

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: July 9, 2013		DATE SUBMITTED: June 20, 2013	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Martin Zimmermann	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input checked="" type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input 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 type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<p>AGENDA ITEM DESCRIPTION: A proposal to amend the text of Bryan Code of Ordinances Chapter 130, Zoning, to allow tattoo studio uses in the Downtown – South (DT-S) zoning district with prior approval of a Conditional Use Permit, and by adopting use-specific conditions for tattoo studio uses city-wide, and amending existing zoning district regulations accordingly.</p>			
<p>SUMMARY STATEMENT: In late 2012, City staff received a citizen request to change the Zoning Ordinance in order to allow a tattoo studio use on property located at 307 W. 26th Street. The property is currently zoned Downtown – South (DT-S) District, which does not permit tattoo studios. Bryan’s Zoning Ordinance defines “tattoo/body piercing studio” uses as, “the workshop of a tattoo artist, and/or a facility where the piercing of body parts, other than ears, is performed for purposes of allowing the insertion of jewelry” (Sec. 130-3). The Zoning Ordinance allows tattoo/piercing studios by right in C-2 (Retail), C-3 (Commercial) and I (Industrial) zoning districts of Bryan.</p> <p>During the City Council workshop meeting on April 9, 2013, the Council asked that the Planning and Zoning Commission review the Zoning Ordinance relative to the entire downtown area and evaluate the list of allowed and potentially allowed land uses. Subsequently, the Planning and Zoning Commission appointed a subcommittee of four Commissioners to study allowed land uses in the downtown zoning districts, including tattoo studio uses.</p> <p>During the Commission’s June 6, 2013, regular meeting, the subcommittee recommended the following:</p> <ol style="list-style-type: none"> 1. that tattoo studio uses be potentially allowed in the Downtown – South (DT-S) zoning district, with prior approval of a Conditional Use Permit; and 2. that the following new use-specific standards shall apply to all tattoo studio uses city-wide: <ol style="list-style-type: none"> a. All structures housing a tattoo studio use shall be located at least 5,280 feet from another structure housing a tattoo studio use. b. All structures housing a tattoo studio use shall have a minimum of 3,000 square feet of floor area and a maximum of 5,000 square feet of floor area. c. Consumption of alcoholic beverages shall be prohibited in the tattoo studio (in accordance with 25 Texas Administrative Code, Chapter 229, Subchapter V, “Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios”, Rule 229.404 (h), as may be amended from time to time). <p>The subcommittee also reviewed other land uses currently allowed or potentially allowed in the three downtown zoning districts. Commissioners discussed ideas on how zoning regulations can continue to promote future development in the central area of the city while protecting the character of the downtown area. Rather than making specific recommendations about downtown land uses at this time, however, the subcommittee concluded that a more inclusive investigation is</p>			

necessary to help protect the substantial public and private investment made since the adoption of the Downtown Master Plan in 2001. The subcommittee therefore recommends that a far-reaching examination of land use in the downtown area be undertaken as part of an update to the City's Comprehensive Plan for which another Planning and Zoning Commission subcommittee was already established earlier this year.

The full Planning and Zoning Commission unanimously voted to recommend approving the subcommittee's suggested changes to the Zoning Ordinance, specifically to Sections 130-18(c) and by adding a new Section 130-34(l). Sections 130-14(b) and 130-23(b) would also be amended to reference the new use-specific standards in Section 130-34(l) in zoning districts where tattoo studio uses are already allowed. The draft ordinance attached to this Council Action Form includes those recommended changes.

Since this issue first came up in April 2013, several citizens have submitted written comments to City staff and the City Council on the subject or spoken at public meetings on the issue. Excerpts from the minutes of those meetings and copies of written comments received from citizens are attached to this Council Action Form.

