

ORDINANCE NO. 0-2011-82

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 1, "GENERAL PROVISIONS", ARTICLE VIII., "MUNICIPAL COURT", AND CHAPTER 7, "COMMUNITY DEVELOPMENT", ARTICLE III, "MINIMUM URBAN STANDARDS" OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS TO PROVIDE THE TYLER MUNICIPAL COURT WITH CIVIL JURISDICTION RELATING TO ENFORCEMENT PROCEDURES FOR SUBSTANDARD STRUCTURES AND DEMOLITION AND MANDATING A JUDICIAL FINDING THAT A SUBSTANDARD STRUCTURE IS A PUBLIC NUISANCE BEFORE DEMOLITION CAN OCCUR; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Texas Supreme Court on July 1, 2011 issued a ruling in *City of Dallas v. Stewart*, 2011 WL 2586882 (Tex.), 54 Tex. Sup. Ct. J. 1348 (No. 09-0257) (Tex. July 1, 2011) that a judicial finding of public nuisance should be had prior to any demolition of property; and

WHEREAS, in order to be in compliance with this latest adjustment, regarding requirements for demolitions, of Texas law; Tyler's procedures must be amended which also require City Code amendments as set out in this ordinance; and

WHEREAS, it is considered to be in the City of Tyler's best interest to use the Tyler Municipal Court rather than other State courts to comply with the Texas Supreme Court decision; and

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

WHEREAS, municipalities may, under their police powers, enact reasonable regulations 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 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 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, 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 the summarily abate and remove a nuisance; and

WHEREAS, Texas Government Code Section 30.00005 provides that the City by ordinance may provide that the Tyler Municipal Court of record court has civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A., Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code; and

WHEREAS, Texas Government Code Section 30.00005 provides that the City by ordinance may provide that the Tyler Municipal Court of record court has concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and

WHEREAS, the City Council desires to have additional and more efficient choices for addressing the problem of substandard buildings which are unfit for human habitation and which create slum and blight conditions in many Tyler neighborhoods;

WHEREAS, in light of the Texas Supreme Court ruling, on July 1, 2011, the City Council desires to create new strategies and improve existing programs targeting neighborhood revitalization efforts; and

Now, therefore, be it ordained by the Tyler City Council as follows:

PART 1: That City Code Chapter 1, "General Provisions", Article VIII., "Municipal Court", is hereby amended to read as follows:

**CHAPTER 1. GENERAL PROVISIONS
ARTICLE VIII. MUNICIPAL COURT**

Sec 1-80. Court of Record and Grant of Civil Authority, Jurisdiction

a. Court of Record

1. There is hereby created the Tyler Municipal Court of Record based on state law section 30.003 subchapter NN "to provide more efficient disposition of cases". The Court of Record shall have authority over all tickets issued after September 1, 1999, which have trials after the adoption of this ordinance. Trials held for tickets issued prior to September 1, 1999 and appeals therefrom shall be handled under State and City ordinance provisions in effect prior to the creation of the Court of Record.

2. Judges shall be appointed in accordance with the City Charter Section 25.

3. There shall be a twenty-five dollar (\$25.00) transcript preparation fee collected in addition to the trial costs of transcript preparation. (Ord No. O-99-77, 9-22-99)

b. Grant of Civil Authority, Jurisdiction

Pursuant to Texas Government Code § 30.00005 the Tyler Municipal Court of record shall have:

1. civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code;

2. concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and

3. authority to issue:

(a) search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(b) seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises. (Ord. No. 0-2011- 82, 10-12-2011)

PART 2: That City Code Chapter 7, "Community Development", Article III., "Minimum Urban Standards", is hereby amended to read as follows:

**CHAPTER 7 COMMUNITY DEVELOPMENT
ARTICLE III. MINIMUM URBAN STANDARDS**

Sec. 7-68. Neighborhood Revitalization Board.

a. Appointment/procedures.

1. The City Council hereby creates the Neighborhood Revitalization Board (NRB) consisting of five (5) members appointed by the City Council. Members may include, but are not required to include, a realtor; a building materials dealer; a physician; a member-at-large; or an architect, engineer, or general contractor. The City Council retains the right to appoint any person with an interest in serving to be a member of the Board. (Ord. No. 0-2008-105; 8/27/08)

2. The Board shall organize by electing a vice-chair and secretary. Thereafter, such officers shall be elected by the members at the first annual meeting of the Board.

3. The Board may establish its own rules of procedure consistent with this Code and State law.

b. Meetings. The Director shall set the regular Board meeting schedule and determine the need for and times of special called meetings.

c. NRB duties are:

1. To conduct public hearings; review evidence; approve rehabilitation plans and monitor compliance with timetables for completion; grant extensions of time when reasonable and necessary; order substandard buildings to be repaired, or refer the property to the Tyler Municipal Court of record with a recommendation that the substandard building be declared a public nuisance and be removed or demolished, within a reasonable time pursuant to State law and this Article. The NRB may also assess civil penalties against property owners for failure to secure or repair substandard buildings pursuant to the Board's orders and/or for other violations of this Article. Board orders and orders by the Tyler Municipal Court for demolition or removal may be appealed to District Court as stated in Section 7-76. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00).

2. To consider and determine the true intent and meaning of this Article or any of the related regulations. The Board's decisions related to construction or interpretations of the Code by the Director or designee shall be final. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2008-105, 8/27/08) (Ord. No. 0-2011-82, 10-12-2011)

Sec. 7-71. Substandard Building Notice Letters to Owners and Lienholders. Contents and Attachments.

a. When the Director or designee determines that a building is substandard, a Substandard Building Notice Letter (Notice letter) shall be sent by certified mail, return receipt requested, restricted signature to the last known address of the property owner and any known lienholders. If the owner's address is unknown, a copy of the written notice shall be posted on or near the front door or other visible location of the building. The letter will describe three options available to either demolish or rehabilitate the substandard building. Included with the Notice letter will be:

1. The Inspection Report for Substandard Building listing all violations of the City of Tyler Minimum Urban Standards;

2. Statement that the building must be secured within 48 hours of receipt of the Notice letter, and continue to remain secure;

3. A description of three options available to address the problems, including the City of Tyler Voluntary Demolition Program;

4. The date, time, and place of hearing before the Neighborhood Revitalization Board, if the substandard building was built within the past 50 years and is not designated as a historical landmark;

5. Statement that if the owner/lienholder chooses the rehabilitation option, that a written Rehabilitation Plan of Action and an Application for Certificate of Appropriateness for Rehabilitation, if applicable, must be submitted to the Neighborhood Services Director who will then forward to the Building Official for review within twenty-five (25) days of the Notice's receipt describing how the property will be brought into code compliance, the time needed to perform the work in a reasonable manner, and the economic feasibility of the plan;

6. If applicable, a statement that a date, time, and place of hearing will be set before the Historical Preservation Board, for certain buildings built over 50 years ago or of historical significance per Section 7-73. and Sec. 10-23;

7. Statement that City will secure, repair, or recommend removal or demolition of the building as ordered if owner fails to do so;

8. Statement that City may: assess civil penalties for violations of Chapter 7, Art. III. requirements, and/or for failure to repair, remove, or demolish the building; may place a lien on the property for costs incurred in any such activities; may file Class C misdemeanor charges for violations of Chapter 7, Art. III; and/or may file an injunction in state district court requesting court ordered action by the owner;

9. A Substandard Building Disposition form which must be returned within ten (10) days of the receipt of the Notice letter;

10. An Application, Affidavit of Hardship, Waiver and Release for Voluntary Demolition form and a Rehabilitation Plan of Action form; and

11. A stamped and addressed envelope for owner/lienholder use to return form(s) to the City of Tyler Neighborhood Services Department.

b. If the City chooses to file notice in the County land records, the notice must contain the name and address of the owner, if known; a legal description of the property; and a description of the public hearing, if applicable. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-8, 2/11/09) (Ord. No. 0-2011-82, 10-12-2011)

Sec. 7-76. Appeal of City Orders.

Pursuant to State law, the owner, lienholder and/or mortgagee aggrieved by a City Order issuing a Certificate of Demolition or Appropriateness for Rehabilitation issued by authority of this Article, may appeal to the state district court within thirty (30) calendar days after date a copy of the City Order is personally delivered or is mailed to them by certified mail, return receipt requested, restricted signature. If appeal is not timely made, Orders issued pursuant to this Article shall be final at the expiration of the thirty (30) calendar day period for appeal. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2011-82, 10-12-2011)

Sec. 7-77. Enforcement of Board-Order.

a. An assessment of a civil penalty by the Neighborhood Revitalization Board as provided in this Article is final and binding and constitutes *prima facie* evidence of the penalty in any court of competent jurisdiction.

b. The Director shall carry out the final Order.

1. The Director is authorized to contract the work at City expense. The Director shall prepare a certified statement of charges incurred by the City to secure, repair, remove, or demolish the building. The certified statement of charges shall be sent to the owner certified mail, return receipt requested, restricted signature within ten (10) days of the date costs were incurred by the City to secure, repair, remove, or demolish the building. The certified statement of charges shall make a demand for payment within thirty (30) days and will further instruct the property owner regarding the method and manner in which payment will be expected.

2. The Director shall monitor recovery of civil penalties assessed by NRB as set forth in the Order. The Director may schedule further hearings before the NRB and request assessment of further civil penalties for violations of any Order or for other violations of Code provisions pursuant to this Article.

3. The City may choose to protect its interests in recovering such costs and/or civil penalties by placing appropriate liens against the property pursuant to State law, unless the property is a homestead protected by the Texas Constitution. An affidavit of lien containing the name and address of the owner, if known, legal description of the land, the amount of expenses or civil penalty, duration of civil penalty, and balance due shall be filed with the Smith County Clerk.

4. If the Director or designee determines that a previous Order should be reviewed or re-examined due to changed or special circumstances, including subsequent substantial efforts to correct existing Code violations by any person, then the Director or designee shall have the authority to resubmit the Order for review according to the procedure applicable to City hearings. Orders may be upheld, repealed, or modified.

c. The City Attorney is hereby authorized to enforce this Article, by all appropriate legal means including enforcement in municipal court, and/or filing civil actions in courts of appropriate jurisdiction to seek compliance with said Orders, or defending the City from suit. If timely payment does not follow the issuance of the demand, the City Attorney is authorized to bring an action in district court for collection of all amounts due, for foreclosure of the lien, and for a judicially authorized sale of the property to pay costs or for such other and further appropriate relief. Any money received at the sale of the property in excess of demolition costs and costs of sale shall be credited to the owner of the property.

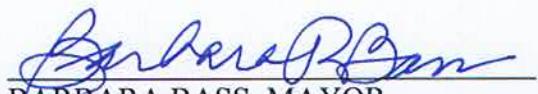
d. To enforce a civil penalty ordered under Section 7-75 e., the Director shall file a copy of each Order assessing a civil penalty with the City Clerk. The City Clerk shall file with the Smith County District Clerk a certified copy of the Order stating the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on said penalty.

e. Criminal Penalty. After any Order made pursuant to this Article has become final, no person to whom such order is directed shall fail, neglect, or refuse to obey such Order. Any person who fails to comply with any such Order commits a Class C misdemeanor offense, and is subject to the penalties set forth in Section 1-4. A separate offense is committed each day in which an offense occurs. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2011-82, 10-12-2011)

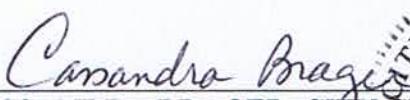
PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5. 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 become effective upon 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, October 14, 2011.

PASSED AND APPROVED this 12th day of October, A. D., 2011.


BARBARA BASS, MAYOR
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

GARY C. LANDERS, CITY ATTORNEY


APPROVED: