

City of Houston, Texas, Ordinance No. 2008- 1229

AN ORDINANCE AMENDING ARTICLE XI OF CHAPTER 47 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO TRANSPORTATION OF CERTAIN LIQUID WASTES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston is a municipal corporation organized under the Constitution and the general and special laws of the State of Texas and exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, the City has enacted Chapter 47 of the Code of Ordinances, which *inter alia* regulates the use of the City's sewers; and

WHEREAS, the City owns and operates a sanitary sewer system that is subject to regulation by the Texas Commission on Environmental Quality ("TCEQ"); and

WHEREAS, in 2005 the City entered into an Agreed Order with the TCEQ that commits the City to revising its Code of Ordinances to address stoppages in the City's sewer lines that are due to city-regulated liquid waste; and

WHEREAS, in 2007 the City Council amended Chapter 47 by setting a minimum cleaning frequency to remove waste from non-residential grease traps and other interceptors to improve the ability of the sanitary sewer system to convey sewage for treatment at the City's facilities; and

WHEREAS, the City Council finds that the adoption of amendments to the Code of Ordinances would further enhance the benefits derived to the public health, safety, and

welfare through regulating and manifesting all city-regulated liquid waste, including portable toilet waste; and

WHEREAS, the City Council finds that it is appropriate to recover the costs of administering the program established by the Ordinance through the assessment of permit fees; and

WHEREAS, the City Council finds that the Department of Health and Human Services has analyzed the costs of administering the program, and related those costs to the types of permits issued by the City; and

WHEREAS, the City Council finds that the fees are reasonably related to the cost of administering the program; **NOW, THEREFORE;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1 . That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Section 47-411 of the Code of Ordinances, Houston, Texas, is hereby amended by deleting the definitions of *Class A site operator*, *Class A waste*, *Class B waste*, *Class C waste* and *septic tank control ticket*.

Section 3. That Section 47-411 of the Code of Ordinances, Houston, Texas, is hereby further amended by adding a new definition, which shall read as follows:

“City-regulated waste means liquid, semi-liquid and solid wastes and wastewater removed from septic tanks used by single-family or multiple residential units, institutions or commercial establishments that primarily generate waste of a type associated with domestic use. It includes oily water, FOG, grease trap waste, sewage sludge, and portable toilet waste; as well as any materials collected in a septic tank, grit trap, lint trap, retention pond, utility service vault or any similar device, which materials result from or are incidental to any process of industrial, manufacturing, institutional or commercial operations including, but not limited to, mobile or stationary car or truck washing, pavement washing, environmental testing facilities and commercial laundries or laundromats.”

Section 4. That Section 47-411 of the Code of Ordinances, Houston, Texas, is hereby further amended by amending the following definitions as follows:

“*Generator* means any person whose activities or process generate city-regulated waste within the city or who stores city-regulated waste within the city.”

“*Manifest* means a form approved by the health officer to document the collection, transportation and disposal of city-regulated waste.”

“*Waste* means any type of city-regulated waste or any mixture thereof.”

Section 5. That Subsection (b) of Section 47-414 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) No city-regulated waste may be directly disposed into the sanitary sewer.”

Section 6. That Section 47-417 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-417. Responsibilities of agents and employees.

The responsibilities created under this article for biological pretreatment service providers, disposers, generators and transporters shall extend to the owners and other persons having possession and control of the site, facilities or equipment as well as to their officers, agents and employees having responsibilities for their operations.”

Section 7. That Subsection (c) of Section 47-421 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(c) It is an affirmative defense to prosecution under this section that the waste generated at the site contains no city-regulated waste.”

Section 8. That Subsection (a) of Section 47-423 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) The applicant shall submit a nonrefundable annual fee for each interceptor with each original and renewal application for a generator permit or registration certificate. The fee shall be payable in the form prescribed in the application. There shall be no fee to amend a generator permit or registration certificate; provided, however, that a fee shall be required to reissue a lost generator permit or registration certificate.”