STAFF ANALYSIS AND RECOMMENDATION: There does not appear to be a "one size fits all" solution on the subject of regulating tattoo studios in general or downtown areas in particular. Some communities allow tattoo studios by right in all areas where other personal service-related retail sales and service uses (e.g. hair studios or tanning salons) are also allowed. This direction suggests that tattooing appears to have become more acceptable in some cities, which appear to view tattooing as an art form and part of the mainstream. In talking to other city planners around the state, staff found however, that negative preconceptions about tattooing ("sailors, bikers, gang members") appear to be just as prevalent. Several communities have chosen to limit tattoo business locations either to certain zoning districts or to adopt specific use restrictions, such as locational separation requirements.

Staff believes the Planning and Zoning Commission's recommendation is a practical compromise on this issue, by potentially allowing such uses in the DT-S District, but only with prior additional review of a Conditional Use Permit application by the Planning and Zoning Commission.

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. summary of subcommittee findings to P&Z;
3. excerpts from the P&Z's regular meeting minutes of May 16 and June 6, 2013; and
4. comments received from citizens (separate PDF document).

FUNDING SOURCE: N/A

APPROVALS: Hugh R. Walker, 06/24/2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 06-25-2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 07-02-2013

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 130, ZONING, OF THE CITY OF BRYAN CODE OF ORDINANCES, BY ADDING “TATTOO STUDIO” TO THE LIST OF POTENTIALLY ALLOWED LAND USES IN THE DOWNTOWN-SOUTH (DT-S) ZONING DISTRICT WITH PRIOR APPROVAL OF A CONDITIONAL USE PERMIT AND ADDING USE-SPECIFIC STANDARDS THAT SHALL APPLY TO TATTOO STUDIO USES CITY-WIDE; 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 Planning and Zoning Commission recommended during its June 6, 2013 regular meeting that the City’s zoning regulations be amended by adding “tattoo studio” to the list of potentially allowed land uses in the Downtown – South (DT-S) zoning district with prior approval of a Conditional Use Permit and to add use-specific standards that shall apply to tattoo studio uses city-wide;

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 adding the use “Tattoo Studio” to the list of potentially allowed land uses in the Downtown – South (DT-S) zoning district with prior approval of a Conditional Use Permit in Section 130-18(c) (Downtown-South District) as follows:

(c) *Conditional uses:*

- College or university;
- Municipal services support facilities;

- Nightclub or tavern (greater than 5,000 square feet);
- Police station;
- Roof-top heliport or helistop;
- Tattoo studio.

3.

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

(m) *Tattoo Studio Requirements:*

- (1) All structures housing a tattoo studio use shall be located at least 5,280 feet from another structure housing a tattoo studio use.
- (2) All structures housing a tattoo studio use shall have a minimum of 3,000 square feet of floor area and a maximum of 5,000 square feet of floor area.
- (3) Consumption of alcoholic beverages shall be prohibited in the tattoo studio (in accordance with 25 Texas Administrative Code, Chapter 229, Subchapter V, “Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios”, Rule 229.404 (h), as may be amended from time to time).

4.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by adding a reference to new Section 130-34(m) to Section 130-14(b) as follows:

(b) *Permitted uses.* Any permitted use in the office district with the addition of:

- Tattoo/piercing studio (see 130-34(m));

5.

That Chapter 130, Zoning, of the Bryan Code of Ordinances is hereby amended by adding a reference to new Section 130-34(m) to Section 130-23(b) as follows:

(b) *Permitted uses.*

- Tattoo/piercing studio (see 130-34(m));

6.

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

7.

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.

8.

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.

9.

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.

10.

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

11.

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.

12.

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.

13.

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 9th day of July, 2013 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 23rd day of July, 2013 by a vote of ___ yeses 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



June 6, 2013

A recommendation to the Bryan City Council regarding an amendment to the text of Bryan Code of Ordinances Chapter 130 (Zoning) regarding tattoo studio uses

BACKGROUND:

Bryan's Zoning Ordinance defines "tattoo/body piercing studio" uses as

the workshop of a tattoo artist, and/or a facility where the piercing of body parts, other than ears, is performed for purposes of allowing the insertion of jewelry. (Sec. 130-3)

The Zoning Ordinance allows tattoo/piercing studios by right in C-2 (Retail), C-3 (Commercial) and I (Industrial) zoning districts of Bryan.

