale, rent or lease and outside a permanent, established structure which has received a certificate of occupancy and complies with all current applicable zoning, building codes, and site development requirements of the City.

Storage, Limited Outdoor shall mean storage that is accessory to the principal land use on a site. Storage activities include storage of packaged merchandise or material in boxes, in crates, on pallets or other kinds of shipping packaging and other similar merchandise, material or equipment. Disorganized or loose materials or objects, or materials stored in bulk shall not be allowed in limited outdoor storage.

Storage, General Outdoor shall mean storage of unpackaged or bulk materials, including but not limited to landscape, building and aggregate materials.

Storage, Industrial Outdoor shall mean outdoor storage allowed for all uses allowed within the Industrial District zoning designation.

4.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by deleting Section 130-26(c)(1) (West Villa Maria, FM 2818, and FM 158 Corridor Overlay Districts) as follows:

(c) *Screening and general appearance standards:*

~~(1) *Open storage*. Open storage, as defined in the zoning ordinance, is prohibited except for the display of operable vehicles for sale at a dealership and inventory for sale of such.~~

5.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by deleting Section 130-27(c)(1) (SH 47, Corridor Overlay District) as follows:

(c) *Screening and general appearance standards:*

~~(1) *Open storage*. Open storage, as defined in the zoning ordinance, is prohibited except for the display of operable vehicles for sale at a dealership and inventory for sale of such.~~

6.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by deleting Section 130-28(c)(1) (South College Corridor Overlay District) as follows:

(c) *Screening and general appearance standards:*

~~(1) *Open storage*. Open storage, as defined in the zoning ordinance, is prohibited except for the display of operable vehicles for sale at a dealership and inventory for sale of such.~~

7.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by adding a new subsection Section 130-34(l) to read as follows:

(l) *Outdoor Display and Storage requirements:*

Purpose. To encourage the most appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of outdoor display and storage to be permitted in the various zoning districts in accordance with the following standards.

(1) Sidewalk display shall meet the following standards:

a. Sidewalk display shall be permitted adjacent to a principal building wall and extending a distance no greater than 5 feet from the wall.

b. Sidewalk display shall not block entrances, exits or required travel paths, and shall not impair emergency services access to any buildings.

c. Sidewalk display shall comply with all applicable standards established by the Americans with Disabilities Act and shall not obstruct the use of any crosswalk or wheelchair ramp.

d. Sidewalk display shall not be permitted to block any public pedestrian right of way.

e. Sidewalk display shall occur only during the business hours of the applicable business establishment.

(2) Outdoor display shall meet the following standards:

a. May include packaged merchandise, motor vehicles, RV's, trailers, farm equipment, construction equipment, accessory buildings for sale, rent or lease and other large items typically found on display outside in a retail environment.

b. Sample merchandise on display outdoors only during the business hours of the applicable business establishment need not be packaged.

c. Materials in bulk shall not be permitted in outdoor display.

d. Display of items that would normally be utilized outside, is not limited to sample items.

e. Except for items that would normally be stored and utilized outside, outdoor display shall be allowed only during the business hours of the applicable business establishment.

f. Outdoor display areas shall be located only on an improved surface.

g. Items stacked for outdoor display shall have an aggregate height no greater than 12 feet.

h. With the exception of motor vehicles, outdoor display shall not be located within minimum required building setback areas.

i. Outdoor display may be located in defined off-street parking areas to the extent that remaining available on-site parking is not reduced below the minimum amount required for the site by City development standards.

j. Outdoor display shall not be located in minimum required landscaped areas.

k. Outdoor display shall not block entrances, exits or required travel paths, and shall not impair emergency services access to any buildings.

l. Outdoor display shall comply with all applicable standards established by the Americans with Disabilities Act and shall not obstruct vehicular traffic, off-street parking, or the use of any crosswalk or wheelchair ramp.

m. Outdoor Display shall not be located in any public right-of-way, including sidewalks and alleys.

n. When located in defined off-street parking areas, outdoor display areas shall be separated from active drive aisles and parking areas by a physical barrier providing clear delineation of such storage area to shoppers and motorists.

(3) Limited outdoor storage shall require approval of a site plan by the City's Site Development Review Committee (SDRC) in accordance with requirements for site plan approval for nonresidential and multifamily developments of Bryan Code of Ordinances Chapter 62. The site plan must show dimensions and location of the proposed limited outdoor storage area. Limited outdoor storage shall meet all the following standards:

a. Limited outdoor storage shall not be more than 12 feet in height and shall be completely screened from view from any public right-of-way, public parking areas, or adjacent residential development by a 100 percent opaque visual barrier or screen.

b. In lieu of screening required by subsection a) above, limited outdoor storage may be allowed without screening, if located a minimum of 150 feet from an adjacent street right-of-way.

c. Limited outdoor storage shall be located at least 15 feet from any public right-of-way and /or any abutting residential use.

d. Limited outdoor storage shall be located behind the primary front façade of the principle building on a site.

e. Limited outdoor storage may be located to the side of a building so long as it is not located within a minimum required side building setback area.

(4) General outdoor storage shall require approval of a site plan by the City's Site Development Review Committee (SDRC) in accordance with requirements for site plan approval for nonresidential and multifamily developments of Bryan Code of Ordinances Chapter 62. The site plan must show dimensions and location of the proposed limited outdoor storage area. General outdoor storage shall meet all the following standards.

a. General outdoor storage shall not be more than 12 feet in height and shall be completely screened from view from any public right-of-way, public parking areas, or adjacent residential development by a 100 percent opaque visual barrier or screen. Complete screening shall mean that no portion of the material stored is visible from outside the screening device.

b. General outdoor storage shall be located behind the primary front façade of the principle building on a site.

c. General outdoor storage shall be located at least 150 feet from the front property line and not closer than 150 feet from an existing residential use on an abutting property.

d. General outdoor storage shall not be located in minimum required side building setback areas and must be located at least 15 feet from any side property line.

(5) Industrial outdoor storage shall meet the following standards.

a. All material shall be screened when closer than 150 feet from a public right of way.

b. Uniform metal panel and / or chain-link with slat material shall be permitted as screening in industrial zoning districts.

(6) Outdoor display or storage shall be permitted in zoning districts as shown below:

	A-O	RD-7	RD-5	RN-C	MU-1	MU-2	MF	C-1	C-2	C-3	DT-N	DT-S	DT-C	SC-B	SC-R	I
Sidewalk Display	✓	x	x	x	x	x	x	x	✓	✓	✓	✓	✓	✓	x	x
Outdoor Display	✓	x	x	x	x	x	x	s	s	✓	x	x	x	s	x	x
Limited Outdoor Storage	s	x	x	x	x	x	x	x	x	s	x	x	x	x	x	x
General Outdoor Storage	s	x	x	x	x	x	x	x	x	s	x	x	x	x	x	x
Industrial Outdoor Storage	s	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓

x = not permitted
✓ = permitted by right
s = shall be permitted upon approval by the Site Development Review Committee

8.

That the entire text of Chapter 130 is amended to standardize nomenclature relating to outdoor display or storage as shown in Exhibit "A" attached hereto, along with recited changes in the body of this ordinance.

9.

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

10.

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

11.

That 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.

12.

That 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., Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

13.

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

14.

That a person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the City of Bryan Code.

15.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

16.

That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be _____.

PRESENTED AND GIVEN first reading the 28th day of May, 2013 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 11th day of June, 2013 by a vote of ___ yeses and ___ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

_____
Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

_____
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

Planning and Zoning Commission
Memorandum

April 18, 2013

CITY OF BRYAN

A proposal to amend the text of the Zoning Ordinance (Bryan Code of Ordinances Chapter 130) as it relates to the regulation of outdoor storage

BACKGROUND:

Periodically the Planning and Zoning Commission assesses the previous year's body of work and accomplishments, and considering those along with projects ongoing, generates a "wish list" of issues on which to focus in the coming 12 months. For several years in the early 2000s the Planning and Zoning Commission had a subcommittee charged with studying and recommending changes to the portion of the Zoning Ordinance regulating outdoor storage. Unfortunately, other issues intervened and the subcommittee's task remained unaccomplished.

