

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C2O-2011-014 Garage Sales, Art Tours and Home Occupation

Description:

Amend Chapter to Title 25 relating to requirements for tours, garage sales, home occupations, and art production and sales. The amendment specifies how often a homeowner may hold a garage sale (4 days/year) or take part in an art tour that includes minor sales (6 days/year).

Staff Recommendation: Staff has prepared the ordinance requested by City Council, and recommends approval of this the amendment, with the following changes:

- The number of permitted days of a garage sale be reduced from four to two; and
- To qualify as an art tour for the purposes of this ordinance, the tour organizer is required to notify the City of Austin Cultural Arts Division, with the dates and participating addresses of the tour.

Discussion:

This item was initiated by City Council on May 12, 2011 with Resolution No. 20110512-040. The intent was to support local artists and the creative community by allowing the sale of art by the artist from a residence that is taking part in a annual or semi-annual tour.

Staff has taken this item to the Arts Commission for comment, and has held an additional meeting with Planning, Code Enforcement and Cultural Arts staff and members of the local arts community.

Staff recommends that the allowable number of days per year for a garage sale be reduced from four to two. The State of Texas currently allows two garage sales per year per residence to take place without requiring the collection of sales tax. Keeping City of Austin code in line with the State of Texas would decrease confusion and would ease enforcement of city and state regulations.

Additionally, staff recommends that to qualify as an art tour for the purposes of this ordinance, the tour organizer is required to notify the City of Austin Cultural Arts Division, with the dates and the addresses of participating properties. This simple notification will ease the enforcement of the ordinance.

Proposed Language

One use would be added to list of permitted accessory uses for a primary residential use:

§ 25-2-893 (*Accessory Uses for a Principal Residential Use*)

(C) The following are permitted as accessory uses:

...
(7) on-site sales held in connection with a garage sale or a tour that or a tour that complies with Section 25-2-901 (Garage Sales and Tours);

The following new section would be added:

§ 25-2-901 GARAGE SALES AND TOURS.

- (A) A garage sale is allowed as an accessory residential use subject to the requirements of this subsection.
 - (1) A garage sale includes yard sales, carport sales, or similar types of sales involving:
 - (a) the sale of used or secondhand tangible property customarily found at a residence; and
 - (b) the production and incidental sale of artwork by an individual responsible for making or producing the artwork.
 - (2) A garage sale must be conducted entirely on a property used as the seller's principal residence.
 - (3) A garage sale may not be held at the same property more than four days per calendar year or as part of a tour under Subsection (B) of this section.
- (B) Participation on an annual or semi-annual tour is allowed as an accessory residential use subject to the requirements of this subsection.
 - (1) A tour is an organized event in which multiple residential properties are opened to members of the public for any lawful purpose, including:
 - (i) the appreciation and study of architecture; and
 - (ii) the production and incidental sale of artwork by an individual responsible for making or producing the artwork.
 - (2) A residential property may participate in a tour that includes the production or sale of art at the property no more than six days per calendar year.
- (C) In addition to the requirements of this section, a garage sale or studio tour must comply with all other applicable regulations.

City Council Date and Action:

May 12, 2011: City Council adopts Resolution No. 20110512-040 initiating a code amendment to address garage sales and art tours.

August 25, 2011: City Council set a public hearing for this item for September 23, 2011.

September 23, 2011: The item is scheduled for public hearing and action.

Board and Commission Actions

Planning Commission Committee on Codes and Ordinances – May 17, 2011: The committee forwarded this item to the full Planning Commission with a recommendation for approval.

Planning Commission – July 12, 2011: The Planning Commission referred the item to the Arts Commission.

Arts Commission –

August 15, 2010 – The Arts Commission requested that staff receive additional input from the artist community and continued discussion to a special called meeting on August 29, 2011.

August 29, 2011 – The Arts Commission recommended the following changes to the ordinance:

- The discussion of garage sales be dropped from the ordinance, and, if necessary, be discussed as a separate item;
- The number of permitted days per year that an artist may sell their art as part of a tour be expanded from 6 to 12;
- Up to 6 guests artist, be permitted to sell their art from the same property, along with the primary artist; and
- That advertising of an art tour not be considered a violation of the prohibition on advertising of a home occupation as per 25-2-900 (J).

(vote 6-0)

Planning Commission – September 13, 2011: The item is scheduled for public hearing and action.

Ordinance Number:

City Staff: Robert Heil

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Email: robert.heil@ci.austin.tx.us

ORDINANCE NO.

