

City of Houston, Texas, Ordinance No. 2008-414

AN ORDINANCE AMENDING SECTIONS 21-161, 21-164, AND 21-166 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS RELATING TO REGISTRATION OF AIR POLLUTION SOURCES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL, PROVIDING AFFIRMATIVE DEFENSES THERETO AND PENALTIES THEREFOR; CONTAINING A SAVINGS CLAUSE; 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, pursuant to Division 1 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, the Health Officer conducts a program for the abatement of air pollution within the City which is reasonable and necessary to protect the health, safety, and welfare of the public; and

WHEREAS, registration of sources of air pollution assists the Health Officer to locate and inspect the sources of air pollution; and

WHEREAS, the City Council finds that the source registration requirements of Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas have been beneficial to the health, safety, and welfare of the public generally by accomplishing its objectives; and

WHEREAS, the City Council finds that the adoption of the amendments to certain provisions of Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas

would further enhance the benefits derived to the public health, safety, and welfare; **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 Subsection (a) of Section 21-161 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new definition of the term *Act*, in alphabetical order in the appropriate position, that reads as follows:

“*Act* means the Texas Clean Air Act, Chapter 382 of the Texas Health & Safety Code, as may be amended from time to time.”

Section 3. That the caption of Section 21-164 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 21-164. Incorporation of state rules; compliance; penalty.”

Section 4. That Subsection (b) of Section 21-164 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(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.”

Section 5. That Section 21-164 of the Code of Ordinances, Houston, Texas, is hereby amended by adding new Subsections (c) thru (f) that read as follows:

“(c) It shall be unlawful for any person to operate or cause to be operated any facility that does not comply with the requirements in subsection (a) of this section.

(d) It is an affirmative defense to prosecution under this section that the prosecuted condition or activity has been:

- (1) Approved or authorized by the Act, state rule or state order; and
- (2) That the facility is in compliance with any such approval or authorization under the Act, state rule or state order.

(e) 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.

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

Section 6. That Item (2) of Subsection (a) of Section 21-166 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(2) Gasoline dispensing site:

1--6 gasoline pump nozzles, per site \$250.00

7 or more gasoline pump nozzles, per site \$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.”

Section 7. That Subsection (b) of Section 21-166 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) Should more than one facility exist on any premises, then the total of all applicable fees shall be payable up to a maximum of the equivalent of a fee for the four facilities with the highest fees.”

Section 8. 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 9. The provisions of this Ordinance shall apply to facility registration applications that are filed on or after the effective date of this Ordinance. Registration applications filed before the effective date of this Ordinance shall be governed by the former provisions of the Code of Ordinances, Houston, Texas, which are hereby saved from repeal for the limited purpose of their continued application to previously filed registration applications.

Section 10. 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 immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 7th day of May, 2008.

Bill White
Mayor of the City of Houston

Prepared by Legal Dept. Quiter Wagon *DAI*
PSW:ltsm 4/24/08 Senior Assistant City Attorney
Requested by Elena Marks, Director, Mayor's Office of Health and Environmental Policy
L.D. File No. _____

**CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: MAY 13 2008**

| AYE | NO | |
|---------|--|-----------------|
| ✓ | | MAYOR WHITE |
| •••• | •••• | COUNCIL MEMBERS |
| ✓ | | LAWRENCE |
| ✓ | | JOHNSON |
| ✓ | | CLUTTERBUCK |
| ✓ | | ADAMS |
| ✓ | | SULLIVAN |
| ✓ | | KHAN |
| ✓ | | HOLM |
| ✓ | | GARCIA |
| ✓ | | RODRIGUEZ |
| ✓ | | BROWN |
| ✓ | | LOVELL |
| ✓ | | NORIEGA |
| | ABSENT ON PERSONAL BUSINESS | GREEN |
| ✓ | | JONES |
| CAPTION | ADOPTED | |