



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-2

Date: May 24, 2006

Subject: Request that the City Council consider adopting an ordinance amending the Tyler City Code to streamline and clarify the substandard building process, and provide for enhanced civil and criminal enforcement.

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Item Reference: Texas Local Gov't Code Chapter 214; Tyler City Code Chapter 7, Article III.

State law, at Texas Local Government Code Section 214.001(a)(1), provides that a 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. Pursuant to State law, Tyler City Code Chapter 7, Article III., sets forth minimum urban standards and establishes a procedure for inspecting and tagging substandard buildings, provides a process for giving proper notice to the owner of a substandard building, and provides for a public hearing to determine if a building meets the minimum urban standards set forth in the City Code.

Both the Community Development Department and the Legal Department have been involved in an extensive, ongoing review of the Substandard building process and ordinance. This proposed ordinance draft is the first stage of a number of changes that are likely to be made to the Substandard Building process as part of the ongoing review/re-codification project involving Chapter 7. The attached ordinance makes a number of changes to the procedures for handling substandard buildings, including some “clean-up” changes, in order to make the process work more smoothly while at the same time meeting all State law notice and hearing requirements. The most significant changes to the Ordinance are as follows:

1. **Sections 7-61 and 7-69. Definition of substandard building.** A definition for “substandard building” similar to the State law definition in Texas Local Gov't Code Section 214.001 is added to Section 7-69, and is also referenced in the Definitions in Section 7-61. The State law uses the term “building”, so the word “structure” in the Substandard Building process is changed to “building” throughout.

2. **Section 7-76.a.** Currently, an officer or employee connected with the Community Development Department, except one whose only connection is a member of the Neighborhood Revitalization Board (NRB), shall not be financially interested in the furnishing of labor, materials or appliances for work on a building, or in the making of plans/specifications therefore, unless as the owner of such building. Since the exception for the NRB potentially conflicts with the City's Charter and Ethics Ordinance, that provision has been removed.
3. **Section 7-67.g. and h.** The term "condemned" is removed, as such term is not defined in the Code and is unnecessary.
4. **Section 7-70.b. Neighborhood Revitalization Board meetings.** The wording is changed to state that the NRB shall meet at regular intervals, but that "Special Meetings" may be called as needed by the Community Development Manager. This change will give the Board maximum flexibility to change the frequency and timing of its meetings.
5. **Section 7-70.c. Neighborhood Revitalization Board duties.** Presently, Section 7-70.c. 2 authorizes the NRB to grant extensions of not more than 120 days, in order to allow a person to meet the requirements of the Code. Since the State law sets forth certain requirements and specific time periods for compliance, this 120-day provision could potentially conflict with the State law and is therefore being deleted. The variance procedure is also deleted, since Chapter 7 sets forth the minimum urban standards. The authority for the board to order the assessment of a civil penalty against a property owner for failure to comply with a board order is included in this Section and references to the State law appeal for substandard buildings are added. Also, Section 7-70 is clarified to state that the decision of the NRB regarding construction or interpretation of the Code by the Community Development Manager or designee is final.

The State law uses the term "public hearing", so the numerous references to "compliance proceeding" contained throughout the Substandard Building process is changed to "public hearing" to conform to the State law wording.

6. **New Sections 7-71.c.4 and 7-71.c.5. Providing notice of provisions with which compliance is required.** The State law sets forth specific requirements for providing notice to a person of the provisions that must be complied with and for notifying such person that he/she is required to comply with said provisions. State law requires that these notices must be provided to a person before a civil penalty may be ordered for noncompliance. These specific notices from State law are added to this Section.
7. **New Section 7-71.h. Specifying time periods and requirements for compliance.** The State law sets forth specific time periods for a person to come into compliance with minimum urban standards. These specific time periods from the State law and related requirements are currently followed, but specific references thereto are now being added to the Tyler City Code. In non-emergency situations, a property owner will be given 30 days to correct, per the State law.

If more than 30 days is given, the NRB shall establish specific time schedules for the work and the owner, lienholder or mortgagee shall be required to secure the property during the work, per the State law. Consistent with State law, the NRB shall not allow more than 90 days to correct unless a detailed plan of action and time schedule for the work is submitted, and the person also establishes that the work cannot reasonably be completed within 90 days due to the scope and complexity of the work.

8. New Section 7-71.i.1 and Section 7-71.i.2(e).

The State law sets forth specific findings requirements that must be made by order before a civil penalty may be assessed against a person for noncompliance. These specific requirements from State law are added.

