

ORDINANCE NO. O-2020-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 1, "GENERAL PROVISIONS", ARTICLE I. "CITY CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY AMENDING AND CLARIFYING GENERAL PENALTY PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, it is the intent of the City Council to comply with all applicable Federal and State laws; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations not in conflict with Federal or State law to promote the health, safety and 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 local 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 local self-government; 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 provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; 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 expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or 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 the 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, 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 the 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, Texas Local Government Code Section 217.042(a) provides that a home rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, Texas Local Government Code Section 341.903 provides that a home rule municipality may police areas owned by and located outside of the municipality, such as parks and grounds, lakes and land contiguous to and used in connection with a lake, and speedways and boulevards.

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the municipality; and

WHEREAS, Texas Local Government Code Section 54.004 provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; 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, State law authorizes a maximum fine of two thousand dollars (\$2000.00) for violations of City ordinances that involve fire safety, zoning, or public health and sanitation, other than dumping of refuse (Texas Local Government Code Section 29.003; Texas Code of Criminal Procedure Article 4.14); and

WHEREAS, State law authorizes a maximum fine of four thousand dollars (\$4,000) for violations of City ordinances that involve dumping of refuse; and

WHEREAS, Tyler City Code Section 1-4 currently provides a non-exclusive list of City Code Sections related to fire safety, zoning, or public health and sanitation that have a maximum fine of \$2000 for such violations; and

WHEREAS, it is important to amend and clarify the current City Code penalty provisions in City Code Section 1-4;

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

PART 1: That Tyler City Code Chapter 1, "General Provisions", Article I. "City Code", is hereby amended by amending City Code Section 1-4 to read as follows:

Sec. 1-4. General penalties for violation of Code; continuing violations.

- a. The maximum penalties for violation of City ordinances are limited by State law.
- b. The fine cannot exceed two thousand dollars (\$2,000.00) if the case involves fire safety, zoning, or public health and sanitation.

These should include but not be limited to the following:

1. Chapter 4, sections 4-101 and 4-104, governing firearms within the City;
2. Chapter 6 governing buildings and structures, including any violation of the International Codes as adopted therein;
3. Chapter 7, Article III, governing and regulating minimum standards for occupancy of buildings and structures, including sanitary facilities and substandard buildings;
4. Chapter 8, Section 8-23 governing firearms in parks and recreation areas, and Section 8-50 governing the operation of concessions in parks or recreation areas;
5. Chapter 14, Article II, governing and regulating noxious odors or substances and fierce or dangerous conduct of animals.
6. Chapter 16, governing the proper collection, removal, handling, or transporting of garbage, trash, or other types of solid waste
7. Chapter 17, Article I governing and regulating the use of public right-of-

ways and Article VII, governing and regulating the operation of commercial vehicles in residential areas;

8. Chapter 18 governing littering, health and sanitation;

9 Chapter 10, Unified Development Code, governing and regulating the platting, subdivision and development of land, or governing zoning;

10. Chapter 19, including:

(a) Article IV, disposal of industrial wastes;

(b) Article V, liquid waste transportation and disposal;

(c) Section 19-27 through 19-32, 19-36, 19-37, 19-39, and 19-40 which involve unauthorized tampering with the water system.

(d) Section 19-146, governing proper sanitation, garbage and sewage disposal on lake lots leased from the City;

(e) Section 19-190 discharge of weapons

(f) Section 19-233, declaring unlawful any discharge of wastewater or sewage from any vehicle, trailer, camper or house trailer within the Lake Bellwood Reservoir Area;

(g) Section 19-235, declaring unlawful any discharge of firearms within the Lake Bellwood Reservoir Area;

(h) Section 19-239, declaring unlawful the discharge of fireworks or explosives within the Lake Bellwood Reservoir.

(i) Article XI., governing illicit discharge and stormwater connection regulations. (Ord. No. 0-2010-93, 9/8/10)

c. The fine cannot exceed four thousand dollars (\$4,000.00) if the case involves dumping of refuse.

d. In all other cases, the maximum fine is not more than five hundred dollars (\$500.00), except where otherwise provided.

e. Each day or fractional part thereof that any violation of this Code or of any ordinance shall continue constitutes a separate offense. (Ord. No. O-98-45, 5/27/98) (Ord. No. O-2009-52, 4/22/09) (Ord. No. 0-2000-97, 12/20/2000) (Ord No. O-2016-1, 1/13/16) (Ord. No. 0-2019-15; 01/22/20)

PART 2: 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 3: 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 January 24, 2019.

PASSED AND APPROVED this 22nd day of January, A. D., 2020.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS


ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY