

**ORDINANCE NO. O-2009-8**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CITY OF TYLER CODE OF ORDINANCES CHAPTER 7, "COMMUNITY DEVELOPMENT", ARTICLE III, "MINIMUM URBAN STANDARDS", SECTION 7-71., "SUBSTANDARD BUILDING NOTICE LETTERS TO OWNERS AND LIENHOLDERS" AND SECTION 7-72., "OPTIONS FOR DEMOLITION OR REHABILITATION OF SUBSTANDARD BUILDINGS REQUIREMENT TO RETURN SUBSTANDARD BUILDING DISPOSITION FORM" BY ADDING FINANCIAL INABILITY TO PAY THE COSTS OF DEMOLITION AS A REQUIREMENT FOR PARTICIPATION IN THE VOLUNTARY DEMOLITION PROGRAM; 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 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 of Tyler's Voluntary Demolition Program is an additional effective tool for addressing the problem of substandard buildings which are unfit for human habitation and which create slum and blight conditions in many Tyler neighborhoods; and

**WHEREAS,** The Voluntary Demolition program currently does not consider in the determination of who may be served by the Program an individual's ability to pay for the cost of demolition; and

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

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

**PART 1.** That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", Section 7-71., "Substandard Building Notice Letters to Owners and Lienholders" be amended to read as follows:

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

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

1. The Inspection Report for Substandard Building listing all violations of the City of Tyler Minimum Urban Standards;
2. Statement that the building must be secured within 48 hours of receipt of the Notice letter, and continue to remain secure;
3. A description of three options available to address the problems, including the City of Tyler Voluntary Demolition Program;
4. The date, time, and place of hearing before the Neighborhood Revitalization Board, if the substandard building was built within the past 50 years and is not designated as a historical landmark;

5. Statement that if the owner/lienholder chooses the rehabilitation option, that a written Rehabilitation Plan of Action and an Application for Certificate of Appropriateness for Rehabilitation, if applicable, must be submitted to the 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, Affidavit of Hardship, Waiver and Release for Voluntary Demolition form and a Rehabilitation Plan of Action form; and

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

b. If the City chooses to file notice in the County land records, the notice must contain the name and address of the owner, if known; a legal description of the property; and a description of the public hearing, if applicable. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-7, 2/11/09)

**PART 2.** That Tyler City Code Chapter 7, Community Development, Article III, "Minimum Urban Standards", Section 7-72., Options for Demolition or Rehabilitation of Substandard Buildings. Requirement to Return Substandard Building Disposition Form", be amended to read as follows:

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

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

b. Option One: City of Tyler Voluntary Demolition Program. The Voluntary Demolition Program exists to encourage owners that have a financial inability to pay the costs of demolition to consent to the demolition and clearance of substandard buildings which are not feasible for rehabilitation. Under the program, the City takes responsibility for all demolition and clearance activities 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, an Affidavit of Hardship and a Waiver and Release for Voluntary Demolition. Additional documentation of financial inability to pay the costs of demolition may be required to be submitted if requested by the Director.

Applications may be picked up at and returned to the 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 eligible parties regarding the scheduled date for demolition. (Ord. No. 0-2007-101, 8-22-07) (Ord. No. 2009-7, 2/11/09)

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) (Ord. No. 2009-7, 2/11/09)

**PART 3:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until 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 February 13, 2009.

**PASSED AND APPROVED** this 11<sup>th</sup> day of February, A. D., 2009.

  
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BARBARA BASS, MAYOR  
CITY OF TYLER, TEXAS

ATTEST:   
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CASSANDRA BRAGER, CITY CLERK

APPROVED:   
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GARY C. LANDERS, CITY ATTORNEY

