

City of Houston, Texas, Ordinance No. 2018-227

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO REGULATION OF CORRECTIONAL FACILITIES AND ALTERNATE HOUSING FACILITIES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the Texas Department of Criminal Justice (“TDCJ”) approves privately-owned facilities called Alternate Housing Facilities to provide housing services to parolees; and

WHEREAS, the TDCJ has approved approximately ninety-nine Alternate Housing Facilities to operate in the City of Houston; and

WHEREAS, the TDCJ requires Alternate Housing Facilities to comply with all municipal codes and regulations; and

WHEREAS, fifty percent of parolees that were living in an Alternate Housing Facility in the City of Houston as of October 2017 were convicted of an offense that was sexual in nature and may have as a condition of their parole the requirement that they not reside in a facility that is within a specified number of feet, the distance being determined on a case by case basis, of a school or park, and

WHEREAS, it is TDCJ’s policy to approve a facility as an Alternate Housing Facility only if it is established at least 1000 feet from any other approved Alternate Housing Facility, and

WHEREAS, based on 2017 crime data compiled by the Houston Police Department (“HPD”), there are on average a greater number of reported incidents of criminal activity per square mile within 1000 feet of an alternate housing facility that is less than 1000 feet from another alternate housing facility, than for a facility that is not within 1000 feet of any other facility; and

WHEREAS, there are on average a greater number of reported incidents of criminal activity per square mile within 1000 feet of an alternate housing facility, than within 1000 feet of any park, school, or daycare in the City; and

WHEREAS, over half of the alternate housing facilities currently operating in the City are located within 1000 feet of a park, school, or daycare; and

WHEREAS, 2017 crime data shows that there is a higher occurrence of reported criminal activity within 1000 feet of a park, school, or daycare that is located within 1000

feet of an alternate housing facility than occurs on average within 1000 feet of a park, school, or daycare that is not located within 1000 feet of an alternate housing facility; and

WHEREAS, the City has determined that there is approximately 350 square miles (52% of the City's total area) that is not within 1000 feet of a park, school, daycare, or an existing alternate housing facility; and

WHEREAS, the Administration and Regulatory Affairs Department ("ARA") has determined that many Alternate Housing Facilities provide multi-tenant living quarters in structures originally designed for single-family use; 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 numerous 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, for these reasons the City Council of the City of Houston believes it is in the interest of the public health, safety and welfare to require the permitting of and oversight for the operation of Alternate Housing Facilities in the City of Houston; **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 IV of Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended to read 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 Correctional Facility Permit, Alternate Housing Facility Permit, Correctional Facility Inspection, and Alternate Housing Facility Inspection fees established in Section 28-462 of the Code of Ordinances, Houston, Texas, in the amounts shown below:

Name	Description	Statutory Authority	Amount
Alternate Housing Facility	Annual Permit (nonrefundable)	28-153(a)	\$130.00
Alternate Housing Facility	Inspection (nonrefundable)	28-153(b)	\$192.00
Correctional Facility	Annual Permit (nonrefundable)	28-153(a)	\$130.00
Correctional Facility	Inspection (nonrefundable)	28-153(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 and remove the former Correctional Facilities Application – Original, Application – Renewal, and Permit transfer fees from 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.

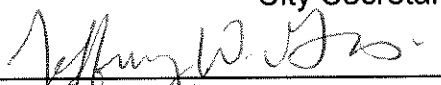


Mayor of the City of Houston

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
Requested by Tina Paez, Director, Department of Administration and Regulatory Affairs
L.D. File No. 0371800048001



Assistant City Attorney

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: **MAR 27 2018**

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		STARDIG
ABSENT		DAVIS
✓		COHEN
ABSENT		BOYKINS
✓		MARTIN
✓		LE
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		LASTER
✓		
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		EDWARDS
✓		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT A

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS

* * *

ARTICLE IV. CORRECTIONAL FACILITIES AND ALTERNATE HOUSING FACILITIES

Sec. 28-151. Definitions.

