

ORDINANCE NO. O-2009-99

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "UNIFIED DEVELOPMENT CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY REVISING HISTORICAL PRESERVATION BOARD MEMBERSHIP REQUIREMENTS; GRANTING THE HISTORICAL PRESERVATION BOARD FINAL AUTHORITY TO APPROVE LANDMARKS AND CERTAIN CERTIFICATES OF APPROPRIATENESS, AND AMENDING NOTICE REQUIREMENTS FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND CERTIFICATES OF DEMOLITION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter 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 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

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

WHEREAS, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, the City Council has adopted certain historical preservation regulations in City Code Chapter 10, Articles X. and XI.; and

WHEREAS, it is important to revise Historical Preservation Board membership requirements, Certificate of Appropriateness authority, and notice requirements related to Certificates of Appropriateness and Certificates of Demolition; and

WHEREAS, Texas Local Gov't Code Chapter 214 provides that a municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal or demolition of a substandard building; and

WHEREAS, Texas Local Gov't Code Chapter 214 contains specific notice and hearing requirements related to substandard structures; and

WHEREAS, the City of Tyler has established regulations regarding substandard structures in City Code Chapter 7, Article III.;

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

PART 1: That Tyler City Code Chapter 10, "Tyler Unified Development Code, Article X., "Administration and Enforcement", Division A., "Review and Approval Bodies", is hereby amended by amending Section 10-772 to read as follows:

Sec. 10-772. Tyler Historical Preservation Board

a. Establishment, Membership, and Vacancies

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. All members shall have a demonstrated interest, competence or knowledge in historic preservation within the City. The City Council may appoint a representative, other

than the Executive Director, of the Heart of Tyler Main Street Program or successor organization, or designee, to serve as a non-voting Ex Officio member of the Board. 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) (Ord. No. 0-2007-72; 6/19/07) (Ord. No. 0-2009-99; 9/23/09)

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 designate 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. Except as otherwise provided in this Division, 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) (Ord. No. 0-2009-99; 9/23/09)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XI, "Historic Preservation", Division A., "Designation of Landmarks and Districts", is hereby amended by amending Sections 10-780 through 10-782 to read as follows:

Sec. 10-780. Historic Landmarks

a. The City Council finds that the recognition and preservation of historic landmarks is in the public interest and serves to promote the welfare of the community. The purpose of sections 10-20 through 10-25 is to preserve the historic structures of the community through a voluntary program of owner participation, and to carry out the City's responsibilities as a Certified Local Government.

b. A "historic landmark" is defined as any site or area of historic or cultural importance or significance as designated by the Historical Preservation Board or City Council. Historic landmarks shall include historic structures, sites, districts or areas:

1. Within which the buildings, structures, appurtenances and places exemplify the cultural, political, economic or social history of the nation, state, region or community.

2. That are identified with the lives of historic persons or with important historical events.

3. That embody the distinguishing characteristics of an architectural type or specimen as to color, proportion, form, details, materials and craftsmanship. (Ord. No. 0-98-81, 10/7/98) (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-781. Authority

a. The Historical Preservation Board may recommend and the City Council may approve the expansion of an historic district or the application of such zoning district to a new area in accordance with this section.

b. The Historical Preservation Board may approve the designation of a landmark if the board finds that the proposed landmark merits such designation according to this Division. The Board shall have final authority to designate historic structures, sites or areas for inclusion on the landmark register, unless the Board's decision is appealed to the City Council pursuant to Chapter 1, Article IV., in which case the City Council shall have final authority. (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-782. Designation of Historic Landmarks

a. The Historical Preservation Board must maintain a document designated as the "Tyler Historic Landmark Register."

b. A structure, site, or area may be nominated by the owner or by any interested third party, but may not be placed on the Tyler historic landmark register without the express consent of the property owner.

c. An application form will be required as prescribed by the board. The board will conduct public meetings to consider applications for inclusion of sites, structures, or areas on the Tyler historic landmark register. The board shall have final authority to designate historic structures, sites, or areas for inclusion on the register, unless the board's decision is appealed to the City Council pursuant to Chapter 1, Article IV., in which case the City Council shall have final authority.

d. In considering a structure, site or area for designation in the Tyler historic landmark register, the board and city council will consider the following:

1. Character, interest, or value as part of the development, heritage, or cultural characteristics of the city, State of Texas, or United States.

