

ORDINANCE NO. O-2009-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 16, "SOLID WASTE DISPOSAL REGULATIONS", ARTICLE I., "SOLID WASTE DISPOSAL REGULATIONS" OF THE TYLER CITY CODE BY ADDING PROVISIONS REQUIRING CUSTOMER REMOVAL OF CONTAINERS FROM COLLECTION LOCATION FOLLOWING COLLECTION SERVICE AND ADDING PROVISIONS FOR CONTAINER RETURN FEES; RENAMING AND AMENDING CURRENT TYLER CITY CODE CHAPTER 17, "TRAFFIC", TO BECOME NEW TYLER CITY CODE CHAPTER 17 "STREETS AND TRAFFIC" AND BY MOVING AND RENAMING CURRENT CHAPTER 18., "STREETS", ARTICLE I., "STREETS AND RIGHT-OF-WAY" TO NEWLY AMENDED CHAPTER 17., "STREETS AND TRAFFIC", ARTICLE X., "STREETS AND RIGHT-OF-WAY"; RENAMING AND AMENDING CURRENT TYLER CITY CODE CHAPTER 18, "STREETS", TO BECOME NEW CHAPTER 18 "CODE ENFORCEMENT" AND AMENDING NEWLY AMENDED CHAPTER 18, "CODE ENFORCEMENT" BY ADDING NEW CHAPTER 18, "CODE ENFORCEMENT", ARTICLE I., "MISCELLANEOUS", REQUIRING FENCE MAINTENANCE STANDARDS BY PROPERTY OWNERS; AMENDING NEWLY AMENDED CHAPTER 18, "CODE ENFORCEMENT", ARTICLE II., "WEEDS AND DEBRIS", BY AMENDING HEIGHT RESTRICTIONS, AMENDING "UNCULTIVATED VEGETATION" DEFINITION, AND ADDING PROVISION REQUIRING PROPERTY OWNERS TO MAINTAIN RIGHT-OF-WAY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the municipality; and

WHEREAS, Texas Local Government Code Section 54.004 provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Texas Local Government Code Section 217.042 (a) and (b) provide that a municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits, and that a municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, the City Council has determined that various additions and revisions to City Code provisions relating to Code Enforcement activities would enhance the Code Enforcement Department's ability to enforce public nuisances and violations that tend to reduce the value of private property, create public health, safety, and welfare hazards, or produce urban blight adverse to the maintenance and development of the municipality

WHEREAS, additional enforcement tools are required to protect public and private property from a continuing degradation due to such public nuisances and violations on such property; and

WHEREAS, the Code Enforcement Department is the appropriate department for such enforcement activities;

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

PART 1: That old Tyler City Code Chapter 17, "Traffic", be amended to become new Tyler City Code Chapter 17 "Streets and Traffic" by moving current Chapter 18., "Streets", Article I., "Streets and Right-of-Way" to newly amended Chapter 17., "Streets and Traffic" to read as a new Article X., "Streets and Right-of-Way" to read as follows:

**Chapter 17
STREETS AND TRAFFIC**

ARTICLES I. through IX. No Change.

ARTICLE X. STREETS AND RIGHT-OF-WAY

Sec. 17-154. Reserved (Ord. 0-2002-59, 12/11/02) (Ord. No.0-2009-15, 2/25/09)

Sec. 17-155. Corner visibility at street intersections-Areas to which applicable.

a. The areas in the City hereinafter restricted are as follows. All of that portion of land lying within a sight distance triangle and triangular distances for street intersections controlled by stop signs shall be determined by establishing a point in the center line in the street with the stop sign at right angles to the location of the stop sign or at a marked stop bar. On a major street, the distances listed below shall be measured from the center line intersection. The two points then shall be connected to form the restricted sight distance triangle. Distance in feet along major roads from intersection:

	30 mph	35 mph	40 mph	45 mph	50mph	55mph
2 lane	300	350	400	450	500	550
4 lane	350	400	450	500	600	650
6 lane	400	450	500	550	650	700

b. No property owner may allow any object, vegetation, fence, structure, or any element, except grass or other landscaping or vegetation which can never grow to a height exceeding two and one-half (2½) feet above the top of the curb elevation or three (3) feet above the edge of the roadway where no curb exists, within a sight distance triangle as described herein at any public and private street intersections, other than signal light controlled intersections within the City.

c. The following are exempted from the above restriction:

1. Single trunk trees when trimmed completely to a height of seven (7) feet.

2. Signs when supported by a single post not exceeding one foot diameter and such sign is at least ten (10) feet above the top of the curb elevation, sidewalk elevation, or ten and one-half (10½) feet above the edge of the pavement where no curb or sidewalk exists.

3. Utility poles installed under existing franchises within the City.

d. This section shall not apply to any business building, family dwelling or apartment house existing in the City on July 20, 1976 and not in violation of any state or City law.

e. This section does not affect the City's right to administer and control the remaining portions of its public street rights-of-way not involved in the triangular corner areas referred to herein.

f. In addition to other penalties, City may enter upon and remove from the triangular corner areas provided for herein any of the prohibited structures or growths provided for herein, such entry and removal upon the private property portions of such triangular areas to be without liability to the owners thereof. (Ord. No. 0-97-54, 11/5/97) (Ord. No.0-2009-15, 2/25/09)

Sec. 17-156. Obstructions within public rights-of-way and medians prohibited.

a. It is unlawful to place or maintain any permanent or temporary sign, sign post, advertising displays, merchandise or construction materials or other obstruction within a public right- of-way or median except as provided in subsection b.

b. The above provisions of this Article shall not apply to:

1. Any pole or other object placed within a public right-of-way or median pursuant to any City franchise or permit.

2. Any traffic-control sign or device erected or maintained by the City, including signs showing bus stops and availability of public transportation;

3. Any sign or placard relating to the placement of public utilities; or

4. Any temporary sign or device: if placement of such sign has been approved in advance by the Traffic Engineer to insure that such sign does not create visual or

other obstruction within the public right-of-way or median. (Ord. No. 0-97-54, 11/5/97)
(Ord. No.0-2009-15, 2/25/09)

Sec. 17-157. City empowered to remove obstructions.

The City may summarily remove any sign, sign post, advertising display, merchandise or construction material or other obstruction from within the limits of the public right-of-way or median. City will keep the object for thirty (30) days after which it will be disposed of pursuant to state law. (Ord. No.0-2009-15, 2/25/09)

Sec. 17-158. Certain posting prohibited.

a. Except as provided herein, it is unlawful to post or affix any sign, notice, poster, handbill, or other device calculated to attract the attention of the public to any lamppost, utility pole, light standard, sign, structure, tree, or building located on public property or in the right-of-way.

b. It is a defense to prosecution under subsection a. that the sign, notice, handbill or other device was posted:

1. on a board or area designated for the posting of such public notices by the owner of the public property;
2. by authority of a contract, lease, or other agreement with the City or other owner of the public property;
3. in accordance with official government business;
4. pursuant to a special event permit issued by the owner of the public property. (Ord. No. 0-97-54, 11/5/97) (Ord. No.0-2009-15, 2/25/09)

Secs. 17-159. through 17-172. Reserved.

PART 2. That current Tyler City Code Chapter 18, "Streets", be renamed as Chapter 18 "Code Enforcement" and amended by adding a new Chapter 18, "Code Enforcement", Article I., "Miscellaneous", to read as follows:

**Chapter 18
CODE ENFORCEMENT**

ARTICLE I. Miscellaneous

Sec. 18.1. "Fences and Walls, Maintenance Standards"

Any person, firm, corporation, partnership, association of persons, owner, agent, occupant, or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City limits shall:

- a. maintain a fence so that it is not out of vertical alignment more than one foot from the vertical, measured at the top of the fence, for a fence over four feet high, or more

than six inches from the vertical, measured at the top of the fence, for a fence not more than four feet high, except that this provision does not apply to a masonry wall unless the wall encloses:

1. a multi-tenant property; or
 2. a single-family or duplex property where the wall is not shared with another property;
- another property;
- b. repair or replace rotted, fire damaged, or broken wooden slats and support posts;
 - c. repair or replace broken or bent metal posts and torn, cut, bent, or ripped metal fencing materials; and
 - d. repair or replace loose bricks, stones, rocks, mortar, and similar materials on any masonry wall that encloses:
1. a multi-tenant property; or
 2. a single-family or duplex property where the wall is not shared with another property. (Ord. No.0-2009-15, 2/25/09)

Secs. 18.2-18.19 Reserved.

Current sections moved to Chapter 17 s new Article X as set out in Part I above.

PART 3: That old Tyler City Code Chapter 18, "Streets", Article II., "Weed and Debris" which was previously amended to become new Tyler City Code Chapter 18, "Code Enforcement", Article II., "Weed and Debris" is hereby amended to read as follows:

ARTICLE II. WEEDS AND DEBRIS

Sec. 18-20. Prohibited accumulations.

a. Weeds, grass, and other accumulations of uncultivated vegetation. It is unlawful for any person, firm, corporation, partnership, association of persons, owner, agent, occupant, or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City limits or within five thousand (5,000) feet thereof, to allow uncultivated vegetation to grow to a height greater than twelve (12) inches on such tract. However, these restrictions shall not apply to trees, or natural or nature park areas so designated by the City Council, or to flowers and shrubs that are either regularly or systematically pruned or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth. Uncultivated vegetation means weeds, grass or other vegetation that are not regularly or systematically cut, mowed, pruned, fertilized, or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth.

b. Other accumulations of vegetation. It is unlawful for any owner, occupant, agent, or other person in control of premises within the City limits or within five thousand (5,000) feet

thereof, to allow fallen trees, fallen tree limbs or fallen branches, brush, or underbrush growth to accumulate upon such premises. However, these restrictions shall not apply to natural or nature parks so designated by the City Council.

c. Other accumulations. It is unlawful for any owner, occupant, agent, or other person in control of premises within the City limits or within five thousand (5,000) feet thereof, to allow rubbish, including newspapers, refrigerators, stoves, furniture, tires, cans and appliances, trash, garbage, refuse, junk, or debris to collect upon such premises.

