

CHAPTER 28 HAZARDOUS ENTERPRISE
INTERNAL CITY WORKING GROUP DRAFT--10-27-2020 12-08-2020

This Draft is for Discussion Purposes Only
Not reviewed by City Attorney or Adopted by City Council

ARTICLE VII. HAZARDOUS ENTERPRISES

DIVISION 1. IN GENERAL

Sec. 28-221. Scope and administration.

- (a) This article imposes requirements upon the construction, expansion, and use of certain premises that constitute hazardous occupancies under the Building Code or other facilities falling within the definitions herein and under the Construction Code.
- (b) The planning official is authorized to promulgate rules and procedures for the efficient administration of this article, consistent with applicable state and federal laws and regulations.
- (c) The requirements of this article shall not be construed to preclude the construction or expansion of a building or structure that is not an enterprise under this article.

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:

Applicant means the individual or entity filing an application under this article.

~~*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 duties hereunder.~~

Department means the department of planning and development.

Effective date means _____.¹ ~~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,~~

1. The City Secretary is instructed to insert the effective date of the ordinance to which this Exhibit A is attached.

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~~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.~~

Emergency management coordinator shall have the meaning ascribed in chapter 13 of this Code. The term shall also include the emergency management coordinator's designee.

~~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. means a use or activity on, or of, a tract of land or within a building or structure, in whole or in part, that includes storage of, and also includes outside storage or use of hazardous materials exceeding the *Maximum Allowed Quantities* (MAQs) that constitutes a Group H-1, 2 or 3 occupancy as described in section 307 of that volume of the Construction Code known as the City of Houston 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. , in whole or in part, that includes storage (both interior and exterior) of hazardous materials exceeding the MAQs as described in Building Code section 307 if any highly toxic material is manufactured, processed, generated, stored or used. 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 or~~
- (3) Any areas or spaces containing fuel storage for generators and, fire pumps-, above or underground fuel storage associated with vehicle motor fuel-dispensing facilities.

Enterprise permit or permit means a current and valid license or document issued by the planning official authorizing the holder to operate an enterprise issued under this article. Except where specific reference is made to a restricted permit or an undertreated permit, the term "permit" includes a registration of a nonconforming enterprise.

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Expansion means any change, addition or modification in construction of a building or structure that extends any exterior wall or roof of a building or structure, and includes addition to the types of or increase to the authorized use or storage of quantities of hazardous materials present at the facility.

Fire marshal shall be a holder of a position described in section 34-56 of this Code or the holder's designee.

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

Highly toxic material means 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 means an area determined by creating a closed curve with a radius of 1,000 feet from the tract perimeters when testing for an unrestricted permit or 1,000 feet from the outer walls ~~(existing or proposed) of the building(s) or structure(s)~~ or an existing or proposed horizontal roof line of the building or structure in which hazardous materials will be manufactured, processed, generated, stored or used when testing 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~~ means the use of a 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.~~

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Registration ~~A registration issued under section 28-236 of this Code to an enterprise in operation on the effective date.~~ means an authorization of an enterprise that was previously a nonconforming enterprise as of December 18, 1996, or that became a nonconforming enterprise on the effective date of this ordinance.

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.~~ has the meaning ascribed in chapter 42 of this Code.

Restricted permit means a permit under which manufacture, processing, generation, storage or use of hazardous materials will take place only within the covered roof area of a buildings or structures that are is so designated on the tract to which the permit pertains.

Review committee means the group of licensed or otherwise qualified technical professionals established by section 28-228 of this Code.

School means a building, whether situated within the city or not, where persons regularly assemble for the primary 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.~~ means the use of a building, structure, or tract of land for a public park or community center, school, library, church, licensed day care center, licensed group day-care home, licensed family home, hospital, licensed continuing care facility, licensed convalescent and nursing facility, or any related institution.

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Tract means a contiguous parcel or parcels of land under common ownership or control, whether situated within the city or not.

Unrestricted permit means 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 or entity to own, use or operate or to cause to be used or operated any enterprise located within the city unless there is a an approved enterprise permit. A An enterprise permit is valid only for enterprise operation as authorized in this article for the type of permit held.
- (b) The enterprise permit shall be conspicuously posted upon the tract in a manner prescribed by the director planning official. In any prosecution under this article, it shall be presumed that there is no enterprise permit if a permit one 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 required to obtain any all other permits, licenses and authorizations required by law.

Sec. 28-225. Penalty and enforcement.

- (a) 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.
- (b) The fire marshal and the planning official shall each have the authority to enforce violations of this article.
- (c) The remedies set forth in this article are cumulative of all other remedies available to the city in the enforcement of this article. The city attorney may institute any legal or equitable remedy to enforce this ordinance or enjoin or otherwise cause the abatement of any condition described in this article, and to recover all expenses incurred in connection therewith, including without limitation, administrative and legal expenses, attorneys' fees and costs, and civil penalties by law.