In late 2012, City staff received a citizen request to change the Zoning Ordinance in order to allow a tattoo studio use on property located at 307 W. 26th Street. The property is currently zoned Downtown – South (DT-S) District which does not permit tattoo studios. During its workshop meeting on January 17, 2013, it was the consensus of the Commission to not schedule this item for further consideration.

At the request of two Councilmembers, staff presented the citizen request to the Council during its workshop meeting on April 9, 2013. During that workshop meeting, the Council asked that the Planning and Zoning Commission review the Zoning Ordinance relative to the entire downtown area and evaluate the list of allowed and potentially allowed land uses.

During its regular meeting on May 16, 2013, Commissioners voted to designate a Planning and Zoning Commission subcommittee to study allowed land uses in the downtown zoning districts and report back to the full Commission by the Commission's regular meeting scheduled for July 18, 2013. The subcommittee met on May 24, 2013, reviewed pertinent information, and formulated the recommendations below. A summary of other cities' tattoo studio regulations is also attached.

SUBCOMMITTEE RECOMMENDATIONS:

The subcommittee recommends the following changes to the Zoning Ordinance:

3. that tattoo studio uses be potentially allowed in the Downtown – South (DT-S) zoning district, with prior approval of a Conditional Use Permit; and
4. that the following new use-specific standards shall apply to all tattoo studio uses city-wide:
 - a. All structures housing a tattoo studio use shall be located at least 5,280 feet from another structure housing a tattoo studio use.

- b. All structures housing a tattoo studio use shall have a minimum of 3,000 square feet of floor area and a maximum of 5,000 square feet of floor area.
- c. Consumption of alcoholic beverages shall be prohibited in the tattoo studio (in accordance with 25 Texas Administrative Code, Chapter 229, Subchapter V, “Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios”, Rule 229.404 (h), as may be amended from time to time).

The subcommittee recommendation would require City Council’s approval of an amendment to the text of the Zoning Ordinance, specifically to Sections 130-18(c) and by adding a new Section 130-34(l). Sections 130-14(b) and 130-23(b) would also be amended to reference the new use-specific standards in Section 130-34(l) in zoning districts where tattoo studio uses are already allowed.

The subcommittee also reviewed other land uses currently allowed or potentially allowed in the three downtown zoning districts. Commissioners discussed ideas on how zoning regulations can continue to promote future development in the central area of the city while protecting the character of the downtown area. Rather than making specific recommendations about downtown land uses at this time, however, the subcommittee concluded that a more inclusive investigation is necessary to help protect the substantial public and private investment that has been made here since the adoption of the Downtown Master Plan in 2001. The subcommittee therefore recommends that a far-reaching examination of land use in the downtown area be undertaken as part of an update to the City’s Comprehensive Plan for which another Planning and Zoning Commission subcommittee was already established earlier this year. Commissioners agreed that an update to the 2001 Downtown Master Plan in the context of a Comprehensive Plan Update would be more appropriate, avoid a duplication of effort, and could better account for all the aspects affecting development and quality of life the downtown area and the City as a whole. The Comprehensive Plan Update subcommittee is scheduled to hold its first meeting within a few weeks.

OPTIONS:

The Planning and Zoning Commission is scheduled to make a recommendation to the City Council regarding tattoo studio uses during its regular meeting on June 6, 2013. Commissioners may

1. accept the subcommittee’s recommendations and suggest them to the City Council for approval; or
2. recommend alternate changes to the Zoning Ordinance regarding tattoo studio uses; or
3. recommend no changes to the Zoning Ordinance at this time.

OTHER CITIES' REGULATION OF TATTOO STUDIO USES:

There does not appear to be a “one fits all” solution on the subject of regulating tattoo studios in general or downtown areas in particular. Some communities allow tattoo studios by right in all areas where other personal service-related retail sales and service uses, for example, hair studios or tanning salons, are also allowed. This suggests that tattooing appears to have become more acceptable in some cities, which appear to view tattooing as art form and part of the mainstream. In 6 of the 10 cities surveyed, tattoo studio uses are either allowed or potentially allowed with additional review (i.e., Conditional Use/Special Use Permit).

