

ORDINANCE NO. O-2021-65

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 7, "COMMUNITY DEVELOPMENT", ARTICLE III, "MINIMUM URBAN STANDARDS", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY CLARIFYING THE POWERS AND DUTIES OF THE NEIGHBORHOOD SERVICES DEPARTMENT, BUILDING INSPECTION DEPARTMENT AND CODE ENFORCEMENT DEPARTMENT IN THE SUBSTANDARD BUILDING PROCESS, AMENDING DEFINITIONS, UPDATING THE VOLUNTARY DEMOLITION PROCESS, CLARIFYING EMERGENCY DEMOLITION RESPONSIBILITY, REMOVING REFERENCES TO THE CITY COUNCIL, UPDATING THE SUBSTANDARD BUILDING PROCESS, AND MAKING OTHER CORRECTIONS AND 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, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and 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, 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 of Tyler 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 all nuisances and causes thereof; 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, or when not prescribed by the Charter, in such manner as shall be provided by ordinances or 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 the 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 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 the 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, Texas Local Government Code Section 54.001(a) provides that the governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance or police regulation; 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 and summarily abate and remove a nuisance; and

WHEREAS, Texas Local Government Code Section 214.001(a)(1) states that a home-rule municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal or demolition of a building that is dilapidated, substandard, or unfit for human habitation and a hazard to public health; and

WHEREAS, Texas Local Government Code Section 214.001(a)(2) states that a municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal or demolition of a building that, regardless of its structural condition, is unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; and

WHEREAS, Texas Local Government Code Section 214.001(a)(3) states that a municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal or demolition of a building that is boarded up, fenced, or otherwise secured in any manner, if the building constitutes a danger to the public even though secured from entry; or the

means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by 214.001(a)(2); and

WHEREAS, pursuant to Texas Local Government Code Section 214.001(b), the Tyler City Code establishes minimum standards for the continued use and occupancy of all buildings, provides for giving proper notice to the owner of a substandard building, and provides for a public hearing to determine whether a building complies with the standards set out in the ordinance; and

WHEREAS, Texas Local Government Code Section 214.002(c) states that the governing body of a municipality may punish by a fine, confinement in jail, or both a person who does not comply with an order to repair, remove, or demolish a structure that the municipality finds is likely to endanger persons or property; and

WHEREAS, pursuant to Texas Local Government Code Chapter 214, the City of Tyler has adopted specific regulations related to substandard structures in Tyler City Code Chapter 7, Article III.; and

WHEREAS, The City of Tyler's Voluntary Demolition Program is an additional effective tool for addressing the problem of substandard buildings which are unfit for human habitation and which create slum and blight conditions in many Tyler neighborhoods; and

WHEREAS, The Voluntary Demolition program standards currently consider in the determination of who may be served by the Program an individual's ability to pay for the cost of demolition; and

WHEREAS, in order to serve those individuals with the greatest need for the program's benefits, a requirement of financial inability to pay for the costs of demolition was previously implemented, thereby helping to ensure that the program benefits are put to the best use by assisting those most in need of the program services, while encouraging the removal of deteriorated and dilapidated substandard buildings; and

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

PART 1: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amended by amending Section 7-61 by adding the following definitions in the appropriate alphabetical order as follows, with no other changes to the Definitions:

Sec. 7-61. Definitions.

Department shall refer to either the Neighborhood Services Department or the Building Inspection Department, depending on the location of the alleged substandard building. If the alleged substandard building is located in a low-moderate income area as defined by the Department of Housing and Urban Development, then *Department* refers to the City of Tyler Neighborhood Services Department. Otherwise, *Department* refers to the City of Tyler Building Inspection Department. In addition, the Chief Building Official or designee is authorized to exercise emergency authority on any building tagged pursuant to Section 7-78, regardless of whether or not the building is located in a low-moderate income area as defined by the Department of Housing and Urban Development. (Ord. No. 0-2021-65; 06/23/21)

Director shall refer to either the Managing Director over the City of Tyler Neighborhood Services Department or designee, or the Chief Building Official or designee, depending on the location of the alleged substandard building. If the alleged substandard building is located in a low-moderate income area as defined by the Department of Housing and Urban Development, then *Director* refers to the Managing Director over the City of Tyler Neighborhood Services Department or designee. Otherwise, *Director* refers to the City of Tyler Chief Building Official or designee. In addition, the Chief Building Official or designee is authorized to exercise emergency authority on any building tagged pursuant to Section 7-78, regardless of whether or not the building is located in a low-moderate income area as defined by the Department of Housing and Urban Development. (Ord. No. 0-2021-65; 06/23/21)

(Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 2: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-67 to read as follows:

Sec. 7-67. Powers and duties of Director.

a. Authority. If an alleged substandard building is located in a low-moderate income area as defined by the Department of Housing and Urban Development, then the Managing Director over the City of Tyler Neighborhood Services Department or designee shall have primary authority and responsibility for enforcing the provisions of this Article. If an alleged substandard building is located in an area other than a low-moderate income area as defined by the Department of Housing and Urban Development, then the City of Tyler Chief Building Official or designee shall have primary authority and responsibility for enforcing the provisions of this Article. (Ord. No. 0-2021-65; 06/23/21)

b. Restrictions on employees. A City officer or employee shall not be directly or indirectly financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building, or in the making of plans or of specifications therefor, unless as the owner of such building. Such officer or employee shall not engage in any work which is inconsistent with duties or with the interests of the City.

c. Recordkeeping. The Director shall keep, or cause to be kept, records of the Department's business.

d. Right of entry. The Director or designee are authorized to enforce the provisions of this Article, and upon presentation of proper identification to the owner, agent, or tenant in charge of such property, may enter any building, structure, dwelling, apartment, apartment house or premises, during all reasonable hours. When the property is unoccupied or in cases of emergency where extreme hazards are known to exist, identification and reasonable hour limitations shall not apply. The Director or designee is authorized to enter upon any premises where a violation exists and to post notice identifying persons violating this Chapter.

e. Inspections. The Director or designee may authorize inspections to determine the condition of buildings and premises in the interest of safeguarding the health and safety of future occupants and of the public. The Director or designee is hereby authorized to enter, examine, and survey all buildings or structures to verify compliance with this Chapter. If such buildings or structures are occupied, inspections shall be done at reasonable times.

f. Annual Reports. The Director shall submit an annual report to the City Manager covering the work of the Department and summarizing the Neighborhood Revitalization Board decisions during the preceding year.

g. Letters of compliance. Letters indicating compliance with Code provisions may be issued by the Director or designee.

h. Removal of Placard. No building which has been placarded as unfit for human habitation, occupancy, or use shall again be used for such habitation, occupancy, or use until approved by the Director or designee and such placard is removed. No person shall deface or without proper authority remove the placard from any building. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 3: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-70 to read as follows:

Section 7-70. Substandard Building Declared Public Nuisance. Duty to Secure.

a. All substandard buildings are hereby declared to be public nuisances and illegal and shall be placarded. Such placard shall give notice to the public as to the substandard condition of the property and the prohibition for persons to enter the property without the express authority of the Director or designee. Such buildings shall be abated by repair and rehabilitation or by demolition in accordance with this Article and pursuant to authority provided by Texas law.

b. When a building is placarded, any owner, authorized agent, or anyone having supervision or control of such building shall within 48 hours of receipt of the Notice of Substandard Building letter as described in Section 7-71 secure all windows, doors, or other structural openings to prevent access by unauthorized persons unless the City Inspector determines the property must be immediately secured. The owner may be assessed civil penalties for failure to secure at the initial public hearing, and/or the City may place a lien on the property for costs associated with securing the property. A substandard building shall be considered 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 or boarding over structural openings with plywood, lumber, or other 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 Director or designee upon written request of the owner, contractor, or other person in control of the premises.

c. It is the owner's responsibility to keep it secured throughout any repair or appeal period. Upon the owner's failure to prevent access, the City may secure the building and may charge the owner or assess a civil penalty, or add the costs of repair or the amount of civil penalty to its lien pursuant to State law, without additional prior notice.

d. Before selling any building upon which a notice has been placarded pursuant to this Article, the owner is required to give the following notices in writing:

1. To the buyer, a notice stating, "The City of Tyler Neighborhood Services Director has determined that the building on _____(Lot and Block)_____ (street address)_____ is substandard and unsafe for occupancy. Occupancy of this building is prohibited and administrative proceedings are in progress to require repair or demolition of this building which may result in various costs assessed to the owner."