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Sec. 28-226. Regulations Fees and costs.

~~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.~~

- (a) Payment of all applicable fees as set forth in the city fee schedule is a condition of the acceptance and processing of any application under this article.
- (b) The planning official may, from time to time, with the assistance of the department of finance, pursuant to Administrative Procedure 4-9, prepare and submit for the mayor's approval and placement on the city council agenda a recommendation for revision of the fees charged in this article. If city council authorizes revisions to the city fee schedule, applicant shall pay such fees for services performed by the department under this chapter. The fees approved under this provision shall be included in the city fee schedule.
- (c) Any person who commences any work on a tract or within a building or structure for use as an enterprise before obtaining an enterprise permit shall pay the fee established pursuant to section 42-54(b) of this Code, in the amount stated in the city fee schedule.
- (d) Each applicant for a modification shall be responsible for the payment of all costs for any expert deemed necessary by the review committee for the evaluation of the modification request. The city may require the applicant to provide to the city a reasonable amount to be placed in escrow for payment of such costs. Full payment shall be made within 30 days after the date of written notice from the city official, and the permit for the modification will not be released by the planning official until full payment is received by the city. If full payment is not made as provided herein, the modification shall be deemed denied, and the city may proceed with collection of any costs due under this section.

Sec. 28-227. Notice; certain information deemed confidential by law.

- (a) As soon as practicable following receipt of a complete application for an enterprise permit under section 28-231 of this Code, or a modification request under division 3 of this article, the planning official shall:
 - (1) Cause a map of the land use test area to be created;
 - (2) Provide notice of the application to:

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- a. Each district council member in whose district any portion of the tract included in the enterprise permit application or modification request is located, and
 - b. Each neighborhood association with defined boundaries registered with the department of neighborhoods in which any portion of the lot or tract included in the enterprise permit application or modification request is located.
- (b) Certain information that is submitted by an applicant for an application including supporting information submitted for an enterprise permit, or utilized for notice, issuance of an enterprise permit, or enforcement of this article may be confidential by law or not subject to public inspection, including but not limited to section 418.178 of the Texas Government Code, or other homeland security laws.

Sec. 28-228. Establishment of the review committee.

There is hereby created a review committee to evaluate and make technical findings on a modification request submitted in accordance with division 3 of this article. Membership of the committee shall include the planning official, the building official, the fire marshal, and the emergency management coordinator. The committee may establish procedures necessary for the conduct of its business and may conduct its review via electronic mail or in-person meetings. In order to move a request for modification of standards forward for further review, unanimous consent of all members is required.

Secs. 28-2279—28-230. Reserved.

DIVISION 2. PERMITS

Sec. 28-231. Enterprise 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.~~~~

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- ~~(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.~~
- (a) Enterprise permits are categorized as restricted, unrestricted, or registration. A permit may only be issued to the owner of the tract where the enterprise will be located. The owner may designate, in writing and submitted with the application, an individual or company to represent them as applicant. A separate application and permit are required for each tract.
- (b) An applicant who desires to obtain a permit under this article shall file an application with the department. The application shall be in the form prescribed by the planning official and shall include:
 - (1) The non-refundable fee set forth for this provision in the city fee schedule;
 - (2) Proof of ownership of the tract in the form of a certified copy of a deed, lease, or other evidence of legal title. If the applicant is not the title owner of

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the tract where the enterprise is located, proof that the applicant is authorized to act for the owner.

- (3) A survey sealed by a state licensed surveyor, drawn to scale, and showing the exact location (existing or proposed) of any building or structure, or the location on the tract, in which hazardous materials will be manufactured, processed, generated, stored, or used.
- (4) The specific occupancy divisions within Class H for the enterprise.
- (5) If the application is for a registration of a nonconforming enterprise, the applicant shall provide evidence to the satisfaction of the planning official that one or more of the following conditions existed on the effective date:
 - a. The tract was in operation or in process of construction for use as an enterprise;
 - b. The tract was served by rail service; or
 - c. The active status of out of doors manufacture, processing, generation, storage, or use of hazardous materials.
- (6) Any other information reasonably required by the planning official for the purpose of processing and evaluating the application under the requirements of this article.

~~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.~~

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- ~~(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.~~

Sec. 28-2323. Issuance; or denial; of an enterprise permit.

- ~~(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.~~

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- ~~(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.~~
- (a) The planning official shall review and approve an application for an enterprise permit meeting the standards set forth in this article 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) 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; or
 - (3) The land use test area around a restricted or unrestricted permit meets one or more of the follow conditions:
 - a. 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 applicant's tract that is not improved with one or more buildings or structures shall not be included in the computation; or
 - b. Any portion of the tract upon which a sensitive use is situated falls within the land use test area.
- Evaluation of these conditions shall be made based upon the land uses that existed on the date the application is filed with the department.