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

Alternate housing facility means a residence in which three or more unrelated parolees reside that:

- (1) Is owned by an individual, private entity, or non-profit or faith-based organization;
- (2) Is not operated by, established by, or contracted with the Texas Department Criminal Justice ("TDCJ"); and
- (3) Will be operated under TDCJ approval.

The operator of an alternate housing facility that does not have TDCJ approval may apply for and be granted an initial permit, provided he shall apply for and obtain TDCJ approval for the facility within 45 days after obtaining a permit under this article and shall maintain an approved status with TDCJ for as long as the facility is in operation.

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.

Correctional facility means a facility for the housing and rehabilitation or training of adults on parole, early release or pre-release, or any other form of executive, judicial or administrative release from a penal institution. Such a facility shall not include a facility that is:

- (1) Used primarily as a temporary holding facility;
- (2) Used primarily for persons arrested for or found guilty of misdemeanor offenses;

- (3) Located in or near court facilities; or
- (4) Used primarily to hold prisoners awaiting transfer to a state facility.

Department means the department of administration and regulatory affairs.

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

Facility means a correctional facility or an alternate housing facility.

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

Licensed day care center means a facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Operator means the manager or other natural person principally in charge of a facility.

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

Parolee means a convicted felon released from incarceration to serve a portion of his sentence under supervision in the community.

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

Public park or recreation facility means a publicly owned or controlled park or recreation facility operated for the benefit of the general public, whether situated in the city or not, and including but not limited to those park and playground properties placed under the direction and control of the Parks and Recreation Department by chapter 32 of this Code.

School means a building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education, together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

- (1) Public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through twelve classes are taught;
- (2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through twelve; and
- (3) Public and private institutions of higher education.

Tract means a contiguous parcel of land under common ownership, whether situated within the city or not.

Sec. 28-152. Previously existing facilities.

(a) A correctional facility that is operating on 3-22-18, 2018,¹ shall come into full compliance with this article by October 1, 2019.

(b) An alternate housing facility that is operating under approval of the TDCJ on 3-22-18, 2018,² shall come into full compliance with this article by October 1, 2019.

Sec. 28-153. Permit.

(a) It shall be unlawful for any person to own or operate a facility located within the city limits without a permit.

(b) It shall be unlawful for any person to own or operate a facility located within the city limits unless the permit is posted at or near the principal public entrance to the facility in such a manner that it will be conspicuous to all who enter the premises.

(c) In any prosecution under subsection (a) above, it shall be presumed that there was no permit at the time of the alleged offense, unless a permit was then posted as provided in subsection (b) of this section.

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

(e) 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

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

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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.

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

(g) A permit is valid only at the location for which it is issued.

(h) 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.

(i) A permit may be cancelled upon written request of the owner or operator and surrender of the permit itself to the director. The surrender of a permit shall be effective upon its delivery to the office of the director.

Sec. 28-154. Fees.

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

(b) The applicable correctional facility inspection fee or alternate housing facility inspection fee stated in the city fee schedule shall be payable prior to the commencement of an inspection and shall be nonrefundable. The inspection fee shall not be subject to the annual adjustment in section 1-13 of this Code.

Sec. 28-155. Permit applications; renewals.

(a) An operator of a facility shall apply for a permit annually to the director. . Application forms shall be supplied by the director. The intended operator shall be required to give the following information on the application form:

- (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 facility is to be operated;

- (3) The telephone number of the facility;
 - (4) A general description of the services to be provided, including the name and contact information of any federal, state or other governmental entity for which the services are to be provided;
 - (5) The classification of the residents to be housed (including whether violent or nonviolent and whether any person convicted of an offense listed under article 42A.054 of the Code of Criminal Procedure will be housed);
 - (6) If operated on behalf of a governmental entity, a copy of any existing contract or bid specifications for its operation, all security and resident monitoring plans required under state or federal law, and any additional security and monitoring measures that are to be implemented;
 - (7) The address and legal description of the tract of land on which the facility is to be located;
 - (8) If the facility is in operation, the date on which the owner acquired the facility for which the permit is sought, and the date on which the facility began operations as a facility at the location for which the permit is sought; and
 - (9) If the facility is not in operation, the expected start-up date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
- (b) The application shall be accompanied by the following:
- (1) A statement conforming to minimum state law requirements for unsworn declarations by the owner of the real property attesting to the knowledge of the owner that the property will be used for the operation of a facility;
 - (2) If the 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);
 - (3) If the facility is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

- (4) If the facility is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
- (5) If the 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;
- (6) If the 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;
- (7) Proof of the current fee ownership of the tract of land on which the facility is to be situated in the form of a copy of the recorded deed;
- (8) If the person identified as the fee owner of the tract of land in item (7) is not also the owner of the 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 facility to have or obtain the use and possession of the tract or portion thereof that is to be used for the facility for the purpose of the operation of the facility;
- (9) A copy of the facility certificate of occupancy;
- (10) A statement conforming to minimum state law requirements for unsworn declarations by the owner and operator of the facility attesting that the applicant's operation will not violate deed restrictions;
- (11) Upon renewal for an alternate housing facility, proof of the continued approval of the TDCJ; and
- (12) Any other information that may be reasonably requested by the director.

Any of items (1) through (9) above may 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 facility shall submit a request to the building official for the annual correctional facility or alternate housing facility inspection described in section 28-158 of this Code.

Sec. 28-156. 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 facility is or is to be situated.

(b) *Review of application.* Within 35 business days after receipt of any complete application and passed annual correction facility or alternate housing facility inspection, either original or renewal, 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 if any of the following conditions exist:
 - a. The applicant's facility is located within 1,000 feet of any licensed day care center, public park or recreation facility, or school;
 - b. The applicant's facility is located within 1,000 feet of any other facility for which there is a permit or that is by law exempt from the terms of this article;
 - c. The applicant failed to supply all the information requested on the application;
 - d. The applicant gave materially false, fraudulent or untruthful information on the application;

- e. The application or the facility does not meet any other requirement of this article;
 - f. The operator has had a permit revoked for the same enterprise within the 180-day period next preceding the date that the application was filed;
 - g. The applicant's facility will, or is intended to, house more than 75 adults on parole, early release or pre-release, or any other form of administrative release from a penal institution; or
 - h. The facility or its operation has failed to comply with all applicable statutes and regulations, whether at the applied-for location or another location; or
- (3) Approve the application and issue the permit, subject to compliance with this article, including, but not limited to, inspection of the facility and payment of any required fees.

A correctional facility that was operating on 3-22-18, 2018,³ shall be exempt from the distance requirements of subitems a and b of item (2) above, provided that the facility is subsequently issued a permit on or before October 1, 2019, and is operated continuously thereafter under a permit or renewal without termination, revocation, or lapse. If not timely filed, a renewal application shall be subject to the same fees and shall be treated in the same manner in all respects as an original application.

3-22-18 An alternate housing facility that was operating under approval of the TDCJ on 3-22-18, 2018,⁴ shall be exempt from the distance requirements of subitems a and b of item (2) above, provided that the facility is subsequently issued a permit on or before October 1, 2019, and is operated continuously thereafter under a permit or renewal without termination, revocation, or lapse, and further provided that the TDCJ approval continues to remain in effect. If not timely filed, a renewal application shall be subject to the same fees and shall be treated in the same manner in all respects as an original application.

All measurements for subitems a and b of item (2) above shall be made in a straight line without regard to intervening structures or objects, from the nearest point on the property line for the applicant's facility to the nearest point on the property line of such other licensed day care center, public park or recreation facility, or school.

(c) *Property uses and distances upon renewal.* Property uses and distances for subitems a and b of subsection (b)(2) of this section, as determined at the time an original application is filed shall apply to a renewal application that is timely filed as provided in section 28-153(h) of this Code. If not timely filed, renewal applications shall

³ City Secretary shall insert the date of passage and approval of this Ordinance.