In talking to other city planners around the state, staff found however, that negative preconceptions about tattooing (“sailors, bikers, gang members”) appear to be just as prevalent. Several of the surveyed communities have chosen to limit tattoo business locations either to certain zoning districts or to adopt specific use restrictions, such as locational separation requirements, for example, from residential districts, liquor stores, churches, or other tattoo establishments. Below is a summary of other cities’ regulation of tattoo studios.

- City of College Station, TX
 - considered a personal service shop
 - allowed by right and no restrictions in Office, Suburban Commercial, General Commercial, Commercial Industrial, and in all Northgate Districts
- City of Waco, TX
 - defined as a personal service shop
 - allowed by right with no restrictions in C-1 Community Commercial, C-2 Community Commercial, C-3 General Commercial, C-4 Central Commercial, C-5 Service Commercial District, and in downtown district
- City of Killeen, TX
 - tattoo studio only allowed but with no restrictions in B-5 Commercial District;
 - studio must be licensed per TX Health Code
- City of San Marcos, TX
 - defines tattoo/piercing studio
 - allowed by right with no restrictions in Community Commercial, General Commercial and Heavy Commercial districts, and with conditional use permit in Mixed Use, Vertical Mixed Use, Neighborhood Commercial
- City of San Angelo, TX
 - considered a personal service-oriented retail sales and service use
 - allowed by right with no restrictions in Neighborhood Commercial, General Commercial, Central Business District (downtown), and with conditional use permit in Office Commercial, Heavy Commercial and Manufacturing zoning districts
- City of Tyler, TX
 - considered a personal and consumer service use
 - allowed by right with no restrictions in C-2 Commercial in Industrial districts, not in downtown

- City of Nacogdoches, TX
 - defines tattoo studio
 - requires specific use permit in B-1, B-2, Medical and downtown, allowed with no restriction in I-1 (Light Industrial District)

- City of Mesquite, TX
 - defines use as body art/decoration
 - allowed with special use permit in Town East Retail district (downtown area)
 - requires that the use be located 1,000 ft. from the nearest property line of the following uses:
 - any residential zoned district
 - any lot currently in residential use
 - any public/private school or daycare
 - any library, park, playground or Rec. Facility
 - place of worship
 - city-owned properties
 - any other body art/decorations use

- City of Georgetown, TX
 - classifies tattoo uses as Restricted Personal Service shops “generally less desirable when located adjacent to residential areas”
 - allowed by right in C3 district and with special use permit in C-1 and downtown district

- Orange Bend, AL
 - no liquor stores within 500 ft.
 - not allowed within 5,000 ft. of body piercing, palm reader, cash advance or loan outlets

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING
MINUTES OF MAY 16, 2013:**

2. HEAR CITIZENS.

Mr. Cliff Collard, 110 Marta Street, College Station, Texas; Ms. Gwendolyn Inocencio, 6849 Bendwood, College Station, Texas; Ms. Kristy Petty, 810 Enfield Street, Bryan, Texas; Mr. Chris Lawrence, 712 Banks Avenue, Bryan, Texas; Ms. René Lawrence, 712 Banks Avenue, Bryan, Texas; and Mr. Mike Lapp, 19063 E. State Hwy 21, Bryan, Texas, came forward to speak in favor of allowing tattoo studio uses in the Downtown-South (DT-S) zoning district either by right or through conditional use permit. Citizens informed the Commission:

- that Mr. Collard is recognized statewide in his field
- that tattoos are a form of art and would be placed among other downtown art uses
- that Mr. Collard's clientele must book appointments months in advance
- that making a decision about tattoo studio uses based on the type of clientele is discrimination
- of Mr. Collard's education and contributions to the community
- that Mr. Collard's business is an exception to negative stereotypes about tattoo studio uses.