2. Distinguishing characteristics of an architectural type or specimen.

3. Elements of architectural design, detail, materials, or craftsmanship, which represent a significant architectural innovation.

4. Relationship to other distinctive buildings, sites, districts, or areas which are eligible for preservation according to a plan based on architectural, historic, or cultural motif.

5. Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style.

6. Exemplification of the cultural, economic, social, ethnic, or historical heritage of the city, State of Texas, or United States.

7. Location as the site of a significant historic event.
8. Identification with a person(s) who significantly contributed to the culture and development of the city, State of Texas, or United States.
9. Value as an aspect of community sentiment or public pride.
10. Identification as the work of a designer, architect, or builder whose work has influenced city growth or development.
11. Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community, or the city.
12. Archaeological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest.
13. Demonstrated ability of the property owner to maintain the structure, site, or area in a sanitary, aesthetic, or lawful manner. (Ord. No. 0-2005-61, 8/17/05)
14. The Planning Department will cause the designation of any structure, site, area, or district on the Tyler historic landmark register to be recorded in the Smith County deed records. (Ord. No. 0-98-81, 10/7/98) (Ord. No. 0-2009-99; 9/23/09)

PART 3: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XI., "Historic Preservation", Division B., "Certificate of Appropriateness", is hereby amended by amending Sections 10-785 through 10-792 to read as follows:

Sec. 10-785. Applicability

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 on the Tyler historic landmark register unless a Certificate of Appropriateness or Certificate of Demolition has been issued pursuant to this Division. The term "exterior architectural feature" shall include, but not limited to, the kind, color and basic texture of all exterior building materials and such features as windows, doors, lights, signs and other exterior features. (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-786. Authority to File No changes...

Sec. 10-787. Notice and Hearing by Historical Preservation Board

Within forty-five (45) days of the receipt of a completed application, the board must hold a public meeting, as scheduled by the Planning and Zoning Department. Property owners must be notified of the date, time and place of the public hearing. If the subject property was initially tagged as substandard and in violation of the Minimum Urban Standards, Chapter 7, Art. III., or successor, or a Certificate of Demolition is being sought, then property owners and known mortgagees and lien holders must 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 the hearing. If the subject property was so tagged as substandard or a Certificate of Demolition is

being sought, then the Planning and Zoning Department must also send a copy of the notice letter described herein to the Neighborhood Services Director. (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-788. Review by the Historical Preservation Board; City Council review required for substandard structures and/or Certificates of Demolition

Upon review of the application, the board must determine whether the proposed work will adversely affect any exterior architectural feature or adversely affect the historical character of the building, structure or site, whether any proposed rehabilitation of an historic building, structure or site is consistent with the guidelines in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and whether such work is appropriate and consistent with the spirit and intent of this article. The board shall have final authority to grant a Certificate of Appropriateness, except as follows:

1. If the board's decision regarding a Certificate of Appropriateness is appealed to the City Council pursuant to Chapter 1, Article IV., then the board must then forward its recommendations to the City Council, which will have final authority to grant a Certificate of Appropriateness. Property owners must be notified of the date, time and place of the public hearing.

