(h) It shall be the duty of any owner, operator or manager to maintain a complete list of all persons, including names and addresses, who conduct any business on the premises and are required to obtain a permit under article VIII of this chapter.
(Ord. No. 97-75, § 3, 1-15-97)

Secs. 28-137—28-150. Reserved.

ARTICLE IV. CORRECTIONAL FACILITIES

Sec. 28-151. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Church. A building, whether situated within the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Community center. A community facility, whether situated within the city or not, operated by an association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a state or national organization of like character, or a multiservice center, whether situated within the city or not, operated by the City of Houston Health and Human Services Department or successor department.

Correctional facility. A facility for the housing and rehabilitation or training of adults on parole, early or pre-release, or any other form of executive, judicial or administrative release from a penal institution. Such a facility shall not include a facility which is:

(1) used primarily as a temporary holding facility,

(2) used primarily for persons arrested for or found guilty of misdemeanor offenses,

(3) located in or near court facilities, or

(4) used primarily to hold prisoners awaiting transfer to a state facility.

Director. The director of the planning and development department and such employee(s) of the planning and development department as s/he may designate to perform the duties of the "director" under this article.

Facility for the elderly. A nursing home for the elderly licensed by the State of Texas, a board and lodging home for senior citizens registered with the State of Texas, or a nutrition site for the elderly operated by the City of Houston, whether situated in the city or not.

Licensed day care center. A facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Operator. The manager or other natural person principally in charge of a correctional facility.

Owner or owners. The proprietor if a sole proprietorship, all general partners if a partnership, the corporation if a corporation, or a governmental entity.

Permit. A current, valid permit issued by the director pursuant to the terms of this article to an operator for a correctional facility.

Planning commission. The planning commission created by chapter 33 of this Code.

Public park or recreation facility. A publicly owned or controlled park or recreation facility operated for the benefit of the general public, whether situated in the city or not, and including but not limited to those park and playground properties placed under the direction and control of the City of Houston Parks and Recreation Department by chapter 32 of this Code.

Residential. Pertaining to the use of land, whether situated within the city or not, for premises such as homes, townhomes, patio homes, manufactured homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for non-transient occupancy and which

are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes, hospitals, and nursery schools shall not be considered to be residential.

School. A building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

(1) public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through twelve classes are taught,

(2) special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through twelve, and

(3) public and private institutions of higher education.

Tract. A contiguous parcel of land under common ownership, whether situated within the city or not.
(Ord. No. 91-1306, § 2, 9-11-91; Ord. No. 94-1268, § 4, 11-22-94; Ord. No. 95-104, § 1, 1-25-95)

Sec. 28-152. Permit required.

(a) It shall be unlawful for any person to own or operate a correctional facility located within the city unless there is a permit for the correctional facility.

(b) It shall be unlawful for any person to own or operate a correctional facility located within the city unless the permit is posted at or near the principal public entrance to the correctional facility in such a manner that it will be conspicuous to all who enter the premises.

(c) In any prosecution under subsection (a) above, it shall be presumed that there was no per-

[The next page is 2003]

mit at the time of the alleged offense, unless a permit was then posted as provided in subsection (b).
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-153. Permit applications.

(a) Applications for a permit, whether original or renewal, must be made to the director by the intended operator of the correctional facility. Applications must be submitted by hand delivery to the office of the director during regular working hours (8:00 a.m. to 5:00 p.m. Monday through Friday, city holidays excepted). Application forms shall be supplied by the director. The intended operator shall be required to give the following information on the application form:

(1) a. The name, street address (and mailing address if different) and Texas drivers license number of the intended operator;

b. The name and street address (and mailing address if different) of the owner(s);

(2) The name under which the correctional facility is to be operated, a general description of the services to be provided, including the name of any federal, state or other governmental entity for which the services are to be provided, the classification of offenders to be served (including whether violent or nonviolent and whether any convicted of offenses listed under section 3g of article 42.12 of the Code of Criminal Procedure will be served), the maximum number of beds which are permitted to be provided as well as the number of beds which are intended to be used, and if operated on behalf of a governmental entity, a copy of any existing contract or bid specifications for its operation, all security and resident monitoring plans required under state or federal law, and any additional security and monitoring measures which are to be implemented;

(3) The telephone number of the correctional facility;

(4) The address and legal description of the tract of land on which the correctional facility is to be located;

(5) If the correctional facility is in operation, the date on which the owner(s) acquired the correctional facility for which the permit is sought, and the date on which the correctional facility began operations as a correctional facility at the location for which the permit is sought.

(6) If the correctional facility is not in operation, the expected start-up date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

(b) The application shall be accompanied by the following:

(1) Payment in full of a fee of $350.00 for an original application, or $100.00 for a renewal application, as applicable, by certified check, cashiers check or money order, which fee shall not be refundable under any circumstances;

(2) If the correctional facility is to be operated under an assumed name, a certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes Annotated, Business and Commerce Code, chapter 36);

(3) If the correctional facility is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(4) If the correctional facility is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(5) If the correctional facility is a limited partnership formed under the laws of Texas, a

certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act (article 6132a Vernon's Texas Civil Statutes);

(6) If the correctional facility is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act (article 6132a Vernon's Texas Civil Statutes);

(7) Proof of the current fee ownership of the tract of land on which the correctional facility is to be situated in the form of a copy of the recorded deed;

(8) If the persons identified as the fee owner(s) of the tract of land in item (7) are not also the owners of the correctional facility, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the correctional facility to have or obtain the use and possession of the tract or portion thereof that is to be used for the correctional facility for the purpose of the operation of the correctional facility;

(9) Any of items (2) through (8), above shall not be required for a renewal application if the applicant states that the documents previously furnished the director with the original application or previous renewals thereof remain correct and current.

(c) A separate application and permit shall be required for each correctional facility.
(Ord. No. 91-1306, § 2, 9-11-91; Ord. No. 91-1342, § 3, 9-18-91)

Sec. 28-154. Term of permit; renewal.

Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner revoked or surrendered. Each permit shall be subject to renewal as of its expiration date by the filing of a renewal application with the director. Renewal applications must be filed at least 20 days prior to the expiration date of the permit that is to be renewed.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-155. Issuance or denial of permit.

(a) Within 35 days of receipt of any application, either original or renewal, the director shall grant or deny the requested permit and give written notice to the applicant as to the decision.

(b) The director shall issue a permit to the applicant unless one or more of the following conditions exist:

(1) The applicant's correctional facility is located within 750 feet of any church, community center, facility for the elderly, licensed day care center, public park or recreation facility or school. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the applicant's correctional facility to the nearest point on the property line of such church, community center, facility for the elderly, licensed day care center, public park or recreation facility or school;

(2) The applicant's correctional facility is located within 1,000 feet of any other correctional facility for which there is a permit or which is by law exempt from the terms of this article. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the applicant's correctional facility to the nearest point on the property line of any other correctional facility;

(3) Seventy-five percent or more of the tracts within a circular area, as described herein, are residential in character. The radius of such circular area shall be 1,000 feet, and the center of such circular area shall correspond to the midpoint of a line joining the two most distant points on the boundary of the tract on which the correctional facility is located;

(4) The applicant failed to supply all of the information requested on the application;

(5) The applicant gave materially false, fraudulent or untruthful information on the application;

(6) The application or the correctional facility does not meet any other requirement of this article;

(7) The operator has had a permit revoked for the same enterprise within the one-hundred-eighty-day period next preceding the date that the application was filed;

(8) The applicant has not demonstrated that the owner of the correctional facility owns or holds a lease for the property or the applicable portion thereof upon which the correctional facility will be situated or has a legally enforceable right to acquire the same; or

(9) The applicant's correctional facility will, or is intended to house more than 75 adults on parole, early or pre-release, or any other form of administrative release from a penal institution.

(c) Property uses and distances for original applications shall be determined as of the time that the application is filed. If a renewal application is timely filed as provided in section 28-154, the property uses and measurements for the renewal application shall be determined as of the time that the original application for the correctional facility was filed. If not timely filed, renewal applications shall be subject to the same fees and shall be treated in the same manner in all respects as original applications.

(d) In the event that the director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within 35 days of the receipt of its application by the director. An applicant may appeal the decision of the director regarding such denial by filing a written request for a hearing with the director within 15 days after he is given notice of such denial. The director's decision on the application shall be final unless an appeal is timely filed. The applicant's written request for a hearing shall set out the grounds on which the denial is challenged. An evidentiary hearing shall be conducted by the planning commission under rules consistent with this Code and with the nature of the proceedings, and which ensure that each party may present evidence, cross examine witnesses and be represented by legal counsel. Rule 12 of the city council's rules of procedure (section 2-2 of this Code) shall be applicable.

(e) The planning commission shall conduct the hearing within 30 days after receipt of the applicant's written request for a hearing unless the applicant requests an extension in writing. The planning commission shall render a written decision, adopted by majority vote of those present at the hearing, and shall issue notice thereof to the applicant within ten days after the conclusion of the hearing. A tie vote of those present at the hearing shall constitute a denial of the appeal. The written decision of the planning commission shall be final unless an appeal is filed to city council pursuant to section 28-155(f).

(f) The applicant may appeal the decision of the planning commission to city council by filing a written notice of appeal and all materials otherwise required by this Code for such an appeal with the city secretary within 15 days after the applicant is given notice of the planning commission's decision. A vote of city council shall be taken within 30 calendar days after the date on which the city secretary receives the notice of appeal. All parties shall be required to comply with the planning commission's decision during the pendency of the appeal; provided, however, that an applicant for a renewal or transfer permit shall be entitled to the issuance of a temporary permit pending the disposition of the appeal upon written demand therefor filed by the applicant with the director. Temporary permits issued under this subsection (f) shall be valid until the sixtieth day after the decision becomes final. The decision of the city council shall be final.