2. To the City of Tyler Neighborhood Services Director, P.O. Box 2039, Tyler, Texas, a notice stating, "I am selling the property located at _____(Lot and Block)_____ (street address)_____ to _____ (name of buyer)_____ whose address is _____ (mailing address and street address)_____. The date of the sale is _____(month, day and year)_____."

3. It is unlawful for the owner to fail to give the notices required by this section. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 4: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-71 to read as follows:

Sec. 7-71. Substandard Building Notice Letters to Owners and Lienholders. Contents and Attachments.

a. When the Director or designee determines that a building is substandard, a Substandard Building Notice Letter (Notice letter) shall be sent by certified mail, return receipt requested, restricted signature to the last known address of the property owner and any known lienholders. If the owner's address is unknown, a copy of the written notice shall be posted on or near the front door or other visible location of the building. The letter will describe three options available to either demolish or rehabilitate the substandard building. Included with the Notice letter will be:

1. The Inspection Report for Substandard Building listing all violations of the City of Tyler Minimum Urban Standards;

2. Statement that the building must be secured within 48 hours of receipt of the Notice letter, and continue to remain secure;

3. A description of three options available to address the problems, including the City of Tyler Voluntary Demolition Program;

4. The date, time, and place of hearing before the Neighborhood Revitalization Board, if the substandard building was built within the past 50 years and is not designated as a historical landmark;

5. Statement that if the owner/lienholder chooses the rehabilitation option, that a written Rehabilitation Plan of Action and an Application for Certificate of Appropriateness for Rehabilitation, if applicable, must be submitted to the Director who for review within twenty-five (25) calendar days of the Notice's receipt describing how the property will be brought into code compliance, the time needed to perform the work in a reasonable manner, and the economic feasibility of the plan;

6. If applicable, a statement that a date, time, and place of hearing will be set before the Historical Preservation Board, for certain buildings built over 50 years ago or of historical significance per Section 7-73. and Sec. 10-23;

7. Statement that City will secure, repair, or recommend removal or demolition of the building as ordered if owner fails to do so;

8. Statement that City may: assess civil penalties for violations of Chapter 7, Art. III. requirements, and/or for failure to repair, remove, or demolish the building, may place a lien on the property for costs incurred in any such activities; may file Class C misdemeanor charges for violations of Chapter 7, Art. III; and/or may file an injunction in state district court requesting court ordered action by the owner;

9. A Substandard Building Disposition form which must be returned within ten (10) days of the receipt of the Notice letter;

10. An Application, Affidavit of Hardship, Waiver and Release for Voluntary Demolition form and a Rehabilitation Plan of Action form; and

11. A stamped and addressed envelope for owner/lienholder use to return form(s) to the City of Tyler Neighborhood Services Department or Building Inspection, as applicable.

b. If the City chooses to file notice in the County land records, the notice must contain the name and address of the owner, if known; a legal description of the property; and a description of the public hearing, if applicable. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-8, 2/11/09)

PART 5: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-72 to read as follows:

Sec. 7-72. Options for Demolition or Rehabilitation of Substandard Buildings. Requirement to Return Substandard Building Disposition Form.

a. The Substandard Building Notice letter will set forth three options for consideration as described below. The owner/lienholders shall choose an option and return the Substandard Building Disposition form within ten (10) calendar days of receipt of the Notice letter.

b. Option One: City of Tyler Voluntary Program. The Voluntary Demolition Program exists to encourage owners that have a financial inability to pay the costs of demolition to consent to the demolition and clearance of substandard buildings which are not feasible for rehabilitation. Under the program, the City takes responsibility for all demolition and clearance activities and a lien will be placed on the property for a period of 15 years for the cost of the demolition. The program encourages the removal of deteriorated and dilapidated substandard buildings and encourages new construction of affordable housing on appropriate lots. The Voluntary Program is available under the following conditions:

1. The Director has determined that a structure tagged as substandard, due its condition or situation, poses a serious threat so as to justify demolition; and

2. The Director makes a specific recommendation to the NRB to approve Voluntary Demolition and

3. The owner shall not be assessed the costs associated with the voluntary demolition conducted pursuant to this subsection if the owner meets the requirements of HUD to be classified as low-moderate income with regards to financial inability to pay.