Section 9. That Section 47-423 of the Code of Ordinances, Houston, Texas, is hereby further amended by redesignating Subsection (c) as Subsection (d) and adding a new Subsection (c) and amending Subsection (d) to read as follows:

“(c) The health officer shall, from time to time, prepare and submit for approval by motion of the city council a schedule of fees that shall be paid by an applicant for a permit or a registration certificate. Payment of any applicable fees when due is a condition of the processing of any application under this article.

(d) All fees collected pursuant to this division shall be deposited in the special waste transportation and inspection fund account established by the city council. Funds from this account may be expended only for the costs of permitting, inspecting, monitoring, controlling, educating and enforcing any violation pertaining to the management and disposal of city-regulated waste.”

Section 10. That Section 47-427 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-427. Posting required; fee for lost permit or certificate.

Each generator shall cause its generator permit or registration certificate to be conspicuously posted at the site for which it is issued. Upon request of a transporter or the health officer, the generator shall specify the location at which the generator permit or registration certificate is posted and shall make the generator permit or registration certificate available for inspection. If upon inspection the health officer cannot readily determine that the generator permit or registration certificate is available for inspection, the permit or certificate will be deemed lost. A fee shall be imposed for reissuing a lost generator permit or registration certificate.”

Section 11. That Section 47-434 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-434. Fee.

A nonrefundable permit application review fee shall be submitted with each original and renewal application for a transporter permit. A nonrefundable permit application fee shall be submitted with each original and renewal application for a temporary transporter permit. The fee shall be payable in such form as specified by the health officer on the application. There shall be no application review fee payable for the filing of an application for an amendment.”

Section 12. That Section 47-436 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-436. Permit bond.

The applicant shall submit a City of Houston waste transportation permit bond to the department prior to the being issued a transporter permit or temporary transporter permit. For a transporter permit, the aggregate penal amount of the bond shall not be less than \$150,000. For a temporary transporter permit, the aggregate penal amount of the bond shall not be less \$30,000. The bond shall be issued by the applicant as principal and a corporate surety authorized to transact business in Texas as surety upon the penal condition that the principal and surety will reimburse the city for the cleanup costs of any spill that may arise as a result of operations conducted under the permit within 30 days following demand. The bond shall expressly waive any requirement of notice to the principal or surety prior to the commencement of cleanup operations or the incurring of costs therefor. The bond shall be in a form approved by the city attorney. The bond shall be in effect at all times during the transporter permit or temporary transporter permit term and shall not be subject to cancellation.”

Section 13. That Subsection (c) of Section 47-440 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(c) Within seven days following the effective date of any revocation of a transporter permit or temporary transporter permit as authorized under this section, the transporter shall surrender all of its manifests and registration forms to the health officer. A holder of a transporter permit shall also produce its registered vehicles at a location designated by the health officer and allow

the health officer to remove the registration decals, and a holder of a temporary transporter permit shall surrender all registration certificates to the health officer. Additionally, the transporter shall provide the health officer with an accounting of all manifests in its possession.”

Section 14. That Subsection (b) of Section 47-452 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) The health officer shall place a registration decal on each registered vehicle operated by a holder of a transporter permit. In the case of tractor-trailer combinations, either component may be the registered vehicle for registration decal placement. The design and form of the registration decal shall be as promulgated by the health officer and shall include the date of expiration, which shall be coterminus with the transporter permit expiration.”

Section 15. That Items (2) and (3) of Subsection (a) of Section 47-453 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

- “(2) The transporter has paid the applicable vehicle registration fee. Vehicle registration fees shall not be refundable and cannot be prorated.
- (3) The transporter makes the vehicle available to the health officer at a reasonable time for verification of vehicle identification and placement of registration decals.”

Section 16. That Item (2) of Subsection (b) of Section 47-453 of the Code of Ordinances, Houston, Texas, is amended as follows:

- “(2) The transporter has paid the applicable vehicle registration fee. Vehicle registration fees shall not be refundable and cannot be prorated.”

Section 17. That Subsection (b) of Section 47-453 of the Code of Ordinances, Houston, Texas, is further amended to add a new Item (3) as follows:

- “(3) The transporter makes the vehicle available to the health officer at a reasonable time for verification of vehicle identification and placement of registration decals.”

Section 18. That Section 47-455 of the Code of Ordinances, Houston, Texas, is hereby repealed.

Section 19. That Subsection (b) of Section 47-456 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) In the event a transporter desires replacement registration decals (as may be necessary if the vehicle is painted or repaired) or wishes to transfer waste decals to a replacement vehicle, the transporter shall surrender all registration decals for the vehicle and shall pay a registration decal replacement charge per vehicle. No registration decal shall be provided for a replacement vehicle until the transporter permit has been amended to include that vehicle. No replacement registration decal shall be provided unless the transporter surrenders the decals to be replaced or provides conclusive evidence that they have been destroyed. If the decals are not surrendered and the required proof is not provided, then the full vehicle registration fee applicable under this division shall be payable.”

Section 20. That Sections 47-461, 47-462 and 47-463 of the Code of Ordinances, Houston, Texas, are hereby repealed.

Section 21. That Item (2) of Subsection (b) of Section 47-464 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(2) Discharge only from vehicles displaying registration decals authorizing transportation of city-regulated waste; and”

Section 22. That Section 47-465 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-465. Discharge fees.

The discharge of waste at a city sewage treatment facility shall be in accordance with the terms of section 47-464 of this Code and shall require payment of the discharge fee established by city council. The utility official is authorized to establish the method of payment for the discharge fee, as well as any additional regulations and procedures for the documentation of waste transfer and the orderly collection of fees required by this section. Without limitation, the regulations and procedures may provide for immediate

suspension of discharge privileges following notice to any transporter who is delinquent in payment of fees or has otherwise violated city regulations in the discharge of waste at city sewage treatment facilities. Upon request, a suspended transporter shall be given a prompt hearing by the utility official or his designee.”

Section 23. That Subsection (b) of Section 47-472 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) A non-refundable biological permit and registration fee shall be submitted with each original and renewal application.”

Section 24. That Subsection (b) of Section 47-478 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) On or before the fifteenth day of each calendar month, each biological pretreatment service permit holder shall provide a monthly report, accompanied by a processing fee, to the health officer, setting forth the name, address and telephone number of each site at which biological pretreatment service was performed, the dates on which the service was rendered during the preceding calendar month.”

Section 25. That Section 47-486 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-486. Fees; lost generator permits.

There shall be no fee for the filing of an original application or amendment application under this division or for the issuance of an original generator permit or an amendment thereto. However, a fee shall be imposed for reissuance of a lost or missing generator permit.”

Section 26. That Section 47-489 of the Code of Ordinances, Houston, Texas, is hereby repealed.

Section 27. That the title of Division 8 of Article XI of Chapter 47 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“DIVISION 8. DOCUMENTS”

Section 28. That the caption and Subsection (a) of Section 47-501 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

“Sec. 47-501. Manifests.

(a) The department shall promulgate a multiple-copy form for manifests to be used by generators, transporters and disposers to document the transfer of waste.”

Section 29. That Subsection (c) of Section 47-501 of the Code of Ordinances, Houston, Texas, is hereby repealed.

Section 30. That the caption and Subsection (a) of Section 47-502 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

“Sec. 47-502. Manifest requirements.

(a) It shall be unlawful for any reason to allow waste to be removed from a septic tank, trap, interceptor or other device without first obtaining a completed manifest.”

Section 31. That Section 47-503 of the Code of Ordinances, Houston, Texas, is hereby repealed.

Section 32. That Section 47-504 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-504. Forms supplied to transporters.

(a) The health officer shall supply manifests and other forms to transporters for their use under this article. The health officer may impose a fee that is based upon the city's production cost for the forms.

(b) It shall be the duty of each transporter to maintain a supply of manifests and other forms in each vehicle that is being utilized for the transportation of waste in the city and to make the forms available to generators whose sites are serviced by its vehicles in order to timely and properly complete the documentation requirements of this article.”