(g) Failure of the director to give timely notice of his action on an application, or failure of the planning commission to timely conduct or give notice of its decision on an appeal from the director's decision, or failure of city council to vote on an appeal from the decision of the planning commis-

sion within the limitation of time specified above, shall entitle the applicant for an original permit to the issuance of a temporary permit upon written demand therefor filed by the applicant with the director. Such a temporary permit shall only be valid until the third day after the director gives notice of his action on the application, or the planning commission gives notice of its decision on the appeal, or the city council votes on the appeal, as applicable.
(Ord. No. 91-1306, § 2, 9-11-91; Ord. No. 95-104, § 1, 1-25-95)

Sec. 28-156. Transfer upon change.

(a) A permit is personal to the owner(s) and operator designated in the application, provided it may be transferred pursuant to this section. A transfer application must be filed by the tenth day next following any change of the owner(s) or operator designated on the application.

In the event that a transfer application is not timely filed, then the permit shall be invalid for any purpose relating to the operation of the correctional facility, and any transfer shall require the filing of an original permit application and be subject to the regulations application thereto. For purposes of measurements between correctional facilities under section 28-155(b)(2) of this Code, a correctional facility for which the permit has become invalid by operation of this section shall be treated as through it had a permit until the permit is revoked pursuant to section 28-157 of this Code and any appeal therefrom to the city council has been concluded.

(b) The director shall prescribe a form on which permit transfer applications shall be made. The form shall include a statement that the original application remains correct as previously submitted in all respects except those that are amended therein. The transfer application shall be accompanied by a nonrefundable transfer fee of $100.00. Transfer applications shall be filed in the same place and at the same time as original applications, and the fee shall be payable in the same manner as for original applications, as provided in section 28-153 of this Code.

(c) Transfer applications shall be reviewed, issued and subject to appeal pursuant to section 28-155, except that items (1), (2), and (3) of subsection (b) shall not apply, and they shall be issued for the remaining term of the permit to be transferred.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-157. Revocation of permit.

(a) The director shall have the authority to request the revocation of a permit for any one or more of the following reasons:

(1) The operator of the correctional facility gave materially false, fraudulent or untruthful information on the original, renewal or transfer application form;

(2) The correctional facility has not been open for operations for a period of 30 consecutive days, unless due to circumstances beyond the control of the owner, and the owner is proceeding with due diligence, given all attendant circumstances, to open or reopen the facility;

(3) The permit was erroneously issued in contravention of the criteria of this article; or

(4) The correctional facility or its operation has failed to comply with all applicable statutes and regulations.

(b) Prior to revocation of a permit, the director shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, shall notify the owner(s) and operator in writing of the reasons for the proposed revocation and grant such owner(s) and operator the opportunity to appear at an evidentiary hearing before the planning commission at a time and place specified within such notice. Such hearing shall be held not less than 15 days after the notice is given. Hearings shall be conducted under rules consistent with this Code and with the nature of the proceedings and which ensure that each party may present evidence, cross examine witnesses and be represented by legal counsel. Rule 12 of the city council's rules of procedure (section 2-2 of this Code) shall be applicable. If, after the hearing, the planning commission finds by majority vote of those present at the hearing that the permit should be revoked, it shall issue a written order revoking such permit which shall be effec-

tive on the sixtieth day after notice thereof is given to the operator. A tie vote of those present at the hearing shall constitute a finding that the permit should be revoked.

(c) Any operator or owner(s) who have complied with rule 12 shall have the right to appeal an order of the planning commission revoking a permit to the city council in accordance with the procedure set forth in section 28-155(f). The filing of an appeal of a revocation to the city council shall have the effect of superseding or suspending the order of the planning commission pending the disposition of the appeal to city council.

(d) A correctional facility shall be treated as having a permit for purposes of measurements under section 28-155(b)(2) of this Code, pending the date for filing an appeal of a permit revocation, and if an appeal is filed, pending the disposition of the appeal by the city council.
(Ord. No. 91-1306, § 2, 9-11-91; Ord. No. 95-104, § 1, 1-25-95)

Sec. 28-158. Other permit provisions.

(a) A permit is valid only at the location for which it is issued.

(b) A permit may be cancelled upon written request of the owner(s) or operator and surrender of the permit itself to the director. Permits shall be surrendered at the same place and at the same time as provided in section 28-153(a) of this Code. The surrender of a permit shall be effective upon its filing in the office of the director.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-159. Notices.

(a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant, operator or owner of a correctional facility may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application which has been received by the director, or any notice of address change which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director shall cause it to be posted at the principal entrance to the correctional facility.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director at the time(s) and in the manner provided for filing of applications in section 28-153(a) of this Code.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of residence or mailing address.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-160. Penalty; continuing violations.

(a) Violation of any provision of this article shall be punishable by a fine of $500.00. Each day any violation continues shall constitute and be punishable as a separate offense.

(b) The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-161. Approval by city officials.

Whenever in connection with the establishment or continued operation of a correctional facility, another governmental entity, its prospective or current contractor, or any owner or operator desires an expression of the approval of city officials, other than that evidenced by a permit or pursuant to a formal agreement with that governmental entity, it shall be furnished by means of a resolution duly enacted by city council. No such resolution shall be deemed to modify or repeal any portion of this article. No expression of approval by city officials shall be deemed an approval by the City of Houston unless made in accordance with this section.
(Ord. No. 91-1306, § 2, 9-11-91)

Sec. 28-162. Security and resident monitoring.

The director shall furnish a copy of all applications to the chief of police. The chief of police or his designees shall review all security and resident monitoring plans and make comments concerning any deficiencies to the owner, operator and governmental entity for which the facility is to be operated. The chief of police or his designees shall monitor all correctional facilities for compliance with the required security and resident monitoring plans and notify the owner, operator and applicable governmental entity of any alleged violations.
(Ord. No. 91-1306, § 2, 9-11-91)

Secs. 28-163—28-170. Reserved.

ARTICLE V. JUVENILE CURFEW*

Sec. 28-171. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Emergency shall mean an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term shall include but not be limited to a fire, natural disaster, vehicular accident, or a serious medical condition of sudden onset.

Guardian shall mean the person who, under a court order, is the guardian of the person of a minor or the public or private agency with whom a minor has been placed by a court.

Minor shall mean any person under 18 years of age.

Parent shall mean the natural mother or father or adoptive mother or father of a minor.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartments, houses, office buildings, transport facilities, and shops.
(Ord. No. 91-1543, § 2, 10-30-91)

Sec. 28-172. Offenses.

(a) It shall be unlawful for any minor to knowingly remain, walk, run, stand, drive or ride about, in or upon any public place in the city between the hours of 12:00 at night (midnight) and 6:00 a.m. on any day of the week or between the hours of 9:00 a.m. and 2:30 p.m. on a Monday, Tuesday, Wednesday, Thursday or Friday.

(b) It shall be unlawful for the parent or guardian having legal custody of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in section 28-172(a) of this Code.

(c) Violations of this section shall be punishable as provided in section 1-6 of this Code.
(Ord. No. 91-1543, § 2, 10-30-91)

Sec. 28-173. Defenses.

It is a defense to prosecution under section 28-172 of this Code that:

(a) The minor was accompanied by his or her parent or guardian;

(b) The minor was accompanied by an adult designated by his or her parent or guardian;

(c) The minor was on an errand made necessary by an emergency;

(d) The minor was attending a school, religious, or government-sponsored activity or was traveling to or from a school, religious, or government-sponsored activity;

(e) The minor was engaged in an lawful employment activity or was going directly to or coming directly from lawful employment;

*Editor's note—In accordance with Texas Local Government Code § 370.002 (effective May 31, 1995), the provisions of this article are subject to a public hearing and review process at three year intervals. Following public hearings conducted in 1998, City Council continued this article by adoption of Ord. No. 98-366, effective May 19, 1998. Following public hearings conducted in 2001, City Council continued this article by adoption of Ord. No. 01-409, effective May 15, 2001. Following public hearings conducted in 2004, City Council continued this article by adoption of Ord. No. 04-384, effective May 11, 2004.

(f) The minor was on the sidewalk of the place where he or she resides;

(g) The minor was on an errand directed by his or her parent or guardian;

(h) The minor was in a motor vehicle involved in intrastate or interstate transportation;

(i) The minor was engaged in, participating in, or traveling to or from any event, function or activity for which the application of section 28-172 of this Code would contravene his or her rights protected by the Texas or United States Constitutions;

(j) The minor was married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code; or

(k) With respect to the hours between 9:00 a.m. and 2:30 p.m. only, that the offense occurred during the school summer vacation break period of the school in which the minor is enrolled or on a holiday observed by the closure of classes in the school in which the minor is enrolled or that the minor has graduated from high school or received a high school equivalency certificate.

(Ord. No. 91-1543, § 2, 10-30-91)

Sec. 28-174. Supplemental effect.

The provisions of this article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to juveniles.
(Ord. No. 91-1543, § 2, 10-30-91)

Sec. 28-175. Enforcement.

Notwithstanding the penal effect of this article the chief of police is encouraged to develop alternative enforcement strategies, which may include but need not be limited to the return of minors to their residences or schools, counseling with minors and their parents or guardians, the issuance of warning citations to minors or their parents or guardians, or the referral of instances that appear to also involve the violation of school attendance laws to those officers who are responsible for the enforcement of those laws. The enforcement strategies shall be promulgated in writing to members of the police department so that this article may be enforced in a uniform manner.
(Ord. No. 91-1543, § 2, 10-30-91)

Secs. 28-176—28-200. Reserved.

ARTICLE VI. LOCATION OF HOTELS*

Sec. 28-201. Definitions.

As used in this article the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Bed and breakfast facility. A building on residential property with rooms for rent on a daily basis, with a resident owner, occupant or manager and no more than ten sleeping rooms for rent.