d. Nuisance declared. Any prohibited accumulation or collection of vegetation or debris in violation of subsections a., b., or c. above is a public nuisance and is unlawful.

e. Any owner of record, person who has contractual responsibility for or the legal right of possession to tangible property, which includes a right-of-way, or which property abuts a right-of-way and such person enjoys the use of the right-of-way:

1. shall be responsible for the maintenance of such right-of-way, and
2. shall not maintain or allow in the right-of-way any prohibited accumulation or collection of vegetation or debris in violation of subsections a., b., or c. above. Any violation of this subsection is unlawful.

f. Allegation and evidence of a culpable mental state is not required for proof of an offense defined by this Article. (Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-18, 5/16/2001) (Ord. No. 0-2001-57, 11/28/2001) (Ord. No. 0-2003-17, 5/14/03) (Ord. No.0-2009-15, 2/25/09)

g. Enforcement. Employees of the Code Enforcement Department, Peace Officers and Public Service Officers of the Tyler Police Department, or other persons designated by the Solid Waste Director are authorized to enforce the provisions of this Article. In making any inspection under this Article, the Code Enforcement Department employee or other authorized persons may enter, examine, take photographs, tag, and survey any premises to verify compliance with this Article. (Ord. No.0-2009-15, 2/25/09)

Whenever a violation of this Article occurs within five thousand (5,000) feet of the City limits, the Solid Waste Director shall have discretion as to whether inspection and/or enforcement shall occur. (Ord. No. 0-2003-17, 5/14/03) (Ord. No.0-2009-15, 2/25/09)

Sec. 18-21. No Changes.

Sec. 18-22. No Changes.

Sec. 18-23. No Changes.

Sec. 18-24. No Changes.

Secs. 18-25. - 18-29. Reserved. No. Changes.

PART 4: That Tyler City Code Chapter 16, "Solid Waste Disposal Regulations", Article I, "Solid Waste Disposal Regulations", Section 16-4., "Residential collection", Sub-section c., is hereby amended to read as follows:

c. Garbage. A customer shall provide a garbage container meeting the requirements of Section 16-4. The customer shall place, or cause to be placed, the garbage container in the location for collection approved by the Director. Packout service is offered to residents in all areas of the City. Containers other than packout shall be placed at the curb for collection no earlier than 6:00 p.m. on the day prior to scheduled service and shall be removed by 7:00 a.m. the morning following the collection day.

An authorized City employee has the authority to take the following actions if the garbage container is left in or about the curb area at any time other than the above described times:

1. 1st occurrence within a 12 month period: the City employee will move the container to the Customer's front door area and post a notice on the Customer's container notifying the Customer of the violation of Tyler City Code Section 16-4c.

2. 2nd occurrence within a 12 month period: the City employee will move the container to the Customer's front door area and post a notice on the container that notifies the Customer of the violation of Tyler City Code Section 16-4c and that a \$2.00 dollar container return fee will be assessed on the Customer's utility bill upon the next occurrence of a Section 16-4c violation requiring removal and return of Customer's container.

3. 3rd occurrence within a 12 month period: the City employee will move the container to the Customer's front door area and post a notice on the container that notifies the Customer: 1) of the violation of Tyler City Code Section 16-4c, 2) that a two dollar (\$2.00) container return fee has been assessed on the Customer's utility bill for the violation of Section 16-4c requiring removal and return of Customer's container, and 3) that a twenty dollar (\$20.00) container return fee will be assessed on the Customer's utility bill upon the next occurrence of a Section 16-4c violation requiring removal and return of Customer's container.

4. 4th and subsequent occurrences within a 12 month period: the City employee will move the container to the Customer's front door area and post a notice on the container that notifies the Customer: 1) of the violation of Tyler City Code Section 16-4c, 2) that a twenty dollar (\$20.00) container return fee has been assessed on the Customer's utility bill for the violation of Section 16-4c requiring removal and return of Customer's container, and 3) that a twenty dollar (\$20.00) container return fee will be assessed on the Customer's utility bill upon any subsequent occurrences of a Section 16-4c violation requiring removal and return of Customer's container.

All animal and pet waste that is subject to decomposition shall be well wrapped or bagged in waterproof paper or plastic adequate to avoid contact with or exposure to said material before being deposited in the container or receptacle. No garbage containers may be placed in an alley or other public way without authorization from the Director. Whenever garbage is


collected from an alley, the container shall be placed entirely within the adjoining lot lines. Access from the alley or other public way must be provided to the garbage containers. (Ord. 0-2003-5, 1-22-03) (Ord. No.0-2009-15, 2/25/09)

- d. No change.
- e. No change.

PART 5: 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 6: 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 be published in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 27, 2009.

PASSED AND APPROVED this the 25th day of February, 2009.

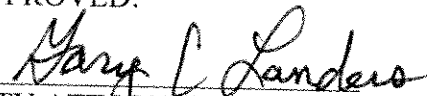

BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



APPROVED:


MARY C. LANDERS
CITY ATTORNEY