

City of Houston, Texas, Ordinance No. 2013-_____

AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF THE *CITY OF HOUSTON FIRE CODE* AND CHAPTER 10 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO ORDERS, PERMITS, AND ABATEMENTS BY FIRE DEPARTMENT OFFICIALS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING THERETO; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston (the "City") is authorized by its home rule powers to enact ordinances as necessary for the protection of public health and safety; and

WHEREAS, recent decisions from state courts in Texas have emphasized the importance of procedural due process when municipalities enforce local ordinances against owners of private property; and

WHEREAS, due process in administrative proceedings requires notice, an opportunity to be heard and to cross-examine witnesses, and an impartial trier of fact; and

WHEREAS, the City Council finds that certain amendments to the *City of Houston Fire Code* ("Fire Code") and to the Code of Ordinances, Houston, Texas ("Code of Ordinances" or "City Code") will strengthen the due process rights of property owners without compromising public health and safety; **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 adopted as a part of this Ordinance.

Section 2. That Section 104.5 of the Fire Code is amended to read in its entirety as follows:

"104.5 Notices and orders. As may be required to enforce this code, the fire code official is authorized to issue and to serve notices, orders, and criminal citations, as well as administrative citations or summonses in the manner prescribed by Article XVIII of Chapter 10 of the City Code."

Section 3. That Section 105 of the Fire Code is amended to replace "hearing official" with "Section 105 Hearing Official" throughout the said Section.

Section 4. That Section 105.5.2 of the Fire Code is amended to read in its entirety as follows:

"105.5.2 Hearing. Except for hearings related to orders issued under Section 105.5.3, all hearings under this Section 105 shall be conducted by a Section 105 hearing official. In rendering a decision, the Section 105 hearing official shall consider only the evidence presented at the hearing. A decision of the Section 105 hearing official shall be set forth in writing, copies of which shall be served upon each party in the same manner as the notice of a right to a hearing."

Section 5. That Section 105.5.3 of the Fire Code is amended to read in its entirety as follows:

"105.5.3 Emergency revocation of permit. If the revocation of a permit issued under this code reasonably appears to be necessary to abate or ameliorate a serious and immediate fire hazard, the fire code official may revoke the permit without prior notice or hearing. In such circumstances, however, the fire code official must provide the permit holder with an opportunity for a post-revocation hearing in the manner prescribed by Division 8 of Article IX of Chapter 10 of the City Code."

Section 6. That the first sentence of Section 108.1 of the Fire Code is amended to read as follows:

"In order to hear and decide appeals from decisions of the fire code official as to the suitability of alternate materials and types of construction, there shall be a board of appeals."

Section 7. That the first sentence of Section 109.2 of the Fire Code is amended to add ("NOV")" after the words "written notice of violation" and to add the following text at the conclusion of the said Section:

"The NOV advises the recipient of the existence of a violation of this code but does not initiate a judicial or administrative proceeding. Service of an NOV is not required prior to service of a citation or summons or to other action to enforce this code."

Section 8. That Section 109.2.1 of the Fire Code is amended to read in its entirety

as follows:

"109.2.1 Service of NOV. An NOV issued pursuant to this code shall be served upon the owner, operator, occupant, or other person responsible for the violation, either by personal service or by certified mail, return receipt requested. For unattended or abandoned locations, a copy of the NOV may be posted on the premises in a conspicuous place at or near the entrance to such premises, in which case a copy of the NOV shall be mailed by certified mail, return receipt requested, to the owner of the property at the owner's last known address, according to the records of the appraisal district in which the property is located."

Section 9. That Section 109.2.3 of the Fire Code is amended to read in its entirety

as follows:

"109.2.3 Prosecution of violation. If a person owning, operating, or maintaining an occupancy, property, or vehicle subject to this code allows a violation of this code to exist or fails to take immediate action to abate a violation when ordered to do so by the fire code official, the fire code official is authorized to take any action authorized by this code or other applicable law."

Section 10. That the subheading of Section 109.3.3 of the Fire Code is amended

to read in its entirety as follows: **"Administrative adjudication of unlawful parking or stopping of vehicle."**

Section 11. That Section 109.3.4 of the Fire Code is amended to read in its entirety

as follows:

"109.3.4 Referral to city attorney. In addition to other remedies authorized by this code or other applicable law, the fire code official may refer a violation to the city attorney for appropriate legal action to abate or restrain an activity, condition, or occupancy constituting or resulting from a violation of this code."

Section 12. That Section 110.1 of the Fire Code is amended to read in its entirety

as follows:

"110.1 General authority. If all or part of a property or structure violates this code and constitutes a threat to public health or safety, the fire code

official shall issue such notices or orders to abate the threat as are reasonable under the circumstances. Such notices may include one or more placards posted conspicuously at the property stating that the property is a threat to public health or safety, that the Fire Marshal may order an evacuation of the structure or take other action against the property, and that persons who continue to use the building do so at their own risk. The wording of the placard shall be factually accurate, but no particular wording is prescribed."

Section 13. That Section 110.1.2 of the Fire Code is amended to read in its entirety

as follows:

"110.1.2. Administrative hearing under City Code. The fire code official may schedule a public hearing before a hearing officer as provided by Division 2 of Article IX of Chapter 10 of the City Code and request any relief authorized by the said Article IX."

Section 14. That Section 110.3 of the Fire Code is amended to read in its entirety

as follows:

"110.3 Summary abatement. If all or part of a property or structure constitutes a serious and immediate fire hazard, the fire code official or a fire department official in charge of an incident may abate or otherwise remedy the said hazard without prior notice or hearing. In such circumstance, however, the fire code official must provide each owner, lienholder, and mortgagee of the subject property with an opportunity for a post-abatement hearing in the manner prescribed by Division 8 of Article IX of Chapter 10 of the City Code."

Section 15. That the Fire Code is amended to delete Sections 110.4 and 111.2.1.

Section 16. That Section 202 of the Fire Code is amended to add the following

definitions:

"SECTION 105 HEARING OFFICIAL. The person or persons designated in writing by the Mayor of the City of Houston to consider (a) applications by the fire code official to revoke permits issued under authority of Section 105 of this code; (b) appeals of denials of permits authorized by Section 105 of this code; and (c) appeals of orders issued under authority of Section 105 of this code, *except that* appeals of orders issued under authority of Section 105.5.3 shall be considered as provided elsewhere in this code. A Section 105

hearing official may be an employee of the Houston Fire Department, except that no person who has taken part, directly or indirectly, in any decision, order, or investigation related to the subject of the hearing shall serve as a Section 105 hearing official. A Section 105 hearing official shall act without bias for or against any hearing participant, including the Houston Fire Department."

"SERIOUS AND IMMEDIATE FIRE HAZARD. A condition that violates this code and that in the absence of immediate action by the fire code official or a fire department official in charge of an incident presents a reasonable likelihood of causing serious bodily injury to a human being."

Section 17. That Section 10-317 of the Code of Ordinances, Houston, Texas, is amended to redefine the following terms:

"Building standards official means the neighborhood protection official or the building official or the fire code official (as defined in the Fire Code), according to their respective enforcement responsibilities as provided in this article or in the Fire Code."

"Hearing officer means the individual, whether one or more, designated by the mayor to conduct administrative hearings as provided by this article; to consider evidence of violations of this article and of certain provisions of the Fire Code, as provided therein or in this Code; and to enter orders as are supported by the evidence."

Section 18. That Section 10-331 of the Code of Ordinances, Houston, Texas, is amended to read in its entirety as follows:

"Sec. 10-331. Authority of the hearing officer.

The hearing officer is authorized to conduct public administrative hearings and to enter orders in the manner provided by this article and to the extent authorized by Subchapter A of Chapter 214, Texas Local Government Code, and this article, or by the Fire Code."

Section 19. That Article IX of Chapter 10 of the Code of Ordinances, Houston, Texas, is amended to add the following Division 8, which shall read in its entirety as follows:

"DIVISION 8. SPECIAL HEARINGS UNDER THE FIRE CODE

Sec. 10-411. Appeals of certain orders of the fire code official.

(a) An order of the fire code official (as defined in the Fire Code) outside the scope of Section 105 and Sections 108.1 through 108.3 of the Fire Code shall be appealed by filing a written request for an administrative hearing, which request must be received by the city secretary within thirty days after the day on which the person filing the request was served with the order. Notwithstanding the previous sentence, an order issued under Section 105.5.3 of the Fire Code shall be appealed in the manner provided by this division. All such requests received by the city secretary shall be forwarded promptly to the fire code official. In the absence of such a request for hearing, the order of the fire code official is final, and no further appeal shall be allowed.

(b) No later than thirty days after the city secretary's receipt of a request to which subsection (a) of this section refers, the fire code official shall give a written notice of hearing to each owner, lienholder, and mortgagee of the subject property in the manner described in Section 214.0011(c), Texas Local Government Code. The notice of hearing shall include the following information:

- (1) That a hearing will be held on a stated date and at a stated time and place, which date shall be as soon as practicable but in any case no later than ninety days after the day on which the city secretary receives a request to which subsection (a) of this section refers;
 - (2) That the hearing will be held before a hearing official to consider whether the order was duly authorized by the Fire Code;
 - (3) That any person having a legal interest in the property (as evidenced by the real property records of the county in which the property is located) may appear in person, may be represented by an attorney, may present testimony and other evidence, and may cross-examine all witnesses; and
 - (4) That the hearing will be conducted 'in accordance with Division 8 of Article IX of Chapter 10 of the Code of Ordinances, Houston, Texas, which Code is available for public review at www.houstontx.gov/codes.'
- (c) The hearing officer shall conduct the hearing to which

subsection (b) of this section refers.