Central business district. The area included and bounded by Buffalo Bayou, Chartres Street, Texas Street, Dowling Street, Hadley Street, Hamilton Street, McGowen Street, Bagby Street, and Heiner Street as projected and extended to Sabine Street. Properties abutting and fronting on such streets are included in the district.

An area that has:

(1) A permanent public transit system;

(2) A demonstrated modal split in favor of public transportation;

***Note**—Section 4. That the provisions of the Hotel/Motel Ordinance, as amended in sections 28-201 and 28-202 of this article, shall apply to all projects involving the construction, alteration or remodeling of hotels and motels to which the Hotel/Motel Ordinance is applicable, including those previously reviewed and those pending review by the City on the effective date of this Ordinance, except any project for which an application for a building permit to construct, alter or remodel the hotel or motel, including all plans and required, related documents, has been filed before the effective date of this Ordinance. Any project for which a building permit has been issued, and any project for which a valid building permit application was filed in completed form with all required attachments in the Building Official's Office, before the effective date of this Ordinance shall be governed by the provisions in effect at the time that they were filed, and the former provisions of the Hotel/Motel Ordinance, as amended herein, are saved from repeal for that limited purpose.

(3) An equivalent level of municipally owned public parking; and

(4) Equivalent levels of vehicular traffic, as determined after a study by the director, may be added to the above-described area or established as a separate area and may, after a public hearing, be designated by the city council as a central business district.

Church. A building, whether situated within the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Commission. The planning commission of the city.

Director. The director of the department of planning and development or the director's designee.

Health and human services department facility means a public health clinic or a multi-purpose center operated by the city's health and human services department or a public health clinic operated for the city by another entity.

Hotel. Any building or buildings in which the public may obtain transient sleeping accommodations. The term shall include hotels, motels, suites hotels, tourist homes, houses, or courts, lodging houses, inns, rooming houses, or other buildings where transient rooms are furnished for a consideration, but shall not include properties that are residential in character.

Library. A building or buildings, whether situated within the city or not, the primary purpose of which is the keeping of literary and artistic materials such as books, periodicals, newspapers, pamphlets, and prints for reference or reading.

Licensed day-care center. A facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Limited-access or *controlled-access highway.* Any highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

Parking management area. A high density urban development with a minimum of 3,500,000 square feet of gross floor area and a minimum floor area ratio of one under a unified management entity that is situated in close proximity to permanent transit facilities.

Public park means a publicly owned or leased tract of land, whether situated in the city or not, designated, dedicated, controlled, maintained, and operated by the city or any political subdivision of the state for use by the general public for active or passive recreational or leisure purposes that contains improvements, pathways, access, or facilities intended for public recreational use. The term "public park" shall not include parkways, public roads, rights-of-way, esplanades, traffic circles, easements, or traffic triangles unless such tracts or areas contain and provide improvements or access to a recreational or leisure use by the public. A current list of public parks shall be compiled and maintained by the director of the parks and recreation department and shall be available for public inspection in the office of the city secretary.

Residence. Any permanent building or structure containing habitable rooms for nontransient occupancy, that is designed and used primarily for living, sleeping, cooking and eating, and is intended to be used or occupied as a dwelling place for residential purposes, whether or not attached, including homes, town homes, patio homes, duplexes, triplexes, quadraplexes, condominiums and apartments. Hotels, motels, boardinghouses, group homes, halfway houses, nursing homes, hospitals, nursery schools, schools and child care facilities shall not be considered residences.

Residential. Pertaining to the use of land for a residence, as defined in this section.

Residential area. The area around a hotel site that, within the residential test area, contains 50 percent or more residential tracts that are wholly or partially situated in the test area. For purposes of this computation, tracts that are improved with multi-unit residential occupancies, such as apartments and condominiums, shall be counted on the basis of each one-eighth acre of land, or any fraction thereof that is situated within the test area, being equal to one residential tract.

Residential restrictions. One or more restrictive covenants limiting the use of property to residential purposes that are contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records or deed records.

Residential street. A street where 30 percent or more of the frontage along both sides of the street within a distance of 250 feet or the distance to the nearest four-way public street intersection, whichever is greater, from the tract upon which a hotel would be located consists, in each direction along the blockface, of front, side or rear yards of residential uses. For purposes of this article, a major thoroughfare may also be classified as a residential street, in which case the residential street classification shall control.

Residential test area. An area determined by creating a closed curve with a radius as provided below from the boundaries of the proposed hotel tract. Each tract, other than the hotel tract, that is situated in whole or in part within the radius so created shall be a part of the residential test area. For a hotel with 50 or fewer separately rentable units, the applicable radius shall be 1,500 feet. For a hotel with 51 through 75 separately rentable units, the applicable radius shall be 1,000 feet.

Residential tract. Either of the following:

a. A tract that is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable residential restrictions; or

b. An unrestricted tract upon which a residence exists.

Service facilities. Facilities provided by a hotel for the service and convenience of customers, including, but not limited to, restaurant or food service, liquor sales, meeting rooms or swimming pool.

School. A building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education, together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to (1) public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through 12 classes are taught, (2) special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through 12, and (3) public and private institutions of higher education.

Suites hotel. A hotel as herein defined with all of the following characteristics:

(1) At least 75 separately rentable units, with service facilities; provided that the service facilities may not include a restaurant or cocktail lounge;

(2) Each rentable unit shall contain a kitchen with a full-size refrigerator, a range or range top with at least two burners, an oven (traditional, microwave or convection), sink, dishwasher, storage cabinets and counterspace for meal preparation;

(3) At least 75 percent of the rentable units shall be suites with a living room and a separately enclosed bedroom; and

(4) No units shall be rentable on less than a full twenty-four-hour basis.

Tract. A contiguous parcel of land under common ownership, whether situated within the city or not.

(Ord. No. 93-1641, § 2, 12-22-93; Ord. No. 94-1268, § 4, 11-22-94; Ord. No. 95-104, § 1, 1-25-95; Ord. No. 98-334, § 4, 4-29-98; Ord. No. 98-529, § 2, 6-30-98; Ord. No. 01-722, §§ 2, 3, 8-1-01)

Sec. 28-202. Locational requirements.

(a) It shall be unlawful for any person to construct any new hotel, to alter or remodel any existing hotel so as to add more sleeping rooms thereto, or to convert any premises for use as a hotel unless the following requirements are met:

(1) The tract on which the hotel is situated shall have direct frontage on and take primary access from:

a. At least one major thoroughfare that is not a residential street;

b. The right-of-way of a limited access or controlled-access highway; or

c. A street or portion thereof that is not a residential street, that is striped or otherwise actually allows for at least four lanes of moving traffic, and that connects to a major thoroughfare that is not a residential street, provided that a hotel that is the result of the conversion of an existing apartment complex of 75 or more units to a suites hotel may be on a street or portion thereof that meets all of the requirements of this item 28-202(1)c. but that is a residential street.

All primary entrances to the property shall be at least 20 feet in width and shall be from the street identified above in this provision upon which the tract fronts and from which the tract takes primary access. Notwithstanding the foregoing, the hotel may have one or more secondary entrances to the tract from streets other than those identified in this paragraph, provided that the entrance lanes are not more than 15 feet in width and that the total number of secondary entrances does not exceed 75 percent of the total of primary entrances either in number or aggregate width.

(2) No portion of the tract on which the hotel, other than a hotel with 120 or more separately rentable units and service facilities is situated may have frontage on or take any access from any street on which any school, library, church, licensed day care center, health and human services department facility, or public park also has frontage, if the hotel tract would be within 750 feet of the school, library, church, licensed day care center, health and human services department facility, or public park tract. The distance shall be measured from the nearest point on the tract on which the hotel is situated to the nearest point on the tract on which the school, library, church, licensed day care center, health and human services department facility, or public park is situated.

(3) The property line of the tract on which a hotel with 50 or fewer separately rentable units is situated may not abut at any point any other tract that is in whole or in part residential in character. To the extent that any property line of the tract on which a hotel with 51 or more separately rentable units is situated abuts at any point any other tract that is in whole or in part residential in character, then the owner of the hotel shall provide a buffer along the entire length of that property line of the hotel. The buffer shall include the provision and maintenance of each of the following:

a. Hotel building(s) set back at least ten feet from the property line;

b. Canopy trees at least one per 100 lineal feet of property line;

c. Ornamental trees at least two per 100 lineal feet of property line;

d. Shrubs at least 16 per 100 lineal feet of property line; and

e. Solid wood or masonry fence at least eight feet in height.

Upon request by the applicant in writing, the director may waive any of the buffer requirements of item (3) above upon finding the following: (i) the project is a conversion of another premises to a suites hotel; (ii) the project, if a waiver is granted, will not be contrary to the public interest or detrimental to the public health, safety, or welfare; and (iii) the project, if a waiver

is granted, will not result in a violation of any other applicable ordinance, regulation or statute.

(4) No premises located on a residential street shall be converted to a suites hotel other than an apartment complex with 75 or more units.

(5) A hotel, with or without service facilities, that has 75 or fewer separately rentable units may not be situated in a residential area unless the hotel is situated upon a tract that is contiguous to and abuts the right-of-way of a limited access or controlled access highway and takes its primary access from the frontage road of that highway, provided that the hotel may not take secondary access from any residential street.

(b) All determinations required under this section shall be based upon facts in existence on the day that the application for a building permit to construct, alter, or remodel the hotel is duly filed in the office of the building official with all plans, drawings, and other documents required for its consideration and processing under the terms of the building code. In the event that any applicant for a building permit to construct, alter, or remodel a hotel fails to initiate or prosecute the work such that the building permit expires under the terms of the building code, then a new building permit shall be required, and its issuance shall be subject to facts in existence at the time that the application is file for the new permit.
(Ord. No. 93-1641, § 2, 12-22-93; Ord. No. 98-529, § 3, 6-30-98; Ord. No. 01-722, § 4, 8-1-01)

Sec. 28-203. Penalty.

Violation of the provisions of this article is unlawful and shall be punishable as provided in section 1-6 of this Code.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-204. Building permit.

It is the responsibility of the applicant for a building permit or other license, authorization or permit issued by the city to ensure that any construction, alteration or conversion of property for hotel use conforms to this article. No building permit or other license, authorization or permit shall be construed to allow any action in contravention of this article and any license, authorization or permit obtained that purports to allow any action in contravention of this article shall be void.

In addition to any other fees prescribed therein, each applicant for a building permit to construct, alter or remodel a hotel under the Building Code shall be required to pay a fee of $200.00 for inspection under this article, provided that the fee shall not be assessed for hotels that are exempt under section 28-205 of this article.
(Ord. No. 93-1641, § 2, 12-22-93; Ord. No. 02-399, § 59, 5-15-02)

Sec. 28-205. Exemptions.

It is a defense to prosecution under this article that the hotel is a bed and breakfast facility or is situated wholly within a central business district or a parking management area as defined herein. It is also a defense to prosecution under this article that the application for the building permit under which the hotel is being constructed, altered or remodeled was filed with the building official on or before June 16, 1992.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-206. Appeal of denial of building permit.

Appeals from the denial of a building permit for noncompliance with this article shall be reviewed in the same manner as appeals from development plat disapprovals under section 42-87 of this Code.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-207. Variance procedure.

(a) An applicant for a building permit may make written application to the director for a variance from the requirements of this article other than those requirements which may be made the basis of a request for a waiver under item 28-202(3) of this Code. Application shall be made on a form supplied by the city and shall include:

(1) A nonrefundable fee of $200.00;

(2) A statement of the specific provision of this article from which the variance is requested; and

(3) A statement of the extent of the variance sought and the specific facts and reasons that the applicant believes warrant the granting of the variance. This application package shall be reviewed by the director.

(b) A staff report regarding the variance request shall be provided to the commission prior to the meeting at which the variance will be considered.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-208. Requirement for a public hearing.

(a) A request for a variance that includes relief from the provisions of item 28-202(2) of this Code shall be subject to a public hearing to be conducted by the commission under this section. A request for a variance that does not involve relief from those provisions shall not require a public hearing under this section.

(b) Notice of the public hearing shall be given at the expense of the applicant by:

(1) The publication of notice, in the form to be prescribed by the director, in a newspaper of general circulation in the city at least 15 days before the date of the public hearing;

(2) The mailing of notice at least 15 days before the date of the public hearing to the owners, as shown on the most recently approved tax roll, of property within a distance of 750 feet of the boundaries of the property that is the subject of the request for a variance from the requirements of item 28-202(2) of this Code;

(3) The mailing of notice at least 15 days before the date of the public hearing to all civic associations registered with the planning and development department whose boundaries include all or a portion of the area within 750 feet of the property that is the subject of the request for a variance from the requirements of item 28-202(2) of this Code; and

(4) The posting of notice upon a sign on the property for which the variance is requested at least 15 days before the date of the public hearing giving notice of the application for variance and the date of the public hearing. The director shall prescribe the dimensions of the sign and shall establish criteria for the location of the sign. If the property for which the variance is requested fronts on or has access to more than one public street, the director may require placement of more than one sign on the subject property upon a finding that more than one sign is necessary to provide adequate notice.

(c) The applicant for a variance subject to a public hearing shall provide the following information to the director at the time specified by the director:

(1) A certified list of the property owners to whom notice must be given pursuant to subsection (b) of this section; and

(2) For each property owner and registered civic association to whom notice must be given pursuant to subsection (b) of this section:

a. One stamped envelope addressed to each property owner and registered civic association; and

b. One copy of the notice of the public hearing in the form prescribed by the director.

(d) The director shall authorize the publication of the required notices for the public hearing after the commission establishes a date for the hearing. After this authorization is given, the applicant must provide for the publication of the notice, in the form prescribed by the director, and provide the director with an affidavit of publication within one week of authorization.

(e) At the public hearing, any interested person may present testimony, orally or in writing, with respect to the application for variance.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-209. Standards for variance.

(a) The commission is authorized to consider and grant variances from the provisions of this article by majority vote of those members present and voting, when the commission determines that the following conditions exist:

(1) The imposition of the terms, rules, conditions, policies and standards of this article would create an undue hardship by depriving the applicant or owner of the property of reasonable use of the land; and

(2) The circumstances supporting the granting of the variance are not the result of a hardship imposed or created by the applicant; and

(3) The intent and general purposes of this article will be preserved and maintained; and

(4) The granting of the variance will not be injurious to the public health, safety or welfare.

The commission shall not grant or deny any request for a variance on which a public hearing is required under section 28-208 of this Code until after the hearing has been conducted. After the close of any public hearing or other deliberation, the commission shall consider the application, the staff report, and any testimony and exhibits presented, and shall render its decision, which shall be in writing.

(b) The decision of the commission to grant or deny any variance shall be final, and no appeal may be taken.
(Ord. No. 93-1641, § 2, 12-22-93)

Sec. 28-210. Applicability of variance.

Any variance granted under the provisions of this article will apply only to the specific property and use upon which the commission was requested to grant a variance by the applicant. All variances granted shall be in writing, shall be signed by the secretary of the commission and be maintained as a permanent record of the commission.
(Ord. No. 93-1641, § 2, 12-22-93)

Secs. 28-211—28-220. Reserved.

ARTICLE VII. HAZARDOUS ENTERPRISES

DIVISION 1. GENERAL

Sec. 28-221. Scope.

This article imposes requirements upon the construction, expansion and use of certain premises that constitute hazardous occupancies under the Building Code.
(Ord. No. 96-1361, § 2, 12-18-96; Ord. No. 02-399, § 60, 5-15-02)

Sec. 28-222. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Child care facility. A "day care center" or "group day care home" licensed pursuant to chapter 42 of the Texas Human Resources Code or a "family home" registered as such pursuant to chapter 42 of the Texas Human Resources Code. The facility need not be situated within the city.

Director. The director of planning and development and those employees of the planning and development department to whom he may assign the performance of duties hereunder.

Effective date. The meaning of the term "effective date" shall be determined as follows: (1) With respect to any area within the corporate limits of the city as the corporate limits existed on December 18, 1996, then it means that date. (2) With respect to any area annexed into the corporate limits of the city after December 18, 1996, then it means the effective date of the annexation.

Enterprise. A tract upon which any building or structure is situated that by virtue of its use, in whole or in part, constitutes a Group H-1, 2 or 3 occupancy as described in section 307.1 of the Building Code. The term also includes any Group H-4 occupancy as so described if any

highly toxic material is manufactured, processed, generated, stored or used in the building or structure. Otherwise, Group H-4 occupancies are not included. The term also does not include:

(1) Any public water or wastewater treatment facility that is being operated under regulations promulgated by state or federal agencies, including but not limited to the United States Environmental Protection Agency and the Texas Commission on Environmental Quality;

(2) Areas or spaces up to 500 square feet each in research labs operated under the authority of a hospital, college, or university, and classified as H-2, H-3 or H-4, with an aggregate maximum area of ten percent on each floor; and

(3) Areas or spaces containing fuel storage for generators and fire pumps.

Expansion. Any change, addition, or modification in construction of a building or structure that extends any exterior wall of the building or structure.

Hazardous materials. Those chemicals or substances that are physical or health hazards as defined and classified in chapter 27 of the Fire Code.

Highly toxic material. Any substance so defined in section 3702 of the Fire Code.

Hospital. A premises, whether situated within the city or not, that is licensed as a hospital or as a mental hospital under chapter 241 or chapter 577 of the Texas Health and Safety Code or an equivalent facility that is maintained or operated by the state or federal government or one of their agencies.

Land use test area. An area determined by creating a closed curve with a radius of 1,000 feet from the tract perimeters for an unrestricted permit or 1,000 feet from the outer walls (existing or proposed) of the building(s) or structure(s) in which hazardous materials will be manufactured, processed, generated, stored or used for a restricted permit. Each tract, including the applicant's tract, that is situated in whole or in part within the radius so created shall be a part of the land use test area.

Multifamily residential. A residential tract, whether situated within the city or not, that contains three or more separate dwelling units, each with facilities for living, sleeping, cooking and eating.

Nursing home. An institution, whether situated within the city or not, that is licensed under chapter 242 of the Texas Health and Safety Code or a facility that is operated under a certificate of authority issued under chapter 246 of the Texas Health and Safety Code.

Permit. A current and valid permit to operate an enterprise issued under this article. Except where specific reference is made to a restricted permit or an unrestricted permit, the term "permit" includes a registration.

Rail service. The existence on or contiguous to a tract of a railroad spur or siding that is actually used to receive and/or ship materials that are manufactured, processed, generated, stored or used on the tract.

Registration. A registration issued under section 28-236 of this Code to an enterprise in operation on the effective date.

Residential. Pertaining to the use of land, whether situated within the city or not, for premises such as homes, townhomes, patio homes, manufactured homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for nontransient occupancy and which are designed primarily for living, sleeping, cooking, and eating therein. A premises that is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes, hospitals, and nursery schools shall not be considered to be residential.

Restricted permit. A permit under which manufacture, processing, generation, storage or use of hazardous materials will take place

only within buildings or structures that are so designated on the tract to which the permit pertains.

School. A building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education, together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

(1) Public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through 12 classes are taught; and

(2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through 12.

Sensitive use. A child care facility, hospital, nursing home or school.

Tract. A contiguous parcel of land under common ownership, whether situated within the city or not.

Unrestricted permit. A permit under which the manufacture, processing, generation, storage or use of hazardous materials may take place both within buildings or structures and out of doors on the tract to which the permit pertains.

(Ord. No. 96-1361, § 2, 12-18-96; Ord. No. 98-334, § 5, 4-29-98; Ord. No. 02-399, § 61, 5-15-02; Ord. No. 06-1126, § 1, 11-8-06)

Sec. 28-223. Prohibited activities.

(a) It shall be unlawful for any person to own, use or operate or to cause to be used or operated any enterprise located within the city unless there is a permit for the enterprise. A permit is valid only for enterprise operation as authorized in this article for the type of permit held.

(b) The permit for an enterprise shall be conspicuously posted upon the tract in a manner prescribed by the director. In any prosecution under this article, it shall be presumed that there is no permit if a permit is not properly posted.

(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-224. Provisions cumulative.

The provisions of this article are cumulative of all other provisions of this Code and other city ordinances, including, without limitation, the Construction Code and the Fire Code, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and permit holders are additionally required to obtain any other permits, licenses and authorizations required by law.

(Ord. No. 96-1361, § 2, 12-18-96; Ord. No. 02-399, § 62, 5-15-02)

Sec. 28-225. Penalty.

Violation of this article is unlawful. Any person violating any provision of this article shall, upon conviction, be fined not less than $100.00 nor more than $2,000.00 for each violation. Each day that any violation continues shall constitute and be punishable as a separate offense.

(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-226. Regulations.

Consistent with the provisions of this article, the director may promulgate regulations relating to the application for and issuance and use of permits. A copy of the regulations shall be maintained in the director's office for inspection, and copies may be purchased at the fee prescribed by law.

(Ord. No. 96-1361, § 2, 12-18-96)

Secs. 28-227—28-230. Reserved.

DIVISION 2. PERMITS

Sec. 28-231. Permit applications.

(a) A permit may only be issued to the owner of the tract or the owner's authorized designee. Separate applications and permits are required for each tract.

(b) A tract owner who desires to obtain a permit shall submit an application to the director in a form promulgated for that purpose, which shall include the following:

(1) The applicant's name, telephone number, mailing address and street address, if different.

(2) Proof of ownership of the tract in the form of a copy of a deed or other evidence of legal title. Also, if the applicant is not the owner, proof that the applicant is authorized to act for the owner.

(3) A legal description of the tract.

(4) Whether the application is for a restricted permit, an unrestricted permit or a registration.

(5) If the application is for a restricted permit or a registration, a survey diagram drawn to scale showing the exact location (existing or proposed) of the building(s) or structure(s) in which hazardous materials will be manufactured, processed, generated, stored or used for which the permit is sought.

(6) If the application is for a registration, proof that the tract was in operation or in process of construction for use as an enterprise on the effective date; proof of whether the tract had rail service on the effective date; and proof of whether the tract had out of doors manufacture, processing, generation, storage or use of hazardous materials on the effective date.

(7) The specific occupancy divisions (1, 2, 3 and/or 4) within Class H for which the tract will be used. *Note:* See the definition of "enterprise."

(8) The telephone number and name of the person who may be contacted by members of the public for information about the intended use of the tract.

(9) Any other information reasonably required by the director for purposes of processing the application under the requirements of this article.

(10) A nonrefundable processing fee of $250.00 for a restricted permit or unrestricted permit or $25.00 for a registration.

(c) An application for a restricted permit or unrestricted permit may be amended by the applicant at any time prior to the issuance of mailed or published notice as provided in section 28-232 of this Code.
(Ord. No. 96-1361, § 2, 12-18-96; Ord. No. 06-1126, § 2, 11-8-06)

Sec. 28-232. Notice procedure.

(a) As soon as practicable following receipt of an application for a restricted permit or an unrestricted permit, the director shall cause a map of the land use test area to be created and determine the names and addresses of:

(1) Each person who owns property therein according to the most recent tax roll data available to the director.

(2) Each civic association that is registered with the director as having any portion of its service area therein.

(b) The director shall provide the names and addresses developed pursuant to subsection (a) to the applicant together with the form of a notice letter regarding the provisions of this article and the intended use of the tract to the applicant who shall furnish one copy of the notice to be mailed by first class mail at the applicant's expense to each person and civic association. The mailing shall be supervised by the director.

(c) The director shall also provide the form of a newspaper notice regarding the provisions of this article and the intended use of the tract to the applicant who shall cause the same to be published one time in a newspaper that is published in the city with a daily circulation of 100,000 copies or more in a manner prescribed by the director and provide proof of the publication and the date of publication to the director.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-233. Issuance; denial.

(a) An application shall be approved and the permit issued unless:

(1) The information provided in the application is materially false or incomplete or the applicant has failed in any material respect to comply with this article.

(2) One-third or more of the tracts within the land use test area are being used for residential purposes. In computing the foregoing percentage, any tract being used for multifamily residential purposes shall be counted as being equal to one tract for each eight dwelling units or fraction thereof

upon the tract. Any tract other than the applicants tract that is not improved with one or more buildings or structures shall not be included in the computation.

(3) Any portion of the tract upon which a sensitive use is situated falls within the land use test area.

(4) The applicant has had a permit revoked for operations on the tract or any portion thereof during the two year period preceding the date of filing of the application.

The foregoing determinations (2) and (3) shall be based upon land uses as they existed on the date the application was filed and shall not be applicable to applications for the issuance of registrations.

(b) If one or more persons who own property or reside within the land use test area request a hearing regarding an application for a restricted permit or an unrestricted permit or an application filed pursuant to section 28-243(c) of this Code by submitting to the director a written request therefor that is received in the director's office on or before the fifteenth day following the latter of the date of publication or mailing of notices as provided in section 28-232 of this Code, the director shall refer the matter to the planning commission for a hearing with respect to whether the application meets the criteria specified above. If a hearing is timely requested, then the commission shall make the determination whether the permit should be granted. Otherwise, the director shall make that determination.

(c) If an application is denied, then the applicant shall be afforded a written notice of the reason(s). There shall be no appeal from the denial of an application by the planning commission. However, an applicant whose application is denied by the director shall be entitled to appeal the matter to the planning commission by filing a written notice of appeal in the director's office within 15 days following the date that notice of the denial is mailed to the applicant. If an appeal is timely filed, the director shall cause the matter to be referred to the planning commission, and the commission's determination shall be final.

(d) Each permit shall identify the owner and state whether it is a restricted permit, unrestricted permit or registration. Each permit shall identify the tract to which it pertains, and restricted permits and registrations shall identify the building(s) or structure(s) upon the tract to which they pertain. Registrations shall also state whether the tract had rail service on the effective date and whether the tract had out of doors manufacture, processing, generation, storage or use of hazardous materials on the effective date.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-234. Transfer.

Upon any change of ownership of the tract to which it pertains, a permit may be transferred to the new owner upon request and payment of a fee of $25.00 and proof of the change of ownership of the tract.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-235. Revocation.

(a) Following notice and a hearing, a permit may be revoked if it is determined that:

(1) The permit application was materially false or incomplete;

(2) The permit was issued through error;

(3) The permit holder has failed to comply with any applicable provision of this article; or

(4) The use of the tract as an enterprise has been discontinued for a continuous period of 180 days.

(b) An least 30 days notice of a revocation hearing shall be provided to the permit holder by depositing the same in the United States mail, first class, certified, return receipt requested, addressed to the last known address of the permit holder; provided that the notice shall be posted at the tract if returned by the U.S. Postal Service. The notice shall set forth the alleged grounds for the revocation and the date, time and place for the hearing.

(c) The burden of demonstrating that a permit should be revoked shall be upon the city, and the permit holder may also present evidence and

cross examine witnesses. The hearing shall be conducted by the planning commission, who shall revoke the permit if they determine by a preponderance of the evidence that grounds exist for revocation. If the grounds are based upon item (a)(3) above, and if the permit holder demonstrates that the violation(s) were not intended and that effective measures have been taken to prevent their reoccurrence, then the commission may suspend the permit for a period of time in lieu of revocation, if it determines that justice would thereby be served. The decision of the planning commission to suspend or revoke a permit shall be made in writing and shall set forth the grounds therefor. The planning commission's determination shall be final.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-236. Registrations.

(a) An enterprise in existence or in process of construction on the effective date may continue to operate without a permit for a 60-day period during which an application may be filed with the director, and thereafter may be authorized by the director to continue to operate while the city is acting upon the application.

(b) In lieu of seeking or in the alternative to seeking a restricted permit or an unrestricted permit, an enterprise in existence or in process of construction on the effective date may seek a registration.

(c) Applications for registrations shall not be subject to the land use criteria specified in items (2) and (3) of section 28-233(a) of this Code and shall be granted or denied without notice and a hearing as otherwise provided in this division. However, if the applicant alternatively seeks a restricted permit or an unrestricted permit, then the applicant shall be subject to all criteria of this division with respect to the application insofar as it seeks a restricted or unrestricted permit.

(d) For purposes of this section, a building or structure is considered to be in process of construction when another permit required for its construction is applied for with the jurisdiction having authority to issue the other permit or if no other permit is required, when actual work commences on the ground.

(e) The director may extend the filing period for a registration upon demonstration to the director by clear and convincing evidence that the enterprise was in fact in operation on the effective date and that the applicant's failure to timely file was based upon an error or misunderstanding and not the result of conscious indifference to the requirements of this article.
(Ord. No. 96-1361, § 2, 12-18-96)

Secs. 28-237—28-240. Reserved.

DIVISION 3. EXPANSION, ETC.

Sec. 28-241. Restricted permits—Expansion or construction.

A restricted permit is valid only for enterprise operations within the building(s) and/or structure(s) identified thereon for that purpose. Any expansion of the building(s) or structure(s) to which the permit pertains, conversion of any other building or structure to use for enterprise operations or construction of any additional building(s) or structure(s) for enterprise operations shall require the application for and issuance of a new permit under this article. The holder of a restricted permit may not manufacture, process, generate, store or use hazardous materials out of doors upon the tract without first obtaining a new unrestricted permit.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-242. Unrestricted permits—Expansion or construction.

