

REDLINE FOR

PROPOSED 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.

Note: Redline is based on Draft 2.2 of proposed Ordinance.

PROPOSED AMENDMENTS TO FIRE CODE

104.5 Notices and orders. ~~The~~ As may be required to enforce this code, the fire code official is authorized to issue and to serve such notices, or 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 ~~as are required to affect compliance with this code in accordance with Sections 109.1 and 109.2.~~

105.5 Revocation. A permit issued under the provisions of this code may be revoked as provided herein after a hearing conducted by the Section 105 hearing official, if the Section 105 hearing official finds from a preponderance of evidence adduced at such hearing that there has been a false statement or misrepresentation as to the material facts in the application or construction documents on which the permit or approval was based, or a violation of the terms and conditions as set forth in this code, including, but not limited to, any one of the following:

1. The permit is used for a location or establishment other than that for which it was issued.
2. The permit is used for a condition or activity other than that listed in the permit.
3. Conditions and limitations for the permit, as set forth in this code, have been violated.
4. There have been any false statements or misrepresentations as to the material fact in the application for permit or plans submitted or a condition of the permit.
5. The permit is used by a different person or firm than the name for which it was issued.
6. The permittee failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this code within the time provided therein.

7. The permit was issued in error or in violation of an ordinance, regulation or this code.

105.5.1 Notice of hearing. Not later than 14 days prior to the date set for the revocation hearing by the Section 105 hearing official, the permit holder shall be given a written notice by the fire code official which shall set forth:

1. The grounds upon which the fire code official will seek revocation of the permit;
2. That a hearing has been scheduled thereon before the Section 105 hearing official and the time, date and place of the hearing; and
3. That the permit holder may appear, may be represented by counsel, may present evidence and may cross examine witnesses presented by the fire code official.

105.5.2 Hearing. ~~A~~Except for hearings related to orders issued under Section 105.5.3, all hearings under this code ~~Section 105 shall be conducted by the fire chief or a representative, hereinafter called "Section 105 hearing official." The fire chief shall not designate any person to be a hearing official under this code who has taken any part in the investigation of the matter that is the subject of the hearing or any person who directly supervised the investigation. The~~ In rendering a decision, the Section 105 hearing official shall consider only the evidence presented at the hearing in rendering a decision. The ~~A~~ decision of the Section 105 hearing official shall be set forth in writing, copies of which and shall be served upon each party in the same manner as the notice of a right to a hearing.

105.5.3 Emergencies. ~~Where an emergency exists, the fire code official shall not be required to give a written notice or hearing prior to revoking the permit.~~ **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 108 BOARD OF APPEALS

108.1 Board of appeals established. ~~In order to hear and decide appeals of orders, from decisions or determinations made by~~ of the fire code official relative to the application and interpretation of this code as to the suitability of alternate materials and types of construction, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the Mayor, subject to confirmation by the City Council. The

fire code official shall be an ex officio member of said board. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. See Appendix A.

108.2 Limitations on authority. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The board shall have no authority to waive requirements of this code. The fire code official shall take action in accordance with the decision of the board.

108.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to this code.

SECTION 109 VIOLATIONS

109.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

109.2 Notice of violation. When the fire code official finds a building, premises, vehicle, storage facility or outdoor area that is in violation of this code, the fire code official is authorized to prepare a written notice of violation ("NOV") describing the conditions deemed unsafe and, when compliance is not immediate, specifying a time for reinspection. 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.

109.2.1 Service of NOV. ~~A notice of violation~~ An NOV issued pursuant to this code shall be served upon the owner, operator, occupant, or other person responsible for the ~~condition or violation~~, either by personal service, or by certified mail, return receipt requested ~~or by delivering the same to, and leaving it with, some person of responsibility upon the premises.~~ For unattended or abandoned locations, a copy of ~~such notice of violation~~ the NOV ~~may~~ shall 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 and a copy of the notice of violation shall be mailed by certified mail, with return receipt requested or a certificate of mailing, to the owner of the property at the owner's last known address of the owner, occupant or both, according to the records of the appraisal district in which the property is located.

109.2.2 Compliance with orders and notices. A notice of violation issued or served as provided by this code shall be complied with by the owner, operator,

occupant or other person responsible for the condition or violation to which the notice of violation pertains.

109.2.3 Prosecution of violations. ~~If the notice of violation is not complied with promptly or if a persons owning, operating, or maintaining an occupancy, premises property, or vehicle subject to this code allows a hazard violation of this code to exist or fails to take immediate action to abate a hazard on the occupancy, premises, or vehicle violation when ordered to do so by the fire code official, the fire code official is authorized to request the legal counsel of the jurisdiction to institute the appropriate legal proceedings at law or in equity to restrain, correct or abate such violation or to require removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant hereto~~ take any action authorized by this code or other applicable law.

109.2.4 Unauthorized tampering. Signs, tags or seals posted or affixed by the fire code official shall not be mutilated, destroyed or tampered with or removed without authorization from the fire code official.

109.3 General Penalty; continuing violations. When in this code an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or wherever in this code the doing of any act is required or the failure to do any act is declared to be unlawful and no specific penalty is provided therefor, the violation of any such provision of code shall be punished by a fine of not less than \$500.00, nor more than \$2,000.00; provided, however, that no penalty shall be greater or lesser than the penalty provided for the same offense under the laws of the state. Each day any violation of this code shall continue shall constitute a separate offense. In prosecutions under this code, the various provisions hereof that are designated as exceptions shall not be treated as exceptions within the meaning of Section 2.02 of the Texas Penal Code, and instead, they shall constitute defenses to prosecution within the meaning of Section 2.03 of the Texas Penal Code.

109.3.1 License suspension/revocation. The suspension, revocation, cancellation or denial of any license, permit or certificate by the jurisdiction shall not prohibit the imposition of any civil or criminal penalty. The imposition of a civil or criminal penalty by the jurisdiction shall not prohibit the suspension, revocation, cancellation or denial of any license, permit or certificate.

109.3.2 Enforced removal or abatement. The application of the foregoing penalty shall not be held to prevent the enforced removal or abatement of any prohibited condition.

109.3.3 Administrative adjudication of unlawful parking or stopping of vehicle. The provisions of Article IV of Chapter 16 of the *City Code* shall be applicable to the adjudication of any offense arising under this code that involves the parking or stopping of a vehicle. The fines for parking or stopping of a vehicle shall be as otherwise provided in this section or other provisions of this code, as applicable, but the citation shall be issued and adjudicated in all respects as provided in Article IV of Chapter 16 of the *City Code*.

~~109.3.4 Abatement of violation Referral to city attorney.~~ In addition to the imposition of the penalties herein described other remedies authorized by this code or other applicable law, the fire code official is authorized to institute may refer a violation to the city attorney for appropriate legal action to prevent unlawful construction or to restrain, correct or abate or restrain an activity, condition, or occupancy constituting or resulting from a violation of this code; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business or occupancy of a structure on or about any premises.

SECTION 110 UNSAFE BUILDINGS

110.1 General authority. ~~If during the inspection of all or part of a property premises, a building or structure or any building system, in whole or in part, violates this code and constitutes a clear and inimical threat to human life, safety or public health or safety, the fire code official shall issue such notices or orders to remove or remedy~~ abate the conditions threat as shall be deemed necessary in accordance with this section are reasonable under the circumstances and shall refer the building to the building department for any repairs, alterations, remodeling, removing or demolition required in accordance with the Construction Code and the procedures set forth in Articles VIII and IX of Chapter 10 of the City Code and this section. 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.

110.1.1 Unsafe conditions. Structures or existing equipment that are or hereafter become unsafe or deficient because of inadequate means of egress or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. A vacant structure which is not secured against unauthorized entry as required by Section 311 shall be deemed unsafe.

110.1.2 Structural hazards. ~~When an apparent structural hazard is caused by the faulty installation, operation or malfunction of any of the items or devices governed by this code, the fire code official shall immediately notify the building code official in accordance with Section 110.1.~~ 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.

110.2 Evacuation. The fire code official or the fire department official in charge of an incident shall be authorized to order the immediate evacuation of any occupied building deemed unsafe when such building has hazardous conditions that present imminent

danger to building occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the fire code official or the fire department official in charge of the incident.

110.3 Summary abatement. ~~Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code. 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.~~

110.4 Abatement. ~~The owner, operator, or occupant of a building or premises deemed unsafe by the fire code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action.~~

SECTION 111 STOP WORK ORDER

111.1 Order. Whenever the fire code official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the fire code official is authorized to issue a stop work order.

111.2 Issuance. A stop work order shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work is authorized to resume.

~~**111.2.1 Hearing.** Hearing shall be provided notice and conducted in accordance with Sections 105.5.1 and 105.5.2.~~

111.3 Emergencies. Where an emergency exists, the fire code official shall not be required to give a written notice prior to stopping the work.

111.4 Failure to comply. It shall be unlawful to fail to comply with any stop work order.

SECTION 202 GENERAL DEFINITIONS

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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.

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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.

PROPOSED AMENDMENTS CODE OF ORDINANCES

Sec. 10-317. Definitions.

When used in this article, the following words and phrases have the meaning stated, unless the context of their usage clearly indicates another meaning:

Building standards official means the neighborhood protection official *or* the building official or the fire code official (as defined in the Fire Code), according 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 by this article, Code; and to enter orders as are supported by the evidence.

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

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

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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.