

City of Houston, Texas, Ordinance No. 2018-226

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY ADDING A NEW ARTICLE RELATING TO REGULATION OF LODGING FACILITIES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the Administration and Regulatory Affairs Department (“ARA”) has determined that facilities providing multi-tenant living quarters for compensation to the general public in structures originally designed for single-family use, are in operation throughout the City of Houston (the “City”); and

WHEREAS, the City recognizes that a fire hazard is created when a structure houses more individuals than its designated occupancy load allows for under the Construction Code; and

WHEREAS, it is necessary to make changes to a facility, including making sure the facility has operable windows, a fire extinguisher and first-aid kit, and at least two means of egress, to convert a structure that has been designated single-family under the Construction Code to a multi-tenant lodging facility; and

WHEREAS, providing housing services in a lodging facility that has not been reviewed for compliance with the City’s Code provisions relating to fire safety poses a threat to the health, safety, and welfare of lodging facility residents; and

WHEREAS, establishing permitting and inspection requirements for lodging facilities ensures the City’s ability to enforce relevant City Code provisions; and

WHEREAS, City Council finds that adoption of this ordinance will better protect the public health, safety, and welfare of the citizens of the City; **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 Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XVIII that reads as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the “Code”) to make such nonsubstantive 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 4. That the City Council hereby approves the new Lodging Facility related fees established in Section 28-613 of the Code of Ordinances, Houston, Texas, in the amounts shown below:

Name	Description	Statutory Authority	Amount
Lodging Facility	Annual Permit (nonrefundable)	28-612(a)	\$ 81.00
Lodging Facility	Inspection (nonrefundable)	28-612(b)	\$192.00

These fees shall not be subject to the annual fee increase under Section 1-13 of the Code of Ordinances, Houston, Texas. The Director of Finance shall incorporate the new fees in the City Fee Schedule.

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 immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 21st day of March, 2018.

APPROVED this 22nd day of March, 2018.

Sylvester Turner

Mayor of the City of Houston

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

City Secretary

Prepared by Legal Dept. _____
JWG:asw 03/06/2018 Assistant City Attorney
Requested by Carol Haddock, Director, Houston Public Works
L.D. File No. 0371800047001

EXHIBIT A

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS

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ARTICLE XVIII. LODGING FACILITIES

DIVISION 1. GENERALLY

Sec. 28-601. Definitions.

As used in this article, the following words, terms and phrases shall have the meanings assigned to them in this section, unless the context of their usage clearly indicates a different meaning:

Business day means the city's standard days of operation; 8:00 a.m. to 5:00 p.m., Monday through Friday, but shall exclude any day designated as an official city holiday or for which the operations of the city have been reduced or closed due to any unforeseen circumstance or emergency.

Department means Houston Public Works.

Director means the director of the department and the director's designees.

Employee means a person who regularly works in a lodging facility.

Hearing officer means an individual designated by the director to conduct administrative appeal hearings.

Lodging facility means an establishment that furnishes lodging to three or more persons who are unrelated to the owner of the establishment by blood or marriage. The term "lodging facility" shall not include: (1) a boarding home, as defined in article XIV of this chapter, (2) a hotel or bed and breakfast facility, each as defined in article VI of this chapter, or (3) a single-family residential building, condominium, or townhouse that is owner-occupied for at least three months of the year each year.

Operator means the person in control of a lodging facility.

Owner means the proprietor if a sole proprietorship, all general partners if a partnership, or the corporation and all officers, directors, and persons holding 50 percent or more of the outstanding shares of the corporation if a corporation.

Permit means a current, valid permit issued by the director pursuant to the terms of this article to an operator for a lodging facility.

Resident means a person who is residing in a lodging facility.

Sec. 28-602. Scope.

This article applies to all lodging facilities as defined in this article, regardless of when they began operation, except as otherwise provided by this article.

Sec. 28-603. Exemptions.

This article does not apply to:

- (1) Boarding home facilities, as defined in section 28-451 of this Code.
- (2) Correctional facilities or alternate housing facilities, each as defined in section 28-151 of this Code.
- (3) Home and community support services licensed under Texas Health and Safety Code Chapter 142, as amended.
- (4) Convalescent and nursing facilities and related institutions licensed under Texas Health and Safety Code Chapter 242, as amended.
- (5) Continuing care facilities licensed under Texas Health and Safety Code Chapter 246, as amended.
- (6) Assisted living facilities licensed under Texas Health and Safety Code Chapter 247, as amended.
- (7) Intermediate care facilities for individuals with an intellectual disability licensed under Texas Health and Safety Code Chapter 252, as amended.
- (8) A person who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:
 - a. The home and community-based services (HCS) waiver program;
 - b. The Texas home living (TxHmL) waiver program;
 - c. The STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or
 - d. Texas Government Code Section 534.152.
- (9) An establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care and or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and

quarantine laws and rules as described in Texas Health and Safety Code Section 242.003(3), as amended.

- (10) A facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Health and Human Services (HHS) and that is monitored by HHS or its designated local intellectual and developmental disability authority in accordance with standards set by HHS or is funded in whole or in part by the Texas Department of State Health Services and that is monitored by that department or by its designated local mental health authority in accordance with standards set by HHS, as described in Texas Health and Safety Code Section 247.004(4), as amended.
- (11) A hotel as defined by Texas Tax Code Section 156.001, as amended.
- (12) A retirement community as defined by Texas Tax Code Section 11.18, as amended.
- (13) The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows, such as a monastery or convent.
- (14) A child-care facility as defined by Texas Human Resources Code Section 42.002, as amended.
- (15) A family violence shelter center as defined by Texas Human Resources Code Section 51.002, as amended.
- (16) A fraternity or sorority house, or other dormitory, associated with an institution of higher education.
- (17) A multi-family rental building, as defined in section 10-152 of this Code.
- (18) A facility that is a member of the Houston/Harris County Continuum of Care, as described in 24 CFR Part 578.

Sec. 28-604. Rules; forms.

The director may issue rules and regulations for the operation of this article and shall promulgate application and permit forms. A copy of the forms rules, and procedures, if any, shall be maintained in the office of the director or on the city's web site for inspection, and copies may be purchased at the fee prescribed by law.

Sec. 28-605. Notices.

(a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant,

operator or owner of a lodging facility may be given by personal delivery, electronic mail, or United States mail, postage prepaid, addressed to the most recent address as specified in the application for the permit most recently received by the director, or any notice of address change most recently received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of residence or mailing address.

Sec. 28-606. Penalty; continuing violations.

(a) Violation of any provision of this article shall be punishable by a fine of \$500.00. Each day any violation continues shall constitute and be punishable as a separate offense.

(b) The revocation of any permit shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

Secs. 28-607—28-610. Reserved.

DIVISION 2. PERMITS

Sec. 28-611. Permit.

(a) It shall be unlawful for any person to operate a lodging facility within the city limits without a permit issued by the department pursuant to this article.

(b) Obtaining or holding a permit under this article shall not be interpreted to excuse or relieve a lodging facility or its owner, operator, or any employee from compliance with state law or other provision of this Code.

(c) A permit is personal to the owner of the facility for which it is issued and may not be transferred or otherwise assigned. Any change in ownership of the facility will require the filing of a new permit application within ten business days following the effective date of the change. The application shall be subject to the same fees and shall be treated in the same manner in all respects as an original application. Failure to timely file the new application for a permit may result in denial of the permit. If the permit holder for the facility is a corporation, and there is any transfer in the interest of the corporation or of any entity having an interest in the corporation after the permit is issued, the corporation must submit a new permit application within ten business days following the effective date of the change.

(d) A separate permit shall be required for each lodging facility.

(e) Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner renewed, revoked or surrendered. A permit may be renewed by filing an application for renewal with the director not more than 90 days prior to the expiration date of the permit.

Sec. 28-612. Fees.

(a) The annual lodging facility permit fee stated in the city fee schedule shall be payable upon the issuance of a permit and shall be nonrefundable. The annual lodging facility permit fee shall not be subject to the annual fee adjustment in section 1-13 of this Code.