1 AN ORDINANCE ESTABLISHING REQUIREMENTS FOR RESIDENTIAL
 2 GARAGE SALES AND TOURS AND CLARIFYING REQUIREMENTS
 3 RELATING TO ART PRODUCTION ON RESIDENTIAL PROPERTY.
 4

5 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
 6

7 PART 1. Subsection (C) of City Code Section 25-2-893 (*Accessory Uses for a Principal*
 8 *Residential Use*) is amended to read:

9 (C) The following are permitted as accessory uses:

- 10 (1) recreational activities and recreational facilities for use by residents;
 11 (2) religious study meetings;
 12 (3) playhouses, patios, cabanas, porches, gazebos, and household storage
 13 buildings;
 14 (4) radio and television receiving antenna and dish-type satellite receivers;
 15 (5) solar collectors;
 16 (6) home occupations that comply with Section 25-2-900 (*Home*
 17 *Occupations*);
 18 (7) on-site sales held in connection with a garage sale or a tour that complies
 19 with Section 25-2-901 (*Garage Sales and Tours*);

20 ~~[(7)]~~(8) the keeping of dogs, cats, and similar small animals as household pets;
 21 and

22 ~~[(8)]~~(9) a single accessory apartment that complies with the requirements of
 23 Section 25-2-901 (*Accessory Apartments*).
 24

25 PART 2. City Code Chapter 25-2, Article 5 (*Accessory Uses*) is amended to add a new
 26 Section 25-2-901 (*Garage Sales and Tours*) to read as follows:

27 § 25-2-901 GARAGE SALES AND TOURS.

28 (A) A garage sale is allowed as an accessory residential use subject to the
 29 requirements of this subsection.

- 1 (1) A garage sale includes yard sales, carport sales, or similar types of sales
- 2 involving:
- 3 (a) the sale of used or secondhand tangible property customarily found
- 4 at a residence; and
- 5 (b) the production and incidental sale of artwork by an individual
- 6 responsible for making or producing the artwork.
- 7 (2) A garage sale must be conducted entirely on a property used as the
- 8 seller's principal residence.
- 9 (3) A garage sale may not be held at the same property more than four days
- 10 per calendar year or as part of a tour under Subsection (B) of this section.

11 (B) Participation on an annual or semi-annual tour is allowed as an accessory
 12 residential use subject to the requirements of this subsection.

- 13 (1) A tour is an organized event in which multiple residential properties are
- 14 opened to members of the public for any lawful purpose, including:
- 15 (i) the appreciation and study of architecture; and
- 16 (ii) the production and incidental sale of artwork by an individual
- 17 responsible for making or producing the artwork.
- 18 (2) A residential property may participate in a tour that includes the
- 19 production or sale of art at the property no more than six days per
- 20 calendar year.

21 (C) In addition to the requirements of this section, a garage sale or studio tour must
 22 comply with all other applicable regulations.

23 **PART 3.** The City Council finds that:

- 24 (A) As determined by Planning & Development Review Department, a home
- 25 occupation use under Section 25-2-900 (*Home Occupations*) may include the
- 26 production of art. However, the sale of art is only allowed in connection with a
- 27 garage sale or tour as authorized by this ordinance.
- 28 (B) City Code does not regulate internet advertising.

29 **PART 4.** This ordinance takes effect on _____, 2011.

C3/6

PASSED AND APPROVED

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_____, 2011

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Lee Leffingwell
Mayor

APPROVED: _____
Karen Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

C3/7

RESOLUTION NO. 20110512-040

WHEREAS, several annual and semi-annual tours are held within Austin's urban neighborhoods that enhance the unique cultural and artistic environment for city residents and members of the Austin creative community; and

WHEREAS, production of arts and crafts is currently a permitted use under the City's home occupation regulations; and

WHEREAS, the promotion of home occupations, including arts and craft production and limited sales, is allowed via websites as well as guides and directories related to tours and events; and

WHEREAS, the tours provide a creative outlet for visual artists, craft-makers, and design professionals, as well as residents who maintain homes and public spaces and enhance the character and economy of the city; and

WHEREAS, city regulations protect neighborhoods and impact the success of tours, art production and home art sales; and

WHEREAS, in recognition of the City of Austin's continuing efforts to support art in public spaces and cultural arts programming and its creative community; **NOW, THEREFORE**,

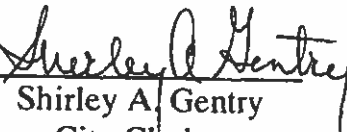
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. The City Council initiates code amendments to City Code Chapter 25-2 (*Zoning*) and directs the City Manager to develop a proposed ordinance that:

- (A) Allows residential properties throughout the City of Austin to participate in a tour, which may include the on-site incidental sale and production of arts and crafts, for up to 6 days per year;
 - (B) Allows residential properties to hold garage sales or similar events, which may include the on-site incidental sale and production of arts and crafts, for up to four-days per year when not associated with a tour; and
 - (C) Clarifies that the ordinance does not waive applicable land use codes or health and safety regulations.
2. The City Manager is directed to present a draft ordinance consistent with the terms of this resolution for consideration by the Council within 90 days.

ADOPTED: May 12, 2011

ATTEST:


Shirley A. Gentry
City Clerk