4. The owner shall be assessed the costs associated with the voluntary demolition pursuant to this subsection if:

- a) The owner does not meet the low-moderate income standard as provided by HUD; and/or
- b) The owner sells the property for profit. (Ord. No. 0-2021-65; 06/23/21)

Requests to participate in the Voluntary Demolition Program may be made either before or after the building has been identified as substandard under this Article by filing an Application, an Affidavit of Hardship and a Waiver and Release for Voluntary Demolition. Additional documentation of financial inability to pay the costs of demolition may be required to be submitted if requested by the Director.

Applications may be picked up at and returned to the Neighborhood Services Department. Applications will also be included with Notice of Substandard Building letters for those buildings tagged pursuant to this Article. In those cases, applications should be returned with the Substandard Building Disposition Form. The Director or designee shall process all Applications and contact eligible parties regarding the scheduled date for demolition. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-8, 2/11/09)

c. Option Two: Submit Rehabilitation Plan of Action and have public hearing before the Neighborhood Revitalization Board or/and also the Historical Preservation Board, as applicable. Owners/lienholders may request time for rehabilitation by submitting to the Director a written Rehabilitation Plan of Action within twenty five (25) calendar days of receipt of the Notice Letter. A completed Application for Certificate of Appropriateness for Rehabilitation, forms of which are available from the City of Tyler Planning Department, must also be submitted if the property is a designated historic landmark. The Plan and completed Application, if applicable, will be submitted to the Neighborhood Services Department or to the Building Inspection Department, as applicable, for review before consideration by either the Neighborhood Revitalization Board (NRB) (See Sec. 7-74) and also the Historical Preservation Board (HPB) if applicable (See Sec. 7-73).

The Rehabilitation Plan of Action must include: a detailed description of the work required to render the building safe, sanitary and fit for human habitation, occupancy, or use; a reasonable time schedule for completion of such repairs or demolition; and proof of financial resources available to complete repairs. (Ord. No. 0-2007-101, 8-22-07)

d. Option Three: Owner demolition and clearance.

1. The owner/lienholder may choose to demolish the substandard building by obtaining the appropriate demolition permit from the Director or designee within thirty (30) calendar days of receiving a written Notice to Proceed from Director or receiving a Certificate of Demolition from the Neighborhood Revitalization Board.

2. No bond will be required if the owner/lienholder performs all demolition; however, if the owner/lienholder hires a third-party contractor to perform demolition and clearance activities, a performance or cash bond will be required before a demolition permit may issue. The performance or cash bond shall be conditioned upon the permittee performing the demolition in accordance with permit instructions and removing all debris from the site prior to the permit's expiration date and the failure to do so may result in the application of all or part of the bond proceeds to defray costs of project completion.

3. For good cause, the Director or designee may extend the time limit of the permit for up to thirty (30) days. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-8, 2/11/09) (Ord. No. 0-2021-65; 06/23/21)

PART 6: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-73 to read as follows:

Sec. 7-73 Substandard Buildings 50+ Years Old. Procedures for Rehabilitation or Demolition of Historically Significant Buildings. Historical Preservation Board.

a. If the substandard building is 50 or more years old at the date of being placarded, the Director shall verify with Planning whether the property is identified as historically significant per the Historic Resources Survey of Tyler, Texas and will also send a letter to the State Historical Preservation Office (SHPO) requesting a determination about whether the property may be of historical significance.

