

ORDINANCE NO. O-2023-112

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE VIII., "FIRE PREVENTION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATING TO ADOPTION OF THE 2021 INTERNATIONAL FIRE 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 Fire Code with local amendments is currently in effect; and

WHEREAS, the Fire Department has reviewed the 2021 International Fire Code and recommends its adoption with some local amendments; and

WHEREAS, the 2021 International Fire 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 Code Chapter 6, "Buildings and Structures", Article VIII., "Fire Prevention", is hereby amended by amending Section 6-122 to read as follows:

Sec. 6-122. Fire Prevention Code-Adoption.

The International Fire Prevention Code, 2021 edition, with amendments as set out in Section 6-123, is hereby adopted. (Ord. No. O-96-5, 1-24-96) (Ord. No. O-2001-64, 12/5/2001)

(Ord. No. O-2006-33; 3/22/06) (Ord. No. O-2007-25; 2/28/07) (Ord. No. O-2018-16; 1/24/18)
(Ord. No. O-2023-112; 10/25/23)

PART 2: That Tyler City Code Chapter 6, “Buildings and Structures”, Article VIII., “Fire Prevention”, is hereby amended by deleting current Section 6-123 and adopting a new Section 6-123 to read as follows:

Sec. 6-123. Fire Code-Amendments.

The 2021 International Fire Code, as adopted in Section 6-122, is amended as follows:

- a. Section 101 is amended by adopting a new Section 101.2.2. to read as follows:

Section 101.2.2. Applicability to Airport. The provisions of this code shall apply to Tyler Pounds Regional Airport.

- b. Section 102.7 is deleted in its entirety and a new Section 102.7 is adopted as follows:

102.7. General. Where provisions of this Code do not apply to specific situations involving the protection of life and property from the hazards of fire, smoke and explosion, compliance with the most current editions of nationally recognized standards or publications listed in Code, when not in conflict with the provisions of the International Building Code or City Code Chapter 6, shall be evidence of compliance with this Code.

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

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

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

103.2. Appointment. The Fire Chief or designee is hereby appointed as the Fire code official for purposes of this code.

- e. Section 104.7.1 is amended by adding a sentence at the end to read as follows:

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

- f. Section 110 is amended by adding a new Section 110.5 to read as follows:

Section 110.5. Securing of burned buildings within 48 hours after fire.

Whenever any building or other structure in the City is partially burned, the owner thereof, or the person in charge or control thereof, shall secure all windows, doors, or other structural openings of the building or structure to prevent access by unauthorized persons within forty-eight

(48) hours of the occurrence of the fire. A burned building or structure shall be considered as properly secured when access to the interior is prevented by:

1. The use of window locks, door locks, padlocks, or other appropriate locking mechanisms; or
2. Completely enclosing over structural openings with appropriate building materials; or
3. Totally enclosing the building with a temporary chain link construction fence at least six (6) feet in height that is locked during non-construction periods; or
4. Other acceptable means of securing the building approved by the Fire Chief or designee upon written request of the owner, contractor, or other person in control of the premises.

g. Section 110 is amended by adding a new Section 110.5.1 to read as follows:

Section 110.5.1. Materials to comply with Building and Residential Codes within 6 months after fire.

Whenever any building or other structure in the City is partially burned, the means and materials used to secure and/or repair the building or structure shall, within six (6) months of the occurrence of the fire, meet either Building Code or Residential Code requirements, as applicable.

h. Section 110 is amended by adding a new Section 110.6 to read as follows:

Section 110.6. Removal of debris or partially burned building after fire.

The owner or person in control of or in possession of any premises in the City upon which any material substances have been rendered useless or unmerchantable by reason of any fire on such premises, or any debris resulting from such fire, shall remove the same from such premises after written notice to do so has been served by the fire code official.

Whenever any building or other structure in the City is partially burned, the owner thereof, or the person in charge or control thereof, shall within ten (10) calendar days after written notice from the fire code official to do so, remove all refuse, debris, charred and partially burned lumber and material from the premises. If said building or other structure shall be burned to such an extent that it is rendered incapable of being repaired as required by this Code or any other ordinance, the owner of the property upon which same is located or any person in charge or control thereof, shall within ten (10) calendar days after notice from the fire code official to do so, apply for and obtain a permit from the Building Inspection Department to remove all of the remaining portion of the building or structure from the ground.

The fire code official may extend the ten-day period for removal of such burned or partially burned building when the insurance adjustment, if any, is still pending, but not to exceed one hundred eighty (180) days.

i. Section 110 is amended by adding a new Section 110.6.1 to read as follows:

Section 110.6.1. Permit required to remedy burned buildings. Whenever any building or other structure in the City is partially burned, the owner thereof, or the person in charge

or control thereof, shall within sixty (60) calendar days after written notice to remove or repair the building has been served by the fire code official, apply for and obtain a permit from the Building Inspection Department to remove or repair the building or other structure. The fire code official, following consultation with the Building Inspection Department, may extend the sixty (60) calendar day period for good and satisfactory reasons, as determined by the fire code official in his/her sole discretion.

- j. Section 110 is amended by adding a new Section 110.6.1.1 to read as follows:

Section 110.6.1.1. Requirements for means/materials used to secure/repair burned buildings. Whenever any building or other structure in the City is partially burned, the means and materials used to secure and/or repair the building or structure shall, within six (6) months of the occurrence of the fire, meet either Building Code or Residential Building Code requirements, as applicable.

- k. Section 111 is deleted in its entirety and new Section 111 is adopted as follows:

111. Construction Board of Adjustment and Appeals

111.1. 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.

