

ORDINANCE NO. O-2023-106

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE X., "ENERGY CONSERVATION CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATING TO ADOPTION OF THE 2021 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, it is important to ensure safe and quality electrical work by electrical contractors; 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, as it existed on May 1, 2001, is adopted as the energy code for the State; and

WHEREAS, Texas Health & Safety Code Sections 388.003(d) and (e) authorize municipalities to include local amendments to the 2015 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, the 2015 edition of International Energy Conservation Code, with amendments, is currently in effect; and

WHEREAS, the 2021 International Energy Conservation 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

WHEREAS, it is important to adopt the 2017 Edition of the National Electrical Code with amendments; and

WHEREAS, on January 8, 2018 the Construction Board of Adjustment and Appeals voted to recommend that this ordinance be adopted by the City Council;

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 2021 Edition of the International Energy Conservation Code, as amended in Section 6-161, is hereby adopted by reference and incorporated herein. Copies of the 2015 Energy Conservation Code and amendments thereto are available in the Building Inspection Division of the Development Services Department, and City Clerk's offices. (Ord. No. 0-2023-106;10/25/23)

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:

The 2021 International Energy Conservation Code, as adopted in Section 6-160, is amended as follows:

a. Add a new Section C101.5.2 as follows:

C101.5.2. 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. Add a new Section C101.2.1 to read as follows:

C101.5.2.1. Appointment. The Chief building official or designee is hereby appointed as the Code Official for purposes of this code. In exercising such powers, the code 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.

c. Add a new Section C101.5.3 to read as follows:

C101.5.3 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and

without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act or by reason of any act or omission in the discharge of official duties.

d. Add a new Section C101.5.3.1 as follows:

C101.5.3.1 Legal defense. Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this code. Indemnification of City officials, City employees, and members of City Council appointed boards is governed by City Code Section 2-62.

e. Add a new Section C101.5.4 is adopted to read as follows:

C101.5.4. 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.

f. Delete current Section C110 and adopt a new Section C110 to read as follows:

C110. Construction Board of Adjustment and Appeals

C110.1. 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.

C110.2. Membership.

C110.2.1 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.

C110.2.2. 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.

C110.2.3. 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, the absence of a member and any failure of a member to vote.

C110. 3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in C109.4, to hear appeals of decisions and interpretations of the Code official and consider variances of the technical codes.

C110.4. Appeals.

C110.4.1. 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 is 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 there under have been misconstrued or incorrectly interpreted.

C110.4.2. 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.

C110.4.2.1. 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.

C110.4.3. 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.

C110.4.4. 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.

C110.5 Procedures of the Board.

C110.5.1 Rules and Regulations. The board shall establish rules and regulations for its own procedure not inconsistent with City rules and ordinances, or 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.

C110.5.2. 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. Add a new Section R101.5.2 to read as follows:

R101.5.2. 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.

h. Add a new Section R101.5.2.1 to read as follows:

R101.5.2.1. Appointment. The Chief building official or designee is hereby appointed as the Code Official for purposes of this code. In exercising such powers, the code 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.

i. Add a new Section R101.5.3 to read as follows:

R101.5.3 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act or by reason of any act or omission in the discharge of official duties.

j. Add a new Section R101.5.3.1 as follows:

R101.5.3.1 Legal defense. Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this code. Indemnification of City officials, City employees, and members of City Council appointed boards is governed by City Code Section 2-62.

k. Add a new Section R101.5.4 as follows:

R101.5.4. 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.

1. Delete current Section R110 and adopt a new Section R110 to read as follows:

R110. Construction Board of Adjustment and Appeals

R110.1. 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.

R110.2. Membership.

R110.2.1 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.

R110.2.2. 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.

R110.2.3. 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, and the absence of a member and any failure of a member to vote.

R110. 3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in R109.4, to hear appeals of decisions and interpretations of the Code official and consider variances of the technical codes.

R110.4.1. 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 is 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 there under have been misconstrued or incorrectly interpreted.

R110.4.2. 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.

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R110.4.3. 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 building official.

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- m. R405.11. Delete
- n. R404.2. Delete.
- o. Appendices CB, CC, RB and RC are hereby adopted.
- p. Appendices CA and RA. Delete.

(Ord. No. O-2023-106;10/25/23)

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:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



DEBORAH G. PULLUM,
CITY ATTORNEY