9. New Section 7-71.i.2(f) (old Section 7-71 h.5) and Section 72. “Re-hearing” provisions deleted. Presently, the Tyler City Code allows a person to appeal the order of the NRB back to the NRB, or to the City Council, for a “re-hearing”. Following such re-hearing, the person can then appeal to State district court under the State law. The current “re-hearing” process is not mandated by State law, results in frequent delays, sometimes adds months to the process, and hinders the City’s ability to take timely action against properties that threaten the public safety. As a result, the current City Code provisions allowing a “re-hearing” are deleted, while keeping the current references to the property owner’s ability to appeal the NRB’s order under State law. This change should have the greatest impact on reducing the amount of time that the substandard process takes for certain buildings.

10. Sec. 7-73. Enforcement of Board Order. State law provides that a civil penalty may be placed as a lien against the subject property and may be enforced by suit filed with the district court. Additionally, State law allows for criminal penalties to be pursued for noncompliance with an order to repair, remove, or demolish a structure. City Code provisions setting forth additional means of enforcing civil and criminal penalties is added.

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending the Tyler City Code to streamline and clarify the substandard building process, and provide for enhanced civil and criminal enforcement.



**Drafted/Recommended By:
Department Leader**

Gary C. Landers

**Edited/Submitted By:
City Manager**

ORDINANCE NO. O-2006-52

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 7, "COMMUNITY DEVELOPMENT", ARTICLE III., "MINIMUM URBAN STANDARDS", TO CLARIFY AND STREAMLINE THE REGULATIONS RELATED TO SUBSTANDARD BUILDINGS, AND ENHANCE CIVIL AND CRIMINAL ENFORCEMENT RELATED TO SUBSTANDARD BUILDINGS, AND TO CLARIFY DEFINITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; 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 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 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 Sections 214.0015 (b)(2) and (d) state that a municipality may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building and impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty; 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, it is important to provide for enhanced civil and criminal enforcement related to such substandard housing; and

WHEREAS, the Neighborhood Revitalization Board reviewed the proposed streamlining amendments to the ordinance on 4/21/06, and the Board is in support thereof; and

WHEREAS, the Neighborhood Revitalization Board has been made aware of the proposed amendments relating to enhanced civil and criminal enforcement, and the Board is in support thereof;

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”, Sections 7-67 through 7-73 are hereby amended to read as follows:

Sec. 7-67. Powers and duties of Manager Regarding Housing.

a. Restrictions on employees. An officer or employee connected with the department, shall not be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building, or financially interested 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 department.

b. Records. The Manager shall keep, or cause to be kept, a record of the business of the Department which shall be open to public inspection.

c. Right of entry. The Manager or authorized representative shall enforce the provisions of this Code, 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, except that such identification and reasonable hour limitations shall not apply in cases where the property is unoccupied or in cases of emergency where extreme hazards are known to exist which may involve the potential loss of life or severe property damage. The Manager or agent is further authorized to enter upon any premises upon which a violation exists and erect signage that identifies persons that ignore and violate the minimum standards herein.

d. Inspections. The Manager may make or cause to be made inspections to determine the condition of buildings and premises in the interest of safeguarding the health and safety of future occupants of such buildings and of the public. For the purpose of making such inspections, the Manager or agent is hereby authorized to enter, examine, and survey all buildings or structures for the purpose of verifying that such premises are in compliance with the minimum standards set forth herein. If such buildings or structures are occupied, any inspections shall be done at reasonable times.

e. Reports. The Manager shall annually submit a report to the City Manager covering the work of the Department during the preceding year and shall incorporate a summary of the decisions of the Neighborhood Revitalization Board during said year.

f. Letter of compliance. A letter indicating compliance with the provisions of this Code may be issued by the Manager.

g. Occupancy of buildings. 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 Manager and such placard is removed. No person shall deface or without proper authority remove the placard from any building which has been placarded as unfit for human habitation, occupancy, or use.

h. Requiring owner to secure substandard buildings. Whenever a building is placarded as unfit for human habitation or occupancy, any owner, authorized agent, or anyone having supervision or control of such building shall secure immediately all

windows, doors, or other structural openings to prevent access by unauthorized persons. A substandard building 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 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 nonconstruction periods; or
4. Other acceptable means of securing the building approved by the Manager or designee Board upon written request of the owner, contractor, or other person in control of the premises.

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 either 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. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06)

Sec. 7-68. Permits.

Any owner, authorized agent, or contractor who desires to construct, enlarge, alter, repair, move, demolish or change a substandard building or to cause any such work to be done thereon, shall first apply for and obtain a permit from the Community Development Department with any time restrictions to be imposed by the Neighborhood Revitalization Board. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06)

Sec. 7-69. Designation and notification of substandard building .

a. As set forth in State law, a substandard building shall include the following:

1. A building that is dilapidated, substandard by not being in compliance with the minimum urban standards set forth in this Article or unfit for human habitation, and that is also a hazard to the public health, safety, and welfare; or
2. 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; or

3. A building that is boarded up, fenced, or otherwise secured in any manner, if either 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 subsection 2. above.

b. All such substandard buildings are hereby declared to be public nuisances and illegal and shall be placarded. Such buildings shall be abated by repair and rehabilitation or by demolition in accordance with this Code and pursuant to authority provided by Texas law. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06)

Sec. 7-70. Neighborhood Revitalization Board.

a. Appointment/procedures.