111.2. Membership and Terms.

111.2.1. 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 regular 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.

111.2.2. 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 fire code official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

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

111.3. Powers.

The Construction Board of Adjustment and Appeals shall have the power, as further defined in 108.4, to hear appeals of decisions and interpretations of the fire code official and consider variances of the technical codes.

111.4. Appeals

111.4.1. Decision of the fire code official. The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the fire code official whenever any one of the following conditions are claimed to exist:

1. The fire 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.

111.4.2. 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.

111.4.2.1. 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.

111.4.3. Notice of Appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the fire code official. Appeals shall be in a form acceptable to the fire code official.

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

111.5. Procedures of the Board.

111.5.1. 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.

111.5.2. 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 fire code official or varies the application of any provision of this code, the fire code official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building 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.

l. Section 112.4 is deleted in its entirety, and is replaced with a new Section 112.4 to read as follows:

112.4. Violation penalties. It shall be unlawful for any person, firm or corporation to violate any of the provisions of this code. Penalties for violations shall be as set forth in City Code Section 1-4.

m. Sections 307.1 through 307.4.3 are deleted in their entirety and are replaced with a new Section 307.1 to read as follows:

307.1. Outdoor burning. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained upon any premises within the City limits.

Exceptions:

1. Owners who reside on individual lots two (2) acres or larger may burn trees, brush and other plant growth on said lots if for purposes of maintenance or land clearing only and not for purposes of residential or commercial development, and if materials to be burned are generated solely on such property. Other materials, including household garbage, individual piles of leaves or grass, and commercial wastes, shall not be burned.

2. If a violent weather condition destroys buildings, trees or other vegetation, and clean-up is of the essence, burning of storm debris in residentially zoned areas may be allowed if it can be shown that burning would substantially expedite the clean-up; and if no practical alternative exists.

3. Any burning carried out pursuant to subsections 1. or 2 above must conform to State law and to TCEQ or successor Rules. Per TCEQ rules, the Fire Department may require a property owner conducting outdoor burning to extinguish a fire if such burning causes a traffic hazard, or is deemed a nuisance for a "sensitive receptor" such as a residence, business, barn, greenhouse, etc.

4. Any burning carried out pursuant to subsection 1. or 2. above shall not be conducted on any Ozone Action Day designated by the TCEQ or successor, and such burning shall not be conducted on any day in which there is in effect an order issued by Smith County that prohibits outdoor burning in unincorporated areas of Smith County due to drought conditions.

5. All complaints regarding outdoor burning should be forwarded to the Fire Chief or Fire Marshal's Office.

Sec. 307.5 is renumbered as new Sec. 307.2 with no other changes.

n. Section 310 is amended by adding a new Section 310.9 to read as follows:

310.9. Smoking. In addition to this Section, smoking regulations are located in City Code Chapter 4, Article II.

o. Section 311.5 is deleted in its entirety.

p. Section 507.5.1 is hereby amended to read as follows:

507.5.1. Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 300 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official. Maximum spacing along fire apparatus roads shall be 500 feet in residential areas and 300 feet in commercial areas.

Exceptions:

For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 mm).

q. Section 914.7.1 is amended by adding a second Exception to read follows:
Exception: Automatic sprinklers shall not be required when an amusement building shall be in existence for less than 30 consecutive days, but only if the construction and use have been approved by the Fire Code Official or authorized representative.

r. Section 1103.5.1. Deleted.

s. Section 1103.5.4. Deleted.

- t. Section 2306 is amended by adding a new Section 2306.2.3.1 to read as follows:

2306.2.3.1. Flammable or combustible liquids in above ground tanks outside of buildings prohibited in Fire District. The storage of flammable or combustible liquids in above ground tanks outside of buildings is prohibited within the Fire District as defined in City Code Section 6-120.

- u. Section 2311 is amended by adding a new Section 2311.9 to read as follows:

2311.9. Fuel tanks, storage and handling of flammable or combustible materials, and transfer of gasoline in garages. The fuel tanks of motor vehicles shall be filled directly through approved hose from approved pumps attached to approved portable tanks or drawing from approved storage tanks. Storage and handling of flammable or combustible liquids shall conform to Chapter 57 of this Code. No transfer of gasoline in any garage shall be made in any open container and if the fuel tank of a vehicle is drained for any purpose, it shall be drained outside of any building.

- v. Chapter 80 is deleted in its entirety.

w. Appendices A, B, C, H, I, J, K, L, and M are deleted in their entirety. Appendices E, F and G are hereby adopted. Appendix D is hereby adopted, and is amended as set forth herein.

- x. Section D103.1 is hereby amended to read as follows:

D103.1. Access road width with a hydrant. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm). Delete Figure D103.1 in its entirety.

- y. Section D103.4 and Table D103.4 are deleted in their entirety.

- z. Section D103.5 is amended to read as follows:

D.103.5. Fire apparatus access road gates. Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. The minimum gate width shall be 20 feet (6096 mm), unless otherwise approved by the fire code official.

2. Gates shall be the swinging or sliding type.

3. Construction of gates shall be of materials that allow manual operation by one person.

4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.

5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices are subject to approval by the fire code official.

6. Manual opening gates shall not be locked with a padlock or chain and padlock unless approved by the fire code official.

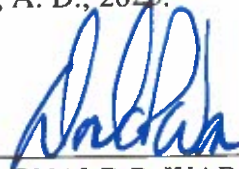
7. Locking device specifications shall be submitted for approval by the fire code official.

(Ord. No. 0-2023-112; 10/25/23)

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 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