

ORDINANCE NO. O-2020-72

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 19, ARTICLE I., IN GENERAL AND ARTICLE III., WATER AND SEWER SERVICE AND CHAPTER 1, GENERAL PROVISIONS, ARTICLE I., CITY CODE, AND ADDING ARTICLE XII., PRIVATE LATERAL SEWER LINES, OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATED TO THE NEW PRIVATE LATERAL PROGRAM, 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, 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, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; 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, The City of Tyler is committed to ensuring the health of the general public and reducing the potential health risks posed by inadequate maintenance of private laterals connecting to the City's main sewer lines; and

WHEREAS, the owner of property containing a private lateral should maintain that private lateral with guidance from the City; and

WHEREAS, to facilitate the resolution of defective private lateral lines, the City desires to provide additional information and details to property owners and the new Private Lateral Sewer Line Ordinance will provide uniform standards and specifically set forth owner responsibilities; and

WHEREAS, Equity issues are considered so that any eligible property owner may seek assistance and counsel from the City in order to resolve defective private lateral problems; and

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

PART 1: That Tyler City Code Chapter 19, Utilities, Article I., "In General", is hereby amended by amending Section 19-1 to read as follows:

Sec. 19-1. Definitions.

As used in this chapter, the following words and terms shall have meanings as follows:

Business Office Manager means the Water Utilities Business Office Manager of the Division. (0-2004-93, 11/24/04)

City means the City of Tyler. When used as the subject of action, refers to action taken by authority of the City Manager.

Developer means one who subdivides or provides to tracts of land the infrastructure necessary or convenient for urban usage. As used in Chapter 19, this term includes the owner of property being developed.

Developmental improvements mean street, drainage, and water and sewer extension improvements.

Director means the Director of Utilities.

Division means Tyler Water Utilities Division which is charged with operation and control of all facilities used by City in furnishing a supply of water to its customers.

Engineer means a person duly authorized under State law, as heretofore or hereafter amended, to practice the profession of engineering in the State of Texas.

Inspector means the City representative who is specifically assigned to inspect any or all parts of the water and sanitary sewer system, particularly new subdivision extensions.

Manager means the Water Production and Water Quality Manager for the Division.

Off-site main means water or sewer mains built to connect a development with the City water or sewer system and located outside the boundaries of the development.

Oversized lines mean water or sewer mains which are both: (a) larger than eight (8) inches in diameter; and (b) larger than needed to serve the development.

Standard specifications means the current standard specifications for waterworks and sewerage improvements in the City.

Design guidelines for water and sewer lines mean the current guidelines for design of water and sanitary sewer system improvements within subdivision developments in the City.

Sewer means sanitary sewer and does not refer to a stormwater sewer.

Utility means the water or sewer system owned by the City of Tyler and the service provided in connection with this system.

PRIVATE LATERAL means the sewer service from the sewer main to and on owners' property, including the connection to the sewer main. The upper lateral is the section from the structure(s) to the property line. The lower lateral is the section from the property line to the sewer main. Both the upper and lower lateral are owned by the property owner. See Ch. 19, Article XII. PRIVATE LATERAL SEWER LINES for more information.

(Ord. No. O-96-54, 6-26-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. 2009-7, 2/11/09) (Ord. No. O-2019-63, 08/14/2019) (Ord. No. 2020-72; 08/12/2020)

PART 2: That Tyler City Code Chapter 19, Utilities, Article III., "Water and Sewer Service", Division C., "Rates", is hereby amended by amending Section 19-65 to read as follows:

Sec. 19-65. Sewer tap and activation fees.

a. Sewer tap fee. Installation of sewer connections (taps) and service connections from the main to the property line or point of user connection shall be performed only by Division employees or a contractor approved by the Director. The following charge shall be made for sewer connections, payable in advance:

Sewer Tap Fee

Size of Service

Charge

4-inch

\$ 2050.00

(0-2006-79; 9-13-2006) (0-2008-128; 9/24/08) (Ord. No. 2009-7, 2/11/09) (Ord. No. 0-2017-77; 9/13/17) (Ord. No. 0-2018-69; 9/12/18) (Ord. No. 0-2019-80; 9/25/19)

b. Activation fee. The tap fee shall include the cost of a tap and service connection from the main to the property line when the total length is fifty (50) feet or less and when installation is not by boring or tunneling under a street or other structure. In such cases the cost of tap and

service shall be the actual cost of furnishing and installing the tap and service line plus a factor of 1.25 to cover overhead and administrative cost. Sewer services six (6) inches and larger will require an approved manhole at the junction with the main. The charge for six (6) inch and larger service connection will be the actual cost of construction including labor, equipment, materials and street restoration, times a factor of 1.25 to cover overhead and administrative costs. By permission of the Director, sewer services six (6) inches and larger may be constructed by an approved contractor. It is the responsibility of the property owner to maintain the private lateral sewer service from the sewer main to and on owners' property, including the connection to the sewer main. In addition to the sewer tap fee, there shall be payable in advance a sewer activation fee. The following fees shall be charged:

Size of Service

Charge

4-inch

\$26.50

6-inch and larger

\$26.50

The Director may allow the construction of a single service connection to service two properties using a "y" at the joint property line. The connected property owner(s) shall be responsible for maintenance of that portion of the private lateral sewer service line extending from the sewer main to and through the "y" located at the joint property line, including the connection to the sewer main.(Ord. No. O-96-54, 6-26-96) (Ord. No. 0-99- 70, 10-1-99) (Ord 0-2003-42, 9-10-2003) (0-2008-128; 9/24/08) (Ord. No. 2009-7, 2/11/09) (Ord. No. 2020-72; 08/12/2020)

PART 3: That Tyler City Code Chapter 19, "Utilities", is hereby amended by adding Article XII., "Private Lateral Sewer Lines."

ARTICLE XII. PRIVATE LATERAL SEWER LINES

Sec. 19-341. Owner maintenance required.

- a. The owner of property containing a private lateral shall maintain the private lateral. Maintenance under this section may include, but is not limited to:
 1. clearing obstructions from the private lateral;
 2. repairing a defect in the private lateral that allows the introduction of extraneous flow or debris into the sanitary sewer system;
 3. repairing a defect in the private lateral that allows the discharge of sewage on the property; and
 4. keeping a cleanout cap/stopper tight and in place.

Sec. 19-342. Testing and notice of defective private lateral.

- a. The Director may periodically have special tests performed to confirm the integrity of the sanitary sewer system, including smoke testing, dyed water testing, air testing, hydraulic testing, closed circuit television inspection, and other testing and inspection techniques approved by the Director.
- b. The Director or his designee may have designated and authorized city personnel or representative(s) enter private property to inspect or test a private lateral.

- c. The city personnel, or representative, shall give the property owner not less than 24-hours written notice before city personnel, or representative, enter private property to conduct an inspection or test, unless:
 - 1. city personnel or representative(s) are conducting an investigation of a complaint or responding to a customer request to test or inspect a private lateral; or
 - 2. sewage is exposed on the property in a manner that creates a potential public health hazard.
- d. The Director may identify defects in a private lateral that allow extraneous flow or debris to enter the private lateral or the discharge of sewage on the property, or a condition that may interfere with the proper operation of the private lateral.
- e. A defect under this section may include, but is not limited to:
 - 1. evidence of pipe or joint deterioration;
 - 2. root intrusion into a pipe that separates a pipe joint or enlarges an existing crack;
 - 3. a misaligned pipe segment, sag, or lack of positive gradient;
 - 4. a broken cleanout, or lack of a necessary cleanout cap/stopper;
 - 5. a downspout, drain, or other connection that allows storm water or other extraneous water to enter the sanitary sewer system; or
 - 6. a flaw that allows the discharge of sewage on the property or the introduction of extraneous water into the sanitary sewer system.
- f. Except as provided in Section 19-343b. (*Repair required; standards*), if the Director identifies a defective private lateral or a condition that interferes with the proper operation of the private lateral, the Director shall send the property owner written notice of the defect or condition, including a statement that the private lateral must be repaired, or the condition corrected, not later than the 120th day after the date of the notice.

Sec. 19-343. Repair required; standards.

- a. A property owner is responsible for the repair of a defective private lateral from the structure(s) to the sewer main. Any work performed on the lower lateral must be done as prescribed by the City design guidelines for water and sewer lines, City specifications and the current Plumbing Code. The City may repair a defective private lower lateral from the property line to the sewer main. The property owner shall pay the appropriate fee(s) and obtain the appropriate permit(s) from the City before performing the repair of a defective private lateral.
- b. If sewage is exposed on the property because of a defective private lateral a property owner must:
 - 1. stop the discharge of sewage immediately;
 - 2. remediate the site using industry standards not later than 24-hours after the owner has notice of the exposed sewage; and

3. complete all necessary repairs of a private lateral immediately, but not later than the 30th day after the owner has notice of the exposed sewage.
- c. A person who repairs an existing private lateral or installs a new or rehabilitated private lateral shall perform the repair or installation as prescribed by the City design guidelines for water and sewer lines, City specifications and the current Plumbing Code.

