CITY COUNCIL PUBLIC HEARING DRAFT
, 2026
Subject to change; not final until approved by City Council

City of Houston, Texas, Ordinance No. 2026-_____

AN ORDINANCE AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, ADDING DIVISION 9 TO ARTICLE III THEREOF, ESTABLISHING A RESIDENTIAL AREA PROXIMITY ASSESSMENT FOR RETAIL FUEL STATIONS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Chapter 54 of the Texas Local Government Code provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Chapter 212 of the Texas Local Government Code provides that the municipality may adopt general plans, rules or ordinances governing development of land to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and

WHEREAS, City Council finds that retail fuel stations are typically located in high commercial traffic areas such as major activity centers and major thoroughfares and present materially different impacts than those stations proposed on other streets or close to predominantly residential areas; and

WHEREAS, City Council has considered the importance of preserving the character of established residential areas and the need to promote orderly and predictable growth of commercial development throughout the City; and

WHEREAS, the City Council finds that establishing a proximity assessment between retail fuel stations and residential areas promotes the orderly growth of the City and bears a rational, real, and substantial relationship to the legitimate governmental interests of protecting the public health, safety, and welfare, and constitutes a reasonable exercise of the City's police power; and

WHEREAS, the earnest participation of advocates speaking in support of property rights, economic growth and opportunity, and preserving the integrity and character of the City's residential areas have been critical to the development of a thoughtful solution unique to Houston; and

WHEREAS, Mayor Whitmire recognizes that Mr. Joseph "Joe" Bailey invested his energy and conviction in this issue in a meaningful and impactful way that materially advanced the City's understanding of the matter; and

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WHEREAS, in recognition of Mr. Bailey's dedication and as a symbolic gesture honoring his memory and his service to the community, the Mayor and governing body adopt the proposed regulatory framework in his name; **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 in recognition of his impactful advocacy, the regulatory framework set forth in Section 3 of this Ordinance shall be designated in honor of Mr. Joe Bailey and shall henceforth be known as the **Joe Bailey Ordinance** of the City of Houston, Texas.

SECTION 3. That Division 9 is hereby added to Article III of Chapter 42 as follows:

"ARTICLE III

DIVISION 9

Sec. 42-275. Definitions.

Terms in this division shall be governed by the definitions in section 42-1 of this Code; provided however, the following terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

Boundary of operations means the perimeter of a tract used as a retail fuel station depicted by development plat.

Freeway means freeway or tollway as identified on the most recently published major thoroughfare and freeway plan. For the purposes of this division, the freeway shall include the entire right of way of the freeway.

Residential area means that test area of which 50 percent or more of the tracts or parts of tracts are in use for or restricted to residential. Multi-family residential tracts located in whole or in part in the test area shall be calculated at a ratio of one-eighth acre of land, or any fraction thereof, as being equivalent to one residential tract.

Retail fuel station means a fuel dispensing facility, including all fuel dispensers, structures and improvements, which operation

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includes the retail sale of gasoline or diesel fuel and ancillary goods and services.

Test area means that area created by plotting a point that is 100 feet from every point of the boundary of operations, excluding the portion of the tract that fronts a public street. The resulting points shall be connected to create an offset shape with a uniformly expanded boundary. Every tract, other than the retail fuel station tract, situated in whole or in part within the offset shape shall constitute the test area.

(insert illustration here)

Sec. 42-276. Applicability.

(a) The requirements of this division shall apply to all building permit applications for new retail fuel stations and to applications received for building permits to reconstruct or improve an existing retail fuel station where such reconstruction or improvement results in a change to the boundary of operations.

(b) The requirements of this division shall not apply to a retail fuel station located in or along:

(1) A Major Activity Center;

(2) A major thoroughfare with a minimum right of way width greater than 80 feet as designated or planned on the street hierarchy classification table on the major thoroughfare and freeway plan; or

(3) A freeway.

Sec. 42-277. Residential area determination required.

(a) Except as otherwise expressly permitted, it shall be unlawful for any person to construct, develop or alter a retail fuel station or to convert any tract for use as a retail fuel station abutting a residential area.

(b) An application for a building permit to construct, establish, expand, or otherwise develop a retail fuel station shall include a written determination by the director in accordance with this division before a building permit may be issued. The applicant shall ensure that any construction, alteration or conversion of a tract for retail fuel station use that changes the boundary of operations conforms to this division. Any license, authorization or permit obtained in contravention of this division shall be void.

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(c) The building official shall not issue a building permit for a retail fuel station unless the director or the commission, as applicable, has determined that the requirements of this division have been satisfied.

Sec. 42-278. Application requirements.

An applicant shall submit a residential area determination application to the director prior to obtaining a building permit or in conjunction with a development plat required by this Code. This submission shall:

(a) Be on the form promulgated by the director;

(b) Include a development plat showing the boundary of operations, location of each existing building, structure or improvement, each easement and right-of-way within or abutting the boundary of the surveyed property with the widths of any easements or rights-of-way also noted, and a metes and bounds description of the boundary of operations.

(c) Include a test area site plan which shall include the location of all proposed and existing buildings, proposed and existing driveways, fences, parking areas and adjacent public street right-of-way widths, and the test area with each tract or portion of tract in the test area identified as residential or non-residential;

(d) Be accompanied by a non-refundable fee set forth for this provision in the city fee schedule; and

(e) Include any additional information reasonably requested by the director for the administration of this division.

Sec. 42-279. Residential area determination.

(a) The director shall determine if the proposed retail fuel station abuts a residential area by dividing the number of residential tracts in the test area by the total number of tracts in the test area and multiplying the result by 100. The product shall be expressed as a percentage. “Tracts” as used herein shall include full tracts or any portion thereof.

Residential % of Test area	=	(# of Residential Tracts in Test Area ÷ Total # of Tracts in Test Area) × 100

(b) Upon receipt of a complete application, the director shall provide written notice of its determination to the applicant within 20 business days.

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(c) The written determination issued under this section is effective for as long as there is an active permit application for the construction or alteration of the retail fuel station. Any action taken to renew a permit application shall require a new residential area determination.

Sec. 42-280. Appeal of director's determination.

(a) The director's determination shall be final unless the applicant timely files an appeal.

(b) An applicant who disagrees with the director's determination may, within 10 business days after being given notice of the director's determination, appeal the determination by submitting an appeal request to the department. This appeal requestion shall:

(1) Be on the form promulgated by the director;

(2) Include a statement of specific facts and reasons that the applicant believes warrants the appeal, including the grounds on which the determination is challenged;

(3) Submit any relevant evidence; and

(4) Provide payment for the cost of the notice of appeal to the property owners in the test area, consistent with the City's fee schedule.

(5) Provide payment of the appeal fee (TO BE CONFIRMED)

(c) The applicant must comply with the notification requirements of section 42-83(b) of this Code.

(d) After receipt of all of the items specified in subsection (b) of this section, the director shall send notice of the appeal to the owners of the tracts within the test area by letter mailed first class mail, postage paid, or by electronic mail message as soon as reasonably possible before the first regular meeting at which the commission will consider the application. The director shall also give notice pursuant to 42-83(a)(2) of this chapter.

(e) At the hearing, the applicant may present their facts and reasons for the appeal and grounds for challenging the determination and include any relevant evidence in accordance with any reasonable rules adopted by the commission. The commission may affirm or reverse the director's determination or defer action until the next regular meeting, but deferral shall not exceed 30 days from the date that the appeal is first presented to the commission. After the hearing, the commission shall give written notice to the applicant of its findings as to whether or not the test area is a residential area and the reasons therefor. The notice shall be sent by first-class mail, with an electronic copy to the email address provided

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by the applicant, as soon as possible after the conclusion of the hearing but in no event more than 30 calendar days thereafter. The decision of the commission shall be final and exhaust the applicant's administrative remedies.

Sec. 42-282. Cumulative effect.

The provisions of this division are intended and shall be construed as a land-use siting and spatial separation requirement only. Compliance with this ordinance is in addition to, and not in lieu of, compliance with all applicable state and federal environmental and air quality regulations. Compliance with the provisions of this section shall not excuse or relieve any person from any other obligation imposed by federal, state, or local law.

Sec. 42-283. Rules and regulations.

The director is hereby authorized to promulgate rules and regulations consistent with the intent and purposes of the provisions of this division. A copy of all rules and regulations shall be maintained by the department, published on the department's website, and be made available in the office of the city secretary for inspection by the public, and copies shall be made available for purchase consistent with the fees prescribed by law."

SECTION 4. That the City Council hereby approves the nonrefundable application filing fee and the nonrefundable appeal fee, established in Section 42-278 and Section 42-280 of the Code of Ordinances, Houston, Texas, respectively, in the amounts shown below:

Description	**Statutory Authority**	**Amount**
Proximity assessment application filing fee	42-278	TBD
Appeal fee	42-279	TBD

The Director of the Planning Department shall ensure the new fees established in this Section are provided to the Director of the Finance Department for incorporation into the City Fee Schedule upon the passage and approval of this Ordinance.

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SECTION 5. 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 also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

SECTION 6. 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 7. That there exists a public emergency requiring 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 30th day following its passage.

PASSED AND ADOPTED ON	_____
APPROVED ON	_____

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

ATTEST: _____ City Secretary of the City of Houston	CITY OF HOUSTON, TEXAS Signed by: _____ Mayor of the City of Houston
PREPARED BY: _____ Senior Assistant City Attorney [INITIALS] [DATE] Requested by Vonn Tran, Director, Planning Department L.D. File No. _____	

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