

ARTICLE VII. HAZARDOUS ENTERPRISES

DIVISION 1. GENERAL

Sec. 28-221. Scope and enforcement; remedies cumulative; other action not limited.

(a) This article imposes requirements upon the construction, expansion and use of certain premises that constitute hazardous occupancies under the Building Code.

(b) The fire marshal and the director shall have the authority to enforce penalties for violations of this article. The department shall charge an investigation fee for noncompliance with this article, as set forth in the city fee schedule.

(c) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specifically, the city attorney may institute any legal action to enforce this ordinance or enjoin or otherwise cause the abatement of any condition described in this article, as well as for the recovery of all expenses incurred in connection therewith, including without limitation administrative and legal expenses, attorneys' fees and costs, and for civil penalties as provided by law.

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

Department means the department of planning and development.

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.

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.

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.

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.

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.

Sec. 28-227. Variance procedure.

(a) An applicant for a permit required under this article may submit a written application to the department for a variance from the requirements of this article. To qualify for a variance under this section, the applicant shall:

- (1) File an application in the form prescribed by the director;
- (2) Describe in writing the extent of the variance sought and provide documentation of the specific evidence or data that justifies granting the variance; and
- (3) Pay the non-refundable fee set forth in the city fee schedule for the application.

Prior to filing an application with the department, the applicant shall meet with the director, who shall conduct a preliminary review of the application during the pre-submittal meeting and advise the applicant of the procedures for applications as well the conditions used by the commission in determining whether a variance may be granted, as described in subsection (c) below.

(b) Upon receipt of a complete application pursuant to subsection (a) of this section, the director shall:

- (1) Provide a copy of the application and related documentation to the fire marshal;
- (2) Ensure that notice requirements have been met in accordance with section 28-323 of this Code prior to commission consideration of a variance application; and
- (3) Present to the commission a recommendation on the variance request made in collaboration with the fire marshal.

(c) The commission shall hold a public hearing on the variance request. Upon close of the public hearing, the commission shall consider and act on the application for a variance pursuant this section. The commission shall:

- (1) Grant the variance, with or without conditions, if by majority vote of those members present and voting the commission finds the application satisfies the criteria of subsection (d) of this section;
- (2) Deny the variance request if the commission is unable to make the findings necessary for approval of a variance; or
- (3) Defer consideration of the variance request to a later commission meeting.

The decision of the commission to grant, deny, or defer consideration of any variance shall be final, and no appeal may be taken.

(d) To grant a variance pursuant to subsection (c)(1) of this section, the commission must determine that each of the following conditions exists:

- (1) The documentation supplied by the applicant supports the granting of the variance;
- (2) The manufacturing, processing, generation, storage, or use of the hazardous material is not reasonably expected to pose a hazard to human health or the environment;
- (3) Appropriate mitigation and safeguards will be provided and maintained. This may include, but not be limited to: additional containment infrastructure, monitoring requirements, or operational procedures;
- (4) Notice was provided in accordance with section 28-232 of this Code;
- (5) The intent and general purposes of this article will be preserved and maintained; and
- (6) The granting of the variance is not reasonably expected to be injurious to the public health, safety, or welfare.

(e) The commission is authorized to impose any condition on the permit for which the variance is requested that the commission determines (1) is reasonably related to the variance requested and (2) furthers the intent and purposes of this article.

(f) Any variance granted under the provisions of this section shall apply only to the specific property for which the commission approved the variance and shall not constitute a change of this article, or any part hereof, or establish any policy, rule or regulation contrary to the provisions of this article.

Sec. 28-228. Fees.

The fees for this article are set forth in the city fee schedule. Payment of any applicable fees when due is a condition of the processing of any application or action required by this article. The director may, from time to time, with the assistance of the department of finance, pursuant to city policies and procedures, prepare and submit for city council approval fees that shall be paid by an applicant for services performed by the city in accordance with administration or enforcement of this article.

Secs. 28-227229—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.

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(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) The nonrefundable processing fee stated for this provision in the city fee schedule for a restricted permit, an unrestricted permit, or 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.

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.~~

_____ (a) A permit or application that requires approval from the commission shall meet the notice requirements of this section.

_____ (b) Within 45 days after receipt of a complete application, the director shall give notice of the request for a restricted permit, an unrestricted permit, or variance and of the scheduling of the commission's hearing and consideration thereof by mail to any individual, group, or entity listed on the current appraisal district records as the owner of record for a lot or tract, as those terms are defined in section 42-1 of this Code, that is within 1,000 feet of the boundary of the lot or tract for which a restricted permit, an unrestricted permit, or variance is requested. Notice shall be given no later than 20 days before the date the commission first considers the application. The fee for sending notice to an entity is set forth in the city fee schedule.

_____ (c) Prior to the commission meeting, notice by electronic or regular mail shall be given to:

- (1) Each district council member in whose district any portion of the lot or tract for which a restricted permit, an unrestricted permit, or variance is requested is located; and
- (2) Each neighborhood associated with defined boundaries registered with the department of neighborhoods in which any portion of the lot or tract for

which a restricted permit, an unrestricted permit, or variance is requested is located.

(d) Notice of the commission meeting shall be given no later than 20 days before the commission meeting by public in a newspaper of general circulation that meets the notice requirements of state law.

(e) The applicant for a permit shall pay all costs associated with the notice provisions of this section.

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.

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, accompanied by payment of the fee stated for this provision in the city fee schedule and proof of the change of ownership of the tract.

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.

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.

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.

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.

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.

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.

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.

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.

Secs. 28-247—28-250. Reserved.