The holder of an unrestricted permit may construct additional buildings or structures, convert the use of buildings or structures or undertake expansion of existing buildings or structures upon the tract to which the permit pertains without first obtaining a new permit under this article. The holder of an unrestricted permit may not expand the size of the tract to which the permit pertains without first obtaining a new permit for the expanded tract.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-243. Limitations upon registrations.

(a) A registration authorizes enterprise operations within building(s) and structure(s) identified for that use on the registration.

(b) A registration authorizes out of doors manufacture, processing, generation, storage or use of hazardous materials on the tract only if so designated on the registration.

(c) Any expansion of the building(s) or structure(s) to which the registration pertains, conversion of any other building or structure to use for enterprise operations or construction of any additional building(s) or structure(s) for enterprise operations shall be authorized only on the following basis:

(1) If the tract had rail service on the effective date and the rail service is designated on the registration, then no restriction exists.

(2) If the tract did not have rail service on the effective date, then construction or expansion will only be authorized following application, notice, a hearing, if requested, and permission of the director or the planning commission as provided in sections 28-231 through 28-233 of this Code, except that the residential land use test criteria of section 28-233(a)(2) shall be adjusted so that:

a. The test shall be based upon two-thirds or more, rather than one-third or more, of the tracts if the tract takes its street access exclusively from a major thoroughfare;

b. The test shall be based upon one-half or more, rather than one-third or more, of the tracts if the tract does not take access exclusively from a major thoroughfare.

(d) The tract upon which an enterprise operating under a registration is situated may not be expanded, unless the enterprise seeks and obtains a new restricted or unrestricted permit.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-244. New permits; etc.

(a) Applications for new permits, where required under this division, shall in all respects be treated as original permit applications under division 2 of this article. Without limitation, land use determinations shall be based upon uses in existence at the time that the new permit application is filed.

(b) Applications for construction or expansion under registrations that are filed under section 28-243(c) of this Code shall be processed in the same manner as new restricted permit applications. Land use determinations thereunder shall be based upon uses in existence at the time that the application for construction or expansion is filed.
(Ord. No. 96-1361, § 2, 12-18-96)

Sec. 28-245. Other buildings.

The provisions of this division shall not be construed to preclude the construction or expansion of buildings that do not constitute H-1, 2 or 3 occupancies or constitute H-4 occupancies, as defined in section 307.1 of the Building Code where any highly toxic material is manufactured, processed, generated, stored or used. However, it shall be the duty of any holder of a registration or a restricted permit undertaking such expansion or construction to first notify the director in writing.
(Ord. No. 96-1361, § 2, 12-18-96; Ord. No. 06-1126, § 3, 11-8-06)

JOBNAME: No Job Name PAGE: 44 SESS: 2 OUTPUT: Mon Dec 4 15:04:29 2006
/first/pubdocs/alt/10123e/10123_takes_tag_alt_10123e_janet

Sec. 28-246. When revocation proceedings are pending.

No application for a new permit or for expansion of operations under a registration that is required under this division shall be considered by the director or the planning commission while a revocation proceeding relating to the same tract is in progress under section 28-235 of this Code. In that instance, the director shall notify the applicant that action on the application will be withheld pending the resolution of the revocation proceeding.
(Ord. No. 96-1361, § 2, 12-18-96)

Secs. 28-247—28-250. Reserved.

ARTICLE VIII. SEXUALLY ORIENTED BUSINESS EMPLOYEES, CONDUCT AND OPERATIONS*

DIVISION 1. GENERALLY

Sec. 28-251. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Conduct any business in an enterprise. Any person who does any one or more of the following shall be deemed to be conducting business in an enterprise:

(1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the enterprise or the activities of the premises of the enterprise;

(2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(4) Acts as a door attendant to regulate entry of customers or other persons into the premises of the enterprise; or

(5) Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the enterprise.

Customer. Any person who:

(1) Is allowed to enter an enterprise or any portion of an enterprise in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;

(2) Enters an enterprise or any portion of an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(3) Is a member of and on the premises of an enterprise operating as a private or membership club or an enterprise that reserves any portion of the premises of the enterprise as a private or membership club.

Director. The chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this article.

Employee. Any person who renders any service whatsoever to the customers of an enterprise, works in or about an enterprise or who conducts any business in an enterprise and who receives or has the expectation of receiving any compensation from the operator, or customers of the enterprise. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that this definition cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships, and any other scheme or system whereby the 'employee' has an expectation of receiving compensation, tips, or other benefits from the enterprise or its customers in exchange for services performed.

*Sections 4 and 5 of this Ordinance shall become effective on the 120th day next following the date of its passage and approval by the Mayor. In order to afford any person who requires a permit under Article VIII of Chapter 28 of the Code of Ordinances, Houston, Texas, an opportunity to apply for a permit and, if the permit application is denied by the director and the hearing officer, initiate judicial review prior to the effective date, the Police Chief or his designees shall commence accepting and processing applications for permits on the ninetieth day prior to the effective date. Permit applications shall be processed and hearings shall be conducted within the times specified in Section 28-254 of the Code of Ordinances, as adopted in Section 4 of this Ordinance, so as to ensure that applicants who promptly apply for permits and, if denied, request hearings, will have a period of at least thirty days in which to seek judicial review or injunctive relief before the effective date. Permits issued prior to the effective date shall be postdated to the effective date.

Enterprise. An adult bookstore, adult cabaret, adult encounter parlor, adult lounge, adult modeling studio, adult movie theater or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The term "enterprise" shall include any premises for which a permit is required under either or both of articles II and III of this chapter. However, the term 'enterprise' shall not be construed to include:

(1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;

(2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or

(3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Entertainer. Any employee of an enterprise who performs or engages in entertainment.

Entertainment. Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease that involves the display or exposure of specified sexual activities or specified anatomical areas. The term "entertainment" shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities whatever in the presence of customers.

Manager. Any person who supervises, directs or manages any employee of an enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises of the enterprise, including any "on-site manager."

On-site manager. A person charged by an owner or operator of an enterprise with the responsibility for direct supervision of the operation of the enterprise and with monitoring and observing all areas of the enterprise to which customers are admitted at all times during which the enterprise is open for business or customers are on the premises of the enterprise.

Operator. The manager or other natural person principally in charge of an enterprise.

Owner or *owners.* The proprietor if a sole proprietorship, all general partners if a partnership, or the corporation if a corporation.

Permit. A current, valid permit issued by the director pursuant to the terms of this article.

Separate area. Any portion of the interior of an enterprise separated from any other portion of an enterprise by any wall, partition or other divider.

Specified anatomical areas:

(1) Less than completely and opaquely covered:

a. Human genitals, pubic region or pubic hair;

b. Buttock;

c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or

d. Any combination of the foregoing; or

(2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities:

(1) Human genitals in a discernible state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy;

(3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast or breasts; or

(4) Any combination of the foregoing.

(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-252. Cumulative.

The provisions of this article are expressly made cumulative of other applicable laws including, without limitation, articles II and III of this chapter.
(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 2. PERMITS

Sec. 28-253. Permit required.

(a) It shall be unlawful for any person who does not hold a permit to act as an entertainer or a manager of or in an enterprise.

(b) It shall be the duty of the operator and owners of each enterprise to ensure that no person acts as an entertainer or manager of or in the enterprise unless that person holds a permit.
(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-254. Issuance of permits.

(a) Any person who desires to obtain an original or renewal permit shall make application to the director in person at the offices of the vice division of the police department between the hours of 8:00 a.m. and 12:00 p.m., Monday, Wednesday or Friday, city observed holidays excepted. The application shall be made under oath upon a form prescribed by the director and shall include:

(1) The name, home street address and mailing address (if different) of the applicant;

(2) Proof of the date of birth of the applicant and the identity of the applicant, including at least one photographic identity card issued by a governmental agency;

(3) A list of any criminal charges pending, convictions, and time of service in jail or prison as related to any applicable offense that is specified in section 1-10 of this Code; and

(4) Two passport-type photographs of the applicant of a size specified by the director, which shall become part of the photographic identity cards if a permit is issued.

(b) Each application shall be accompanied by a nonrefundable processing fee of $60.00. Each applicant shall be required to provide fingerprints to be used to verify the applicant's identity and criminal history information. Each applicant shall sign a waiver and authorization form authorizing the director to request on behalf of the applicant criminal history reports from the Texas Department of Public Safety and any appropriate federal agency.

(c) The director shall issue the permit within ten days from the date of filing of the application unless he finds that the applicant has been convicted of or spent time in jail or prison for an offense specified in the applicable provisions of section 1-10 of this Code within the time specified therein. If the application is not granted, then the applicant shall be mailed notice of the grounds and of their right to provide evidence and request a hearing as provided by section 1-9(a) of this Code, within ten days from the date of filing of the application.

(d) Each permit issued by the director shall consist of two photographic identification cards, a personal card and an on-site card.

(e) Any applicant whose application is denied and who requests a hearing on the denial shall be granted a hearing within ten days following the receipt of the request by the vice division of the police department. The hearing shall be conducted as provided in section 1-9(c) of the Code. If the hearing officer rules against the applicant, then the applicant shall be given notice of the right to seek an injunction or judicial review of the decision as provided in section 1-9 of the Code and applicable laws, including article 6252-13d of the Texas Revised Civil Statutes.

(f) In the event that the director fails to issue or deny a permit application within the time specified in subsection (c) or to provide a hearing within the time specified in subsection (e), then the applicant shall, upon written request, be immediately issued a temporary permit which shall be valid until the third day after the applicant is given notice of the decision of the director or the hearing officer.

(g) If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the vice division and request a replacement, which shall be issued for a fee of $35.00 within three days following verification of the identity of the holder.

(h) No permit application shall be accepted nor shall a permit be issued to any person who does not provide proof that he is at least 18 years old. Any permit issued by virtue of any misrepresentation or error to any person under age 18 shall be void.
(Ord. No. 97-75, § 4, 1-15-97; Ord. No. 02-528, §§ 12b., c., 6-19-02)

Sec. 28-255. Term, transfer, amendment.

(a) A permit is valid for two years from the date of its issuance.

(b) A permit is personal to the named permit holder and is not valid for use by any other person.

(c) Each permit holder shall notify the vice division of the police department of his new address within ten days following any change of his address.
(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-256. Display.

(a) Each manager or entertainer shall conspicuously display his personal card upon his person at all times while acting as an entertainer or manager of or in an enterprise.

(b) Each manager or entertainer shall provide his on-site card to the manager or on-site manager in charge of the enterprise to hold while the manager or entertainer is on the premises.

(c) In any prosecution under section 28-253 of this Code, it shall be presumed that the actor did not have a permit unless the permit was in display as required under section (a) of this subsection.
(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-257. Revocation.

In the event that the director has reasonable grounds to believe that any permit holder has been convicted of or spent time in jail or prison for an offense as specified in the applicable provision of section 1-10 of this Code within the time specified therein, then the director may revoke the permit following a notice of the grounds and a hearing as provided in section 1-9(b) of this Code. In the event that the hearing officer determines that the permit should be revoked, then he shall issue his final decree to be effective in 30 days following the mailing of notice of the decree to the permit holder in order to allow the permit holder an opportunity before the permit must be surrendered to seek an injunction or judicial review of the decision as authorized in section 1-9 of this Code and applicable laws, including article 6252-13d of the Texas Revised Civil Statutes.
(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 3. CONDUCT OF ENTERTAINERS

Sec. 28-258. Conduct of employees.

(a) It shall be unlawful for any entertainer to touch a customer or the clothing of a customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.

(b) It shall be unlawful for any entertainer to approach closer than three feet to any customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.

(c) It shall be unlawful for any employee to engage in entertainment or to expose any specified anatomical areas or engage in any specified sexual activities in the presence of a customer in any separate area within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier separating entry to such area from any other area of the enterprise.
(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 4. PENALTIES

Sec. 28-259. Penalties.

(a) The violation of any provision of this article, including the doing of anything which is herein prohibited or declared to be unlawful or

the failure to do anything or perform any duty which is required herein, shall be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as a separate offense.

(b) The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.
(Ord. No. 97-75, § 4, 1-15-97)

Secs. 28-260—28-280. Reserved.

ARTICLE IX. EXCESSIVE CRIMINAL ACTIVITY AT CERTAIN APARTMENT COMMUNITIES

Sec. 28-281. Purpose.

The purpose of this article is to establish a method by which the city may measure certain types of criminal activity occurring in apartment communities in the city and to create a program to address within those apartment communities shown to have excessive levels of criminal activity the application of methods proven to reduce such activity. It is the intent of this article to identify the parties the city will hold responsible for compliance with and violations of this article, rather than to determine the rights and liabilities of persons under agreements to which the city is not a party. The terms of this article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to property that is the subject of this article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article by any person. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-282. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment community means a multi-family residential rental property under common ownership containing ten or more separate living units designed, built, rented, leased, let out or hired out to be occupied, or that are occupied, as residences, but excludes a condominium subject to chapter 81 or 82 of the Texas Property Code.

Community per capita crime index or *CPCCI* means a determination by the police official of the criminal activity on the property of an apartment community over the immediately preceding 12-month period, calculated on a per capita basis. Two separate CPCCIs will be calculated for each apartment community based on the Part 1 and Part 2 crimes listed in the definition of the term criminal activity below that have occurred on such property. The CPCCIs shall be calculated in accordance with the manual.

Crime risk threshold or *CRT* means the statistically determined level of criminal activity in apartment communities in the city during the immediately preceding 12-month period, adjusted for the occupancy of the apartment communities surveyed and expressed on a per capita basis. A CRT will be established for each of two categories of criminal activity on the properties of the apartment communities surveyed based on the Part 1 and Part 2 crimes listed in the definition of the term criminal activity below that have occurred on such properties. The CRTs shall be calculated in accordance with the manual.

Criminal activity means the commission of one or more of the following crimes listed in the categories designated as Part 1 and Part 2 crimes by the Federal Bureau of Investigation's Uniform Crime Report ("UCR") that result in the preparation of an offense report by the police department, namely:

Part 1 Crimes: Murder, rape, robbery, aggravated assault, burglary, theft and auto theft; and

Part 2 Crimes: Other assaults, narcotics offenses (restricted to those of delivery, possession, or manufacture), arson, vandalism, weapons offenses, prostitution, gambling and disorderly conduct.

The following UCR crimes shall not be deemed criminal activity under this article: suicide, all offenses involving domestic violence, forgery and counterfeiting, fraud, embezzlement, stolen property (buying, receiving or possessing), crimes against family and children, driving while intoxicated, violation of alcoholic beverage laws, and vagrancy. State law relieves an owner from responsibility for offenses involving domestic violence and such offenses shall not be deemed criminal activity under this article.

F.A.S.T. means the Forfeiture Abatement Support Team composed of members of the legal and police departments.

F.A.S.T. CPCCI means a determination by the police official of the nuisance activity on the property of an apartment community over the immediately preceding 12-month period, calculated on a per capita basis. The F.A.S.T. CPCCI shall be calculated in accordance with the manual.

F.A.S.T. CRT means the statistically determined level of nuisance activity that is calculated based upon a survey of the apartment communities in the city on whose property at least one of the crimes listed in Chapter 125, Texas Civil Practices and Remedies Code, has occurred during the immediately preceding 12-month period, adjusted for the occupancy of the apartment communities surveyed, and expressed on a per capita basis. The F.A.S.T. CRT shall be calculated in accordance with the manual.

F.A.S.T. eligible apartment community means an apartment community at which the F.A.S.T. CPCCI exceeds the F.A.S.T. CRT.

Inspection means the initial onsite assessment by officers of the police department of the physical, operational and on-site measures in effect on the property that might affect the level of criminal activity at a remedial action eligible apartment community to determine the remedial measures deemed most appropriate to reduce criminal activity at such property.

Manager means the person appointed or hired by the owner to be responsible for the daily operation of an apartment community.

Manual means the manual promulgated by the police official to guide the enforcement of this article and containing, but not limited to, procedures for the registration of apartment communities, remediation strategies to reduce or abate criminal activity at apartment communities with excessive levels of criminal activity, a description of the methods and criteria used to calculate and determine the crime risk thresholds and community per capita crime indices described in this article, and related forms.

Nuisance activity means any one of the crimes listed in Chapter 125, Texas Civil Practices and Remedies Code.

Owner means the person or persons who hold title to an apartment community.

Police official means the chief of police or such other person as he may designate to act as the official primarily responsible for the administration of this article or the said official's designees.

Registered agent means the person identified by the owner of an apartment community in the registration filed pursuant to this article authorized to receive any legal process and/or notice required or provided for in this article on behalf of the owner.

Remedial action eligible apartment community means an apartment community at which both CPCCIs are higher than the corresponding CRTs.

Remedial action plan means a written plan issued by the police official to an owner pursuant to this article specifying and requiring the implementation of remedial measures at a remedial action eligible apartment community and the time allotted to the owner to effect such implementation.

Remedial measures means reasonable actions to be taken or implemented on the property of a remedial action eligible apartment community, including but not limited to: (i) property improvements (fencing, lighting, controlled access, etc.), (ii) operational practices (presence of onsite personnel licensed under the Texas Private Security Act, Chapter 1702, Texas Occupations Code or certified peace officer(s), tenant screening, evictions, recordkeeping, etc.) and (iii) educational programs (Positive Interaction Program, Blue Star training, citizens on watch, etc.) and other remedial measures that have proven effective in reducing criminal activity. Remedial measures shall be based upon standardized measures designed to address various crime risk circumstances that are included in the manual, which have been determined to be reasonable by city council pursuant to section 28-294. Consequently, measures derived from the manual are deemed to be reasonable. A true and correct copy of the manual shall be kept on file in the offices of the multifamily administrative unit of the police department. A true and correct copy of the manual shall also be kept in the office of the city secretary for viewing by any member of the public.

Remediation inspection means an inspection by officers of the police department pursuant to this article to determine whether the remedial measures specified in a remedial action plan or an agreement made pursuant to subsection (c) of section 28-287 of this Code have been implemented.

(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-283. Registration of apartment communities.

(a) It shall be unlawful for any person to operate an apartment community in the city without first registering the ownership of such property as required by this section. No fee shall be charged for the registration required by this section.

(b) The owner of an apartment community shall provide or cause to be provided to the police official the following information regarding such property:

(1) The name of the owner and, if the owner is a corporation, whether foreign or domestic, the registered agent of the owner and the residential or business address of the owner and registered agent, if any, which address information shall include the street name and number, office or suite number if a business address, and the city, state, and zip code;

(2) The nature and extent of the owner's interest in the property. If there is only one owner, the extent of the owner's interest is 100 percent; and

(3) The name and business or residence address, including street name and number, city, state and zip code, of the current manager or management company of the apartment community and, if the manager is other than an individual, the name, title, business address, including street name and number, city, state and zip code, of the individual to be contacted for any purpose under this article relating to the apartment community.

(c) The use of a public or private post office box or other similar address shall not be sufficient for the purposes of complying with this section.

(d) Any change of ownership of an apartment community, including, but not limited to, the sale of the property or any ownership interest therein, shall require the purchaser or transferee to update the information provided under subsection (b) of this section and to file such updated information with the police official within 30 days of the effective date of such ownership change. A prior owner may advise the police official that he no longer holds any ownership interest in the property. The same requirement shall apply to any change relating to the owner's registered agent and manager or management company.

(e) The owner of a newly constructed apartment community shall comply with the provisions of this section not later than the thirtieth day following completion of construction.