Ms. Sharon Anderson, 2304 Cindy Lane, Bryan, Texas, came forward to speak in opposition to tattoo studio uses in the DT-S zoning district. She informed the Commission that if it were to consider allowing tattoo studio uses, it should be by Conditional Use Permit and add restrictions to the distances the tattoo studio uses are allowed from other uses and to the hours the studio is allowed to operate.

**EXCERPT FROM PLANNING AND ZONING COMMISSION DRAFT REGULAR MEETING
MINUTES OF JUNE 6, 2013:**

11. Tattoo Studio Uses

M. Zimmermann

A recommendation to the Bryan City Council regarding an amendment to the text of Bryan Code of Ordinances Chapter 130, Zoning, to allow tattoo studio uses in the Downtown – South (DT-S) zoning district by right, or with prior approval of a Conditional Use Permit, and determining whether any use-specific conditions should be applied to such uses in the DT-S District and/or city-wide, and amending existing zoning district regulations accordingly.

Mr. Zimmermann presented the findings of the subcommittee (on file in the Development Services Department). In response to a question, Mr. Zimmermann explained that the condition which prohibited the consumption of alcohol was already present in state law, but was suggested to clarify that alcohol consumption would not be allowed. In response to a question, Mr. Zimmermann listed the members of the subcommittee as Commissioners Hardeman, Hickle, Gonzalez, and Madison.

The public hearing was opened.

Ms. René Lawrence, 712 Banks Avenue, Bryan, Texas, spoke in favor of the proposed amendment, informing the Commission that the changes would allow professional artists who use skin as their medium to operate while preventing any negative consequences.

Ms. Becky Segrest, 7230 Oak Forest Drive, Bryan, Texas, came forward to commend the Commission for its dedication and work in making Downtown Bryan an enjoyable and safe place to spend time.

Ms. Sharon Anderson, 2304 Cindy Lane, Bryan, Texas, came forward to speak in opposition to tattoo studio uses in the DT-S zoning district. She informed the Commission that if it were to consider allowing tattoo studio uses, it should be by Conditional Use Permit and add restrictions to the distances the tattoo studio uses are allowed from other uses and to the hours the studio is allowed to operate.

In response to a question, Mr. Zimmermann clarified that the proposed amendment did not include stipulations on the hours tattoo studios would be allowed to operate city-wide, although conditional use permits could include conditions which limited the hours of operation.

Mr. Chris Lawrence, 712 Banks Avenue, Bryan, Texas, spoke in favor of the proposed amendment, informing the Commission that it allowed different business owners the opportunity to add cultural value to downtown.

Mr. Cliff Collard, 110 Marta Street, College Station, Texas, spoke in favor of the proposed amendment. He informed the Commission that he had operated near churches, schools, and daycares without a problem. He also stated that he has provided clients who do not want to wait for his services a listing of other tattoo studios in the area.

The public hearing was closed.

Commissioner Hardeman moved to accept the subcommittee's recommendations and recommend to the Bryan City Council the following changes to the Zoning Ordinance:

1. **that tattoo studio uses be potentially allowed in the Downtown – South (DT-S) zoning district, with prior approval of a Conditional Use Permit; and**
2. **that the following new use-specific standards shall apply to all tattoo studio uses city-wide:**
 - a. **All structures housing a tattoo studio use shall be located at least 5,280 feet from another structure housing a tattoo studio use.**
 - b. **All structures housing a tattoo studio use shall have a minimum of 3,000 square feet of floor area and a maximum of 5,000 square feet of floor area.**
 - c. **Consumption of alcoholic beverages shall be prohibited in the tattoo studio (in accordance with 25 Texas Administrative Code, Chapter 229, Subchapter V, “Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios”, Rule 229.404 (h), as may be amended from time to time).**

Commissioner Gonzalez seconded the motion.

Commissioners discussed:

- Their ability to make a city-wide impact
- Their ability to bring business to downtown
- The amount and nature of the citizen response
- Moving Bryan forward
- Commending the work of the subcommittee
- The improvements made in Downtown
- That this proposed amendment provided a good compromise

The motion passed unanimously.