Section 33. That the title of Subdivision 1 of Division 9 of Article XI of Chapter 47 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Subdivision 1. Generator Responsibilities”

Section 34. That Section 47-511 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-511. Verification of transporter registration.

No generator shall allow a transporter to remove waste from a site under the person's control unless the transporter's vehicle displays current and valid registration decals.”

Section 35. That Subsection (a) of Section 47-512 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) Except as specifically provided herein, generators shall clean, or cause to be cleaned, each interceptor and holding tank as often as necessary to comply with the effluent discharge parameters in this article to ensure that sediment and floating materials do not impair the efficiency of the interceptor, and to ensure that no visible fat, oil or grease (FOG) is observed in the sample well. The requirements of this section shall not apply to generators whose city-regulated waste consists solely of residential septic tank waste.”

Section 36. That Subsection (h) of Section 47-512 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(h) No generator shall remove or cause or allow any person to remove waste from an interceptor on the site, unless the entire contents of the interceptor are removed from the site. It is the express intent of this section to prohibit the use of mobile processors and other devices that purport to separate waste or de-water the contents of an interceptor and leave a portion of the materials at the site.”

Section 37. That Subsection (c) of Section 47-513 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(c) Except as may otherwise be provided, an interceptor shall not be required for single family or multi-family residential units.”

Section 38. That the introductory phrase in Item (2) of Section 47-514 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(2) City-regulated waste that exerts or causes:”

Section 39. That Item (3) of Section 47-514 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(3) City-regulated waste in such amounts as to cause interference with the sanitary sewer system, or as to cause pollutants to pass through the sewer system into the environment.”

Section 40. That Section 47-521 of the Code of Ordinances, Houston, Texas, is hereby amended by removing the letter designation “(a)” from Subsection (a) and deleting Subsection (b) in its entirety.

Section 41. That Section 47-531 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-531. Manifest completion.

It shall be unlawful for a transporter to:

- (1) Remove or receive city-regulated waste from the site of a generator unless the generator's portion of the manifest has been completed, the transporter has signed the manifest and the generator's copy of the manifest has been left with the generator.
- (2) Remove or receive waste from another transporter unless both transporters complete and sign the manifest.
- (3) Transport a waste load without having, at all times in the vehicle transporting the waste, a copy of the manifest(s) for all waste being carried.

- (4) Discharge any waste at a lawful disposal site without entering the name of the disposal site and the date the waste is delivered to the disposal site for final disposal, obtaining the signature of the disposer and tendering to the disposer the disposal site copy of the manifest signed and completed by both the generator and the transporter(s)."

Section 42. That Section 47-532 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-532. Verification of registration.

It shall be unlawful for any transporter to remove or receive city-regulated waste from any site that has never been issued an original permit or registration certificate to the current generator as provided in division 2 of this article. It is an affirmative defense to prosecution under this section that the waste consists exclusively of portable toilet waste."

Section 43. That Section 47-533 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-533. Return of manifests.

Each transporter of city-regulated waste shall ensure that the completed generator return copy of the manifest is delivered to the generator within 15 calendar days after the date the waste was picked up from the generator's site. If the waste load is transferred to another transporter, the secondary transporter shall send the completed generator return copy to the generator within 15 days after the date the waste was picked up from the generator's site."

Section 44. That Section 47-534 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-534. Monthly report; review; retention.

(a) On or before the fifteenth day of each calendar month, each transporter shall submit to the health officer the documents specified to be submitted below which shall document all of its waste transportation originating within the city during the preceding calendar month. Delivery shall be made in person, by courier, or by certified mail, return receipt requested. Transporters shall obtain from the health officer a receipt for all hand-

delivered documents. All manifests and other documents submitted under this section shall be true, accurate and complete. The documents to be submitted are:

- (1) All HDHHS/transporter copies or HDHHS/secondary transporter copies of the manifests except manifests for portable toilet waste;
- (2) Monthly fee;
- (3) A monthly waste summary for portable toilet waste in the form prescribed by the health officer; or
- (4) A written statement signed by the transporter's manager stating that the transporter did not transport any waste from a site within the city during the preceding calendar month.

