

ORDINANCE NO. O-2023-107

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE II, "ELECTRICITY", DIVISION D., "NATIONAL ELECTRICAL CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY ADOPTING THE 2023 NATIONAL ELECTRICAL 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 Local Government Code Section 214.214(a) states that the National Electrical Code, as it existed on May 1, 2001, is adopted as the municipal electrical construction code for the State of Texas; and

WHEREAS, Texas Local Government Code Section 214.214(a) states that the National Electrical Code applies to all residential and commercial electrical construction applications; and

WHEREAS, Texas Local Government Code Section 214.214(c) provides that the National Electrical Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings; and

WHEREAS, Texas Local Government Code Section 214.214(b) states that a municipality may establish procedures to adopt local amendments to the National Electrical Code, and for its administration and enforcement; and

WHEREAS, Texas Occupations Code Section 1305.201(c) provides that a municipality may adopt procedures for the adoption of local amendments to the National Electrical Code, and for administration and enforcement of such code; and

WHEREAS, the 2017 Edition of the National Electrical Code is currently in effect; and

WHEREAS, it is important to adopt the 2023 Edition of the National Electrical Code with amendments; and

WHEREAS, the Construction Board of Adjustment and Appeals has voted to recommend that this ordinance and amendments be adopted by the City Council;

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, the 2017 Edition of the National Electrical Code is currently in effect; and

WHEREAS, it is important to adopt the 2023 Edition of the National Electrical Code with amendments; and

WHEREAS, the Construction Board of Adjustment and Appeals voted to recommend that this ordinance and amendments 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 II., "Electricity", Division D., "National Electrical Code", is hereby amended by amending Section 6-43 to adopt the 2023 National Electrical Code as follows:

Sec. 6-43. National Electrical Code adopted.

The 2023 edition of the National Electrical Code, as amended in Section 6-44, is hereby adopted by reference and incorporated herein. Copies of the National Electrical Code and amendments thereto are available from the Building Inspection and the City Attorney offices. (Ord. No. O-96-36, 4-24-96, effective 6-1-96) (Ord. No. O-2000-54, 8-16-2000, effective 9-1-2000) (Ord. No. O-2004-9, 1/28/04) (Ord. No. O-2006-38, 4/12/06) (Ord. No. O-2008-141; 11/12/08) (Ord. No. O-2018-10; 1/24/18) (Ord. No. O-2023-107; 10/25/23)

PART 2: That Tyler City Code Chapter 6, "Buildings and Structures", Article II., "Electricity", Division D., "National Electrical Code", is hereby amended by deleting current Section 6-44 in its entirety, and adopting a new Section 6-44 to read as follows:

Sec. 6-44. Amendments to National Electrical Code.

The 2023 National Electrical Code adopted in Section 6-43 is hereby amended as follows:

a. Section 90.4(A) is hereby amended by adding the following subsections:

(1) Code compliance agency; Building official. 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. The Chief building official or designee is hereby appointed as the Administrative Authority Having Jurisdiction for purposes of this code. In exercising such powers, the Administration Having Authority 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.

(2) Liability. The Authority Having , 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.

(3) 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.

(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.

(5) Appeals and variances. Appeals and variances regarding this Code are governed by City Code Section 6-25.

b. Amend the Definitions in Article 100, Chapter 1, General, by amending the first paragraph of the definition of Authority Having Jurisdiction and deleting the Informational Note therein, and also adding definitions for Chief Electrical Inspector and Electrical Inspector, with no other changes to the Definitions, as follows:

Authority Having Jurisdiction (AHJ). An organization, office, or individual responsible for enforcing the requirements of a code or standard or for approving equipment, materials, an installation, or a procedure. The Building Official or designee is hereby designated as the Authority Having Jurisdiction, and is authorized to interpret and enforce the provisions of this Code.

Chief Electrical Inspector. An electrical inspector who either is the authority having jurisdiction or is designated by the authority having jurisdiction and is responsible for administering the requirements of this Code.

Electrical Inspector. An individual authorized to perform electrical inspections.

c. Add a new Section 110.1.1 to read as follows:

110.1.1. Electrical fences prohibited. Electrical fences shall be prohibited as set forth in City Code Section 6-39.

d. Amend Section 210.8(A) by adding a new Exception No. 5 to read as follows:

Exception No. 5: Refrigeration equipment including freezer, refrigerator, and Air Conditioning equipment when installed on a dedicated circuit.

e. Amend Section 210.8(F) by amending Exception No. 2 to read as follows:

Exception No. 2: GFCI protection shall not be required for HVAC equipment.

f. Amend Section 210.11, Subsection (C) (3), by deleting the Exception.

g. Amend Section 210.52(C)(3) by adding a new Subsection (4) to read as follows:

(4) Receptacle outlets shall be permitted to be mounted not more than 300 mm (12") below a countertop or work surface.

h. Amend Section 210.52(G), by adding the following sentence at the end:

Receptacles shall be a minimum of 18" above finished floor.

i. Amend Informative Annex H, Section 80.1, of Chapter 9, by adding the following sentence at the end:

Informative Annex H, Article 80 of Chapter 9 is hereby adopted, except where otherwise amended herein.

j. Amend Informative Annex H, Section 80.2 of Chapter 9 to read as follows:

Authority Having Jurisdiction. The organization, office, or individual responsible for enforcing the requirements of a code or standard or for approving equipment, materials, an installation, or a procedure. The Building Official or designee is hereby designated as the Authority Having Jurisdiction, and is authorized to interpret and enforce the provisions of this Code.

Chief Electrical Inspector. An electrical inspector who either is the Authority Having Jurisdiction or is designated by the Authority Having Jurisdiction and is responsible for administering the requirements of this Code.

Electrical Inspector. An individual authorized to perform electrical inspections.

k. Delete current Section 80.15 of Informative Annex H of Chapter 9 in its entirety and adopt a new Section 80.15 to read as follows:

80.15. Appeals and variances. Appeals and variances regarding this Code are governed by City Code Section 6-25. See Section 90.4(A).

l. Delete current Section 80.23 of Informative Annex H of Chapter 9 in its entirety and adopt a new Section 80.23 of Annex H to read as follows:

80.23. Violations and 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. See Section 90.4(A).

m. Delete Section 80.27 of Informative Annex H in its entirety.

n. Amend Section 80.29 of Informative Annex H to read as follows:

80.29. Liability for Damages and Indemnification. Article 80 shall not be construed to affect the responsibility or liability of any party owning, designing, operating, controlling, or installing any electric equipment for damages to persons or property caused by a defect therein, nor shall the City of Tyler or any of its employees be held as assuming any such liability by reason of the inspection, re-inspection, or other examination authorized. Indemnification of City officials, City employees, and members of City Council appointed boards is governed by City Code Section 2-62. See Section 90.4(A).

o. Informative Annex H, Sections 80.31, 80.33 and 80.35 of Chapter 9 are Deleted.

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Secs. 6-45-6-49. Reserved.

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