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- (b) When an application cannot be approved under this section, the planning official shall send notice via electronic mail to the applicant stating the reasons the application was denied. An applicant of an application denied pursuant to subsection (a)(3) of this section may submit written notice of intent to file a modification application, or a complete modification application, under the provisions of division 3 of this article within 90 business days of the date notice of the denial is sent by the planning official. A modification application will be held open for 1 year from the date of the notice of intent to file a modification application or a complete modification application is filed with the planning official. After a period of 1 year, an incomplete application for modification will be closed. An extension to complete an application for modification may be requested in writing by the applicant and may be granted by the planning official for a period not to exceed one year from the original date of the notice of intent to file a modification application or a complete modification application. Other than the opportunity to file a modification application, there shall be no appeal from the denial of an application.
- (c) Each enterprise permit issued pursuant to this article shall include:
- (1) The identity, type of legal entity, and legal address of the owner;
 - (2) The tract to which the permit pertains;
 - (3) The type of enterprise permit: restricted, unrestricted, or registration;
 - (4) A detailed statement identifying the historical and current status of the enterprise as:
 - a. An existing nonconforming enterprise established prior to February 16, 1997;
 - b. A conforming restricted enterprise registered between February 15, 1997 and the effective date;
 - c. A conforming restricted enterprise registered after the effective date;
 - d. A conforming unrestricted enterprise registered after the effective date; or
 - e. An existing unrestricted enterprise that is nonconforming as a result of outside storage exceeding the MAQs as of the effective date.
 - (5) A detailed statement of all activities authorized by the permit;

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- (6) A detailed listing of all current and pre-existing authorizations and exemptions under which the permittee is operating; and
- (7) Any other information required by the planning official, building official, or fire marshal that will facilitate identification of activities authorized by or subject to the permit.

Sec. 28-2334. Transfer.

Upon any change of ownership of the tract to which it pertains, a an enterprise 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. A request to transfer ownership shall be made by the applicant in the form prescribed by the planning official and accompanied by:

- (1) Payment of the non-refundable fee stated for this provision in the city fee schedule; and
- (2) Proof of the change of ownership of the tract.

Sec. 28-2345. Revocation.

(a) ~~Following notice and a hearing, a permit may be revoked if it is determined that:~~The planning official may revoke an enterprise permit if the planning official determines:

- (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~~

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~~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.~~

- (b) The planning official shall send notice to the permit holder of a revocation a minimum of 30 days before the date the permit is scheduled for revocation. Notice shall be sent by 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 describe the basis of the revocation under subsection (a) of this section and the timeframe and method for the applicant to file a written request for the planning official to reconsider the revocation.
- (c) A permit holder that has received a notice of revocation may, within the above-referenced 30-day notice period, present information to the planning official in writing to refute any determination made under subsection (a) of this section that is cited as a basis for permit revocation.
- (d) If the grounds for revocation are based upon item (3) in subsection (a) of this section, and if the permit holder demonstrates to the satisfaction of the planning official that the violation was not intended and that effective measures have been taken to prevent a reoccurrence, then the planning official may suspend the permit in lieu of revocation. A suspension would continue, at a minimum, until the planning official has determined that the violation has been or will be adequately addressed.
- (e) A decision by the planning official to suspend or revoke a permit under this section shall be made in writing and include the basis of the revocation under subsection (a) of this section. The decision of the planning official shall be final.
- (f) An application for a permit following revocation of an enterprise permit at the same tract shall be treated as a new permit application under this article. Land use determinations shall be based upon uses in existence at the time the new permit application is filed.
- (g) 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 planning official while a revocation proceeding relating to the same tract is in progress under this section. In that instance, the planning official shall notify the applicant that action on the application will be withheld pending the resolution of the revocation proceeding.

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Sec. 28-235~~6~~. Registrations.

- (a) To assure public safety and emergency response effectiveness, hazardous enterprises that become non-conforming due to amendment of this article shall review their current hazardous enterprise permit and determine whether they may easily become conforming either as a restricted or unrestricted enterprise. If the enterprise would not qualify under the new rules, then in lieu of 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 pursuant to this section, by making application as required under sections 28-231 through 28-233 of this article.
- (ab) 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 following the effective date during which an application may be filed with the planning official ~~director~~, and thereafter may be authorized by the planning official ~~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 28-232(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 may be extended by the planning official if the applicant demonstrates, to the satisfaction of the planning official, 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. A decision to extend a filing period is within the sole discretion of the planning official and is not subject to further appeal.

Sec. 28-236. Limitations upon registrations.

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- (a) A registration authorizes enterprise operations within a building or structure 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 a building or structure to which the registration pertains, conversion of any other building or structure to use for enterprise operations or construction of any additional building or structure 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 the application process for an enterprise permit under this article, except that the residential land use test criteria of section 28-232 of this Code 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; or
 - 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. 28-237. Restricted enterprise permits—Expansion or construction.

A restricted enterprise permit is valid only for enterprise operations within the building or structure identified thereon for that purpose. Any expansion of the building or structure to which the enterprise permit pertains, conversion of any other building or structure to use for enterprise operations or construction of any additional building or structure for enterprise operations shall require the application for and issuance of a new permit under this article. The holder of a restricted enterprise permit may not manufacture, process, generate, store, or use hazardous materials out of doors upon the tract without first obtaining an unrestricted enterprise permit.

Sec. 28-238. Unrestricted enterprise permits—Expansion or construction.

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The holder of an unrestricted enterprise 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 enterprise permit pertains without first obtaining a new permit under this article. The holder of an unrestricted enterprise permit may not expand the size of the tract to which the permit pertains without first obtaining a new unrestricted enterprise permit for the expanded tract.

Secs. 28-2397—28-240. Reserved.

DIVISION 3. EXPANSION, ETC. MODIFICATION TO STANDARDS.

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. 28-241. In general.

- (a) A modification to the standards of this article may be requested by an applicant within the time period described in section 28-232(b) of this Code. The requested modification must meet or exceed the level of public safety standards enumerated in section 28-242 of this Code, and as otherwise required in this article or other chapters of this Code or state and federal law.
- (b) The planning official is authorized to issue an enterprise permit for an application denied previously based upon the criteria of section 28-232 of this Code when a modification is approved under the provisions of this division. To qualify for a modification of these standards, the applicant shall:
 - (1) File an application in the form prescribed by the planning official;
 - (2) Include the material provided with the previously denied enterprise permit application;
 - (3) Provide technical information and other relevant documentation of specific evidence or data that justifies the required findings under subsection (c) of section 28-242 of this Code; and

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- (4) Pay all applicable fees as set forth for this provision in the city fee schedule, which shall include the fee for review of plans using alternative methods of construction, if the modification request includes alternative methods.
- (c) Any modification approved under the provisions of this division shall apply only to the specific enterprise permit considered with the application and shall not constitute a change of this article, or any part hereof, or establish any policy or precedent, rule or regulation contrary to the provisions of this article.

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. 28-242. Procedure and standards.

- (a) Within five business days after receiving a complete application pursuant to section 28-241 of this Code, the planning official shall send an electronic copy of the modification request to the building official and fire marshal, for a technical review of the efficacy of the alternate materials or methods proposed.
- (b) The building official and fire marshal shall submit their recommendations on the technical review detailed in subsection (a) of this section to the planning official within ten business days after the date their recommendations are completed. The planning official shall distribute the modification request and the technical review recommendation to the review committee within five business days after receipt of same.
- (c) The review committee may request additional evaluation by other city departments or divisions, or hire experts to provide advice, and may request that the consulting experts or the applicant attend one or more meetings of the review committee to provide additional information for their thorough review. The review committee shall consider the modification request, the technical review recommendations of the building official and fire marshal, and the following standards:
 - (1) The approval of the modification would:
 - a. Not result in a violation of any other applicable ordinance, regulation, or statute;
 - b. Not be injurious to the public health, safety, and welfare;

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- c. Not impose an undue financial or administrative burden on the city; and
- d. Be in accordance with the spirit and intent of this article.
- (2) The applicant has established appropriate mitigation and safeguards that will be provided and maintained at the facility so 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) There are no reasonable alternatives to granting the modification that would have an equal or lesser impact on the city, the applicant, residents of surrounding neighborhoods, or to a sensitive use; and
- (4) The operation and location of the enterprise is not reasonably expected to prohibit the ability of the city to implement its emergency management plan or otherwise execute the duties of the office of emergency management described in chapter 13 of this Code.
- (d) A unanimous recommendation of the review committee is required to grant a modification from the standards of this article. The review committee is authorized to impose any condition on the enterprise permit for which a modification is requested that the review committee determines is reasonably related to the request and furthers the intent and purpose of this article, specifically including a requirement to sign and submit a release and indemnification as determined by the review committee in favor of the city.
- (e) The planning official shall advise the applicant of the decision by the review committee or request more information on behalf of the review committee within 30 business days after the date a complete application is submitted to the planning official. The decision of the review committee shall be final.
- (f) The planning official shall provide an electronic copy of the approved modification application to applicant and the review committee within five business days after approval by the committee.

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.~~

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- ~~(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~~

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~~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. 28-2437--28-250. Reserved.~~