

ORDINANCE NO. O-2022-89

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY RE-ADOPTING REGULATIONS RELATING TO TAX ABATEMENTS FOR HISTORICAL LANDMARKS; 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, 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, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; 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, Texas Local Government Code Section 211.007(a) authorizes a zoning commission to recommend boundaries for the original zoning districts, and appropriate regulations for each district; and

WHEREAS, on April 23, 2008, the City Council adopted Ordinance No. 0-2008-48, which amended Tyler City Code Chapter 10 by adopting the Unified Development Code governing zoning, subdivision, development and other land use regulations; and

WHEREAS, the City Council has adopted regulations related to preservation of historic structures in City Code Chapter 10, Article XI.; and

WHEREAS, the City Council has adopted provisions related to tax abatements for historical landmarks in Tyler City Code Sec. 10-794; and

WHEREAS, Tyler City Code Sec. 10-794.dh. contains a sunset review provision whereby the City Council reviews Sec. 10-794 every 5 years to determine if the tax abatement provisions for historical landmarks should be continued, modified or repealed; and

WHEREAS, it is important to re-adopt the tax abatement provisions for historical landmarks in City Code Sec. 10-794; and

WHEREAS, the Unified Development Code Review Committee has reviewed the proposed changes; and

WHEREAS, on July 6, 2022, the Historical Preservation Board reviewed the proposed re-adoption of City Code Sec. 10-794; and

WHEREAS, on September 6, 2022, the Planning and Zoning Commission reviewed the proposed changes;

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

PART 1: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XI., "Historic Preservation", Division C., "Tax Abatement", is hereby amended by re-adopting Section 10-794 to read as follows:

Sec. 10-794. Tax Abatements for Historic Landmarks

a. The tax abatement provided for in this section is intended to encourage historic preservation within the City of Tyler. Any building or structure that has been designated as a historic landmark pursuant to the terms of this Article, and which is substantially rehabilitated as provided herein, may have abated one hundred percent (100%) of the amount of any increase in the assessed value for purposes of ad valorem taxes levied by the City of Tyler in excess of the assessed value of the property for a period of five (5) years following issuance of a Certificate of Appropriateness. Said tax abatement must only apply to the increase in the assessed value of the property over the assessed base value of the property, regardless of the actual value of any permits and improvements. In order to be eligible for tax abatement, said renovations must be at a minimum cost of thirty thousand dollars (\$30,000.00) and must be completed within a period of two (2) years from the date of issuance of a Certificate of Appropriateness. The tax abatements would become applicable to the property in January of the first tax year following the date of issuance of a Certificate of Appropriateness. The tax abatements must continue in effect during the established five-year period as long as the property remains on the Tyler historic landmark register. The total amount of said improvements subject to tax abatement per year for the five-year period on a single piece of property must not exceed two million dollars (\$2,000,000).

b. To be eligible for property tax abatement under this section, a property must meet the following requirements:

1. The building or structure must meet the requirements for, and have previously been designated as, a historic landmark pursuant to section 10-782.
2. The structure or building upon which the renovation is to occur must be at least fifty (50) years old or older;
3. The tax abatement under this section is available for buildings or structures on both residential and commercial property.
4. Any renovations or improvements must conform to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, a copy of which is available in the Planning Department.

c. Application process. Applications for tax abatement under this section are voluntary. Any owner seeking tax abatement under this section must file an application for a Certificate of Appropriateness in conformance with section 10-786. Said application must include a projection of the estimated construction time and predicted completion date of the historic repair or rehabilitation. The requirements of sections 10-786 and 10-783 must govern the application, granting and removal, and maintenance process for the Certificate of Appropriateness. However, the actual granting of the tax abatement under this section shall be subject to the discretion and approval of the City Council. After a public hearing, the City Council may by ordinance approve the abatement provided for in this section. If approved by City Council, the applicant for abatement shall cause a copy of the ordinance and application for exemption to be sent to the Smith County Appraisal District not later than January 1st of each subject tax year. (Ord. No. 0-2017-69 8/23/17)

d. Time for completion; re-capture. If the improvements, renovation or restoration repair work on a particular piece of property are not completed within two (2) years from the date of issuance of the Certificate of Appropriateness, any and all tax abatements previously received on said property during the two-year period must be revoked, and the City may re-capture all tax abatements that the property owner received during said two-year period. In addition to the re-capture, the property owner shall not be eligible for the tax abatement for the remaining three (3) years.

e. Eligible costs. Eligible costs must include construction, reconstruction, alteration, change, restoration, removal or demolition of any exterior architectural feature of a building or structure on the Tyler historic landmark register. Materials and labor for repairing, replacing or adding any of the following shall be eligible, if expressly approved as part of the Certificate of Appropriateness:

1. Structural walls;
2. Exterior doors;
3. Windows;
4. Exterior brick veneers or treatments;
5. Roof and gutter where necessary for structural integrity;
6. Façade items;
7. Limited demolition, not more than fifteen percent (15%) of the original structure, and cleanup related to the eligible costs in this subsection;
8. Exterior paint (consistent with those colors available during the time period that the structure was built);
9. Foundations;
10. Structural subfloors;
11. Structural ceilings;
12. Termite damage and treatment;
13. Fixtures and decorative items attached to the main structure, or that contribute to the historic integrity of the property;
14. Fencing that contributes to the historic integrity of the property.

f. Ineligible costs. Ineligible costs shall include the following:

1. Overhead;
2. Taxes;
3. Supervisor payroll;
4. Repairs of construction equipment;
5. Tools;
6. Plumbing and electrical wiring;
7. Mechanical equipment; air conditioning systems;
8. Any other items not directly related to the exterior appearance or the structural integrity or viability of the structure, except that interior items for commercial properties shall be allowed.

g. Use in conjunction with other incentives. The tax abatement authorized by this section may be used in conjunction with other types of abatements or incentives, either existing and that may be developed in the future, unless otherwise prohibited by statute or ordinance.

h. Sunset review. Before the fifth anniversary of the date of re-adoption of this section, the City Manager or designee shall review the tax abatement program established herein. The City Manager or designee shall review the effects of, and any benefits or problems

associated with, this program. Following such review, the City Manager or designee shall make a recommendation to the City Council regarding whether to continue, modify, or repeal this section. (Ord. No. 0-2005-61; 8/17/05) (Ord. No. 0-2008-8; 1/9/08) (Ord. No. 0-2012-83, 10/10/12) (Ord. No. 0-2017-69; 8/23/17) (Ord. No. 0-2022-89; 9/28/22)

PART 10: 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 11: 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 Friday, September 30, 2022.

PASSED AND APPROVED this the 28th day of September, A.D., 2022.



DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



APPROVED:


DEBORAH G. PULLUM,
CITY ATTORNEY