



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: O-1

Date: August 22, 2007

Subject: Request that the City Council consider adopting an ordinance amending Tyler City Code Chapter 7 relating to tagging, notice and enforcement procedures for substandard structures and demolition, and amending Tyler City Code Chapter 10 to clarify demolition and rehabilitation procedures related to historic structures and receive a presentation regarding the same.

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Item Reference: Tyler City Code Chapter 7, Article III.; Chapter 10, Article II.; Texas Local Government Code Sections 214.001; 214.00111; 217.042

The City Council and the community recognize that many citizens need more affordable housing choices. When the City staff tags a substandard building, that act formally brings the property into the City's process, which begins with a public hearing before the Neighborhood Revitalization Board (NRB) or the Historical Preservation Board (HPB). Ultimately, one of two results can occur - demolition or rehabilitation. The proposed ordinance changes give owners three choices in terms of disposition once a substandard property has been tagged; voluntary demolition, rehabilitation, or demolition by owner.

As part of the City of Tyler's emphasis on neighborhood revitalization, including the increased need for and desire to improve neighborhoods; the proposed ordinance establishes ways to more aggressively abate problems associated with substandard structures, many of which are not good candidates for rehabilitation. One strategy is to implement the City of Tyler Voluntary Demolition Program.

The Voluntary Demolition program is designed to be initiated by the property owner. Any time prior to a formal tag being placed on the property, the owner can request that the City demolish and clear a substandard building at no cost to the owner. The owner who is notified that a property has been tagged as a substandard building also has the option of participating in the Voluntary Demolition Program.

The Voluntary Demolition Program encourages the immediate elimination of unsightly and unsafe buildings and, in many cases, allows for the future use of these cleared properties for development of affordable housing. Changes to the demolition and substandard building requirements can serve as a framework for strategic planning with other affordable housing providers to address affordable housing needs. The end result should be more choices for both the affordable housing developers and the citizens seeking homes.

In tagging substandard buildings, the City is equally interested in urging owners to rehabilitate housing that can be preserved, especially where the rehabilitation makes economic sense for the owner and where the ultimate beneficiary is a low/moderate income household.

As it relates to substandard properties whose owners choose to rehabilitate, the proposed ordinance emphasizes the owner's responsibility to develop a reasonable Rehabilitation Plan of Action. The City of Tyler Building Official will be regularly involved in substantive reviews of all submitted rehabilitation plans and will make recommendations to the Neighborhood Revitalization Board and Historical Preservation Board at the initial public hearing on a given property. Both Boards will have a complete staff review to consider at the initial hearing, which will encourage a coordinated staff effort regarding the scope of work and timetable issues. These changes will help define and clarify the Neighborhood Revitalization Board's responsibility in holding the owners accountable, and will improve the ability to monitor progress and assess civil penalties for violations of the Code and/or the related NRB Order. The Neighborhood Services Director may request that civil penalties against neglectful owners be assessed as early as the initial public hearing. Other enforcement mechanisms give the City a choice in pursuing owner compliance, including criminal prosecution for Code violations and requests for civil injunctions.

The ordinance changes clarify demolition and rehabilitation procedures that must be followed for properties which are designated historical landmarks, or are identified as potentially historical by either the City or State preservation offices. Any property aged 50 or over must be evaluated for historical potential before any final decision may be made with regard to rehabilitation or demolition. Older tagged substandard structures which are not historically significant will be evaluated via the NRB process. However, older buildings that are historically significant must be evaluated by the Historical Preservation Board (HPB) and, by local option, the HPB recommendation is forwarded to the City Council for final review and determination. Changes to Chapter 10 will help assure that the City Council, as the final decision maker in these cases, has the information it needs from the HPB to respond appropriately to a request for a Certificate of Appropriateness for Rehabilitation or to properly order a Certificate of Demolition. It was the consensus of the Historical Preservation Board that these amendments to the Demolition provisions be made. It was also the consensus of the Historical Preservation Board that the review of Certificates of Appropriateness include the ability to consider the financial resources of the applicant, and that the ability to establish time limits for completing work under a Certificate of Appropriateness also be added to the Ordinance. The new language clarifies the Historical Preservation Board's involvement in monitoring approved rehabilitation projects and handling demolition projects when the subject property is one requiring Historical Preservation Board and City Council action.