⁴ City Secretary shall insert the date of passage and approval of this Ordinance.

be subject to the same fees and shall be treated in the same manner in all respects as original applications.

(d) *Denial.* In the event that the director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within 35 days after the receipt of its application by the director. An 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 28-160 of this Code.

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

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

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

Sec. 28-157. Operating requirements.

(a) *Posting.* The owner or operator of a facility shall display at the principal public entrance of the facility that is readily available to residents and visitors:

- (1) The permit issued pursuant to this article; and
- (2) The certificate of occupancy issued by the city for the facility.

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

(c) *TDCJ approval.* The owner or operator of an alternate housing facility that is newly permitted shall obtain TDCJ approval for the facility within 45 days after obtaining a permit under this article and shall maintain an approved status with TDCJ for as long as the facility is in operation.

(d) *Records.* The owner or operator of each facility shall maintain on the premises of the facility records sufficient to verify and substantiate all information provided under section 28-155 of this Code. In addition, the owner or operator of each facility shall maintain on the premises of the 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 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 facility, as applicable, and shall maintain all other information required under this section for as long as the facility is in operation and two years after it ceases to operate.

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

(f) *Inspection reports.* 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.

- (g) *Safety or emergency precautions.* The owner or operator of a 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 facility within 24 hours after arrival at the 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 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. 28-158. Inspections.

(a) Upon receipt of a request by the owner or operator of a facility, the building official shall conduct an annual correctional facility or alternate housing facility inspection to confirm that the facility is in compliance with this Code, including the Fire Code and the Construction Code. Upon receipt of the inspection request and payment of the fee stated in the city fee schedule, the building official shall notify the owner and operator of a facility of the date and time scheduled for the inspection.

(b) The building official or any peace officer may enter the premises of a facility at reasonable times to conduct an inspection, survey, or investigation to ensure compliance with this article and to protect the health, safety, or welfare of the residents of the facility. The building official may be assisted in any investigation by representatives of the department, 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 health, safety or welfare of the residents of a facility. During the course of any inspection, the owner, operator, and any employee of the 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 facility shall provide the building official or peace officer access to books, records, and other documents maintained by or on behalf of a facility as required under section 28-157 of this Code.

Sec. 28-159. Revocation of permit.

(a) The director shall have the authority to revoke a permit for any one or more of the following reasons:

- (1) The operator of the facility gave materially false, fraudulent or untruthful information on the original, renewal or transfer application form;
- (2) The facility has not been open for operations for a period of 30 consecutive days, unless due to circumstances beyond the control of the owner, and the owner is proceeding with due diligence, given all attendant circumstances, to open or reopen the facility;
- (3) The permit was erroneously issued in contravention of the criteria of this article;
- (4) The owner or operator of the facility has received notice of more than five violations of this Code, including the Fire Code or Construction Code, in a one-year period; or
- (5) The facility or its operation has failed to comply with all applicable statutes and regulations.

(b) The procedures set forth in section 28-160 of this Code shall apply to appeals of the revocation of permits.

Sec. 28-160. Appeals.

(a) *Request for appeal.* An applicant or owner or operator of a facility may appeal a denial of an 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 business 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 shall be 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. 28-161. 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. 28-162. 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 facility may be given either 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. 28-163. 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.

Sec. 28-164. Security and resident monitoring.

The director shall furnish a copy of each application for a correctional facility permit to the chief of police. The chief of police or his designees shall review the security and resident monitoring plans and may make comments concerning any deficiencies to the owner, operator and governmental entity for which the correctional facility is to be operated, in the same manner as for notices in this article. The chief of police or his designees shall monitor all correctional facilities for compliance with the required security and resident monitoring plans and notify the owner, operator and applicable governmental entity of any alleged violations.

Sec. 28-165. Review to city council.

The director shall provide a review about this article to city council one year after it takes effect (3-22-18)⁵ and each year thereafter.

Secs. 28-166—28-170. Reserved.

City Secretary shall insert the date of passage and approval of this Ordinance ⁵