City of Houston, Texas, Ordinance No. 2007-_____

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 21 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY ADDING A NEW DIVISION 3 RELATING TO CONCRETE CRUSHING SITES; ESTABLISHING A SCHEDULE OF FEES FOR PERMITS ISSUED IN CONNECTION THEREWITH; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston is a municipal corporation organized under the Constitution and the general and special laws of the State of Texas and exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, permitting and registering concrete crushing sites will assist the Health Officer in locating and inspecting these sites; and

WHEREAS, the City Council finds that regulating the location of these sites in residential areas is necessary to protect the public health, safety and welfare of residents of the City; and

WHEREAS, the City Council finds that preventing the concentration of these sites is necessary to protect the public health, safety and welfare of residents of the City; and

WHEREAS, the City Council finds that these sites reasonably are expected to have a negative effect on residential property values and can affect other forms of land use, such as public parks, schools, child care facilities, hospitals, nursing homes and places of worship; and

WHEREAS, the City has conducted public meetings and has received comments on these issues; and

WHEREAS, the City Council finds that the Department of Health and Human Services has analyzed its costs of administering the program, taken into account the appropriate costs of the program, and related the costs to the types of permits issued by the City; and

WHEREAS, the City Council finds that the proposed permit fee is reasonably related to the cost of administering the program; **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 VI of Chapter 21 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Division 3, which shall read as follows:

"DIVISION 3. CONCRETE CRUSHING SITES

Sec. 21-167. Definitions.

As used in this division, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Child care facility has the meaning ascribed in section 28-222 of this Code.

Crushing means any fixed, portable, permanent or temporary operation where pressure is applied to concrete, whether new or used, to reduce the size of the original material so that it can be used or reused.

Designated area means an area determined by creating a closed curve with a radius of 1500 feet from the property line of each site where crushing operations are located. Each tract that is wholly

or partially located within the area so created shall be part of the designated area.

Existing operation means a site that has a valid permit issued by the Texas Commission on Environmental Quality to perform crushing on or before _____[1].

Expand or *expansion* means an increase in:

(1) The size of the tract on which a facility is located; or

(2) Operations, including but not limited to hours of operation and amount of materials that may result in an increase in air emissions.

Hospital has the meaning ascribed in section 28-222 of this Code.

Multi-family residential has the meaning ascribed in section 28-222 of this Code.

New operation means a site that does not have a valid permit issued by the Texas Commission of Environmental Quality to perform crushing on or before _____[2].

Nursing home has the meaning ascribed in section 28-222 of this Code.

Permit means a current and valid permit issued pursuant to this division to operate a site.

Permittee means a person who holds a permit under this division to operate a site, and includes any employee, agent, or independent contractor of the permittee.

Place of worship means one or more buildings, whether situated in the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship.

Public park has the meaning ascribed in section 28-121 of this Code.

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1 Editor shall insert the date of passage and approval of this Ordinance.

2 Editor shall insert the date of passage and approval of this Ordinance.

Residential has the meaning ascribed in section 28-222 of this Code.

Residential area means an area 50 percent or more of which consists of tracts that are wholly or partially subject to residential restrictions or are used for residential purposes. Tracts that are multi-family residential shall be treated as a residential tract.

School has the meaning ascribed in section 28-222 of this Code.

Site means the tract and fixtures, including structures, appurtenances and stockpiles of raw materials and finished products, where crushing is done.

Tract means a contiguous parcel of property under common ownership.

Sec. 21-168. Scope.

Pursuant to this division, all sites where crushing operations are performed are required to obtain a permit. Existing operations, expansions of existing operations and new operations are required to follow the permit application procedures in section 21-171 of this Code. Expansions of existing operations and new operations shall meet the location requirements in section 21-170 of this Code. However, the location requirements in section 21-170, notice requirements set forth in section 21-174 and the hearing and appeal procedures set forth in section 21-175, all sections of this Code, shall not apply to existing operations or to temporary crushing operations located at demolition sites if the concrete is being crushed primarily for use at the demolition site.

Sec. 21-169. Prohibited activities.

It shall be unlawful for any person to:

(1) Operate at a site within the city unless there is a permit for the site issued pursuant to this division;

(2) Expand crushing operations unless a permit for the expansion has been issued pursuant to this division;

(3) Operate at a site within the city in violation of any term of a permit issued pursuant to this division; and

(4) Fail to post signs as provided herein.

Sec. 21-170. Location requirements.

The director shall not issue a permit for a new operation or the expansion of any existing operation:

(1) On a lot, tract or parcel of land where the crushing operation or expansion of the site for crushing is prohibited, expressly or impliedly, by unexpired deed restrictions or covenants running with the land contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records or deed records.

(2) In any designated area that is a residential area or contains a child care facility, hospital, nursing home, place of worship, public park, school or crushing site.

Sec. 21-171. Applications.

(a) An applicant may obtain a permit for an existing operation or new or expanded operation by submitting a permit application to the department in the time and manner prescribed by the director, along with the fee required by section 21-176 of this Code.

(b) An application shall not be considered complete unless accompanied by any drawings, descriptive data, emissions information, permit fees, ownership information, contact information, and other pertinent data that may be required by the director.

(c) The director shall notify the applicant when the application is complete.

(d) If any of the required documentation, data, reports or drawings contain any false, erroneous or misleading information known to the applicant, then any permit issued pursuant to that false, erroneous or misleading information shall be void with the same force and effect as if it had never been issued.

(e) On or before the thirtieth calendar day following the filing of the complete application, the director shall issue to the applicant a written notice of disapproval or preliminary approval of the permit. Any notice of disapproval of a permit application must include a written report explaining the reasons for disapproval. Any preliminary approval shall be subject to the hearing provisions of section 21-175 of this Code, and, if no request for hearing is timely filed thereunder, shall become a final approval on the business day

next following the close of the protest period. The issuance of a written notice to the applicant shall be complete upon the deposit of the properly addressed notice in the United States mail, first class postage paid.

Sec. 21-172. Permits.

Each permit shall specify and display on its face the following terms, which shall be the conditions under which the permittee is authorized to operate or expand the site:

(1) Name of the permittee, address and contact information, including telephone number and e-mail;

(2) Name of the owner of the site, if different from the permittee;

(3) Operations authorized by the permit;

(4) Location of the site;

(5) Signage requirements, which shall include the information in section 21-174 of this Code, except that instead of the application number the permit number shall be listed; and

(6) A statement that the permittee must comply with all applicable requirements of this division, including rules promulgated by the director hereunder.

Sec. 21-173. Additional requirements.

The director may develop rules to ensure that particulate matter originating on a site or as a result of the operations on the site do not create a nuisance. These rules may include dust-suppression techniques, maintenance of entrances and exits and physical barriers and similar practices and may be incorporated into site permits. A copy of the regulations shall be maintained in the director's office for inspection, and copies may be purchased at the fee prescribed by law.

Sec. 21-174. Notice of pending application.

(a) The applicant must post and use reasonable efforts to maintain one or more signs at the location of the proposed site or existing site for which expansion is proposed for a minimum of 30 calendar days beginning no later than the sixth calendar day following the date of the filing of a

complete permit application with the department. Each sign shall be posted no more than 15 feet from the public right-of-way that is used as access to the site. A sign shall face each public right-of-way bordering the site and the lettering on each sign shall be legible from the public right of way. Each sign shall be a minimum of four by eight feet in size, with lettering that complies with specifications promulgated by the director. Each sign shall contain at a minimum the following items of information:

(1) That this is the proposed location of a site or site expansion, with the type of operations identified;

(2) The hours of operation and the type of material to be processed or stored;

(3) The name, address and contact information for the applicant, including telephone number of the person who can provide information about the application;

(4) The permit application number assigned to this project by the department; and

(5) A contact telephone number of the department where information can be obtained about the application.

The applicant shall retain the sign or signs at the site as provided herein.

(b) If, in the opinion of the director, compliance with the requirements of this section is impracticable or insufficient to provide adequate notification of the pending permit application, the director may require additional signs to be erected at locations as he deems advisable.

(c) Written notice of the filing of each application for a permit shall be given to each property owner within the designated area surrounding the proposed site. Notice shall also be given to any civic organization, property owners association, or any other interested group with identifiable boundaries, provided that the organization, association or group is registered with the planning and development department in a manner prescribed by the director of that department. Notice to all owners of record and civic organizations registered with the planning and development department shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the director and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the location of the proposed site or site proposed to be expanded, the surrounding designated area and all other sites located within one square mile of the proposed site or expansion.

(d) Written notice shall be published by the applicant at least once in a daily newspaper of general circulation in the city not later than the seventh calendar day following the date of filing of a complete application. The notice shall be published in the section of the newspaper in which other legal notices are commonly published, and shall be headed with the following words (or their reasonable equivalent), in conspicuous type:

> "NOTICE OF PROPOSED [TYPE OF SITE] [OPERATION OR EXPANSION]." The notice shall state the type of operations being proposed or expanded, describe the intended hours of operation of the site and the material that will be processed or stored at the site, and advise that additional information may be obtained by writing or calling the office of the chief of the bureau of air quality of the health and human services department.

(e) The 'written notice' required in subsection (d) above shall include at a minimum the following:

(1) The name, address, and telephone number of the operator of the proposed or expanded site;

(2) The name, address, and telephone number of the owner if different from the operator of the proposed or expanded site;

(3) The location of the proposed site or site to be expanded including the street address (or nearest street intersection) and the name of the subdivision or survey if there is no recorded subdivision;

(4) The proposed hours of operation of the site;

(5) The types of material to be processed or stored at the site; and

(6) That additional information may be obtained by writing or calling the office of the chief of the bureau of air quality.

(f) The applicant shall be responsible for paying all costs associated with the giving of notice under this division.

Sec. 21-175. Hearing; appeal.

(a) If one or more persons who own property or reside within the designated area request a hearing regarding an application for a permit by submitting to the director a written request therefor that is received in the director's office on or before the fifteenth day following the latter of the date

of publication or mailing of notices as provided in section 21-174(c) of this Code, the director shall refer the matter to a hearing officer appointed by the director for a hearing with respect to whether the application meets the criteria specified in section 21-170 of this Code. The hearing officer shall promulgate rules for hearings. If a hearing is timely requested, the hearing officer shall conduct a hearing and shall make the determination whether the permit should be granted in accordance with this section. Otherwise, the director shall make that determination.

(b) In making a determination regarding the permit, the hearing officer or director shall consider whether the site complies with the requirements of section 21-170 of this Code and may not reasonably be expected to cause a nuisance.

(c) If the application is finally approved, the director shall issue the permit to the applicant.

(d) If an application is denied, the applicant shall be afforded a written notice of the reason for denial. There shall be no appeal from the denial of an application by the hearing officer pursuant to subsection (a) of this section. However, an applicant whose application is denied by the director shall be entitled to appeal the matter to the hearing officer by filing a written notice of appeal in the director's office within 15 days following the date that notice of the denial is mailed to the applicant. If an appeal is timely filed, the director shall cause the matter to be referred to the hearing officer, who shall conduct a hearing in accordance with this section. The hearing officer's determination shall be final.

Sec. 21-176. Application fees.

The director shall establish the application fee, which shall be approved by city council. Any site where there are facilities that are required to register under division 2 of article VI of this chapter is exempt from the payment of any permit application fee under this division.

Sec. 21-177. Provisions cumulative.

The provisions of this division are cumulative of all other requirements of this Code and other laws, including, without limitation, the Construction Code and the Fire Code, as well as all applicable state and federal laws and regulations. Compliance with this division does not excuse compliance with any other law, and permittees are additionally required to obtain any other permits, licenses, and authorizations required by law, including but not limited to permits, licenses, and authorizations that are required to be obtained from the city, the Texas Commission on Environmental Quality, the United States

Environmental Protection Agency or any other appropriate governmental agency.

Sec. 21-178. Penalty; enforcement by city attorney; access to sites.

(a) Violation of this division is unlawful and hereby declared to be a nuisance. Any person who violates any provision of this division shall be guilty of an offense and, upon conviction thereof, shall be punished by a fine of not less than $500 or more than $2000 for each violation. Each and every day that any violation continues shall constitute a separate offense and shall be punishable as such.

(b) In accordance with Section 217.042 of the Local Government Code, the city attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this division. All authority granted to the city attorney under this division shall be exercised uniformly on behalf of and against all citizens and property in the city. This authorization shall be cumulative and in addition to any other civil or criminal penalty provisions. The city, acting through the city attorney or any other attorney representing the city, may file an action in a court of competent jurisdiction to recover damages from the owner or the agent of the owner of a facility in an amount adequate for the city to undertake any activity necessary to bring about compliance with this division.

(c) The city, acting through the city attorney or any other attorney representing the city, is hereby authorized to enter into agreements in lieu of litigation to achieve compliance with the terms, conditions and restrictions of any permit authorized under this division or the provisions of this division.

(d) When it is necessary to make an inspection to enforce the provisions of this division or to inspect or investigate conditions related to air quality, the health officer may enter a site at reasonable times to inspect or to perform the duties imposed by this division or to inspect or review records, reports, data, plans, or other documents relating to compliance with this division. If the site is occupied, credentials must be presented to the occupant and entry requested. If the site is unoccupied, the health official shall first make a reasonable effort to locate the owner or other person having charge or control of the site and request entry. If refused, the health official shall have recourse to the remedies provided by law to secure entry."

Section 3. That the City Council hereby approves the initial schedule of fees attached as Exhibit "A" hereto pursuant to Section 21-176 of the Code of Ordinances, Houston, Texas, as adopted by this Ordinance.

Section 4. 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 applicability 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 5. 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 October 1, 2007.

PASSED AND APPROVED this_____ day of _____, 2007.

_____
Mayor of the City of Houston

Prepared by the Legal Dept. _____ DPA
PSW: April 27, 2007 Senior Assistant City Attorney
Requested by Steven Williams, Director, Health and Human Services Department
L.D. File No.0380700017001
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EXHIBIT A

SCHEDULE OF PERMIT APPLICATION FEES

ARTICLE VI, CHAPTER 21, CITY OF HOUSTON CODE OF ORDINANCES

CONCRETE CRUSHING SITES

Permit Application Fee:	$500.00