

**ORDINANCE NO. O-2021-70**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY CLARIFYING AND ADOPTING REGULATIONS RELATED SOLAR ENERGY DEVICES TO THE EXTENT PERMITTED BY STATE LAW; 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 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**, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

**WHEREAS**, Texas Local Government Code Section 211.003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

**WHEREAS**, Texas Local Government Code Section 211.007(a) authorizes a zoning commission to recommend boundaries for the original zoning districts, and appropriate regulations for each district; and

**WHEREAS**, Texas Local Government Code Section 212.002 states that after a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and

**WHEREAS**, on April 23, 2008, the City Council adopted Ordinance No. 0-2008-48, which amended Tyler City Code Chapter 10 by adopting the Unified Development Code governing zoning, subdivision, development and other land use regulations; and

**WHEREAS**, the Unified Development Code Review Committee has reviewed certain proposed changes to solar energy device regulations; and

**WHEREAS**, on March 2, 2021, the Planning and Zoning Commission reviewed proposed changes to solar energy device regulations; and

**WHEREAS**, on March 24, 2021, the City Council considered an ordinance amending solar energy devices and directed that Staff review possible ordinance amendments in view of recent changes to State law; and

**WHEREAS**, during the 2021 Session, the Texas Legislature amended Texas Local Government Code Section 229.101(b)(1) to provide that a municipality may not prohibit or restrict the installation of a solar energy device except to the extent a property owner's association may prohibit the installation under Sections 202.010(d)(1) through (7) of the Property Code;

**WHEREAS**, it is important to clarify and amend certain provisions in the Unified Development Code in City Code Chapter 10 related to solar energy devices in order to conform to State law; and

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

**PART 1:** That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division D., "Screening", is hereby amended by amending Section 10-341 to read as follows:

**Sec. 10-341. Mechanical Equipment**

a. through e. No changes...

f. This Section 10-341 does not apply to solar energy devices as defined in State law. Solar energy devices are regulated by the City in Section 10-346 only to the extent permitted by State law. (Ord. No. 0-2012-38, 4/25/12); (Ord. No. 0-2021-70; 7/28/21)

**PART 2:** That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division D., "Screening", is hereby amended by adopting a new Section 10-346 to read as follows:

**Sec. 10-346. Solar energy devices.**

- a. Except as provided in subsection b. of this Section, the City shall not regulate solar energy devices as defined in State law.
- b. In accordance with Texas Local Government Code Chapter 229 or successor and Texas Property Code Section 202.010(d) or successor, a solar energy device is prohibited if the device:
  1. Has been adjudicated by a court to threaten the public health or safety, or to violate a law;
  2. Is located on property that is not owned or maintained by the property owner;
  3. Is located in an area on the property owner's property other than:
    - a. On the roof of the home or of another structure allowed under Property Sec. 202.010(d) or successor.
    - b. In a fenced yard or patio owned and maintained by the property owner;
  4. If mounted on the roof of the home:


- a. Extends higher than or beyond the roofline; or
  - b. Does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
  - c. Has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;
5. If located in a fenced yard or patio, is taller than the fence line;
6. As installed, voids material warranties.

(Ord. No. 0-2021-70; 7/28/21)

**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 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 Saturday, August 7, 2021.

**PASSED AND APPROVED** this the 28<sup>th</sup> day of July, A.D., 2021.


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

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK



APPROVED:

  
DEBORAH G. PULLUM,  
CITY ATTORNEY