The Zoning Ordinance's strict limits on outdoor storage, which is currently only allowed in Industrial zoning districts, has placed orderly development and the ability to reasonably expand area business at cross purposes. For example, the Zoning Ordinance allows manufacturing uses in the C-3 (Commercial) zoning district, but currently prohibits manufacturing operations to have any outdoor storage on C-3-zoned properties. Staff believes that it is unreasonable to assume that all manufacturing operations allowed in C-3 Districts can operate entirely within buildings. In order to be allowed outdoor storage, such businesses would either have to relocate to an Industrial zoning district or request a rezoning of their property to Industrial District. Staff believes that this can potentially lead to the emergence of Industrial zoning districts, which allow unsightly or even noxious activities, at locations that are not ideal for such activities, for the sole purpose of allowing outdoor storage.

In an effort to remedy the situation, staff has prepared a text amendment designed to define various types of outdoor storage and specify the zoning districts and conditions that each may be employed. The proposed amendment endeavors to arrange the diverse types of outdoor storage in a manner that recognizes the needs and current practices of business while balancing the desire of the community expressed in the two most recent Comprehensive Plan updates for improved public image and aesthetics.

ANALYSIS AND RECOMMENDATION:

Currently outdoor storage is specifically defined in the Zoning Ordinance as:

Open storage (also outside storage) shall mean the keeping, displaying, or storing, outside a building, of any new or used goods, material, merchandise, or equipment on a lot or tract for more than 24 hours.

This use is permitted in only the Industrial (I) zoning district by right and with Conditional Use Permit approval in the Agricultural – Open (A-O) District. Staff finds that the existing definition is overly broad and limiting this use to only two zoning districts is too restrictive.

During the Commission's April 4, 2013 workshop meeting staff first made the Commission aware of the problems with applying the current regulation. By consensus, Commissioners asked staff to propose alternatives to the current regulation.

After reviewing regulations of several other Texas communities, staff found none that offered a direct solution that could be easily implemented in Bryan. One reason for that is that while most zoning ordinances are very similar in, for example, regulating residential and commercial activities, in almost every ordinance, there are differences in how particular activities are controlled. These differences are likely a result of the specific context within which zoning was adopted in a community. In other words, there does not appear to be a “one fits all” solution on the subject of regulating outdoor storage.

The proposed text amendment was developed by comparing and adapting various cities’ standards on outdoor storage and integrating them into the context of Bryan’s Zoning Ordinance.
Staff recommends defining and organizing several types of commercial storage/display activity in a manner that will permit continued legal operation of existing business practices and regulate new development in a fashion intended to encourage orderly growth.

EXCERPT FROM PLANNING AND ZONING COMMISSION DRAFT REGULAR MEETING MINUTES OF APRIL 18, 2013:

Outdoor Storage and Display **R. Haynes**

A proposal to amend the text of Bryan Code of Ordinances Chapter 130, Zoning, by deleting the existing definition for "open storage", adding new definitions for "sidewalk display", "outdoor display", "limited outdoor storage", "general outdoor storage" and "industrial outdoor storage" and determining in which zoning district said uses will be permitted, and by amending existing zoning district regulations accordingly

Mr. Haynes presented the staff report (on file in the Development Services Department). In response to questions, Mr. Haynes described how the proposed text would limit the height of outdoor storage in relation to its ability to be screened.

The public hearing was opened.

No one came forward.

The public hearing was closed.

Commissioner Hardeman moved to recommend approval of the proposed text amendment to the Bryan Code of Ordinances Chapter 130, as presented by staff, but with the modification that the permitted height for outdoor storage be 12 feet. Commissioner Hickle seconded the motion.

Commissioners discussed whether or not outdoor display should also have a height limit.

Commissioner Gonzales moved to amend the original motion to include the modification that that the permitted height for outdoor display be limited to 12 feet. Commissioner Hardeman seconded the motion. The amendment passed by a vote of 7 in favor and 1 in opposition. Commissioner Madison cast the dissenting vote.

Commissioners discussed:

- whether outdoor display should be limited by height;
- whether outdoor display ever exceeded a height of 12 feet;
- how the ordinance would be enforced; and
- whether they should postpone a decision on the proposed text amendment.

The amended motion passed by a vote of 7 in favor and 1 in opposition. Commissioner Madison cast the dissenting vote.