- (1) If the hearing is a record proceeding, the hearing shall be recorded by a court reporter certified by the Texas Court Reporters Certification Board.
- (2) The hearing may be postponed once for good cause shown; the existence of 'good cause' shall be determined by the hearing officer in the exercise of his sole but reasonable discretion.
- (3) If no person having a legal interest in the property appears before the hearing officer on the date and at the time for which notice was given, the hearing officer shall dismiss the appeal.
- (4) After consideration of the evidence presented at the hearing, the hearing officer shall issue a written order, the substance of which order shall be limited to the following:
 - a. A statement of the date, time, and place of the hearing and of the authority pursuant to which the hearing was conducted;
 - b. A list of all persons who attended all or part of the hearing, to the extent known by the hearing officer;
 - c. A general description of the evidence considered by the hearing officer; and
 - d. A declaration that the order was or was not duly authorized by the Fire Code.
- (5) In the event that the hearing official declares that the order was not duly authorized by the Fire Code, the fire code official shall withdraw the order.

Sec. 10-412. Hearings after permit revocation or summary abatement.

(a) Before the fifteenth day after the day on which the fire code official either (1) revokes a permit pursuant to Section 105.5.3 of the Fire Code or (2) summarily abates a serious and immediate fire hazard pursuant to Section 110.3 of the Fire Code, the fire code official shall give written notice in the manner described in Section 214.0011(c), Texas Local Government Code, to each owner, lienholder, and mortgagee of the subject property, which notice shall (1) notify the said person(s) of the right to

request an administrative hearing to determine whether the permit revocation or summary abatement was duly authorized by law and (2) state an address to which such a request shall be delivered or mailed.

(b) A request responsive to the notice described in subsection (a) of this section must be received by the fire code official within thirty days after the day on which the person submitting the request was served with the notice. In the absence of such a request for hearing, the permit revocation or summary abatement shall be deemed to have been authorized by law.

(c) No later than thirty days after the fire code official's receipt of a request to which subsection (b) of this section refers, the fire code official shall give a written notice of hearing to each owner, lienholder, and mortgagee of the subject property in the manner described in Section 214.0011(c), Texas Local Government Code. The notice of hearing shall include the following information:

- (1) That a hearing will be held on a stated date and at a stated time and place, which date shall be as soon as practicable but in any case no later than ninety days after the day on which the fire code official receives a request to which subsection (b) of this section refers;
- (2) That the hearing will be held before a hearing official to consider whether the permit revocation or summary abatement was authorized by law;
- (3) That any person having a legal interest in the property (as evidenced by the real property records of the county in which the property is located) may appear in person, may be represented by an attorney, may present testimony and other evidence, and may cross-examine all witnesses; and
- (4) That the hearing will be conducted 'in accordance with Division 8 of Article IX of Chapter 10 of the Code of Ordinances, Houston, Texas, which Code is available for public review at www.houstontx.gov/codes.'

(d) The hearing officer shall conduct the hearing to which subsection (c) of this section refers.

- (1) If the hearing is a record proceeding, the hearing shall be recorded by a court reporter certified by the Texas Court Reporters Certification Board.

- (2) The hearing may be postponed once for good cause shown; the existence of 'good cause' shall be determined by the hearing officer in the exercise of his sole but reasonable discretion.
- (3) After consideration of the evidence presented at the hearing, the hearing officer shall issue a written order, the substance of which order shall be limited to the following:
 - a. A statement of the date, time, and place of the hearing and of the authority pursuant to which the hearing was conducted;
 - b. A list of all persons who attended all or part of the hearing, to the extent known by the hearing officer;
 - c. A general description of the evidence considered by the hearing officer; and
 - d. A declaration that the permit revocation or summary abatement was or was not authorized by law.
- (4) In the event that the hearing official declares that the revocation of a permit was not authorized by law, the fire code official shall reissue the permit.
- (5) If no person having a legal or equitable interest in the property appears before the hearing officer on the date and at the time for which notice was given, the hearing officer shall issue a written order, the substance of which order shall be limited to the following:
 - a. A statement of the date, time, and place of the hearing and of the authority pursuant to which the hearing was conducted;
 - b. A list of all persons who attended all or part of the hearing, to the extent known by the hearing officer;
 - c. A statement that no person having a legal or equitable interest in the property appeared before the hearing officer on the date and at the time for which notice was given; and
 - d. A declaration that the permit revocation or summary

abatement is presumed to have been authorized by law."

Section 20. That provisions of the Code of Ordinances and the Fire Code amended by this Ordinance are saved from repeal for the limited purpose of their continued application to judicial and administrative proceedings initiated before the effective date of this Ordinance.

Section 21. 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 22. 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 at 12:01 a.m. on the ninetieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this ___ day of _____, 2013.

Mayor of the City of Houston

Requested by: Terry A. Garrison
Fire Chief

Prepared by Legal Dept. _____
First Assistant City Attorney
Special Counsel for Risk Management