

**ORDINANCE NO. O-2023-110**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES," ARTICLE XI, "EXISTING BUILDING CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATING TO ADOPTION OF THE 2021 INTERNATIONAL EXISTING BUILDING 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 Local Government Code Section 214.215(b) states that a municipality that adopts a building code, other than the International Residential Code adopted under Section 214.212, shall adopt the following: (1) prescriptive provisions for rehabilitation as part of the municipality's building code; or (2) the rehabilitation code that accompanies the building code adopted by the municipality; and

**WHEREAS**, Texas Local Government Code Section 214.215(c) states that the rehabilitation or prescriptive provisions do not apply to the rehabilitation of a structure to which the International Residential Code applies or to the construction of a new structure; and

**WHEREAS**, Per Texas Local Government Code Section 214.215(d)(2), a municipality may amend its rehabilitation code or prescriptive provisions for rehabilitation; and

**WHEREAS**, the 2015 edition of the International Existing Building Code is currently in effect; and

**WHEREAS**, the 2021 International Existing Building Code with local amendments should be adopted to provide flexibility to permit the use of alternative approaches to promote public safety and welfare as affected by the repair, alteration, change of occupancy, addition and relocation of existing buildings; and

**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 Code Chapter 6, "Buildings and Structures," Article XI, "Existing Building Code", is hereby amended by amending Section 6-162 to adopt the 2021 edition of the International Existing Building Code as follows:

**Section 6-162. Existing building code adopted.**

The 2021 edition of the International Existing Building Code, as amended, is hereby adopted by reference and incorporated herein. Copies of the Existing Building Code and amendments thereto are available in the Inspection and City Clerk's offices. (Ord. No. O-2010-18; 3/10/10) (Ord. No. O-2018-15; 1/24/18) (Ord. No. O-2023-110; 10/25/23)

**PART 2:** That Tyler City Code Chapter 6, "Buildings and Structures," Article XI, "Existing Building Code," is hereby amended by repealing Section 6-163 and adopting a new Section 6-163 to read as follows:

**Section 6-163 Amendments to the existing building code.**

The 2021 Existing Building Code, as adopted in Section 6-162, is amended as follows:

- a. Section 101.2 is amended by adding the following sentence:

The provisions of this code shall apply to Tyler Pounds Regional Airport.

- b. Section 101.4.2 is amended as follows:

101.4.2 Buildings previously occupied. The occupancy of any building existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the International Fire Code, or as is deemed necessary by the code official for the general safety and welfare of the occupants and the public.

- c. Section 103.1 is deleted and a new Section 103.1 is adopted 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.. The Chief Building Official or designee is hereby appointed as the Code official.

- d. Section 104.8 is amended by adding the following sentence at the end of the section.

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

- e. Add the following sentences to the end of Section 105.5:

Notwithstanding the provisions of this section, the Code official may impose a time limit as an additional condition of a permit for completion of demolition work once such work shall have commenced, provided that for cause one or more extensions of time, for periods not exceeding

thirty (30) days each, may be allowed in writing by the Code official. Notwithstanding the provisions of this section, demolition work in the Fire District defined in City Code Section 6-120 shall be conducted so that demolition and clean-up are completed within sixty (60) days after issuance of the demolition permit. For cause, up to two (2) extensions of time, each extension for a period not to exceed thirty (30) days, may be allowed in writing by the Code official so that demolition work in the Fire District can be completed.

f. Add a new Section 105.5.1 to read as follows:

105.5.1. Notice relating to voluntary demolitions within the Fire District. When an applicant for a demolition permit wishes to demolish voluntarily a building or structure in the Fire District (as defined in City Code Section 6-120) that is located within ten (10) feet of an adjoining property line, and the adjoining property contains a building or structure that is located within three (3) feet of the property line of the property containing the building or structure to be demolished, then the applicant for the demolition permit shall send written notice of the proposed demolition to the adjoining landowner not later than ten (10) business days before the date of demolition.

g. Section 112 is deleted in its entirety and new Section 112 is adopted as follows:

#### Section 112. Construction Board of Adjustment and Appeals

112.1. 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.

#### 112.2. Membership.

112.2.1. 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.

112.2.2. 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.

112.2.3. 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.

112.3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in 112.4, to hear appeals of decisions and interpretations of the Code official and consider variances of the technical codes.

#### 112.4. Appeals

112.4.1. 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.

112.4.2. 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.

112.4.2.1. 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.

112.4.3. 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.

112.4.4. 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.

112.5. Procedures of the Board.

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

112.5.2. 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.

h. Section 113.4 is deleted in its entirety and a new Section 113.4 is adopted as follows:

113.4. Violation penalties. Penalties for violations of this code are set forth in City Code Section 1-4.

i. Section 306 is deleted in its entirety and a new Section 306 is adopted as follows:

306. Accessibility for existing buildings. Accessibility standards shall be as set forth in State law.

j. Section 1301.3.2 is amended to read as follows:

1301.3.2 Compliance with other codes. Buildings that are evaluated in accordance with this section shall comply with the International Fire Code.

k. Section 1401.2 is amended by amending the first sentence to read as follows:

The building shall be safe for human occupancy as determined by the International Fire Code.

l. All Chapters of Appendices A and B are hereby adopted.

m. Appendices C and D are deleted in their entireties.

(Ord. No. O-2023-110; 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 25<sup>th</sup> 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