(b) The lodging facility inspection fee stated in the city fee schedule shall be payable prior to the commencement of a scheduled inspection and shall be nonrefundable. The lodging facility inspection fee shall not be subject to the annual adjustment in section 1-13 of this Code.

Sec. 28-613. Application for permit.

(a) *Application form.* An operator of a lodging facility shall apply to the director for a permit annually on forms provided by the director and shall include the following information:

- (1)
 - a. The name, street address (and mailing address if different), email address, and Texas driver's license number of the intended operator; and
 - b. The name, street address (and mailing address if different), and email address of the owner;
- (2) The name under which the lodging facility is to be operated;
- (3) The lodging facility telephone number;
- (4) If the lodging facility is to be operated under an assumed name, a certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Business and Commerce Code, chapter 71);
- (5) If the lodging facility is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (6) If the lodging facility is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

- (7) If the lodging facility is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;
- (8) If the lodging facility is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;
- (9) The address and legal description of the real property on which the lodging facility is to be situated;
- (10) Proof of ownership of the real property upon which the lodging facility will be operated in the form of a certified copy of the recorded deed;
- (11) If the person identified as the owner of the real property in item (8) is not the owner or operator of the lodging facility, then the lease, purchase contract, purchase option contract, lease option contract or other document evidencing the legally enforceable right of the owner or operator of the lodging facility to use and possess the real property;
- (12) A general description of the services provided;
- (13) All security and resident monitoring plans and any additional security and monitoring measures which are to be implemented;
- (14) The date on which the applicant began or expects to begin operations as a lodging facility at the location;
- (15) Any other information that may be reasonably requested by the director; and
- (16) The following statements conforming to minimum state law requirements for unsworn declarations:
 - a. A statement by the owner of the real property upon which the lodging facility is situated attesting to the knowledge of that owner that the property will be used for the operation of a lodging facility;
 - b. A statement by the owner and operator of the lodging facility attesting that the applicant's operation will not violate deed restrictions; and

- c. A statement by the owner and operator of the lodging facility attesting that only framed beds at least six feet long and three feet wide equipped with supportive springs and clean supportive mattresses will be used by the lodging facility.

Any of items (2) through (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the original application or previous renewals thereof remain correct and current.

(c) *Request for inspection.* At the time of submission of the application, the owner or operator of a lodging facility shall submit a request to the building official for the lodging facility inspection described in section 28-616 of this Code.

Sec. 28-614. Permit process.

(a) *Initial acceptance of application.* The director shall initially review each application for issuance or renewal of a permit to determine whether the application is complete and all required information has been provided. If not, the director shall return the application to the applicant with a statement of deficiencies. The applicant may then correct the deficiencies and resubmit the completed application.

(a-1) *Internet posting by director.* Within five business days of the director's receipt and acceptance of the completed application for the issuance or renewal of a permit, the director shall cause to be posted on an internet website hosted by the department and being accessible to the public the following information as contained in the completed application:

- (1) The department's identification, reference, case or application number for the application;
- (2) The name of the operator and owner making the application; and
- (3) The physical street address and legal description of the real property as contained in the completed application, including but not limited to: the subdivision name, the subdivision section number, and the lot and block number on which the lodging facility is or is to be situated.

(b) *Review of application.* The director shall review a complete application to determine whether the applicant has met all applicable requirements of this article and of other applicable provisions and shall:

- (1) Return an application that contains any incorrect information;
- (2) Deny the issuance or renewal of a permit for which the application:
 - a. Contains materially false information; or

- b. Is submitted for a lodging facility that is not in compliance with this article; or
- (3) Approve the application and issue the permit, subject to compliance with this article, including, but not limited to, inspection of the lodging facility and payment of any required fees.

(c) *Denial.* If the director proposes to deny the issuance or renewal of a permit, he shall notify the applicant of the proposed grounds for the denial. The applicant may, within ten business days after the date of the notice letter cure any defect. If the applicant timely cures all defects, the director shall approve the application. If the applicant fails to cure all defects within ten business days after the date of the notice letter, the applicant may appeal the denial through the procedure described in section 28-618 of this Code.

(d) *Decision final.* The director shall provide written notice to an applicant of either final approval or denial of an application. The director's decision on an application shall be final, unless an appeal is timely filed.

(e) *Additional conditions for issuance of permit.* Notwithstanding the foregoing, no permit shall be issued until:

- (1) The director determines that the lodging facility has passed the required inspection; and
- (2) The applicant has paid all required fees.

Sec. 28-615. Operating requirements.

(a) *Posting.* The owner or operator of a lodging facility shall prominently and conspicuously post the permit issued for display in a public area of the lodging facility that is readily available to residents and visitors.

(b) *Framed beds.* The owner or operator of a lodging facility shall provide a separate framed bed at least six feet long and three feet wide equipped with supportive springs and clean supportive mattresses 24 hours a day for each resident at the lodging facility.

(c) *Records.* The owner or operator of each lodging facility shall maintain on the premises of the lodging facility records sufficient to verify and substantiate all information provided under section 28-613 of this Code. In addition, the owner or operator of each lodging facility shall maintain on the premises of the lodging facility documentation showing:

- (1) Staffing and shift assignments for all employees;

- (2) The name of each resident, accompanied by personal identifier information, including date of birth and copy of driver's license or other acceptable state recognized means of identification;
- (3) Resident service agreements signed by each resident or the resident's legal representative detailing the services to be provided to the resident by the lodging facility, and the cost of those services; and
- (4) Contact information for the resident's legal representative, if any.

The owner or operator shall maintain information relating to employees or residents required under this section for a period of at least five years after the employee or resident ceases to be employed by or reside at the lodging facility, as applicable, and shall maintain all other information required under this section for as long as the lodging facility is in operation and two years after it ceases to operate.

(d) *Report of death or criminal activity.* The owner or operator of each lodging facility shall immediately notify the Houston Police Department of any death or criminal activity that occurs on the premises of the lodging facility.

(e) *Inspection report.* The owner or operator shall maintain on the premises a current file of inspection reports and other documentation needed to demonstrate compliance with applicable laws and regulations, including the Fire Code and the Construction Code. The inspection reports must be signed by the inspector, dated, and free of any outstanding issues that require corrective actions.

(f) *Safety or emergency precautions.* The owner or operator of a lodging facility shall:

- (1) Implement a written fire and evacuation plan for the facility that sets forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency and identifies two points of entry and egress. The owner or operator shall ensure that all staff and residents are shown how to use all emergency exits from the lodging facility within 24 hours after arrival at the lodging facility. The owner or operator shall maintain documentation of such training.
- (2) Post an emergency evacuation plan in a common area, such as the kitchen or living room.
- (3) Ensure that each employee receives training on the emergency evacuation plan at least two times per year and shall maintain documentation of such training.
- (4) Ensure that flammable supplies, gasoline-operated equipment, and compressed gas equipment are stored outside of the living area.

- (5) Provide a sufficient number of accessible fire extinguishers. The owner or operator shall ensure that a person licensed to inspect fire extinguishers inspects the fire extinguishers annually. The owner or operator shall ensure that the fire extinguishers are recharged when needed by a person licensed to inspect fire extinguishers.
- (6) Provide and maintain an operable smoke alarm and, if any gas utility is provided, a carbon monoxide detector in each sleeping area, kitchen, and laundry area. The owner or operator shall ensure that these devices remain in good working order. If a lodging facility has a resident who is hearing-impaired, the owner or operator shall install and properly maintain a visual smoke alarm that is capable of alerting a hearing-impaired person of the presence of fire or smoke.
- (7) Ensure that properly and visibly labeled first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

Sec. 28-616. Inspections.

(a) Upon receipt of a request by the owner or operator of a lodging facility for an inspection to confirm that the lodging facility is in compliance with this Code, including the Fire Code and the Construction Code, the building official shall meet with the owner or operator to determine whether the lodging facility will require a certificate of occupancy.

- (1) If the building official determines that the owner or operator possesses a certificate of occupancy for the lodging facility that is appropriate for the proposed use, the building official shall schedule the lodging facility for a lodging facility inspection, upon receipt of payment of the fee stated in the city fee schedule; or
- (2) If the building official determines that the owner or operator possesses a certificate of occupancy for the lodging facility that is not appropriate for the proposed use, the building official shall schedule the lodging facility for a certificate of occupancy inspection, upon payment of any fee required therefor in the Construction Code;
- (3) If the building official determines that the owner or operator does not possess a certificate of occupancy for the lodging facility and a certificate of occupancy will be required for the proposed use, the building official shall schedule the lodging facility for a certificate of occupancy inspection, upon payment of any fee required therefor in the Construction Code; or
- (4) If the building official determines that a certificate of occupancy will not be required for the proposed use of the lodging facility, the building official

shall schedule the lodging facility for a lodging facility inspection, upon payment of any fee required therefor in the Construction Code.

The building official shall notify the lodging facility operator of the date and time scheduled for the inspection.

(b) The building official or any peace officer may enter the premises of a lodging facility at reasonable times to conduct an inspection, survey, or investigation to assure compliance with this article and to protect the health, safety, or welfare of the residents of a lodging facility. The building official may be assisted in any investigation by representatives of the police department, the fire department, the department of neighborhoods, the Houston Health Department, or other city or state agency or entity with appropriate jurisdiction over matters affecting the health, safety, or welfare of the residents of a lodging facility. During the course of any inspection, the owner, operator, and any employee of the lodging facility shall be required to identify himself and provide documentation of identity upon the request of the building official or any other city representative participating in the inspection.

(c) At the time of any inspection, the owner or operator of a lodging facility shall provide the director or peace officer access to books, records, and other documents maintained by or on behalf of a lodging facility as required under section 28-615 of this Code.

Sec. 28-617. Revocation of permit.

(a) A permit may be revoked if the director determines that:

- (1) The owner or operator of the lodging facility has received notice of more than five violations of this Code, including the Fire Code or Construction Code in a one-year period;
- (2) Any information supplied in the permit application was materially false or incorrect;
- (3) The permit was obtained or issued as a result of error;
- (4) The applicant obtained a permit by means of fraud, misrepresentation, or concealment of a fact or that the applicant falsified his original application for a permit; or
- (5) Any fact or circumstance exists that would be a basis for denial of an application for issuance or renewal of a permit.

(b) The procedures set forth in section 28-618 of this Code shall apply to appeals to the revocation of permits.

Sec. 28-618. Appeals.

(a) *Request for appeal.* An applicant or owner or operator of a lodging facility may appeal a denial of the application for or renewal of a permit or the revocation of a permit within ten business days after date of deposit of written notice in the mail by submitting a written request for an appeal to the director. If the applicant does not request a hearing within ten business days, the denial is effective and final on the eleventh day after the date of the director's notice of denial.

(b) *Conduct of hearing; rules and procedures.* An appeal hearing shall be conducted on a single weekday within 20 business days after the director receives a request for appeal and shall last no longer than eight hours. Further, an appeal hearing shall be informal and conducted under rules established by the director consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all appeal hearings conducted under this section:

- (1) All parties shall have the right to representation by an attorney licensed to practice in Texas, though an attorney is not required;
- (2) Each party may present witnesses in his own behalf;
- (3) Each party shall have the right to cross examine all witnesses; and
- (4) The hearing officer shall consider only the evidence presented at the appeal hearing in rendering a final decision.

(c) *Authority of hearing officer.* The hearing officer may affirm or reverse a denial or revocation under this article. The hearing officer shall affirm a denial or revocation if he determines by a preponderance of the evidence that grounds exist for the denial or revocation, respectively. The decision of the hearing official is final.

(d) *Notice of decision.* The hearing official shall give written notice of the decision to the applicant or owner or operator of the facility and the reasons therefor. The notice shall be provided by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable, but not more than 30 business days thereafter.

Sec. 28-619. Review to city council.

The director shall provide a review about this article to city council one year after it takes effect (March 22, 2018)¹ and each year thereafter.

City Secretary shall insert the date of passage and approval of this Ordinance ¹