1. The City Council hereby creates the Neighborhood Revitalization Board consisting of five (5) members appointed by the City Council. Members shall include at least: one (1) realtor; one (1) building materials dealer; one (1) physician; one (1) member-at-large; and one (1) architect, engineer, or general contractor. If it is not possible to fill the membership of the board in all the categories listed above, the City Council may select the remaining membership from business and professional City residents.

2. The Board shall organize by electing a vice-chair and secretary. Thereafter, such officers shall be elected by the members at the first annual meeting of the Board.

3. The Board may establish its own rules of procedure provided that such rules conform to this Code and State law.

b. Meetings. The Board shall meet at regular intervals as set by the Manager. Special meetings may be called at any time by the Manager, as needed.

c. Board duties are:

1. The Neighborhood Revitalization Board shall have the authority to conduct public hearings, to review evidence, to grant extensions of time to come into compliance with the minimum urban standards in this Article, to order substandard buildings to be secured, repaired, removed, or demolished within a reasonable time pursuant to State law and Section 7-71, and to order the assessment of a civil penalty against the property owner for failure to repair, remove, or demolish the substandard building within a reasonable time, and to determine the amount and duration of the civil penalty the city may recover. Orders of the Board regarding substandard buildings shall be appealable to a district court as stated in Sections 7-71.i.5 and 7-72. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00)

2. To consider and determine appeals whenever it is claimed that the true intent and meaning of this Article or any of the regulations hereunder have been

misconstrued or wrongly interpreted by the Manager or designee. The decision of the Board relating to construction or interpretations of the Code by the Manager or designee shall be final. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06)

Sec. 7-71. Procedure for requiring relocation, securing repair, removal, or demolition of substandard or unsafe building, and assessing civil penalty for failure to repair.

a. Whenever the Manager or designee determines that a building may be substandard, the following procedure authorized by Texas law shall be instituted. (Note)

b. A date for public hearing before the Neighborhood Revitalization Board shall be set. State law authorizes review by the Historical Preservation Board or the appointment of a receiver under certain circumstances. Should these methods be utilized, the State law procedures shall be followed.

c. Notice of public hearing. Notice shall be sent by certified mail to the last known address of the property owner at least ten (10) days prior to the date of the public hearing. The City shall make a diligent effort, as defined in State law, to discover each mortgagee or lienholder and shall notify each identified mortgagee or lienholders to provide all interested parties with an opportunity to comment at the public hearing. The notice shall contain:

1. Statement giving owner 10 days to contact City about taking corrective action;
2. Statement giving owner 3 days to secure or City will do so;
3. Statement of violations constituting a nuisance;
4. Statement notifying the owner of the provisions of this article and any other applicable city code provisions;
5. Statement that the owner is required to comply with the requirements of said provisions;
6. Identification of the affected property and building;
7. Date, time, place and purpose of public hearing
8. Statement that the owner, mortgagee, or lienholder will be required to submit a written plan of action describing how such person will comply with the ordinance, the time needed to perform the work in a reasonable manner, and economic feasibility of the plan.

9. Statement that City will secure, repair, remove or demolish the building if the ordered action is not taken within a reasonable time.

10. Statement that City may assess a civil penalty against the property owner for failure of owner to repair, remove, or demolish the building if the ordered action is not taken within a reasonable time.

d. 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.

e. If the building is over fifty (50) years old, notice will also be sent to the Tyler Historical Preservation Board. The Board shall review and shall make a recommendation to the City Council regarding whether or not a hearing for historical significance should be conducted by the City Council. After receiving the Board's recommendation, the City Council shall either make a finding of no historical significance so as to allow the procedure under this Chapter to continue, or the City Council shall conduct a hearing for determining possible historical significance of the building in conformance with State law. If the City Council elects to conduct a hearing on a specific building, then the Community Development Department shall begin the procedure in this Section anew after such hearing. (Ord. No. 0-2005-70, 9/14/05)

f. In addition to the notice requirements in this Section, the City may file notice in the County land records. If such notice is filed, it must contain the name and address of the owner if such information can be determined; a legal description of the property; and a description of the public hearing.

g. At the public hearing, the owner must, and notified mortgagees and lienholders may, appear and present evidence concerning the condition of the building, and their written action plan describing:

1. the work required to render the building safe, sanitary or fit for human habitation, occupancy, or use;

2. a reasonable time schedule for completion of such repairs or demolition;

3. how repairs will be paid for;

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

1. 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 secure the building from unauthorized entry, or 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.

