

ORDINANCE NO. 0-2013-28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, RELATING TO ADOPTION OF THE 2009 INTERNATIONAL ENERGY CONSERVATION CODE WITH AMENDMENTS; 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, as part of the ongoing recodification and review of City ordinances, it is necessary to amend certain chapters of the Code to reflect current policies and procedures of the City and to be consistent with changing state and federal statutes; and

WHEREAS, Texas Health & Safety Code Section 388.003(b) states that in regard to residential (other than single-family), commercial, and industrial construction, the International Energy Conservation Code is adopted as the energy code for the State; and

WHEREAS, Texas Health & Safety Code Section 388.003(d) authorizes municipalities to include local amendments to the 2009 Energy Conservation Code if such amendments are not less stringent than the Code and if in compliance with the National Appliance Energy Conservation Act of 1987; and

WHEREAS, Texas Health & Safety Code Section 388.003(c) requires municipalities to establish procedures for the administration and enforcement of the International Energy Conservation Code; and

WHEREAS, on 1/24/07, the City Council adopted the 2006 International Energy Conservation Code, with amendments; and

WHEREAS, the 2009 International Energy Conservation Code with amendments as recommended by the Construction Board of Adjustment and Appeals should be adopted;

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 X., "Energy Conservation Code", is hereby amended by amending Section 6-160 to read as follows:

Section 6-160. Energy conservation code adopted.

The 2009 Edition of the International Energy Conservation Code, as amended in Section 6-161, is hereby adopted by reference and incorporated herein. Copies of the Energy Conservation Code and amendments thereto are available in the Building Inspection Division of the Development Services Department, City Library and City Clerk's offices. (Ord. 0-2002-32; 8/28/02) (0-2007-7; 1/24/07) (Ord. No. 0-2013-28; 3/27/13)

PART 2: That Tyler City Code Chapter 6, "Buildings and Structures", Article X., "Energy Conservation Code", is hereby amending by deleting current Section 6-161 in its entirety and adopting a new Section 6-161 to read as follows:

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

The 2009 International Energy Conservation Code is amended as follows:

a. Add a new Section 101.5.3 as follows:

101.5.3. Building official. The building official or designee is hereby designated as the Code Official and is authorized to interpret and enforce the provisions of this code. In exercising such powers, the building official or designee shall have the same authority as granted to the building official and code official in the other International Codes. Code-certified inspectors shall perform inspections and shall enforce the Code in the inspectors' jurisdiction. (Ord. No. 0-2013-28; 3/27/13)

b. Add a new Section 101.5.4 as follows:

101.5.4. Liability. Indemnification of City officials, City employees, and members of City Council appointed boards is governed by City Code Section 2-62.

c. A new Section 101.5.5 is adopted to read as follows:

101.5.6. Violation penalties. It shall be unlawful for any person, firm or corporation to violate any of the provisions of this code. Penalties for violations of this code are set forth in City Code Section 1-4. (Ord. No. 0-2013-28; 3/27/13)

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 and two (2) alternates. The Board shall be appointed by the applicable governing body.

109.2. Membership.

109.2.1 The Construction Board of Adjustment and Appeals should consist of seven (7) members. 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 regular member shall have either a Master Electrician's license or be a licensed electrical engineer. In addition to the regular members, there should be two alternate members, one member at large from the building industry and one member at large from the public. 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. In the event that regular members are unable to attend a meeting, the alternate members, if appointed, shall vote.

109.2.3. Secretary of Board. The building official shall act as secretary of the board and shall make a detailed record of all of its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member and any failure of a member to vote.

109.3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in 101.5.5.6, to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

109.4. Appeals.

109.4.1. Decision of the Building Official. The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the building official to the Construction Board of Adjustment and Appeals whenever any one of the following conditions is claimed to exist:

1. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.

2. The provisions of this code do not apply to this specific case.

3. That an equally good or more desirable form of installation can be employed in any specific case.

4. The true intent and meaning of this code or any of the regulations there under have been misconstrued or incorrectly interpreted.

109.4.2. Variances. The Construction Board of Adjustment and Appeals, when so appealed to and after a hearing, may vary the application of any provision of

this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.

2. That the special conditions and circumstances do not result from the action or inaction of the applicant.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.

4. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.

5. That the grant of the variance will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and welfare.

109.4.2.1. **Conditions of the Variance.** In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

109.4.3. **Notice of Appeal.** Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the building official.

109.4.4. **Unsafe or Dangerous Buildings or Service Systems.** In the case of a building, structure or service system which, in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official may, in the order, limit the time for such appeals to a shorter period.

109.5 Procedures of the Board.

109.5.1 **Rules and Regulations.** The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet on call of the chairperson. The board shall meet within 30 calendar days after notice of appeal has been received.

109.5.2. **Decisions.** The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or

modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A certified copy of the decision shall be sent by mail or otherwise to the appellant. Every decision of the board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity. (Ord. 0-2007-7; 1/24/07) (Ord. No. 0-2013-28; 3/27/13)

e. Delete current Section 402.4.3 and adopt a new Section 402.4.3 to read as follows:

402.4.3. Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. (Ord. No. 0-2013-28; 3/27/13)

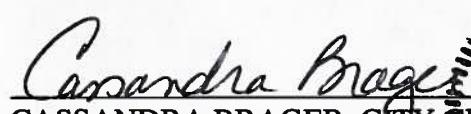
PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: 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 March 29, 2013.

PASSED AND APPROVED this 27th day of March, A. D., 2013.


BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

CITY OF TYLER SEAL TEXAS
GARY C. LANDERS, CITY ATTORNEY