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Tyler City Code Chapter 7 relating to tagging, notice and enforcement procedures for substandard structures and demolition, and amending Tyler City Code Chapter 10 to clarify demolition and rehabilitation procedures related to historic structures and receive a presentation regarding the same.

Drafted/Recommended By: 
Department Leader Gary C. Landers, City Attorney

Edited/Submitted
By: City Manager

ORDINANCE NO. O-2007-101

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 7, "COMMUNITY DEVELOPMENT", ARTICLE I. "DEFINITIONS", ARTICLE III. "MINIMUM URBAN STANDARDS", AND CHAPTER 10, "PLANNING AND ZONING", ARTICLE II, "HISTORICAL PRESERVATION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; 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 of 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 the 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 building, 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 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, the City Council desires to create new strategies and improve existing programs targeting neighborhood revitalization efforts; and

WHEREAS, the City Council desires to have additional and more efficient choices 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 City Council and the community at large recognize that the City of Tyler needs more affordable housing for low and moderate income households; and

WHEREAS, streamlined procedures for encouraging owners to either demolish or, in appropriate projects, to rehabilitate substandard properties will remove slum and blight conditions and create opportunities for new affordable housing options; and

WHEREAS, the City intends to more aggressively encourage owners to rehabilitate housing that can be preserved, and is especially interested when the ultimate beneficiary is a low/moderate income household. By increasing the number of affordable homes, Tyler families at all economic levels have more choices about where to live for the best benefit of their households; and

WHEREAS, adding a Voluntary Demolition Program is a new strategy to address both the need to remove dangerous substandard buildings and the desire to use appropriate cleared lots for new construction benefiting low and moderate income households; and

WHEREAS, changes to the involuntary demolition and rehabilitation procedures before the City of Tyler Neighborhood Revitalization Board and the Historical Preservation Board demand more planning by the owner, more effective rehabilitation plan reviews by City staff, more specialized and efficient use of time by staff, Board members, and owners, and streamlined processes leaving fewer opportunities for substandard buildings to continue deteriorating; and

WHEREAS, whether by demolition or rehabilitation, the speedier removal of slum and blight conditions encourages new economic investment not only by the City but by other community builder organizations; and

WHEREAS, the City Council recognizes its leadership role in the area of strategic planning for current and future neighborhood revitalization projects and affordable housing needs and desires to collaborate with and encourage other community organizations providing affordable housing options and related neighborhood revitalization projects; 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 I. “Definitions”, Section 7-1, “Definitions”, be amended to read as follows:

Sec. 7-1. Definitions.

For purposes of this chapter, the following definitions are applicable:

Department means the Neighborhood Services Department.

Director means Neighborhood Services Department Director.

Discriminatory housing practice means an act that is unlawful under Sections 7-11, 7-12, 7- 13 and 7-14.

Dwelling means any building, structure, or portion thereof which is occupied as, or designed and intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Family means one (1) person or two (2) or more persons related by blood, marriage or legal adoption, or two (2) or more unrelated persons that are the functional equivalent of a family occupying a dwelling unit.

Park means a park, playground, beach, recreation center, or any other public area in the City, owned or used by the City and devoted to active or passive recreation.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trust organizations, trustees, trustees in bankruptcy, and any other reorganization or entity of whatever character.

Private premises means any dwelling, house, building or other structure designed or used, in whole or in part, for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, including any yard, grounds, walk, driveway, porch, steps, vestibule, mailbox or other real or personal property belonging or appurtenant to such dwelling, house, building or other structure.

Public place means any property open or devoted to public use.

Public property means any and all property owned by the City, State of Texas, United States of America, or any subdivision thereof located within the City limits.

To Rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00); (Ord. No. 0-2007-101, 8-22-07)

Secs. 7-2 -7-9. Reserved.

PART 2. That Tyler City Code Chapter 7, Community Development, Article III., “Minimum Urban Standards”, be amended to read as follows:

Sec. 7-60. no changes

Sec. 7-61. Definitions.

Addition is an extension or increase in floor area or height of a building or structure.

Alter or alteration means any change or modification in construction or occupancy.

Apartment means a dwelling unit as defined in this Code.

Apartment house is any building or portion thereof used as a multiple dwelling for the purpose of providing three (3) or more separate dwelling units which may share means of egress and other essential facilities.

Approved means approved by the Director or other authority having jurisdiction.

Basement means that portion of a building between the floor and ceiling, which is partly below and partly above grade (as defined in this section), but so located that the vertical distance from grade to the floor below is less than the vertical distance from grade to ceiling, provided, however, that the distance from grade to ceiling shall be at least four (4) feet six (6) inches.

Building means any structure, or part thereof, built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for fifty (50) percent of its perimeter. (For the purpose of this Code each portion of a building separated from other portions by a fire wall shall be considered as a separate building.)

Cellar means that portion of a building, the ceiling of which is entirely below grade or less than four (4) feet six (6) inches above grade.

Dormitory is a space in a unit where group sleeping accommodations are provided with or without meals for persons not members of the same family group, in one (1) room, or in a series of closely associated rooms under joint occupancy and single management, as in college dormitories, fraternity houses, military barracks and ski lodges.

Dwelling unit is a single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Extermination means the control and extermination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination methods.

Floor area means the total area of all habitable space in a building or structure.

Garbage means animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

HPB means City of Tyler Historical Preservation Board.

Habitable room is a space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

Hotel is any building containing six (6) or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

Lien holder is any person(s), firm, business, corporation, or other entity holding a substantial legal property interest or claim on property for payment of some debt, obligation or duty, either acquired by contract or by operation of law.

Multiple dwelling means any building, or portion thereof, which is occupied as the home or residence of more than two (2) families living independently of each other and doing their own cooking in said building, and shall include flats and apartments.

NRB means City of Tyler Neighborhood Revitalization Board.

Openable area (window) means that part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

Operator means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Owner means the holder of the title in fee simple and any person(s), company, association or corporation in whose name tax bills on the property are submitted or any person, who, alone or jointly or severally with others:

a. Has legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

b. Has charge, care or control of any dwelling or dwelling unit, as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or vendee in possessions, or assignee of rents, lessee, or other person, firm or corporation in control of a building; or their duly authorized agents. Any such person thus representing the actual owner shall comply with this Article, and all rules and regulations adopted pursuant thereto, and shall be responsible for notifying the actual owner of any reported infractions pertaining to the property which apply to the owner.

Placard means a notice posted in a public place. For purposes of this Chapter, placarding refers to an employee or agent of the Department placing a written public notice on the outside of a substandard building as defined by Section 7-69.

Plumbing means the practice, materials, and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following: Sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extensions or alteration of storm water, liquid waste, or sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

Premises means a lot, plot or parcel of land including the buildings or structures thereon.

Repair means the replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the

building, or that would affect or change required exit facilities, a vital element of an elevator, plumbing, gas piping, wiring or heating installations, or that would be in violation of a law or ordinance. The term shall not apply to any change of construction.

Residential buildings means buildings in which families or households live or in which sleeping accommodations are provided, and all dormitories, and shall be classified as "residential occupancy." Such buildings include, among others, the following: Dwellings, multiple dwellings, and rooming houses.

Rooming house means any dwelling or part thereof containing one (1) or more rooming units, in which space is let by the owner or operator to three (3) or more persons who are not related by blood or marriage.

Rooming unit means any room(s) forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish means combustible and noncombustible waste materials, except garbage; and includes the residue from the burning of wood, coal, coke, or other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metal, mineral matter, glass, crockery, and dust.

SHPO means State Historical Preservation Office.

Stairway means one (1) or more flights of stairs and the necessary landings and platforms connecting them to form a continuous and uninterrupted passage from one story to another in a building or structure.

Story is that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or any part thereof.

Temporary housing means any tent, trailer, or other structure used for human shelter designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than thirty (30) consecutive days.

Valuation or value, as applied to a building, means the estimated cost to replace the building in kind.

Ventilation means the process of supplying and removing air by natural or mechanical means to or from any space.

Yard means an open unoccupied space on the same lot with a building extending along the entire length of a street, or rear, or interior lot line.

Meaning of certain words. Whenever the words "dwelling," "dwelling units," "rooming house," "rooming units," "premises," are used in this Article, they shall be construed as though they were followed by the words "or any part thereof." (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00) (Ord. No. 0-2007-101, 8-22-07)

Sec. 7-62 – 7-66. No changes.

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

a. Restrictions on employees. An officer or employee connected with the Department 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 Department.

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

c. Right of entry. The Director or designee 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. 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.

d. Inspections. The Director 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 agent 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.

e. 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.

f. Letters of compliance. Letters indicating compliance with Code provisions may be issued by the Director.

g. 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 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)

Sec. 7-68. Neighborhood Revitalization Board.

a. Appointment/procedures.

1. The City Council hereby creates the Neighborhood Revitalization Board (NRB) 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.

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 consistent with this Code and State law.

b. Meetings. The Director shall set the regular Board meeting schedule and determine the need for and times of special called meetings.

c. NRB duties are:

1. To conduct public hearings; review evidence; approve rehabilitation plans and monitor compliance with timetables for completion; grant extensions of time when reasonable and necessary; order substandard buildings to be repaired, removed, or demolished within a reasonable time pursuant to State law and this Article; and assess civil penalties against property owners for failure to secure, repair, remove, or demolish substandard buildings pursuant to the Board's orders and/or for other violations of this Article. Board orders may be appealed to District Court as stated in Section 7-76. (Ord. No. 0-97-61; 12/3/97) (Ord. No. 0-2000-27, 4-19-00).

2. To consider and determine the true intent and meaning of this Article or any of the related regulations. The Board's decisions related to construction or interpretations of the Code by the Director 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) (Ord. No. 0-2007-101, 8-22-07)

Sec. 7-69. Designation of Substandard Building.

As set forth in State law, a building may be designated as substandard when:

a. The building is a hazard to the public health, safety and welfare and it is dilapidated, and/or in violation of the City of Tyler Minimum Urban Standards, and/or unfit for human habitation; or

b. The building is unoccupied and unsecured allowing access by unauthorized persons; or

c. Efforts to secure an unoccupied building are either inadequate to deter access by unauthorized persons or when the building remains a danger to the public even when secured. (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)

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 nonconstruction 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)

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 Neighborhood Services Director who will then forward to the Building Official for review within twenty-five (25) 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, remove, or demolish 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 as ordered by the NRB or City Council; 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, 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.

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)

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) days of receipt of the Notice letter.

b. Option One: City of Tyler Voluntary Demolition Program. The Voluntary Demolition Program exists to encourage owners 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 at no cost to participating owners. The program encourages the removal of deteriorated and dilapidated substandard buildings and encourages new construction of affordable housing on appropriate lots.

Requests to participate in the City of Tyler Voluntary Demolition Program may be made either before or after the building has been identified as substandard under this Article by filing an Application, Waiver and Release for Voluntary Demolition.

Applications may be picked up at and returned to the City of Tyler 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 interested parties regarding the scheduled date for demolition. (Ord. No. 0-2007-101, 8-22-07)

c. Option Two: Submit Rehabilitation Plan of Action and have public hearing before the Neighborhood Revitalization Board or the Historical Preservation Board and City Council, as applicable. Owners/lienholders may request time for rehabilitation by submitting to the Director a written Rehabilitation Plan of Action within twenty five (25) 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 and Zoning 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 and then forwarded to the City of Tyler Building Official for review before consideration by either the Neighborhood Revitalization Board (NRB) (See Sec. 7-74) or the Historical Preservation Board (HPB) (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 City of Tyler Building Inspection Department within thirty (30) days of receiving a written Notice to Proceed from Director or receiving a Certificate of Demolition from the City Council.

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 Building Official may extend the time limit of the permit for up to thirty (30) days. (Ord. No. 0-2007-101, 8-22-07)

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, the Director shall verify with Planning and Zoning 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 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 City of Tyler Neighborhood Revitalization Board (NRB). Notice of the NRB public hearing shall be sent to interested parties no later than ten (10) 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) 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 City Council 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 City Council. City Council 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 City Council meeting at least ten (10) days prior by certified mail, return receipt requested, restricted signature.

d. City Council decisions to issue Certificates of Appropriateness for Rehabilitation or Demolition may be appealed to district court within 30 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 and Zoning Department 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)

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 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. Then 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)

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 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) 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.

g. Within two (2) days of issuance of the Order, the Director or designee 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. 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)

Sec. 7-76. Appeal of NRB and City Council Orders.

Pursuant to State law, the owner, lienholder and/or mortgagee aggrieved by NRB Order or a City Council Order issuing a Certificate of Demolition or Appropriateness for Rehabilitation issued by authority of this Article, may appeal to the state district court within thirty (30) calendar days after date a copy of the Board Order is personally delivered or is mailed to them by certified mail, return receipt requested, restricted signature. If appeal is not timely made, Orders issued pursuant to this Article shall be final at the expiration of the thirty (30) calendar day period for appeal. (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)

Sec. 7-77. 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.

b. The Director shall carry out the Board's 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) 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) 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 NRB Order. The Director may schedule further hearings before the NRB and request assessment of further civil penalties for violations of any NRB 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 a 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 hearings before the NRB or the HPB. 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 or of the Tyler City Council 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)

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

a. As authorized by State law, if the Chief Building Official determines that a building, poses an immediate threat so as to endanger persons or property, the property will be placarded with a notice of the need for emergency repairs or demolition. The Chief Building Official 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 notice letter. It is unlawful to fail to comply with such order of the Chief Building Official.

b. The Chief Building Official may order the 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) 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) 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 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)

PART 3. That Tyler City Code Chapter 10. "Planning and Zoning", Article II., Historical Preservation", be amended to read as follows:

Sec. 10-10 - Sec. 10-19. Reserved

Sec. 10-20. Historic landmarks. *No changes*

Sec. 10-21. Tyler Historical Preservation Board-Created; composition; appointment of members; terms

a. There is hereby created in and for the City a board to be known as the "Tyler Historical Preservation Board," which shall be composed of nine (9) members who shall serve without compensation and who shall be appointed by the City Council. Members shall serve for terms as set forth in Section 2-1. Board membership shall include 1) an architect, planner, or design professional; 2) a historian, archeologist, or related profession; 3) a real estate professional; 4) an attorney; 5) an owner of historic landmark or property in historic district; and 6) the Executive Director of Historic Tyler, Inc. or successor organization, or designee. Such membership requirements may also be met if a Board member falls into more than one of the listed classifications. If it is not possible to fill the membership of the Board in all its categories listed above, the City Council may select the remaining membership. All members shall have a demonstrated interest, competence or knowledge in historic preservation within the City. If the City Council does not appoint an architect to the Board pursuant to this subsection, the Board is hereby authorized to appoint an architect as an unpaid, Ex Officio, non-voting member of the Board. Said appointee shall serve in an advisory capacity only to the Board. (Ord. 0-2001-38, 8/22/01) (0-2005-61; 8/17/05)

b. The purposes of the Historical Preservation Board are:

1. To work with the federal and state governments, City Planning Department, the historical society and other boards or organizations to help coordinate restoration or preservation projects.
 2. To educate the community about its rich historical legacy and to encourage historical preservation as inspiration for future generations.
 3. To study and research the necessity for historical districts for the City.
 4. To conduct comprehensive studies into the field of historical preservation in this community, including programs now being offered, what still needs to be done, and cooperative efforts among various groups which could be effected toward a common goal.
 5. To provide for the community an overall view of historical preservation and provide data for individuals or organizations interested in historical preservation.
 6. To recommend to the City Council historic landmarks which should be included in the Tyler Historic Landmark Register.
 7. To thoroughly familiarize itself with buildings, structures, sites, districts, areas, places and lands within the City which may be eligible for designation as historical landmarks.
 8. To establish criteria and make recommendations to the City Council to be used in determining whether certain buildings, districts, and areas should be designated as historical landmarks.
 9. To establish guidelines and review requests for Certificates of Appropriateness for Rehabilitation and Certificates of Demolition for buildings, structures and sites designated as historical landmarks.
 10. To formulate plans and programs for public and private action for encouraging and promoting the preservation of historical landmarks.
 11. To suggest sources of funds for preservation and restoration activities and acquisitions, including federal, state, local, private and foundation sources.
 12. To provide information and counseling to owners of historical landmarks.
 13. To prepare annual reports to the Texas Historical Commission and City Council that summarize Board activity during the previous year.
 14. To prepare design guidelines for review of historical landmarks and districts.
 15. To propose to the City Council tax abatement programs for historical landmarks and districts.
- c. The powers and duties of the board are:

1. Act in an advisory capacity and make recommendations to the City Manager, the Planning and Zoning Commission and the City Council concerning establishment of any location, structure, building or area as an official historical site and shall make future recommendations regarding preservation and restoration of such areas or buildings, subsequent to their establishment as official historical sites or districts.

2. Conduct hearings and research for the purpose of determining the feasibility of recommending to the City Manager, the Planning and Zoning Commission and City Council locations, sites and structures to preserve and restore as official historic sites or districts. (Ord. 0-2003-38, 7/23/03)

3. The authority of the Board shall be limited to making recommendations, and it shall in no way have authority to designate or establish areas, buildings or structures as historical sites or districts.

4. The Planning Director shall designate in writing a local preservation officer who shall serve as a liaison for the City and Board to the Texas Historical Commission, and who shall assist the Board in formulating plans and programs for historical preservation. (Ord. No. 0-98-81, 10/7/98) (Ord. No. 0-2007-101, 8-22-07)

Sec. 10-22. Designation of historic landmarks. *No changes*

Sec. 10-23. Alteration or demolition of historic landmarks; Certificate of Appropriateness for Rehabilitation or Certificate of Demolition required.

a. No person or entity may construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of a building or structure or relocate any building or structure designated as historic unless a Certificate of Appropriateness for Rehabilitation or a Certificate of Demolition has been issued by the City Council. The term "exterior architectural feature" shall include, but not be limited to, the kind, color and basic texture of all exterior building materials and such features as windows, doors, lights, signs and other exterior fixtures.

b. Application procedure: Applications for Certificates of Appropriateness and Certificates of Demolition and other required information shall be submitted to the Planning and Zoning Department which will then submit the documents to the Chief Building Official for a structural and financial feasibility review prior to public hearing before the Historical Preservation Board, except as otherwise directed in this Section.

1. Applications for Certificates of Appropriateness for Rehabilitation shall be made on a specified form and shall include two (2) copies of detailed plans, elevations, perspectives, specifications or other suitable plans for the proposed work, including information regarding the financial feasibility of the plans and proof of financial resources to complete the work.

2. If the building or structure is placarded as substandard and a public nuisance as defined by the City of Tyler Minimum Urban Standards at City Code Chapter 7, Sec. 7-69 and 7-70 and the property owner desires to rehabilitate the property, the Application for Certificate of Appropriateness for Rehabilitation and attachments shall be submitted to the Neighborhood Services Director with the required Rehabilitation Plan of Action and within the time frame described in Sec.7-71.

3, Applications for Certificates of Demolition shall be made on a specified form to the Board and shall include two (2) copies of an explanation of the deteriorated and/or dilapidated condition of the building , including visual exhibits such as photographs, and/or copies of the Inspection Report for Substandard Building prepared by City staff if the property has been placarded as substandard and a public nuisance as defined by the City of Tyler Minimum Urban Standards, in which case the Application documents shall be submitted to the Neighborhood Services Director.

4. Applications submitted to the Neighborhood Services Director shall be forwarded to the Planning and Zoning Department which will forward to the Chief Building Official providing a sufficient time for review prior to the hearing scheduled before the Board.

c. Time and Notice of Board Hearing: Within forty-five (45) days of the receipt of a completed Application, the Board shall hold a public hearing, as scheduled by the Planning and Zoning Department. Property owners and known mortgagees and lienholders shall be notified of the date, time and place of the public hearing by certified mail, return receipt requested, restricted signature, at least ten (10) days prior to hearing. If the subject property was initially tagged as substandard and in violation of the Minimum Urban Standards, Chapter 7, Art. III., then the Planning and Zoning Department shall send a copy of the notice letter described herein to the Neighborhood Services Director.

d. Procedure for Board Review and Public Hearing before City Council:

1. Upon review of the Application for Certificate of Appropriateness for Rehabilitation or for Certificate of Demolition, and considering the Chief Building Official's recommendations, the Board shall determine:

(a) Whether demolition is recommended, if applicable, or whether the proposed rehabilitation work will adversely affect any exterior architectural feature or adversely affect the historical character of the building, structure or site;

(b) Whether any proposed work is consistent with the guidelines in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings;

(c) Whether such work is appropriate and consistent with the spirit and intent of this chapter; and

(d) Whether sufficient evidence of financial resources to complete the work has been presented.

(e) Time for completion. As part of the review of an application for a Certificate of Appropriateness or for a Certificate of Demolition, the Board may recommend to the City Council a specific time period for completion of all work under the Certificate of Appropriateness or Certificate of Demolition. When considering the specific time for completion in each individual case, the Board and City Council may take into account the proposed scope of the work, the size and dimensions of the property, the cost of the work, and any other specific circumstances affecting the particular building, structure or property. If work under a Certificate of Appropriateness or Certificate of Demolition issued under this section has not been completed within the time period established by the City Council pursuant to this subsection, the person or entity must file an application for a new Certificate of Appropriateness

or Certificate pursuant to this section. It shall be unlawful for a person or entity to perform work governed by an expired Certificate of Appropriateness or Certificate of Demolition without obtaining a new Certificate of Appropriateness or Certificate of Demolition.

2. The Planning and Zoning Department shall place the Board's recommendation on the next available City Council agenda. The Board's recommendations shall be forwarded to the City Council, which shall have final authority to grant a Certificate of Appropriateness for Rehabilitation or Certificate of Demolition. Notice of hearing before the City Council will be provided to the property owner and known mortgagees and lienholders by certified mail, return receipt requested, restricted signature at least ten (10) days prior to the hearing. At the hearing, the City Council shall review the Board recommendation and make a final decision regarding the issuance of a Certificate under this chapter.

3. Following the City Council's decision, the Planning and Zoning Department shall either hand-deliver or forward to the property owner and known mortgagees and lienholders within two (2) days of the hearing and by certified mail, return receipt requested, restricted signature, either a:

(a) Certificate of Appropriateness for Rehabilitation, which shall include a copy of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; or

(b) Notice that the City Council has made a determination that the proposed work would adversely affect the historic character of the site or structure and a recommendation of an alternative course of action which would preserve the historic character of the structure; or

(c) Certificate of Demolition which shall mandate that demolition and clearance shall be completed by a date certain.

e. Appeal to District Court: An interested party may appeal the final decision of the City Council to the district court by filing a verified petition within thirty (30) days of the date the Certificate or other final notice is provided to the party pursuant to this Chapter. On expiration of the thirty (30) day appeal period, any City Council decision shall be final.

f. Issuance of Building permit: A building permit consistent with a Certificate issued under this chapter may be applied for and issued following the City Council hearing. (Ord. No. 0-98-81, 10/7/98)

g. Temporary Emergency Repairs Orders. If the Chief Building Official, in consultation with the Neighborhood Services Director, if applicable, determines that a building or structure designated on the Tyler historic landmark register poses an immediate threat to persons or property, the Chief Building Official may order or conduct any temporary emergency repairs necessary to make the building or structure safe without the requirement of a Certificate of Appropriateness for Rehabilitation. The Chief Building Official shall send the Board a written Temporary Emergency Repair Order explaining the work done to remove the immediate threat. However, once such temporary emergency repairs have been completed, no further work may be done on the building or structure unless a Certificate of Appropriateness for Rehabilitation is obtained pursuant to this section. If the City incurs costs associated with abating the immediate threat and the City desires to assess costs against the owner, a certified statement of costs shall be prepared by the Chief Building Official, verified by the Chief

Financial Officer, and forwarded to the property owner by certified mail, return receipt requested, with instructions regarding the owner's responsibility to pay those costs. The City may place a lien on the property for unpaid costs associated with this section by filing an affidavit of lien and the certified statement of charges with the Smith County land records. It is unlawful to fail to comply with a Temporary Emergency Repair Order issued by the Chief Building Official. (Ord. 0-99-52, 7/21/99) (Ord. No. 0-2005-70, 9/14/05) (Ord. No. 0-2007-101, 8-22-07)

Sec. 10-24. Property owners' rights; removal by City Council. *No changes*

Sec. 10-25. Tax abatement. *No changes*

Sec. 10-26. Tax abatements for historic landmarks.

a. The tax abatement provided for in this section is intended to encourage historic preservation within the City of Tyler. Any building or structure that has been designated as a historic landmark pursuant to the terms of this Article, and which is substantially rehabilitated as provided herein, may have abated one hundred percent (100%) of the amount of any increase in the assessed value for purposes of ad valorem taxes levied by the City of Tyler in excess of the assessed value of the property for a period of five (5) years following issuance of a Certificate of Appropriateness for Rehabilitation. Said tax abatement shall only apply to the increase in the assessed value of the property over the assessed base value of the property, regardless of the actual value of any permits and improvements. In order to be eligible for tax abatement, said renovations must be at a minimum cost of *thirty thousand dollars (\$30,000.00)* and must be completed within a period of two (2) years from the date of issuance of a Certificate of Appropriateness for Rehabilitation. The tax abatements would become applicable to the property in January of the first tax year following the date of issuance of a Certificate of Appropriateness for Rehabilitation. The tax abatements shall continue in effect during the established five-year period as long as the property remains on the Tyler historic landmark register. The total amount of said improvements subject to tax abatement per year for the five-year period on a single piece of property shall not exceed *two million dollars (\$2,000,000)*.