1. If SHPO states the property may be of historical significance, or the property is already designated as a historical landmark, or the property has been otherwise identified by the City as being potentially historically significant, then the Director will set a hearing before the City of Tyler Historical Preservation Board (HPB) pursuant to Section 10-23. The HPB is responsible for establishing guidelines, reviewing requests, and advising the City Council Neighborhood with regard to issuing Certificates of Appropriateness for Rehabilitation and Certificates of Demolition for buildings, and sites designated as historical landmarks.

2. If SHPO states that the property has no historical significance and the property has not been otherwise identified as potentially historically significant by the City, then the Director shall issue either a Notice to Proceed with Voluntary Demolition under the City's Voluntary Demolition Program or a Notice to Proceed with Demolition by Owner. If the owner/lienholder has requested rehabilitation and has timely submitted a Rehabilitation Plan of Action, then the matter shall be set for public hearing before the Neighborhood Revitalization Board (NRB). Notice of the NRB public hearing shall be sent to interested parties no later than ten (10) calendar days prior to the hearing by certified mail, return receipt requested, restricted signature.

b. Owners/lienholders will be notified of the date and time of the HPB public hearing by certified mail, return receipt requested, restricted signature, at least ten (10) calendar days prior. If the owner/lienholder has requested rehabilitation and properly submitted a Rehabilitation Plan of Action and Application for Certificate of Appropriateness for Rehabilitation pursuant to Section 10-23 and Section 7-73, the HPB will review that Plan and hear from the Building Official regarding the sufficiency and economic feasibility of that Plan. The HPB will determine whether to advise and recommend that the Neighborhood Revitalization Board (NRB) issue either a Certificate of Appropriateness for Rehabilitation, if requested and the Plan is sufficient, or a Certificate of Demolition.

c. After the HPB public hearing, a second public hearing will be set before the NRB. NRB will make the final determination about whether to order a Certificate of Demolition or a Certificate of Appropriateness for Rehabilitation. Owners/lienholders will be notified of the date and time of the NRB meeting at least ten (10) calendar days prior by certified mail, return receipt requested, restricted signature.

d. NRB decisions to issue Certificates of Appropriateness for Rehabilitation or Demolition may be appealed to district court within 30 calendar days following the date a copy of the Order is personally delivered or is mailed certified mail, return receipt requested, restricted signature to the owner, lienholder, and/or mortgagee.

e. If a Certificate of Appropriateness for Rehabilitation is issued, the project shall be monitored by the HPB. The Planning Department, in coordination with the Director, shall schedule additional HPB hearings as needed to review progress made in lieu of the timetable established for project completion. Notices for monitoring hearings shall be sent by certified mail, return receipt requested, restricted signature.

f. If a Certificate of Demolition is issued, the owner must arrange for demolition and clearance of the property to be completed within the time frame designated in the Certificate and consistent with demolition permit requirements. (Ord. No. 2007-101, 8-22-2007) (Ord. No. 0-2021-65; 06/23/21)

PART 7: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-74 to read as follows:

Sec. 7-74 Substandard Buildings Less than 50 Years Old and/or Not Historically Significant. Procedures for Rehabilitation or Demolition. Neighborhood Revitalization Board.

a. When a substandard property is less than 50 years old at the date of being placarded and/or not considered historically significant, and the owner either fails to respond to the initial Notice Letter as described in Sec. 7-71 or submits a Rehabilitation Plan of Action per Sec. 7-72 c., the matter will be addressed in a public hearing before the Neighborhood Revitalization Board (NRB). The date, time, and place of the public hearing will be set forth in the initial Substandard Building Notice Letter.

b. If the owner/lienholder desires to rehabilitate the property, the owner/lienholders must appear to present information and answer questions about the Rehabilitation Plan of Action. The Chief Building Official or designee shall also be present to discuss the viability and feasibility of the proposed Plan.

c. The NRB shall conduct the public hearing and issue orders, when appropriate, pursuant to the following compliance time schedules set forth in State law:

1. If the City has previously notified identified lienholders or mortgagees and those parties had an opportunity to be present at public hearing, then the Board shall determine:

(a.) whether the building is substandard or not; and

(b) whether the property owner was properly notified of the provisions of this Article, other applicable city code provisions, and requirements for compliance; and

(c) whether after notification the property owner violated this Article or failed to take required action.

2. At the initial public hearing on the substandard building, the Board shall require the owner, lienholder or mortgagee of the building to within thirty (30) calendar days repair, remove, or demolish the building unless the owner, lienholder or mortgagee establishes at the hearing that the work cannot reasonably be performed within thirty (30) calendar days.

3. If the Board allows the owner, lienholder or mortgagee more than thirty (30) calendar days to repair, remove or demolish the substandard building, then the Board shall establish specific time schedules for beginning and performing the work. The owner, lienholder or mortgagee shall secure the property from unauthorized entry while the required work is being performed.

4. The Board shall not allow the owner, lienholder or mortgagee more than a total of ninety (90) calendar days to repair the substandard building or fully perform all work required to comply with the Board's Order, unless prior to the initial public hearing before the NRB, a detailed plan and time schedule for work has been submitted for review showing that because of the scope and complexity of the project the work cannot reasonably be completed within ninety (90) days. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 8: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-75 to read as follows:

Sec. 7-75. Neighborhood Revitalization Board Orders. Contents and Notice of Civil Penalties for Failure to Comply.

NRB Board Orders shall state:

- a. How the building is in violation of this Article; and
- b. A reasonable time for the building to be repaired, removed or demolished by the owner; and/or
- c. An additional reasonable time for the ordered action to be taken by any of the mortgagees or lienholders if the owner fails to comply with the Order within the time provided and if requested by mortgagees or lienholders at the initial hearing; and
- d. That the City will secure, repair, remove or demolish the building if the ordered action is not taken within the prescribed time. The City is not required to furnish any further notice to a mortgagee or lienholder other than a copy of the Order; and
- e. A civil penalty not to exceed \$1,000 a day for each violation or an amount not to exceed \$10 a day for each violation, if the property is proven to be the owner's lawful homestead, may be assessed if:
 1. The ordered action was not taken within the prescribed time; or
 2. The property owner was notified of the provisions of this Article and any other applicable City Code provisions and of owner's need to comply with the requirements, and

after notification, the property owner committed an act or failed to take action in violation of this Article and/or other applicable City Code provisions; and

3. In its Order, the NRB must in writing set forth the dollar amount of civil penalties assessed, give the reason for the assessment, and allow the owner or lienholder thirty (30) calendar days from the date of owner's receipt of the Order to make payment, or, if necessary and reasonable under the circumstances, additional time for multiple payments with a specific timetable agreed upon by all parties.

- f. Within two (2) days of issuance of the Order, the Director shall:
1. File a copy of the Order with the City Clerk;
 2. Publish in a newspaper of general circulation in the City a notice containing:
 - (a) Street address or legal description of the property;
 - (b) Date the public hearing was held;
 - (c) A brief statement of the results of the public hearing; and
 - (d) Instructions where to obtain a copy of the Order.

4. Unless personally delivered, send such Order by certified mail, return receipt requested, restricted signature to the owner and any known lienholder or mortgagee. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 9: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-77 to read as follows:

Sec. 7-77. Enforcement of Board Order.

- a. An assessment of a civil penalty by the Neighborhood Revitalization Board (NRB) as provided in this Article is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction.
- b. The Director shall carry out the final Order.
 1. The Director is authorized to contract the work at City expense. The Director shall prepare a certified statement of charges incurred by the City to secure, repair, remove, or demolish the building. The certified statement of charges shall be sent to the owner certified mail, return receipt requested, restricted signature within ten (10) calendar days of the date costs were incurred by the City to secure, repair, remove, or demolish the building. The certified statement of charges shall make a demand for payment within thirty (30) calendar days and will further instruct the property owner regarding the method and manner in which payment will be expected.
 2. The Director shall monitor recovery of civil penalties assessed by NRB as set forth in the Order. The Director may schedule further hearings before the NRB and request assessment of further civil penalties for violations of any Order or for other violations of Code provisions pursuant to this Article.
 3. The City may choose to protect its interests in recovering such costs and/or civil penalties by placing appropriate liens against the property pursuant to State law, unless the property is a homestead protected by the Texas Constitution. An affidavit of lien containing the name and address of the owner, if known, legal description of the land, the

amount of expenses or civil penalty, duration of civil penalty, and balance due shall be filed with the Smith County Clerk.

4. If the Director or designee determines that a previous Order should be reviewed or re-examined due to changed or special circumstances, including subsequent substantial efforts to correct existing Code violations by any person, then the Director or designee shall have the authority to re-submit the Order for review according to the procedure applicable to City hearings. Orders may be upheld, repealed, or modified.

c. The City Attorney is hereby authorized to enforce this Article by all appropriate legal means including enforcement in municipal court, and/or filing civil actions in courts of appropriate jurisdiction to seek compliance with said Orders, or defending the City from suit. If timely payment does not follow the issuance of the demand, the City Attorney is authorized to bring an action in district court for collection of all amounts due, for foreclosure of the lien, and for a judicially authorized sale of the property to pay costs or for such other and further appropriate relief. Any money received at the sale of the property in excess of demolition costs and costs of sale shall be credited to the owner of the property.

d. To enforce a civil penalty ordered under Section 7-75 e., the Director shall file a copy of each Order assessing a civil penalty with the City Clerk. The City Clerk shall file with the Smith County District Clerk a certified copy of the Order stating the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on said penalty.

e. Criminal Penalty. After any Order of the Neighborhood Revitalization Board made pursuant to this Article has become final, no person to whom such order is directed shall fail, neglect, or refuse to obey such Order. Any person who fails to comply with any such Order commits a Class C misdemeanor offense, and is subject to the penalties set forth in Section 1-4. A separate offense is committed each day in which an offense occurs. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2011-82, 10/12/11) (Ord. No. 0-2021-65; 06/23/21)

PART 10: That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", is hereby amending by amending Section 7-78 to read as follows:

Sec. 7-78. Emergency repair or demolition of dangerous buildings.

a. As authorized by State law, if the Chief Building Official or designee determines that a building, poses an immediate threat so as to endanger persons or property, the property may be placarded with a notice of the need for emergency repairs or demolition. The Chief Building Official or designee is authorized to exercise such emergency authority on any building tagged pursuant to this Section, regardless of whether or not the building is located in a low-moderate income area as defined by the Department of Housing and Urban Development. The Chief Building Official or designee shall provide a notice letter by certified mail, return receipt requested, restricted signature to the owner, owner's agent or occupant of the property stating that the property has been tagged and identified as one in need of emergency repair or demolition and that the City will proceed with abating the nuisance if the owner, owner's agent or occupant of the property fails to repair, remove or demolish the building within a time period specified in the Building Official's or designee's notice letter. It is unlawful to fail to comply with such order of the Chief Building Official or designee.

b. Pursuant to this Section, the Chief Building Official or designee may order the immediate repair, removal or demolition of such dangerous building at City's expense, and assess

costs to the owner, owner's representative, or owner or occupant of the property on which the building is located. The Building Inspection Department shall prepare and mail by certified mail, return receipt requested, restricted signature a certified statement of charges itemizing such costs to the owner, owner's representative, or owner or occupant of the property on which the building is located. The letter shall request that the costs be paid within thirty (30) calendar days after receipt of notice from the City. It is unlawful to fail to pay the bill for the City's expenses within thirty (30) calendar days after receipt of notice. If the mailing address of all of the above persons is unknown, then notice shall be posted in a conspicuous place on or near the building.

c. If costs remain unpaid, the Chief Financial Officer or designee shall verify the certified statement of charges prepared by the Building Inspection Department and file a copy of the statement of charges with an affidavit of lien with the County Clerk. From the date of such filing, City shall have a lien on the property unless the property is a homestead protected by the Texas Constitution. For any such debt, suit may be instituted and recovery and foreclosure had in the name of the City. (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 0-2021-65; 06/23/21)

PART 11: 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 12: 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 after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be June 25, 2021.


PASSED AND APPROVED this 23rd day of June, A. D., 2021.



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

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK
DEBORAH G. PULLUM,
CITY ATTORNEY