(f) A true and correct copy of the registration statement shall be posted at all times in the business office at the property or, if no business

office is maintained at the property, in a common area or other conspicuous place accessible at all times to the tenants of such property.

(g) A failure to comply with the requirements of this section shall constitute an offense under this article.

(h) Compliance with the requirements of this section shall be deemed to meet the requirements of sections 250.003 and 250.004 of the Texas Local Government Code.

(Ord. No. 06-1124, § 2, 11-8-06)

Editor's note—Section 3 of Ord. No. 2006-1124 states that § 28-283 shall become effective on the 120th day following the passage and approval of this Ordinance by the Mayor.

Sec. 28-284. Measurement of criminal activity; remediation strategies.

The police official shall determine the CRTs for all apartment communities in the city. The police official shall monitor the CPCCIs for each apartment community on an ongoing basis. An apartment community shall be designated as either remedial action eligible or F.A.S.T. eligible based upon the relationship of its CPCCI(s) to the CRTs or F.A.S.T. CRT, as applicable. Apartment communities not meeting the threshold for designation as either remedial action eligible or F.A.S.T. eligible shall not be designated and changes in the criteria or methods used to calculate the foregoing indices or the remediation strategies set forth in the manual shall not be implemented until:

(1) Notice of such change, including the time, date and location of the public hearing required by item (3) of this section, is given by publication in a newspaper of general circulation and the publication produced by the Houston Apartment Association not later than 30 calendar days prior to the date of the public hearing;

(2) A panel of three persons consisting of: (i) a representative from the multifamily administrative unit of the police department, (ii) a member of the Houston Apartment Association and (iii) a citizen appointed by the mayor having no affiliation with the apartment industry or the police department is selected to carry out the duties set forth in the following item; and

(3) The panel (i) solicits comments from any interested party concerning the proposed change in criteria or methods for calculating the indices or the remediation strategies prescribed in the manual, and after a 30 day comment period, (ii) holds a public hearing at which any owner or manager may be heard on the proposed changes in criteria or methods used to calculate the indices or the remediation strategies prescribed in the manual and, (iii) no later than 30 days from the date of such hearing, makes a final determination concerning the proposed changes in criteria or methods used to calculate the indices or the remediation strategies prescribed in the manual.

(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-285. Notice of designation.

(a) The police official shall provide written notification to the owner or registered agent of each apartment community designated as either remedial action eligible or F.A.S.T. eligible, by personal service, certified mail, or other method which provides confirmation of delivery.

(b) The notice shall consist of the following:

(1) The designation assigned to the apartment community, specifying the types of crimes identified as having occurred on the property during the period reviewed, including the incident numbers assigned to such crimes, the population calculated for the property and the street address and the date and time of each offense to allow the owner to understand the basis of the designation;

(2) The requirement of a mandatory inspection to be conducted by officers of the police department;

(3) The opportunity and procedures by which the owner may challenge the data pro-

vided to the owner pursuant to item (1) of this subsection upon which the designation is based; and

(4) That the police official will be available to meet with the owner or his manager prior to the inspection for the purpose set forth in subsection (b) of section 28-286 of this Code and that a second meeting with the owner or his manager must occur after the inspection to allow the department and the owner to review the results of the inspection and determine a remedial action plan to reduce criminal activity at the property unless an agreement is reached pursuant to subsection (c) of section 28-287 of this Code.

(c) The designation of an apartment community and application of the procedures set forth in this article by the police official shall be binding upon all subsequent owners or other transferees of an ownership interest in the apartment community.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-286. Action after designation; initial meeting.

(a) The owner of a remedial action eligible apartment community must ensure that the police official has received, not less than ten calendar days after the owner's receipt of the notice of designation, a written statement of the owner's decision to either:

(1) Schedule an initial meeting with the police official; or

(2) Waive the initial meeting with the police official, which waiver shall be deemed a consent to the inspection and the owner's agreement to pay the fee prescribed by this article.

Failure of the owner to timely respond to the notice of designation shall be deemed the owner's acquiescence to the conduct of the inspection and agreement to pay the fee required by this article.

(b) At the initial meeting, if not waived or deemed waived, the police official shall discuss the apartment community's designation and the basis for such designation.

(c) A F.A.S.T. eligible apartment community shall be subject to the provisions of sections 2-268 through 2-270 of this Code and upon designation shall be referred by the police official to F.A.S.T for further action.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-287. Inspection, meeting and remedial action plan.

(a) After the police official has designated an apartment community as a remedial action eligible apartment community and has provided the owner the opportunity for an initial meeting, the police official shall collect from the owner the fee required by section 28-290 of this Code and cause the apartment community to be inspected.

(b) Upon completion of the inspection, the police official shall schedule a second meeting at which the police official and the owner or his manager will: (i) discuss the results of the inspection and the owner's past efforts and actions to reduce criminal activity at the property; (ii) review the remedial measures proposed by the police official or the owner to reduce the criminal activity that resulted in the property's designation; and (iii) formulate and reduce to writing a remedial action plan specifying the remedial measures to be implemented at the property by the owner and the time for completion of each of such measures.

(c) The refusal or failure of an owner or his manager to meet with the police official following an inspection shall be deemed the owner's acquiescence to the remedial action plan issued by the police official under this article. In such instance, the police official shall deliver a copy of the remedial action plan to the owner or his manager by either of the methods authorized in subsection (a) of section 28-285 of this Code.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-288. Redesignation; evaluation.

(a) The designations of all apartment communities will be redetermined by the police official not less than every two years after the date of initial designation.

(b) The designation of a remedial action eligible apartment community may be redetermined not sooner than six months following the final deadline for the owner's implementation of remedial measures in the remedial action plan.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-289. Remediation inspection; subsequent inspection.

(a) Each remedial action eligible apartment community for which the police official has conducted an inspection and issued a remedial action plan is subject to a remediation inspection following the expiration of each of the respective dates for completion set out in the plan or agreement.

(b) An apartment community that is designated a remedial action eligible apartment community twelve months following the implementation of a remedial action plan issued pursuant to section 28-287 of this Code shall again be subject to an inspection and may be issued a new or revised remedial action plan pursuant to that section, at the discretion of the police official. After the initial payment of the fee prescribed by section 28-290 of this Code, no further payment of such fee shall be required of the owner of a remedial action eligible apartment community unless a reduction in the level of criminal activity at such property results in the removal of a designation under this article followed by a subsequent designation of the property as either remedial action eligible or F.A.S.T. eligible.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-290. Inspection fee.

(a) A fee of $400.00 shall be charged to the owner of an apartment community to defray the costs incurred by the police official in conducting the inspection, the meetings required by sections 28-286 and 28-287 of this Code, preparing the remedial action plan, and conducting the remediation inspection(s) of the apartment community. The fee shall be paid to the police official prior to the commencement of the inspection.

(b) The chief of police shall review the inspection fee on an annual basis and may increase the inspection fee in an amount not greater than that necessary to recover the actual costs of the inspection, meetings required by sections 28-286 and 28-287 of this Code and the remediation inspection(s), up to five percent over the fee set for the prior year. A proposed increase in the inspection fee of greater than five percent shall require the approval of city council. A record of the current fee shall be maintained on file in the office of the city secretary and in the office of the chief of police.

(c) All revenues received by the city resulting from the operation or enforcement of this article shall be allocated to the police special services fund administered by the police department.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-291. Conduct constituting an offense.

(a) It shall be unlawful for an owner of a remedial action eligible apartment community to:

(1) Fail or refuse to permit officers of the police department to conduct an inspection of the property after receipt of notice under section 28-285 of this Code;

(2) Fail or refuse to permit the police official to conduct the remediation inspection(s) to ensure conformity to a remedial action plan issued under this article;

(3) Fail or refuse to attend the meeting required by subsection (b) of section 28-287 of this Code;

(4) Fail or refuse to timely implement or maintain a measure specified in a remedial action plan issued under this article made pursuant to subsection (b) of section 28-287 of this Code; or

(5) Fail or refuse to pay the inspection fee prescribed in this article.

(b) Failure to comply with the provisions of this article shall be punishable by a fine of not less than $500.00 nor more than $2,000.00. Each day of non-compliance shall constitute a separate violation.

(c) Citations issued in connection with any violation of this article shall be issued in compliance with the provisions of Sections 250.003 and 250.004, Texas Local Government Code, as amended from time to time.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-292. Nuisance.

(a) The city council hereby finds and declares that the operation of a remedial action eligible apartment community whose owner has failed or refused to timely implement one or more remedial measures contained in a remedial action plan, as set forth in this article, constitutes a nuisance and is unlawful.

(b) After at least 10 days prior written notice to the owner of an apartment community described in the foregoing subsection, given in the manner provided in subsection (a) of section 28-285 of this Code, notifying the owner that legal action will be taken if the owner fails to take immediate action to implement a remedial action plan as provided in this article, the city attorney is authorized to institute any legal action to enforce this article including, but not limited to, the filing of civil injunctive proceedings in a court of competent jurisdiction against the owner of a remedial action eligible apartment community described in the foregoing subsection, seeking a mandatory injunction to compel the owner of any such property to implement the remedial measures set forth in a remedial action plan issued to such owner.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-293. Receipt of notice.

Any notice sent or required to be sent by the police official shall be deemed to have been received by the owner or his registered agent not later than the third business day after mailing.
(Ord. No. 06-1124, § 2, 11-8-06)

Sec. 28-294. Adoption of initial manual.

The city council hereby adopts the apartment security ordinance manual dated October 2006 and on file in the office of the city secretary as the initial manual under this article. The city council hereby finds and determines the remediation strategies, remediation strategy standards, computation methodology and remediation strategy framework set out therein to be reasonable and appropriate to address the public health, safety and welfare issues addressed by this ordinance. The police official may make changes to the manual consistent with this article pursuant to and in accordance with the procedures set out in section 28-284 of this Code.
(Ord. No. 06-1124, § 2, 11-8-06)