

ORDINANCE NO. O-2017-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTERS 1, 2, 3, 6 AND 15 OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, TO STREAMLINE PROCEDURES, TO INCREASE EFFICIENCY, TO IMPROVE RESPONSE TIME TO CITIZENS AND TO MAKE CURRENT CITY CODE PROVISIONS MORE CONSISTENT WITH CURRENT PRACTICE, BY AUTHORIZING THE CITY MANAGER TO DESIGNATE MISCELLANEOUS DUTIES AND RESPONSIBILITIES AND BY UPDATING CERTAIN APPEALS PROCEDURES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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, the City of Tyler has adopted ordinances pursuant to Texas Local Government Code Sections 51.001 and 51.072, as well as Tyler City Charter Sections 1, 2 and 6; and

WHEREAS, it is important to amend and update certain Ordinance provisions to streamline procedures, to increase efficiency, to improve response time to citizens and to make provisions more consistent with current practice;

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 III., "Boards", is hereby amended by amending Section 1-21 to read as follows:

Sec. 1-21. Sunset review.

Periodically, the City Manager or designee shall review the need for all Boards and may make recommendations to the City Council as are deemed necessary. (Ord. No. O-98-45, 5/27/98) (Ord. No. 0-2012-71; 9/26/12) (Ord. No. 0-2017-20; 2/22/17)

PART 2: That Tyler City Code Chapter 1, "General Provisions", Article V. "Emergency Preparedness", is hereby amended by amending Section 1-40 to read as follows:

Sec. 1-40. Preparation of plan.

The City Manager or designee shall provide for planning in the area of emergency preparedness and disaster relief. An Emergency Management Plan setting out specific details for the handling of such situations in Tyler and Smith County shall be prepared for Council adoption and periodic review. The City Manager or designee shall also provide for the preparation of such inter-local agreements as are necessary to adequately prepare for emergencies. (Ord. No. O-98-45, 5/27/98) (Ord. No. 0-2017-20; 2/22/17)

PART 3: That Tyler City Code Chapter 2, "Finance and Taxation", Article II., "Taxation", is hereby amended by amending Section 2-21 to read as follows:

Sec. 2-21. Deficiency Determinations.

a. Recomputation of tax, authority to make, basis of recomputation. If the Director of Finance/CFO is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the City by any lodging provider, he/she may compute and determine the amount required to be paid upon the basis of any information within his/her possession or that may come into his/her possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.

b. Penalty. Penalty shall be assessed upon the amount of any determination, as provided by Section 2-20.

c. Notice of determination, service of. The Director of Finance/CFO shall give to the lodging provider written notice of his/her determination. The notice may be served personally or by mail if by mail, such service shall be addressed to the lodging provider at his/her address as it appears in the records of the City. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.

d. Time within which notice of deficiency determination to be mailed. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within four (4) years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within four (4) years after the return is filed, whichever period should last expire.

e. Appeal or protest of deficiency determination. Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the Director of Finance/CFO. The lodging provider shall include such documents as he/she believes may present grounds for abatement of the determination. The Director of Finance/CFO shall give written notice of his/her decision to the lodging provider in the same manner as provided in Section 2-21(c). The decision of the Director of Finance/CFO shall be deemed final unless an appeal is made in writing to the City Manager as provided by City Code Chapter 1, Article IV. The City Manager shall approve or disapprove the appeal, and notify the appellant of the decision. (Ord. No. 0-2011-54; 07/13/2011) (Ord. No. 0-2017-20; 2/22/17)

PART 4: That Tyler City Code Chapter 2, "Finance and Taxation", Article III., "Tax Abatement Policy", is hereby amended by amending Section 2-32 to read as follows:

Sec. 2-32. Abatement Review.