Sec. 19-344. Post-Repair inspection and testing requirements.

- a. After a property owner has repaired a defective private lateral, the Director shall:
 1. Inspect, or cause to be inspected, the private lateral to determine that it complies with the City design guidelines for water and sewer lines, City specifications and the current Plumbing Code; and
 2. May test the private lateral in a manner approved by the Director.
- b. If a private lateral fails the post-repair inspection or test, the property owner shall perform additional repairs as required by the Director to correct the defect.

Sec. 19-345. Financing program; application.

- a. The City may establish a private lateral finance program to assist a property owner in financing the repair of a defective private lateral.
- b. A property owner may apply for assistance from the program by filing an application with the Director on the form prescribed by the Director.
- c. If a property owner complies with the application requirements, the Director may authorize the owner to obtain financing under the program.

Sec. 19-346. Offense.

- a. A property owner commits an offense if the owner fails to repair a defective private lateral in compliance with the current Plumbing Code or to correct a condition interfering with the proper operation of a private lateral on or before the date specified by the Director in the Director's written notice of the defect or as required by Section 19-343b. (*Repair required; standards*).
- b. Unless a discharge is caused by a backup in the sewer main, a property owner commits an offense if the owner fails to stop the discharge of sewage and to remediate the site not later than 24 hours after the owner receives notice from the City of exposed sewage on their property.
- c. Each day or part of a day during which non-compliance occurs constitutes a separate offense.

Sec. 19-347. Criminal penalty.

A person who violates this Article commits an offense, punishable under Section 1-4 of the Tyler City Code by a fine not to exceed \$500.

Sec. 19-348. Civil penalty.

- a. If a person violates this section or fails to take action to comply with this section, or federal, state, or local regulations, the city attorney may initiate a suit for:
 1. civil penalties authorized under Texas Local Government Code Section 54.017 (*Civil penalty*);
 2. injunctive relief;

3. recovery of expenses, loss, or damage to City property or equipment; and
4. other available relief.

Sec. 19-349. City action to correct violation.

- a. If the property owner fails or refuses to repair the private lateral, or correct the condition, described in the notice, the City may repair the private lateral or correct the condition. The City may:
 1. contract for the repair, replacement, or correction; and
 2. expend City funds; and
 3. charge the owner for work performed by the City; and
 4. either
 - (i.) assess the actual costs against the property; or
 - (ii.) if the property owner is the utility customer, apply a charge to the customer's utility bill.

Sec. 19-350. Assessment and lien.

The Director may file a lien statement against the property as provided by Section 342.007 (*Assessment of expenses; lien*) of the Texas Health and Safety Code for work performed and expenses incurred by the city under Section 342.006 (*Work or improvements by municipality; notice*) of the Texas Health and Safety Code. If the City assesses the actual costs against the property, the property owner, within five (5) years after the date of that assessment, must pay the City the amount that the City paid for the completed work, plus simple interest at an amount of 10 percent (10%) a year. If the property owner does not pay the assessment during the five-year period, the City may enforce the lien on the property in the same manner in which it is authorized by law to enforce the lien for paving or other assessment.

Sec. 19-351. Charge.

The Director may apply a charge to the property owner's utility bill for work performed and expenses incurred by the city under Section 19-349 (*City action to correct violation*). The charge shall be prorated over a five-year period. The provisions of Section 19-64 (*Sewer service rates*), shall apply to this provision.

Sec. 19-352. Emergency abatement.

In addition to the corrective action authorized by Section 19-349 (*City action to correct violation*), the Director may take emergency action to abate or eliminate a condition or circumstance that poses an immediate danger to the public health, safety or welfare.

Sec. 19-353. Cumulative remedies.

The remedies authorized under this section are cumulative unless specifically prohibited by state or federal regulation.

Sec. 19-354 - 359. Reserved. (Ord. No. O-2020-72; 08/12/2020)

PART 4: That Tyler City Code Chapter 1, "General Provisions", Article I., "City Code", is hereby amended by amending 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).
 - (j.) Article XII., governing private lateral sewer lines.

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. O-2000-97, 12/20/2000) (Ord. No. O-2016-1, 1/13/16) (Ord. No. O-2019-15; 01/22/20) (Ord. No. O-2020-72; 08/12/2020)

PART 5: 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 6: 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, or later. The effective date of this Ordinance shall be August 14th, 2020.


MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK




DEBORAH G. PULLUM,
CITY ATTORNEY