

ORDINANCE NO. O-2016-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE I., "BUILDING CODE", ARTICLE III., "GAS CODE", ARTICLE IV., "PLUMBING CODE", ARTICLE V., "MECHANICAL CODE", ARTICLE VIII., "FIRE PREVENTION", ARTICLE IX., "RESIDENTIAL CODE", ARTICLE X., "ENERGY CONSERVATION CODE", AND ARTICLE XI., "EXISTING BUILDING CODE", BY AMENDING THE MEMBERSHIP REQUIREMENTS FOR THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS IN VARIOUS INTERNATIONAL CODES ADOPTED BY THE CITY; 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, it is the intent of the City Council to comply with the Second Amendment to the United States Constitution, and all other applicable Federal and State laws regulating firearms; and

WHEREAS, Texas Constitution Article 1, Section 23, provides that every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State, but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime; 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, the City Council has adopted various International Codes to protect the public health, safety and welfare; and

WHEREAS, it is important to update the membership requirements for the Construction Board of Adjustment and Appeals contained in the various standard International Codes;

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

PART 1: That Tyler City Code Chapter 6, "Buildings and Structures", Article I., "Building Code", Article III., "Gas Code", Article IV., "Plumbing Code", Article V., "Mechanical Code", Article VIII., "Fire Prevention", Article IX., "Residential Code", Article X., "Energy Conservation Code", and Article XI., "Existing Building Code", are hereby amended by amending the following sections to read as follows, with no other changes to the Articles or Sections:

Sec. 6-2. Amendments to building code.

The 2006 International Building Code is amended as follows:

a. through g. No changes...

h. Section 112 is deleted in its entirety and new Section 112 is adopted as follows:

112. Construction Board of Adjustment and Appeals

112.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

112.2. Membership.

112.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be set forth in City Code Section 1-20.

112.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

112.2.3 through 112.5.2. No changes...

i. through o. No changes...

(Ord. No. O-93-46, Pt. 2, 7-12-93; Ord. No. O-93-68, Pt. 2, 9-8-93; Ord. No. O-93-83, Pt. 1, 10-1-93) (Ord. No. 0-96-2000, 4/4/96) (Ord. No. 0-2001-59, 12/5/2001) (Ord. No. 0-2005-88; 10/26/05) (Ord. No. 0-2006-101; 12/13/06) (Ord. No. 0-2011-42, 5/25/11) (Ord. No. 0-2016-17; 2/24/16)

Sec. 6-51. Amendments to gas code.

The 2006 International Fuel Gas Code is amended as follows:

a. through e. No changes...

f. Section 109 is deleted in its entirety and a new Section 109 is adopted to read as follows:

109. Construction Board of Adjustment and Appeals

109.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

109.2. Membership.

109.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

109.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the Code Official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

109.2.3. through 109.5. No changes...

g. No changes...

(Ord. No. O-91-10, Pt. 3, 2-19-91; Ord. No. O-93-16, Pt. 2, 4-2-93; Ord. No. O-93-83, Pt. 4, 10-1-93) } (Ordinance No. 0-96-33, 4-4-96) (Ord. No. 0-2001-60, 12-5-2001) (Ord. 0-2007-8, 1/24/07) (Ord. No. 0-2016-17; 2/24/16)

Sec. 6-71. Amendments to plumbing code.

The 2006 International Plumbing Code is amended as follows:

a. through e. No changes...

f. Section 109 is deleted in its entirety and a new Section 109 is adopted as follows:

109. Construction Board of Adjustment and Appeals

109.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven. The Board shall be appointed by the applicable governing body.

109.2. Membership and Terms

109.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met,

the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

109.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the Code Official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

109.2.3. through 109.5.2. No changes...

g. through l. No changes...

Ord. No. 0-98-11, 2/11/98) (0-2001-62, 12/5/01) (0-2007-10, 1/24/07) (Ord. No. 0-2016-17; 2/24/16)

Sec. 6-81. Amendments to Mechanical Code.

The 2006 International Mechanical Code is amended as follows:

a. through e. No changes...

f. Section 109 is deleted in its entirety and a new Section 109 is adopted as follows:

109. Construction Board of Adjustment and Appeals

109.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

109.2. Membership and Terms.

109.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

109.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the Code Official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

109.2.3. through 109.5.2. No changes...

g. through j. No changes...

(Ord. No. O-93-08, Pt. 3, 2-16-93; Ord. No. O-93-17, Pt. 1, 4-2-93; Ord. No. O-93-83, Pt. 2, 10-1-93) (Ord. No. 0-96-35, 4-24-96) (Ord. No. 0-2001-61, 12-5-2001) (Ord. No. 0-2007-9, 1/24/07) (Ord. No. 0-2016-17; 2/24/16)

Sec. 6-123. Fire Code-Amendments.

- a. through c. No changes...
- d. Section 108 is deleted in its entirety and new Section 108 is adopted as follows:

108. Construction Board of Adjustment and Appeals

108.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

108.2. Membership and Terms.

108.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20

108.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the fire code official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

108.2.3 through 108.5.2. No changes...

e. through w. No changes...
(Ord. No. O-96-5, 1-24-96; Ord. No. O-96-47, 6-5-96) (Ord. No. 0-2001-64, 12/5/2001) (Ord. No. 0-2006-33; 3/22/06) (Ord. No. 0-2007-25; 2/28/07) ((Ord. No. 0-2011-42, 5/25/11) (Ord. No. 0-2016-17; 2/24/16)

Section 6-151. Amendments to residential code.

The 2009 International Residential Code is amended as follows:

- a. through d. No changes... Section R101.2 is amended by adding the following sentences:

e. Section R112 is deleted in its entirety and a new Section R112 is adopted as follows:

R112. Construction Board of Adjustment and Appeals

R112.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

R112.2. Membership and Terms.

R112.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be set forth in City Code Section 1-20.

R112.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

R112.2.3. through R112.5.2. No changes...

f. through m. No changes...

(Ord. No. 0-2007-11; 1/24/07) (Ord. No. 0-2013-27; 3/27/13) (Ord. No. 0-2016-17; 2/24/16)

Section 6-161. Amendments to 2009 International Energy Conservation Code.

The 2009 International Energy Conservation Code is amended as follows:

a. through c. No changes...

d. Delete current Section 109 and adopt a new Section 109 to read as follows:

109. Construction Board of Adjustment and Appeals

109.1. Appointment. There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven (7) members. The Board shall be appointed by the applicable governing body.

109.2. Membership.

109.2.1 Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the

membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

109.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

109.2.3 through 109.5.2. No changes...

e. No changes...

(Ord. No. 0-2013-28; 3/27/13) (Ord. No. 0-2016-17; 2/24/16)

Sec. 6-163. Amendments to existing building code.

The 2009 International Existing Building Code adopted in Section 6-162 is amended as follows:

a. through g. No changes...

h. Section 112 is deleted in its entirety and new Section 112 is adopted as follows:

112. Construction Board of Adjustment and Appeals

112.1. Appointment.

There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

112.2. Membership.

112.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

112.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

112.2.3. through 112.5.2. No changes...

i. through n. No changes...

(Ord. No. 0-2010-18; 3/10/10) (Ord. No. 0-2016-17; 2/24/16)

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 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 February 26, 2016.

PASSED AND APPROVED this 24th day of February, A. D., 2016.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



DEBORAH G. PULLUM,
CITY ATTORNEY