

City of Houston, Texas, Ordinance No. 2020-1092

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY REPLACING ARTICLE VII, THE HAZARDOUS ENTERPRISES ORDINANCE, IN ITS ENTIRETY TO STRENGTHEN ENFORCEMENT LANGUAGE, EXPAND CERTAIN DEFINITIONS, INCLUDE A REVIEW PROCESS FOR APPEALS AND MODIFICATIONS, AND ESTABLISH RELATED FEES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT UNLAWFUL AND PROVIDING FOR A PENALTY THEREFOR; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston ("City") regulates certain hazardous enterprises, operations, and materials in accordance with State and Federal laws and in the interest of protecting the public health, safety, and welfare of the residents of the City to the fullest extent possible; and

WHEREAS, a review of the Code of Ordinances, Houston, Texas ("Code"), has found that certain amendments and updating of the terms and conditions for the operation of hazardous enterprises is necessary; and

WHEREAS, the City of Houston ("City") regulates certain hazardous enterprises, operations, and materials in accordance with State and Federal laws and in the interest of protecting the public health, safety, and welfare of the residents of the City to the fullest extent possible; and

WHEREAS, a review of the Code of Ordinances, Houston, Texas ("Code"), has found that certain amendments and updating of the terms and conditions for the operation of hazardous enterprises is necessary; and

WHEREAS, it is the intent of the Council to regulate all locations in the city that utilize, store, process, manufacture, convert, transport, repackage, or handle in any

manner certain hazardous materials that could present an immediate and extreme danger to adjacent residences and other special occupancies located nearby; and

WHEREAS, the Council finds that the regulations should be revised so that the combined amounts of hazardous materials stored both inside and outside a structure are considered in determining Maximum Allowed Quantities under the occupancy requirements of the City of Houston Building Code, the City of Houston Fire Code and the Code and that the regulations should also be revised to ensure that certain hazardous materials are not stored outdoors without the protections required by applicable regulations; and

WHEREAS, the City Council finds that the revisions will better enable the Houston Fire Department, Houston Police Department, and other emergency responders to allocate resources for inspection of hazardous enterprises and aid in effective response to any emergency that may arise by the knowledge of amounts and type of materials; and

WHEREAS, the City Council finds that the registration requirements, strengthened enforcement provisions, revised appeals process, and added modification process to evaluate alternative methods of compliance for hazardous enterprises would best protect the public health, safety and welfare; and

WHEREAS, the City Council has determined that these amendments will benefit and protect the public health, safety, and welfare of residents of the City; **NOW, THEREFORE**,

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

Section 1. That the findings contained in the preamble of this Ordinance are

determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Article VII of Chapter 28 of the Code is hereby amended in its entirety to read as set forth in **Exhibit A**, attached hereto and incorporated herein.

Section 3. That the City Council hereby approves the new fees established as added to the Code by this Ordinance, in the initial amounts shown below, and hereby approves the changes in descriptions shown below for existing fees. That the Director of the Department of Planning and Development shall provide a copy of this Ordinance as passed by the City Council to the Director of Finance, who shall incorporate the changes to Chapter 28, Article VII made by this Ordinance in the City Fee Schedule as follows:

(1) Add the following fees:

Description	Statutory Authority	Amount
Unpermitted Work	42-54(b); 28-227(c); Motion No. 2015-0913	\$330.07
Notification	28-231; Motion No. 2015-0913	\$3.00
Modification Request	28-226(a); 28-241(a)(1)	\$3,330.18

(2) Change the fee description of the following existing fees as follows:

Existing Description	New Description	Statutory Authority
Permit, restricted or unrestricted	Enterprise Permit	28-231(b); Motion No. 2015-0913
Transfer fee for hazardous enterprise	Enterprise Permit Transfer	28-233; Motion No. 2015-0913

Section 4. That the City Attorney is hereby authorized to direct the publisher of the Code to make such non-substantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions

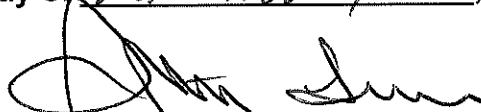
of the published Code.

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 16th day of December, 2020.

APPROVED this 16th day of December, 2020.



Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

Interim City Secretary

Prepared by Legal Dept

KM/sec 12/08/2020

Requested by Margaret Wallace-Brown, Director, Department of Planning and Development
L.D. File No. 0082000004001

Senior Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: DEC 22 2020

Rev. 5/16

EXHIBIT A

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 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.

Department means the department of planning and development.

Effective date means December 16, 2020

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 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, 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

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

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; or
- (3) Any area or space containing fuel storage for generators, 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.

Expansion means any 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 means any chemicals or substances that are physical or health hazards as defined and classified in the Fire Code.

Highly toxic material means any substance so defined in the Fire Code.

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 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 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.

Registration 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 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 building or structure that 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 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.

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 an approved enterprise permit. An enterprise permit is valid only for 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 planning official. In any prosecution under this article, it shall be presumed that there is no enterprise permit if 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 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.

Sec. 28-226. Fees and costs.

- (a) Payment of all applicable fees as set forth in this article and 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:
 - 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. 28-229—28-230. Reserved.

DIVISION 2. PERMITS

Sec. 28-231. Enterprise permit applications.

- (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 fees for an enterprise permit and notification as 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 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. Issuance or denial of an enterprise permit.

- (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.

- (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;
- (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. 28-233. Transfer.

Upon any change of ownership of the tract to which it pertains, an enterprise permit may be transferred to the new owner. 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. 28-234. Revocation.

- (a) 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) 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.

Sec. 28-235. 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.

- (b) 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, and thereafter may be authorized by the planning official to continue to operate while the city is acting upon the application.
- (c) Applications for registrations shall not be subject to the land use criteria specified in section 28-232 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 filing period for a registration may be extended by the planning official if the applicant demonstrates, to the satisfaction of the planning official, 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.

- (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.

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. 28-239—28-240. Reserved.

DIVISION 3. MODIFICATION TO STANDARDS.

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) 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;
 - (2) File an application in the form prescribed by the planning official;
 - (3) Include the material provided with the previously denied enterprise permit application; and
 - (4) 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.
- (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. 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;
 - 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.

Secs. 28-243–28-250. Reserved.