(b) The health officer shall review the reports submitted under subsection (a) and return any manifests submitted therewith to the submitting transporter within 60 days following receipt of the report. Following receipt of the returned documents, the transporter shall retain them for a period of five years from the date of disposal as reflected on the manifest. The documents shall be retained at a location that is situated within the county and shall be made available for inspection and copying by the health officer at the transporter's place of business during regular working hours, immediately upon request."

Section 45. That Section 47-545 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-545. Complete removal required.

No transporter shall remove waste from any interceptor, utility vault, septic tank or similar device unless its entire contents are removed from the site. It is the express intent of this section to prohibit the use of "mobile processors" and other devices that purport to separate waste or de-water the contents of an interceptor and leave a portion of the materials at the site."

Section 46. That Items (1) and (3) of Section 47-551 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

- "(1) The transporter's manifest accurately identifies the amount and type of waste contained in the vehicle at the time of disposal;"

“(3) The transporter tenders to the disposer the manifest that has been completed and signed by both the generator and the transporter(s).”

Section 47. That Section 47-552 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-552. Handling of documentation.

(a) After acceptance of a waste load originating within the city from a transporter, a disposer shall sign and date the manifest tendered by the transporter and shall return all copies of the manifest, except the disposal site copy, to the transporter.

(b) The disposer shall maintain the disposal site copy of each manifest delivered to him for five years after the date of receipt of waste as reflected on the manifest.”

Section 48. That Subsection (a) of Section 47-561 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) The health officer shall conduct inspections of generators as often as needed but not less than once a year to assure compliance with the requirements of this article and other rules and regulations relating to the handling and disposal of city-regulated waste.”

Section 49. That the City Council hereby approves the schedule of fees that is attached to and made a part of this Ordinance as Exhibit A, and which may be modified from time to time by motion of City Council pursuant to section 47-423.

Section 50. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail

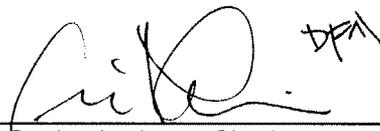
by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 51. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance be passed finally on such date and shall take effect at 12:01 a.m. on January 1, 2009.

PASSED AND APPROVED this 30th day of December, 2008.



 Mayor of the City of Houston

Prepared by the Legal Dept.  ^{DPA}
 November 21, 2008, Ceil Price, Senior Assistant City Attorney
 Requested by Stephen L. Williams, M.ED., M.P.A., Director H 

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AYE	NO	
✓		MAYOR WHITE
....	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
	ABSENT	SULLIVAN
✓		KHAN
✓		HOLM
	ABSENT	GARCIA
✓		RODRIGUEZ
	ABSENT - OUT OF CITY BUSINESS	BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: JAN 05 2008

Exhibit A

Services	Citation	Fee
Generator Permit Fee	Sec. 47-423(a)	\$50.00
Generator Replacement Permit Fee	Sec. 47-427; Sec. 47-486	\$25.00
Transporter Manifest Fee	Sec. 47-504(a)	\$20.00
Transportation Application Fee	Sec. 47-434	\$90.00
Biological Permit and Registration Fee	Sec. 47-472(b)	\$250.00
Transporter Vehicle Registration Fee	Sec. 47-453 (a)(2); Sec. 47-453 (b)(2)	\$400.00
Transporter Temporary Permit Application Fee	Sec. 47-434	\$30.00
Transporter Temporary Vehicle Registration Fee	Sec. 47-453(a)(2); Sec. 47-453(b)(2)	\$35.00
Transporter Vehicle Decal Replacement Fee	Sec. 47-456(b)	\$25.00
Transporter Replacement Permit Certificate Fee	Sec. 47-456(b)	\$25.00
Transporter Manifest Processing Fee	Sec. 47-534(a)(2)	\$2.50
Biological Report Processing Fee	Sec. 47-478(b)	\$10.00