2. 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 the commencement and performance of the work and shall require the owner, lienholder or mortgagee to secure the property in a reasonable manner from unauthorized entry while the required work is being performed.

3. The Board shall not allow the owner, lienholder or mortgagee more than a total of ninety (90) calendar days to repair, remove or demolish the substandard building or fully perform all work required to comply with the Board's Order, unless the owner, lienholder or mortgagee submits to the Board a detailed plan and time schedule for work prior to or at the hearing, and also establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.

i. Order of Board.

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;

(b) whether or not the property owner was actually notified of the provisions of this article and any other applicable city code provisions and of the owner's need to comply with the requirements;

(c) whether or not the property owner, after notification, committed an act in violation of the provisions of this Article or failed to take an action necessary for compliance with said provisions.

2. Then the Board shall issue an Order stating:

(a) how the building is in violation of this Chapter,

(b) a reasonable time for the building to be secured, repaired, removed or demolished by the owner, as set forth in subsection h. above,

(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,

(d) that the City will secure, repair, remove or demolish the building or relocate the occupants if the ordered action is not taken within the prescribed time, in which case, the City is not required to furnish any notice to a mortgagee or

lienholder other than a copy of the Order if owner fails to take timely the ordered action;
or

(e) that the City will assess a civil penalty against the property owner, the amount and duration of the penalty, and that in the compliance hearing it was found that:

(1) the ordered action was not taken within the prescribed time,

(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

(3) after notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

A civil penalty ordered under this subsection shall be in an amount 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.

(f) That the owner, lienholder or mortgagee may appeal to state court within thirty (30) calendar days after the respective dates a copy of the final Board Order is personally delivered or is mailed to them by first class mail, certified return receipt requested.

- j. Within ten (10) days of issuance of the Order, the City 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.
 3. Send such Order by certified mail, return receipt requested 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)

Sec. 7-72. Appeal of Board's Order.

Pursuant to State law, the owner, lienholder or mortgagee aggrieved by the Board's Order may appeal to the state district court, which must be filed within thirty (30) calendar days after the respective dates a copy of the Board Order is personally

delivered or is mailed to them by first class mail, certified return receipt requested. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2006-52, 5/24/06)

Sec. 7-73. Enforcement of Board Order.

a. An assessment of a civil penalty by the Neighborhood Revitalization Board as provided in this article is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment as provided elsewhere herein.

b. The Manager shall carry out the Board's final Order.

1. The Manager is authorized to contract the work at City expense. The Manager shall prepare either a certified statement of charges incurred by the City to secure, repair, remove, or demolish the building, or prepare a written notice setting out the amount and duration of the civil penalty assessed for failure to secure, repair, remove, or demolish the building. The certified statement of charges or written notice of civil penalty assessed shall be sent to the owner certified mail, return receipt requested, after the expiration of time allotted herein.

2. All costs of demolition or repairs, or assessment of a civil penalty shall be the personal obligation of the person who owns the building at the time the order was issued and shall also be assessed as a lien against the land 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 and a demand for payment issued to the owner.

3. If the Manager or designee determines that a previous Order of the Board should be reviewed or re-examined by the Board due to changed or special circumstances, including subsequent substantial efforts to correct existing Code violations by any person, then the Manager or designee shall have the authority to re-submit the Order for Board review. The Board may then uphold, repeal, or modify its previous Order. (Note)

c. The city attorney is hereby authorized to undertake, by all legal means appropriate or necessary, the enforcement of this article, including, but not limited to enforcement in municipal court, filing of appropriate civil actions in courts of appropriate jurisdiction to seek compliance with said orders, or defending the city from suit if suit is taken to appeal any action of the city. 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 a judicially authorized sale of the property to pay demolition costs or for such other and further relief as deemed appropriate. 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 7-71. h., the Manager shall file a copy of each order assessing a civil penalty with the City Clerk and the City Clerk, at the direction of the Manager, 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 such person who fails to comply with any such order commits a 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.

f. Judicial review of decisions. Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the Tyler Neighborhood Revitalization Board issued under this article may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the Board is personally delivered or mailed to them by first class mail, certified return receipt requested, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.

g. 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 Community Development Manager has determined that the building on _____ (Lot and Block) _____ (street address) _____ is unsafe for occupancy. Occupancy of this building is prohibited and administrative proceedings are in progress to require repair or demolition of this building to be accomplished at the expense of the owner."

2. To the City of Tyler Community Development Manager, 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) _____."

h. 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)

PART 2: 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 3: 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 become effective upon 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 May 26, 2006.

PASSED AND APPROVED this 24th day of May, A. D., 2006.

JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY