

City of Houston, Texas, Ordinance No. 2007- 208

**AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO REGISTRATION OF AIR POLLUTION SOURCES AND INCORPORATION OF STATE RULES REGARDING AIR POLLUTION; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**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**, pursuant to Section 21-146 of the Code of Ordinances, Houston Texas, the Health Officer conducts a program for the abatement of air pollution within the City ; and

**WHEREAS**, registration of sources of air pollution will assist the Health Officer to locate and inspect the sources of air pollution; and

**WHEREAS**, the City Council finds that the Ordinance has been beneficial to the health, safety, and welfare of the public generally by accomplishing its objectives; and

**WHEREAS**, the City Council finds that it is appropriate to recover its costs of administering the program established by the Ordinance through the assessment of registration fees; 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 registrations issued by the City; and

**WHEREAS**, the City council finds that the fees are reasonably related to the cost of administering the program; and

**WHEREAS**, the City Council finds that the adoption of the amendments to the Ordinance would further enhance the benefits derived to the public health, safety, and welfare through regulation of additional sources of air pollution; **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 a part of this Ordinance.

**Section 2.** That Item (2) of Section 21-146 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(2) Investigating complaints of violations of the Texas Clean Air Act, pursuant to Chapter 382 of the Texas Health and Safety Code, and other applicable state and federal air pollution laws and rules, regulations and standards promulgated thereunder, by making investigations, inspections and observations of sources and ambient air conditions and maintaining records of such complaints, investigations, inspections and observations;"

**Section 3.** That Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"DIVISION 2. SOURCE REGISTRATION**

**Sec. 21-161. Definitions; scope.**

(a) **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:

*Automotive body repair shop* means any premises that engages in, conducts, or carries on automobile, truck or trailer body repairing or painting, or both.

*Dry cleaning plant* means any premises where fabrics or textiles are cleaned by use of perchlorethylene or petroleum solvents unless the devices used for the cleaning are coin-operated.

*Facility* means an automotive body repair shop, dry cleaning plant, gasoline dispensing site, sewage treatment plant, used vehicle sales lot or any facility or source as those terms are defined in the Texas Clean Air Act, Chapter 382 of the Texas Health Safety Code, as may be amended from time to time, that emits one ton per year or more of airborne contaminants.

*Gasoline dispensing site* means any premises where gasoline is dispensed from a fixed storage tank into vehicles.

*Registration* means a current and valid registration issued under this division.

*Sewage treatment plant* means a premises operated for the purpose of treating waste flowing into a publicly owned sanitary sewage system.

*Used vehicle* means an automobile, truck or trailer of any type that is used or intended for use on the streets and that has previously been registered in Texas or elsewhere.

*Used vehicle sales lot* means any premises utilized by a person required to be licensed as a dealer in motor vehicles under chapter 8 of this Code for the display of used motor vehicles for sale or trade.

(b) Scope. This article shall not be applicable to a facility that is owned and operated by the State of Texas or the United States of America.

**Sec. 21-162. Registration required; penalty.**

(a) It shall be unlawful for any person to operate or cause to be operated any facility unless there is a registration for the facility.

(b) It is an affirmative defense to prosecution under this section with respect to gasoline dispensing sites that the premises has dispensed less than 10,000 gallons per month in each calendar month beginning with January 1, 1991. Any site that exceeded 10,000 gallons in January of 1991 or that has exceeded 10,000 gallons in any ensuing month is not subject to this affirmative defense.

(c) Violation of this section shall be punishable upon first conviction by a fine of not less than \$250.00 nor more than \$1,000.00. If the violator has been previously convicted under this section, a violation of this section shall be punishable by a fine of not less than \$1,000.00 nor more than \$2,000.00.

(d) Each day that any violation under this section continues shall constitute a separate offense.

**Sec. 21-163. Issuance; expiration.**

Registrations shall be issued by the health officer. The director shall promulgate application forms on which applications shall be made. Upon the submission of a properly completed application form and the tender of the applicable fee, the health officer shall issue the registration. A separate application shall be required for each facility. A registration shall be valid for one year commencing on the date of its issuance and shall only apply to the facility identified on the registration. A registration is personal and may not be assigned, conveyed or transferred in any manner.

**Sec. 21-164 Incorporation of state rules; compliance**

(a) The following state air pollution control laws as they currently are and as they may be changed from time to time, are hereby incorporated as if written word for word in this section, including appendices and other matters promulgated as part of the state rules.