2. If the subject property was initially tagged as substandard and in violation of the Minimum Urban Standards, Chapter 7, Art. III., or successor, or if a Certificate of Demolition is being sought, then the board must then forward its recommendations to the City Council, which will have final authority to grant a Certificate of Appropriateness or Certificate of Demolition. (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-789. Certificate of Appropriateness Issuance

Following the board's or City Council's decision, as applicable, the Planning Department must forward to the property owner either a Certificate of Appropriateness, which will include a copy of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, or notice that the board or 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. If no action has been taken by the board or City Council within 60 days of original receipt of the application, a Certificate of Appropriateness will be deemed issued. (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-790. Building Permit Issuance

Upon completion of the board or City Council hearing and recommendation to the property owner or within 60 days, whichever occurs first, a building permit will be issued in accordance with the application of the property owner, provided that such application complies with the building code and other ordinances. (Ord. No. 0-98-81, 10/7/98) (Ord. No. 0-2009-99; 9/23/09)

Sec. 10-791. Temporary Emergency Repairs No changes...

Sec. 10-792. Alteration or Demolition of Historic Landmarks

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 landmarks, or structures within local or national districts, or structures 50 years or older where federal funding is involved unless a Certificate of Appropriateness for Rehabilitation or a Certificate of Demolition has been issued by the board or City Council, as applicable. 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 lien holders shall be notified of the date, time and place of the public hearing. If the subject property was initially tagged as substandard and in violation of the Minimum Urban Standards, Chapter 7, Art. III., or if a Certificate of Demolition is being sought, then property owners and known mortgagees and lien holders 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 the hearing. If the subject property was so tagged as substandard or a Certificate of Demolition is being sought, then the Planning and Zoning Department shall also 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 under certain circumstances:

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 of Demolition 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. If the Board's decision on a Certificate of Appropriateness is appealed to the City Council pursuant to Chapter 1, Article IV., or if the Board conducts a hearing on a property that has been tagged as substandard under Chapter 7 or for which a Certificate of Demolition is being sought, then 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, as applicable. If the City Council is considering an appeal of a Certificate of Appropriateness pursuant to Chapter 1, Article IV., then notice of the date, time and place of such hearing before the City Council shall be provided to the property owner. If the City Council is conducting a hearing on a property that has been tagged as substandard under Chapter 7 or for which a Certificate of Demolition is being sought, notice of such hearing before the City Council will be provided to the property owner and known mortgagees and lien holders by certified mail, return receipt requested, restricted signature at least ten (10) days prior to the hearing. At either type of 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 board's or City Council's decision, as applicable, the Planning and Zoning Department shall either hand-deliver or forward to the property owner within two (2) days of the hearing, the following:

(a) For situations not involving a substandard structure and not involving a request for Certificate of Demolition, in which only the board conducted a hearing:

(1) 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

(2) Notice that the board 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;

(b) For situations not involving a substandard structure and not involving a request for Certificate of Demolition, in which the board conducted a hearing, but the board's decision was appealed to the City Council pursuant to City Code Chapter 1, Article IV.:

(1) 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

(2) 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;

(c) For situations involving a substandard structure or request for Certificate of Demolition, in which the City Council conducted a hearing in addition to the board hearing:

(1) 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 Structures; or

(2) 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

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

(4) 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.

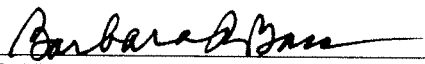
e. Issuance of Building permit: A building permit consistent with a Certificate issued under this chapter may be applied for and issued following the appropriate board or City Council hearing. (Ord. No. 0-98-81, 10/7/98)

f. No changes... (Ord. No. 0-2009-99; 9/23/09)

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 25th day of September, A.D., 2009.

PASSED AND APPROVED this the 23rd day of September, A.D., 2009.

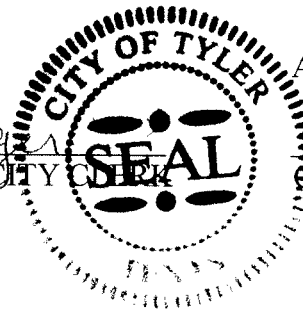


BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



GARY C. LANDERS
CITY ATTORNEY