a. The City Manager or designee, in consultation with the Tyler Economic Development Council, will initially negotiate all tax abatement contracts agreements. The proposed contracts will then be submitted to the Reinvestment Zone Committee for review. The recommendation of the Reinvestment Zone Committee will be submitted to all participating local governments, including the City Council. (Ord. No. 0-2017-20; 2/22/17)

b. A Reinvestment Zone Committee is responsible for reviewing all applications for abatement, recommending action to be taken on the application by the City Council, and monitoring compliance with abatement contracts. Any deviations from the original abatement

contract will be reported by the committee to the City Council along with recommendations from the committee. If recommended by the committee, an abatement contract may be terminated by action of the City Council if the property owner fails to comply with the agreement. Notification of such termination for cause shall be in writing and shall be delivered to the property owner at its address of record. An abatement contract may also be voluntarily terminated where all parties agree through use of a termination agreement approved by the City Council. Committee members shall be appointed by the City Manager and will include representatives who are active in promoting the economic health of the City and the other affected taxing jurisdictions. The committee will include representatives from each of the taxing entities that will be asked to participate in a tax abatement contract. Members do not have to be City residents.

c. When considering abatement contracts, the City will consider any burdens which will be placed on existing infrastructure and basic services by the proposed project. The City may reject applications which place inordinate demands on public services or require inordinately large expenditures to improve or maintain local government infrastructure.

d. Representatives of the taxing jurisdictions periodically review commitments made pursuant to this policy: this policy is reviewed every two years; all reinvestment zones are reviewed every five years; and tax abatement contracts are reviewed annually. This policy is separate from any policy concerned with enterprise zones and any obligations deriving from existing industrial development contracts. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-23, 4/5/00) (Ord. No. 0-2000-74, 9/27/00) (Ord. No. 0-2002-33, 8/28/2002) (Ord. No. 0-2004-63, 8/25/04) (Ord. No. 0-2006-87; 10/11/06) (Ord. No. 0-2008-148; 11/19/08) (Ord. No. 0-2011-6, 1/12/2011) (Ord. No. 0-2013-7, 1/9/2013) (Ord. No. 0-2015-53, 5/13/2015)

PART 5: That Tyler City Code Chapter 2, "Finance and Taxation", Article VI, "Claims", is hereby amended by amending Section 2-61 to read as follows:

Sec. 2-61. Claims for sanitary sewer stoppages; overflows on premises.

The City Manager or designee is authorized, in situations where the City receives a claim for a sanitary sewer main stoppage that results in an overflow on private premises, to pay actual, documented clean-up and restoration expenses (excluding plumbing and lodging expenses) not covered by insurance up to and including an amount of five thousand dollars (\$5,000). In no case does the City assume responsibility for overflows resulting from service line stoppages, nor is this procedure intended to acknowledge or suggest legal liability on the part of the City. Periodically, the City Council shall be notified of the status of all such overflow claims. (Ord. No. 0-98-21; 3/18/98) (0-2003-63, 11/26/03) (0-2006-102, 12/13/06) (Ord. No. 0-2017-20; 2/22/17)

PART 6: That Tyler City Code Chapter 3, "Personnel/Civil Service/TMRS", Article I, "Personnel Policies", is hereby amended by amending Section 2-61 to read as follows:

Sec. 3-3. Affirmative Action.

In order to achieve equal employment opportunity, The City Manager or designee shall, from time to time, develop such equal employment hiring and promotion goals as appropriate. (Ord. No. 0-96-14, 2-21-96) (Ord. 0-2003-64, 11/26/03) (Ord. No. 0-2017-20; 2/22/17)

PART 7: That Tyler City Code Chapter 6, "Buildings and Structures", Article VI, "Moving of Buildings", is hereby amended by amending Section 6-90 to read as follows:

Sec. 6-90. License and bond requirements for moving houses.

a. No person, except a licensed house mover, may move any house over or along any street within the City. Before engaging in such occupation, such person shall obtain an annual license therefor, the fee for which shall be one hundred dollars (\$100.00). Such license may not be granted until applicant has given a bond in the sum of five thousand dollars (\$5,000.00) with two (2) or more good and sufficient sureties, or one executed by an approved surety company doing business in the State. Such bond must be approved by the City Manager or designee and conditioned that said party will pay any and all property damages which may occur to any tree, street, sidewalk, cable, utility pole, traffic signal, sign or any other thing injured by said house mover, whether such injury or damage is inflicted by said house mover or agents, employees or workers; and also conditioned that the house mover will indemnify and keep harmless the City against all liabilities, judgments, costs and expenses which may in any wise accrue against the City in consequence of the granting of such license. Upon the execution of said bond and its approval by the City Manager or designee, the Chief Building Official shall inspect the equipment to be used by the house mover, and upon approval of same and the payment of the license fee, a license shall be issued to applicant.

b. A license may be denied if the applicant has moved a house or structure without a permit within the previous twelve-month period preceding the application.

c. After an administrative hearing, the City Manager or designee may suspend a house moving license for a period of one year if it is determined that the license holder moved a house or structure without a permit.

d. The term "house" as used herein shall mean a structure forming all or part of a single habitable unit which is used or intended to be used for living, sleeping, cooking, eating, and sanitation. (Ord. O-97-29, 6-18-97) (Ord. No. 0-2017-20; 2/22/17)

PART 8: That Tyler City Code Chapter 15, "Franchises", Article VI., "Rights-of-Way Use and Construction", is hereby amended by amending Section 15-265 to read as follows:

Sec. 15-265. Construction Obligations.

A Person is subject to reasonable police power regulation of the City to manage its Public Rights-of-Way in connection with the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities in the Public Rights-of-Way, pursuant to the City's rights as a custodian of public property based upon the City's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:

a. At the City's request, a Person shall furnish the City Engineer accurate and complete information relating to the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities performed by the Person in the Public Rights-of-Way.

b. A Person shall perform excavations and other construction in the Public Rights-of-Way in accordance with all applicable City requirements. The City may require use of trenchless technology if it determines that, based upon information provided to the City by the Person, the particular field conditions warrant the requirement. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

c. Underground installation which would cross a water main 18 inches and larger will require open excavations. State regulations on minimum overhead line heights shall apply to all overhead line installations.

d. The City recognizes that Utility Companies use the City's right-of-way as a matter of necessity to provide citizens of the City with valuable services. The City does not intend to unnecessarily inhibit utilities from installing facilities to provide valuable services. However, a person must obtain a permit, as reasonably required by applicable City codes, prior to any excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's Facilities that involves any of the following:

1. cuts the paved street surface; or
2. Overhead – a project impacting five or more existing and or new poles/structures within the street Right of Way; or
3. Underground – Any project which impacts 3 or more pedestals, transformers, underground vaults or other structures and involves more than 200 feet linear underground installation within the street Right of Way; or
4. blocks traffic lanes or sidewalks during peak traffic periods between 7:00 a.m. to 8:30 a.m. and 4:30 p.m. to 6:00 p.m. on weekdays, or for more than three hours during any non-peak traffic period.

However, if the person has to obtain a federal or state permit for the work, then only a copy of that permit need be provided to the City.

Except in the case of customer service interruptions and imminent harm to property or Persons ("Emergency Conditions"), a Person may not excavate the pavement of a street or Public Rights-of-Way without first complying with City requirements. The City Engineer or designee shall be notified as promptly as possible regarding work performed under such Emergency Conditions, and the Person shall comply with the requirements of City standards and of this Article for the restoration, replacement or repair of the Public Rights-of-Way.

A construction permit is not required for routine maintenance that does not require a pavement cut or just involves connecting to existing facilities for service, provided the construction does not include items number (1) – (4) above of this subsection. Once a permit is issued, Person shall give to the City a minimum of forty-eight (48) hours notice (which may be given at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its Facilities in, on or under the Public Rights-of-Way. The failure of the Person to request and obtain a permit from the City prior to performing any of the above listed activities in, on or over any Public Right-of-Way, except in an emergency as provided for in Subsection (k) below, will subject the Person to a stop-work order from the City and enforcement action. If the Person fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid unless extended by the City upon a showing of good cause. Upon expiration of a permit, a Person shall be required to obtain another permit pursuant to the requirements of this Article.

e. A Person shall furnish the City with construction plans and maps showing the location and proposed routing of new construction or reconstruction at least five (5) business days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way, unless otherwise approved by the City. A Person may not begin construction until the location of new Facilities and proposed routing of the new

construction or reconstruction and all required plans and drawings have been approved in writing by the City, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing.

f. The City may require reasonable bonding requirements of a Person, as are required of other entities that place Facilities in the Public Rights-of-Way. This requirement may be waived or modified by the City Engineer upon a showing of good cause.

g. In determining whether any requirement under this Section is unreasonable or unfeasible, the City Engineer shall consider, among other things, whether the requirement would subject the Person or Persons to an unreasonable increase in risk or service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in construction or in availability of its services, or to any other unreasonable technical or economic burden.

h. A Person issued a permit pursuant to this Article shall, at all times, employ the standard of care attendant to the risks involved to prevent actions, failures and accidents which may cause damage, injury or nuisance to persons, the public, the Facilities of other Persons, or to any City structures or structures owned by other Persons located in the Public Rights-of-Way. A Person issued a permit pursuant to this Chapter shall observe all federal and state statutes and regulations and all applicable City Ordinances and shall keep and maintain its Facilities in a safe and suitable condition, and in good order and repair.

i. Any person aggrieved by the denial of a permit under this Article may appeal such action to the City Manager in accordance with the City Code. (Ord. No. 0-2017-20; 2/22/17)

j. Upon completion of excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities or other work in the Public Rights-of-Way, a Person shall promptly restore and repair the Public Rights-of-Way in accordance with applicable City requirements. Within thirty (30) calendar days after completion of work in the Public Rights-of-Way, the Person shall properly restore, replace, relay and/or repair the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or City facilities and infrastructure located on, in or under any Public Rights-of-Way that has been excavated, altered or damaged by reason of the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's Facilities and shall return same to the same or better condition it was in prior the work. Upon a showing of good cause, the City may at its sole discretion extend the time for restoration and repair of the Public Rights-of-Way under this subsection.

k. Upon failure of a Person to perform any such repair or replacement work, and five (5) days after written notice has been given by the City to the Person, and in the event repairs have not been initiated during such five day period, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Person, its contractors or agents. Upon receipt of an invoice from the City, the Person will reimburse the City for the costs so incurred within sixty (60) calendar days from the date of the City invoice.

l. Should the City reasonably determine, within one year from the date of the completion of the repair work, that the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City facilities and infrastructure located on, in or under any Public Rights-of-Way requires additional restoration, replacement or repair work to meet existing City standards, a Person shall perform such additional work to the satisfaction of the City, subject to all City remedies as provided herein.

m. Notwithstanding the foregoing in subsection g., if the City determines that the failure of a Person to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances, and the Person failed to respond within a reasonable time specified by the City. Upon receipt of an invoice from the City, a Person shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

n. If the City Engineer declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Person shall remove or abate the Person's Facilities by the deadline provided in the City Engineer's request. The Person and the City shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the Person, without paying compensation to the Person and without the City incurring liability for damages. In such situation, the City will take reasonable efforts to ensure that any alterations to a system will not create operational problems that could seriously impact customers of that system.

o. Within sixty (60) days of completion of each new permitted section of a Person's Facilities:

1. If there were not changes, a letter or e-mail verifying it was built according to Plan, or
2. If there were changes from the original drawings submitted, the Person shall supply the City with a complete set of any changes for the segment in a format used in the ordinary course of the Person's business to the extent they are prepared in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by the City, and as allowed by law. The City may, at its discretion, accept in lieu of "as-built" drawings or changes, any reasonable alternative which provides adequate information as to the location of Facilities in the Public Rights-of-Way. (Ord. No. 0-2002-59, 12/11/02)

PART 9: 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 10: 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, February, 24th, 2017.

PASSED AND APPROVED this 22nd day of February, A.D., 2017.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK




DEBORAH G. PULLUM,
CITY ATTORNEY