- (1) 30 TEX. ADMIN. CODE § 101 (2006)(General Air Quality Rules).
- (2) 30 TEX. ADMIN. CODE § 106 (2006)(Permits by Rule).
- (3) 30 TEX. ADMIN. CODE § 111 (2006)(Control of Air Pollution from Visible Emissions and Particulate Matter).
- (4) 30 TEX. ADMIN. CODE § 112 (2006)(Control of Air Pollution from Sulfur Compounds).
- (5) 30 TEX. ADMIN. CODE § 113 (2006)(Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants).
- (6) 30 TEX. ADMIN. CODE § 114 (2006)(Control of Air Pollution from Motor Vehicles).
- (7) 30 TEX. ADMIN. CODE § 115 (2006) (Control of Air Pollution from Volatile Organic Compounds).
- (8) 30 TEX. ADMIN. CODE § 116 (2006)(Control of Air Pollution by Permits for New Construction or Modification).
- (9) 30 TEX. ADMIN. CODE § 117 (2006)(Control of Air Pollution from Nitrogen Compounds).

- (10) 30 TEX. ADMIN. CODE § 122 (2006)(Federal Operating Permits Program).

(b) The director shall ensure that the health officers carry out a regulatory compliance program to determine whether registered facilities are in compliance with all applicable state and federal air pollution control laws and regulations. The regulatory compliance program shall include, but need not be limited to, on site inspections, complaint investigations and reviews of applicable compliance documentation. Civil, administrative and criminal sanctions imposed by law shall be pursued where violations are determined to exist.

**Sec. 21-165. Cumulative.**

The purpose of this division is to provide a viable means of locating and monitoring by routine compliance inspections sources of air contamination. A registration under this division shall neither excuse the securing of any license, permit, registration or other compliance document required under state or federal pollution laws or regulations, nor excuse full compliance with any applicable state or federal law or regulation. This division is cumulative of all other applicable laws and regulations.

**Sec. 21-166. Registration fees.**

(a) There are hereby assessed the following fees for the issuance of registrations:

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|-----|--|----------|
| (1) | Automotive body repair shop  | \$500.00 |
| (2) | Gasoline dispensing site:  |          |
|     | 1--6 gasoline pump nozzles, per nozzle   | \$250.00 |
|     | 7 or more gasoline pump nozzles, per nozzle  | 500.00   |
|     | Where pumps are so configured that two or more nozzles dispensing different types or grades of fuel are attached to one meter, then the nozzles attached to each such meter shall be regarded as one nozzle for purposes of the above calculation. |          |
| (3) | Dry cleaning plant (based upon the normal number of employees):  |          |
|     | Fewer than 6 employees   | \$100.00 |

	6 to 10 employees .....	200.00
	11 or more employees .....	250.00
(4)	Used vehicle sales lot (based on the number of vehicles normally offered for sale):	
	1--5 vehicles .....	No charge
	6--100 vehicles .....	250.00
	101 or more vehicles .....	350.00
(5)	Other facilities based upon annual airborne contaminant emissions:	
	1 ton or more but less than 5 tons .....	\$600.00
	5 tons or more but less than 10 tons .....	1,200.00
	10 tons or more .....	3,000.00
	In any instance in which a facility is unable to produce the records needed to establish its emissions with a reasonable degree of certainty, then the health officer shall estimate the amount on the basis of the best available information.	
(6)	Dual chambered incinerators .....	\$350.00
	Pathological waste incinerators .....	750.00
(7)	Sewage treatment plant, based upon design capacity in gallons per day:	
	Less than 500,000 .....	\$500.00
	500,001 to 9,999,999 .....	1,200.00
	10,000,000 to 39,999,999 .....	2,000.00
	40,000,000 or more .....	2,500.00

(b) Should more than one facility exist on any premises, then the total of all applicable fees shall be payable.

(c) The foregoing fees shall apply to all privately and publicly owned facilities. Facilities owned and operated by a county, and city facilities that are operated with general fund revenues, shall be exempt from payment of the fees but shall be required to be registered."

**Section 4.** The provisions of this Ordinance shall be applicable and take effect as follows:

(a) Any valid registration heretofore issued under Division 2 of Article VI of Chapter 2 of the Code of Ordinances, Houston, Texas, prior to its amendment by this Ordinance, shall be regarded as a valid registration issued under Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, as amended by this Ordinance, for the remainder of the term of the registration.

(b) For any facility that does not have a valid registration issued under Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, and is required to be registered by Division 2 of Article VI of Chapter 2 of the Code of Ordinances, Houston, Texas, as amended by this Ordinance, the effective date of Section 21-162 shall be July 1, 2007.

(c) All other provisions of this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

**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 as provided in **Section 4**, above.

**PASSED AND APPROVED** this 14th day of February, 2007.

Bill White  
Mayor of the City of Houston

Prepared by Legal Dept. [Signature]  
PSW:asw 01/25/2007 Senior Assistant City Attorney  
Requested by Stephen L. Williams, Director, Health and Human Services Department  
L.D. File No. 0380600049001

AYE	NO	
		<b>MAYOR WHITE</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		<del>SEKULA GIBBS</del>
✓		GREEN
	✓	BERRY
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: FEB 20 2007