b. To be eligible for a property tax abatement under this section, a property must meet the following requirements:

1. The building or structure must meet the requirements for, and have previously been designated as, a historic landmark pursuant to section 10-22.

2. The structure or building upon which the renovation is to occur must be at least fifty (50) years old or older;

3. The tax abatement under this section is available for buildings or structures on both residential and commercial property.

4. Any renovations or improvements must conform to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, a copy of which is available in the Planning and Zoning Department.

c. Application process. Applications for tax abatement under this section are voluntary. Any owner seeking a tax abatement under this section shall file an application for a Certificate of Appropriateness for Rehabilitation in conformance with section 10-23. Said

application shall include a projection of the estimated construction time and predicted completion date of the historic repair or rehabilitation. The requirements of sections 10-23 and 10-24 shall govern the application, granting and removal, and maintenance process for the Certificate of Appropriateness for Rehabilitation. However, the actual granting of the tax abatement under this section shall be subject to the discretion and approval of the City Council. After a public hearing, the City Council may by ordinance approve the abatement provided for in this section. If approved by City Council, the applicant for abatement shall cause a copy of the ordinance and application for exemption to be sent to the Smith County Appraisal District not later than January 1st of each subject tax year.

d. Time for completion; re-capture. If the improvements, renovation or restoration repair work on a particular piece of property are not completed within two (2) years from the date of issuance of the Certificate of Appropriateness for Rehabilitation, any and all tax abatements previously received on said property during the two-year period shall be revoked, and the City may re-capture all tax abatements that the property owner received during said two-year period. In addition to the re-capture, the property owner shall not be eligible for the tax abatement for the remaining three (3) years.

e. Eligible costs. Eligible costs shall include construction, reconstruction, alteration, change, restoration, removal or demolition of any exterior architectural feature of a building or structure on the Tyler historic landmark register. Materials and labor for repairing, replacing or adding any of the following shall be eligible, if expressly approved as part of the Certificate of Appropriateness for Rehabilitation:

1. Structural walls;
2. Exterior doors;
3. Windows;
4. Exterior brick veneers or treatments;
5. Roof and gutter where necessary for structural integrity;
6. Facade items;
7. Limited demolition, not more than fifteen percent (15%) of the original structure, and cleanup related to the eligible costs in this subsection;
8. Exterior paint (consistent with those colors available during the time period that the structure was built);
9. Foundations;
10. Structural subfloors;
11. Structural ceilings;
12. Termite damage and treatment;
13. Fixtures and decorative items attached to the main structure, or that contribute to the historic integrity of the property;
14. Fencing that contributes to the historic integrity of the property.

f. Ineligible costs. Ineligible costs shall include the following:

1. Overhead;
2. Taxes;
3. Supervisor payroll;
4. Repairs of construction equipment;
5. Tools;
6. Plumbing and electrical wiring;
7. Mechanical equipment; air conditioning systems;

8. Any other items not directly related to the exterior appearance or the structural integrity or viability of the structure, except that interior items for commercial properties shall be allowed.

g. Use in conjunction with other incentives. The tax abatement authorized by this section may be used in conjunction with other types of abatements or incentives, either existing and that may be developed in the future, unless otherwise prohibited by statute or ordinance.

h. Sunset review. Before the second anniversary of the date of adoption of this section, the City Manager shall review the tax abatement program established herein. The City Manager shall review the effects of, and any benefits or problems associated with, this program. Following such review, the City Manager shall make a recommendation to the City Council regarding whether to continue, modify, or repeal this section. (Ord. No. 0-2005-61; 8/17/05) (Ord. No. 0-2007-101, 8-22-07)

Secs. 10-27-10-29. Reserved.

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be August 24, 2007.

PASSED AND APPROVED this 22nd day of August, A. D., 2007

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY