

ORDINANCE NO. O-2023-103

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 2021 INTERNATIONAL MECHANICAL 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, the 2015 International Mechanical Code with local amendments is currently in effect; and

WHEREAS, the 2021 International Mechanical Code with amendments as recommended by the Construction Board of Adjustment and Appeals should be adopted;

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general 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, 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 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, 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 may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City 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

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 express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and 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 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 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

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

PART 1: That Tyler City Chapter 6, "Buildings and Structures," Article V., "Mechanical Code," is hereby amended by amending Section 6-80 to read as follows:

ARTICLE V. MECHANICAL CODE

Sec. 6-80. Mechanical code adopted.

The 2021 edition of the International Mechanical Code, as amended in section 6-81 is hereby adopted by reference and incorporated herein. Copies of the Mechanical Code and amendments thereto are available in the Building Inspection Division of the Development Services Department, and in the City Clerk's offices. (Ord. No. O-93-08, Pt. 3, 2-16-93) (Ord.

PART 2. That Tyler City Code Chapter 6, "Buildings and Structures," Article V., "Mechanical Code," is hereby amended by deleting current Section 6-81 and adopting a new Section 6-81 to read as follows:

Sec. 6-81. Amendments to Mechanical Code.

The 2021 International Mechanical Code, as adopted in Section 6-80, is amended as follows:

- a. Section 103.1 is amended to read as follows:

103.1. Code compliance agency. The Building Services Department is the code compliance agency. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

- b. Section 103.2 is amended to read as follows:

103.2. Appointment. The Chief Building Official or designee is hereby appointed as the Code Official for purposes of this Code.

- c. Section 104.8.1 is amended by adding a sentence at the end to read as follows:

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

- e. Section 113 is deleted in its entirety.

- f. Section 114 is deleted in its entirety and a new Section 114 is adopted as follows:

114. Construction Board of Adjustment and Appeals

114.1. 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.

114.2. Membership and Terms.

114.2.1. 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.

114.2.2. 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.

114.2.3. Secretary of Board. The Code 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, and the absence of a member and any failure of a member to vote.

114.3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in 109.4, to hear appeals of decisions and interpretations of the Code Official and consider variances of the technical codes.

114.4. Appeals.

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

1. The Code 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 thereunder have been misconstrued or incorrectly interpreted.

114.4.2. 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.

114.4.2.1. 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.

114.4.3. Notice of Appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the Code Official. Appeals shall be in a form acceptable to the Code Official.

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

114.5. Procedures of the Board.

114.5.1. Rules and Regulations. The board shall establish rules and regulations for its own procedure not inconsistent with City rules and ordinances, and 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.

114.5.2. 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 Code official or varies the application of any provision of this code, the Code official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the Code official and shall be open to public inspection. A 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.

g. Section 306.3. Amend the second sentence to read: "The passageway shall not be less than 36 inches (36") high and 22 inches (22") wide and not more than 20 feet (20') in length measured along the centerline of the passageway from the opening to the appliance.

h. Add new Section 306.3.2 to read as follows:

306.3.2 Access panels in ceiling. Where the access panel is installed in a ceiling, flooring shall extend thirty inches (30") on three (3) sides of the opening. The flooring shall be sized per Table R503.1 of the 2015 International Residential Code.

i. Appendix A is hereby adopted.

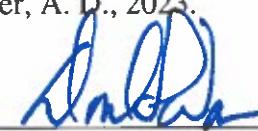
j. Appendices B and C. Delete.

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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, or later. The effective date of this Ordinance shall be January 1, 2024.

PASSED AND APPROVED this 25th day of October, A. D., 2023.



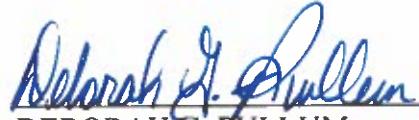
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



APPROVED:


DEBORAH G. PULLUM,
CITY ATTORNEY