

6-27-12

ORDINANCE NO. 28706

An ordinance adding CHAPTER 8A, "BOARDING HOME FACILITIES," to the Dallas City Code; and amending CHAPTER 33, "PERSONAL CARE FACILITIES," of the Dallas City Code; providing definitions; providing licensing procedures, requirements, qualifications, and fees for boarding home facilities; providing for inspection of boarding home facilities; providing construction, maintenance, reporting, record-keeping, education, and care requirements for boarding home facilities; providing for criminal background history checks for the owners, operators, and employees of boarding home facilities; providing food handler requirements for boarding home facilities; providing updated terminology in Chapter 33 to correspond with changes to Chapter 247 of the Texas Health and Safety Code; providing a penalty not to exceed \$2,000; providing a saving clause; and providing an effective date.

WHEREAS, Health Management Associates performed a study of unregulated boarding home facilities in Texas (hereafter "Study") for the Texas Health and Human Services Commission in 2008, which the Commission presented to the Governor and Texas Legislature in 2009; and

WHEREAS, the Study identified 845 boarding home facilities in Texas, with most being in the major urban areas such as Dallas, but concluded that there were undoubtedly more facilities in existence because they were difficult to identify and locate; and

WHEREAS, city staff has identified approximately 225 boarding home facilities in the City that may be subject to this ordinance; and

WHEREAS, the Study found that many low-income Texans reside in unlicensed boarding home facilities, particularly the aged, disabled, mentally ill, and persons with a history of substance abuse; and

WHEREAS, the Study further found that many residents of boarding home facilities have a high likelihood of needing personal care, medical, mental health, and social services, and that these facilities often do not meet those needs; and

WHEREAS, the Study further found some residents have severe behavioral problems and may, without adequate treatment and intervention, present a danger to themselves or other residents; and

WHEREAS, the Study further found that many residents are vulnerable to being financially exploited by the facilities; and

WHEREAS, the Study further found that some facilities are unsafe and unsanitary and even unacceptably dangerous because they are unclean, not adequately heated or cooled, and in need of critical repairs; and

WHEREAS, many boarding home facilities leave residents in isolated environments, which subjects them to neglect and abuse; and

WHEREAS, many residents who lose control of their finances to other persons at the facilities lose the ability to care for themselves and relocate if needed; and

WHEREAS, many boarding home facilities are owned and operated by persons who do not reside on the premises or nearby and who seldom visit the facility; and

WHEREAS, some boarding home facilities have few or no employees or other staff; and

WHEREAS, the lack of on-site management at many boarding home facilities can directly affect the health, safety, and general welfare of the residents and the nearby neighbors; and

WHEREAS, the problems associated with boarding home facilities described above have been extensively documented by the Study, the news media, and city code inspectors, health inspectors, building inspectors, police officers, fire-rescue personnel, and crisis intervention staff; and

WHEREAS, the Research Triangle Institute and Brown University prepared a study titled, "Executive Summary: Analysis of the Effect of Regulation on the Quality of Care in Board and Care Homes" (hereafter "Analysis") for the U.S. Department of Health and Human Services in 1995; and

WHEREAS, the Analysis found that: (1) licensure alone was effective in ensuring that boarding home facilities provided care above a threshold of minimum performance; (2) extensive regulatory systems reduced the prevalence of unlicensed homes; (3) extensive regulatory systems and licensure were effective in promoting better safety, quality of life, and quality of care; and (4) regulation achieved positive effects on quality without producing an excessively institutional model of care; and

WHEREAS, the Study recognized that municipalities may require licensure and otherwise specifically regulate boarding home facilities; and

WHEREAS, the Study recommended that staff members in boarding home facilities should be appropriately trained to recognize problems and to assist residents in obtaining health and social services; and

WHEREAS, the Study recommended that the State adopt a comprehensive state-wide approach to address the problems associated with boarding home facilities; and

WHEREAS, in response to the Study, the State Legislature enacted H.B. 216 in 2009, which is now codified in Chapter 260 of the Texas Health and Safety Code; and

WHEREAS, Chapter 260 authorizes, but does not require, municipalities to require boarding home facilities to obtain a permit and comply with model standards; and

WHEREAS, neither Chapter 260 nor any other state law requires boarding home facilities to comply with any uniform state standards; and

WHEREAS, Section 215.075 of the Texas Local Government Code grants home-rule municipalities the authority to license any lawful business or occupation that is subject to the police power of the municipality; and

WHEREAS, the Texas Health and Human Services Commission published model standards for municipal regulation of boarding home facilities in the August 27, 2010 edition of the Texas Register; and

WHEREAS, the city council believes it is in the interest of the public health, safety, and welfare to regulate and license boarding home facilities and to adopt, with certain modifications, the model standards published by the Texas Health and Human Services Commission; and

WHEREAS, the city council believes the standards in this ordinance will provide adequate standards to protect the health and safety of residents of boarding home facilities, protect these residents from persons who try to take advantage of them, ensure that adequate fire-rescue and police personnel and vehicles are available to serve these residents, and help the city identify and facilitate appropriate responses for residents who may require special assistance during an emergency or at any other time; and

WHEREAS, the city council believes it is in the interest of the public health, safety, and welfare to prohibit persons convicted of certain crimes from owning, operating, or being employed by a boarding home facility in the city of Dallas until the respective time periods designated in Section 8A-37 have expired; and

WHEREAS, the city council, in accordance with Chapter 53 of the Texas Occupations Code, has considered the following criteria:

- (1) the nature and seriousness of the crimes;
  - (2) the relationship of the crimes to the purposes for requiring a license to operate a boarding home facility;
  - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
  - (4) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a boarding home facility; and
- has determined that the crimes listed in Section 8A-37 of CHAPTER 8A, "BOARDING HOME FACILITIES," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of the owners, operators, and employees of a boarding home facility, whose job is to provide lodging and certain services for three or more people who are not related to the owner or operator of the boarding home facility; and

WHEREAS, the city council has determined that the very nature of owning, operating, or being employed by a boarding home facility brings such a person into constant contact with the public, which gives the person repeated opportunities to participate in crimes of violence or dishonesty, or crimes against the public health, safety, or morals, should the person be so inclined, and, thus, it is the finding of the city council that the crimes listed in Section 8A-37 of

CHAPTER 8A, "BOARDING HOME FACILITIES," of the Dallas City Code, as set forth in this ordinance, render a person unable, incompetent, and unfit to perform the duties and responsibilities of the owner, operator, or employee of a boarding home facility in a manner that would promote the public safety and trust; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 8A-37 of CHAPTER 8A, "BOARDING HOME FACILITIES," of the Dallas City Code, as set forth in this ordinance, is presently fit to engage in the ownership or operation of a boarding home facility, or be employed by a boarding home facility, in the city until the respective time periods designated in that section have expired, and, thus, should be disqualified from being issued a license to own or operate a boarding home facility until the expiration of those time periods; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Dallas City Code, as amended, is amended by adding a new CHAPTER 8A, "BOARDING HOME FACILITIES," to be composed of Sections 8A-1 through 8A-40, to read as follows:

**"CHAPTER 8A**

**BOARDING HOME FACILITIES**

**ARTICLE I.**

**GENERAL PROVISIONS.**

**SEC. 8A-1.           PURPOSE.**

- (a) The purposes of this chapter are to ensure that:
- (1) residents of boarding home facilities live in safe, sanitary, and decent housing;

(2) these residents are not abused, neglected, or exploited by the owners, operators, or employees of boarding home facilities;

(3) adequate fire-rescue and police personnel and vehicles are available to serve these residents; and

(4) the city can identify and facilitate appropriate responses for residents who may require special assistance during an emergency or at any other time.

(b) The city is accomplishing those purposes by implementing, standards for construction, maintenance, reporting, record-keeping, education, and care for the protection of the health, safety, and welfare of residents of boarding home facilities. These standards are implemented pursuant to the city's home-rule authority under Article XI, Section 5 of the Texas Constitution and the authority to license lawful businesses subject to the city's police power granted by Sections 54.004 and 215.075 of the Texas Local Government Code.

(c) The city council also intends that this chapter fully comply with the Federal Fair Housing Amendments Act of 1988 ("FHAA"), as amended, the Americans with Disabilities Act of 1990 ("ADA"), as amended, and all other applicable state and federal legislation. It is the express intent of the city council that this chapter be construed in a manner consistent with the FHAA, the ADA, and all other applicable state and federal legislation at all times.

## **SEC. 8A-2. DEFINITIONS.**

Unless the context clearly indicates otherwise, in this chapter:

(1) ABUSE means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the person's caretaker, family member, or other individual who has an on-going relationship with the person; or

(B) sexual abuse of a resident, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08 of the Texas Penal Code (indecent exposure), as amended, or Chapter 22 of the Texas Penal Code (assaultive offenses), as amended, committed by the person's caretaker, family member, or other individual who has an on-going relationship with the person.

(2) ALCOHOL means any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

(3) ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION  
means:

- (A) assisting a resident by reminding the resident to take medication;
  - (B) opening and removing medications from a container;
  - (C) placing medication in a resident's hand or in or on a clean surface such as a medication reminder box; and
  - (D) reminding a resident when a prescription medication needs to be refilled.
- (4) BOARDING HOME FACILITY means an establishment that:
- (A) furnishes, in one or more buildings, lodging to three or more persons who are unrelated to the owner of the establishment by blood or marriage;
  - (B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services to those persons; and
  - (C) is not listed in Section 8A-5 of this chapter.
- (5) CONTROLLED SUBSTANCE means a substance regulated under 21 C.F.R. § 1308, as amended.
- (6) CONVICTION means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. "Conviction" includes disposition of charges against a person by probation.
- (7) DEPARTMENT means the department designated by the city manager to enforce and administer this chapter.
- (8) DIRECT THREAT means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.
- (9) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter and includes representatives, agents, or department employees designated by the director.
- (10) DISABILITY means a disability as defined in 42 U.S.C. § 12102, as amended.
- (11) EMERGENCY CONDITION means any fire, natural disaster, collapse hazard, burst pipe, leaking sewage, lack of working utilities, dangerous utilities, serious police incident, or other condition that requires an immediate response to prevent harm to the property, the occupants of the property, or the public.



(12) EMPLOYEE means a person who performs caretaking duties or regularly works in a boarding home facility.

(13) EXPLOITATION means the illegal or improper act or process of an owner, operator, employee, caretaker, family member, or other individual who has an on-going relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(14) GOOD NEIGHBOR AGREEMENT means a contract between the city and a licensee whereby the city agrees to defer one or more forms of enforcement action in consideration for the licensee agreeing to perform actions, or refrain from performing actions, that are not already required or prohibited by city ordinance, rule, or regulation, or any county, state, or federal law or regulation and that enhances the peace, health, safety, good morals, and general welfare of the residents and employees of the boarding home facility and the surrounding community.

(15) INJURY, INCIDENT, OR UNUSUAL ACCIDENT means an event that resulted in a change in a resident's physical or mental status that requires intervention by a private or public entity responsible for medical or mental health services or an event that requires the facility to take safety and protection measures for the resident or others. This term includes, but is not limited to, the following:

(A) An allegation of abuse, neglect, or exploitation.

(B) Death.

(C) A resident's unexplained absence from the boarding home facility.

(D) Fire.

(E) Criminal acts.

(F) Fights between residents.

(16) LICENSEE means:

(A) a person in whose name a boarding home facility license has been issued;

(B) each individual listed as an owner or operator of the boarding home facility on the application for a boarding home facility license;

(C) each individual who has an ownership interest in the corporation or other legal entity owning or operating the boarding home facility, regardless of whether the individual's name or signature appears on the boarding home facility license application; and

(D) each officer of the corporation or other legal entity owning or operating a boarding home facility, regardless of whether the individual's name or signature appears on the boarding home facility license application.

(17) NEGLECT means the failure of a resident or licensee to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm or pain.

(18) OPERATOR means the person in control of a boarding home facility.

(19) OWNER means an individual who has an ownership interest in a corporation or other legal entity operating a boarding home facility or the owner of the real property where a boarding home facility is located.

(20) PERSONAL CARE SERVICES means:

(A) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;

(B) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or

(C) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(21) RESIDENT means a person who is residing in a boarding home facility.

### **SEC. 8A-3. AUTHORITY OF DIRECTOR.**

The director shall implement and enforce this chapter and may by written order establish such rules, regulations, or procedures, not inconsistent with this chapter or other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, as the director determines are necessary to discharge any duty under or to effect the policy of this chapter.

## **ARTICLE II.**

### **ADMINISTRATIVE.**

### **SEC. 8A-4. LICENSE REQUIRED.**

(a) A person commits an offense if he owns or operates a boarding home facility in the city without a valid license issued under this chapter.

(b) It is a defense to prosecution under this chapter if a person operates a boarding home facility while an application under Section 8A-6 is pending.

(c) It is a defense to prosecution under this section if a person operates a facility listed in Section 8A-5 of this chapter.

**SEC. 8A-5. EXEMPTIONS.**

This chapter does not apply to the following:

(1) Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code, as amended.

(2) Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code, as amended.

(3) Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code, as amended.

(4) Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code, as amended.

(5) Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code, as amended.

(6) A person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by a state agency with jurisdiction over mental health and mental disability and monitored by that state agency or its designated local authority in accordance with standards set by that agency.

(7) An establishment conducted by or for persons who have a sincere religious belief in providing facilities to care and treat the sick by depending 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 including Sections 8A-22, 8A-23, 8A-24, 8A-27(h), 8A-29, 8A-30, 8A-31, 8A-32, 8A-33, and 8A-34 of this chapter.

(8) A hotel as defined by Section 156.001 of the Texas Tax Code, as amended.

(9) A retirement community as defined by Section 11.18 of the Texas Tax Code, as amended.

(10) A monastery or convent as defined by Section 51A-4.204 of the Dallas Development Code, as amended.

(11) A child-care facility as defined by Section 42.002 of the Texas Human Resources Code, as amended.

(12) A family violence shelter center as defined by Section 51.002 of the Texas Human Resources Code, as amended.

(13) A college dormitory, fraternity, or sorority house as defined by Section 51A-4.209 of the Dallas Development Code, as amended.

**SEC. 8A-6. LICENSE APPLICATION.**

To obtain a license to operate a boarding home facility, a person must submit an application to the director on a form provided for that purpose. The applicant must be the owner or operator of the boarding home facility. If the owner or operator is not an individual, an authorized officer or agent of the owner or operator must file the form. The application must contain the following information before it is considered to be complete:

(1) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of the applicant. The street address may not be the address of the boarding home facility unless the applicant actually resides full-time at the boarding home facility.

(2) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and position of the authorized officer or agent filing the form on behalf of the applicant, if the applicant is not an individual. The street address may not be the address of the boarding home facility unless the authorized officer or agent actually resides full-time at the boarding home facility.

(3) The form of business of the applicant; the name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of a high managerial agent of the business; and, if the business is a legal entity, such as a corporation or association, a copy of the documents establishing the business.

(4) The street address and telephone number of the boarding home facility.

(5) The name, street address, mailing address, e-mail address, and telephone number of a person or persons to contact in an emergency as required by Section 8A-17 of this chapter.

(6) Documentary evidence of payment of ad valorem taxes, fees, fines, and penalties owed to the city in connection with the boarding home facility.

(7) The names, street addresses, mailing addresses, e-mail addresses, telephone numbers, legible copies of the drivers' licenses or other official state or federal identification cards, and dates of birth of any owners, operators, or employees of the boarding home facility other than the applicant. The street address may not be the address of the boarding home facility, unless the owner, operator, or employee actually resides full-time at the boarding home facility.

(8) Completed state or federal request and release forms authorizing the city to obtain a criminal history report on each owner and operator of the boarding home facility.

(9) The maximum number of residents that will reside at the boarding home facility.

(10) The services to be offered or provided to the residents of the boarding home facility.

(11) A zoning verification letter stating that the proposed use of the property complies with the Dallas Development Code.

(12) If the boarding home facility has one or more residents with a disability, a list of disabilities of the residents.

(13) If the boarding home facility has one or more residents who are recovering from an addiction to alcohol or a controlled substance but are not currently using alcohol or the controlled substance, a document that describes the applicant's, owner's, or operator's plan for ensuring that the residents continue to refrain from using alcohol or the controlled substance, including all rules by which residents must abide, as required by Section 8A-34 of this chapter.

(14) A statement that, by filing the application, the applicant swears or affirms under penalty of perjury that, to the best of the applicant's knowledge, all information contained in the application is true and correct and that the application is complete and includes all information required to be disclosed under this section.

(15) Such additional information as the applicant desires to include or that the director deems necessary to aid in the determination of whether the requested license should be granted.

#### **SEC. 8A-7. NOTIFICATION OF CHANGE OF INFORMATION.**

The licensee shall notify the director within 10 days after any material change in the information contained in the application for a license to operate a boarding home facility, including any change in ownership or operation of the property and any new disabilities served by the boarding home facility.

**SEC. 8A-8.****FEES.**

- (a) The fee for a license to operate a boarding home facility is \$500.
- (b) No refund of a license fee will be made.
- (c) An applicant for a license may file an application with the director seeking a waiver or reduction of the annual license fee if the boarding home facility serves one or more persons with a disability and payment of the fee would result in substantial financial hardship to the applicant. The application must include the following information before it will be considered complete:
  - (1) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of the applicant.
  - (2) The number of residents of the boarding home facility with a disability.
  - (3) A list of the disabilities of the residents and the number of residents with each disability.
  - (4) The services provided by the boarding home facility to the residents.
  - (5) An explanation of the nature and severity of the financial hardship to the applicant if the fee were to be paid.
  - (6) A copy of the balance sheets and income statements for the boarding home facility, or equivalent documents, establishing the applicant's financial condition for the last three years in accordance with generally accepted accounting principles, unless the boarding home facility has been open for less than three years, in which case it must provide a copy of those documents during the time the facility has been in operation.
  - (7) A statement that, by filing the application, the applicant swears or affirms under penalty of perjury that, to the best of the applicant's knowledge, all information contained in the application is true and correct and that the application is complete and includes all information required to be disclosed under this chapter.
  - (8) Such additional information as the applicant desires to include or that the director deems necessary to aid in the determination of whether the requested waiver or reduction should be granted.
- (d) The director may waive or reduce the annual license fee if the director, after reviewing the complete application, finds that the applicant provides services to one or more persons with a disability and payment of the fee would result in substantial financial hardship to the applicant.

(c) An applicant may appeal a decision of the director under this section to the permit and license appeal board by filing a written notice with the director within 10 days after the date of the decision of the director. The permit and license appeal board shall hear and decide the appeal at its next available meeting. The permit and license appeal board shall use the same standard required for the director. The permit and license appeal board may affirm, reverse, or modify the decision of the director. Appeal to the permit and license appeal board constitutes the final administrative remedy.

**SEC. 8A-9. ISSUANCE AND DENIAL OF LICENSE.**

(a) Upon payment of all required fees and the submission of a complete application, the director shall issue a license to operate a boarding home facility to the applicant if the director determines that:

(1) the applicant has complied with all requirements for issuance of the license;

(2) the applicant, owners, operators, and employees of the boarding home facility meet the criminal history qualifications of Section 8A-37 of this chapter;

(3) the applicant, owners, operators, or employees of the boarding home facility do not own or operate another licensed boarding home facility in the city for which the license is currently suspended or has been revoked;

(4) the applicant has not made a false statement as to a material matter in the application for a license;

(5) the condition and use of the boarding home facility comply with the zoning regulations in the Dallas Development Code, the minimum housing standards in Chapter 27, and the standards in this chapter applicable to the property; and

(6) the applicant, owners, and operators do not owe the city any ad valorem taxes, fees, fines, or penalties.

(b) If the director determines that the requirements of Subsection (a) have not been met, the director shall deny the license.

(c) If the director determines that an applicant should be denied a license, the director shall notify the applicant in writing that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

**SEC. 8A-10. PROHIBITION OF NEW RESIDENTS; SUSPENSION OF LICENSE.**

(a) The director may suspend a boarding home facility license for a period not to exceed 90 days if the director finds that the licensee or an employee of the boarding home facility has:

(1) failed to comply with any provision of this chapter, any other ordinance, or any state or federal law applicable to the operation of a boarding home facility; or

(2) intentionally or knowingly impeded or refused to allow an inspection by the director authorized under this chapter.

(b) A boarding home facility for which the license has been suspended may not admit any new residents during the time the license is suspended.

(c) In lieu of suspending a license for a boarding home facility, the director, at his sole discretion, may enter into a good neighbor agreement with a licensee if the director determines that the good neighbor agreement would eliminate the noncompliance that would otherwise justify a suspension, result in prompt future inspections, and elevate one or more conditions at the boarding home facility to a standard above the requirements of this chapter.

(d) The director shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the suspension, the date the suspension is to begin, the duration of the suspension, and the licensee's right to appeal.

(e) A licensee whose license is suspended may not be granted a license to operate additional boarding home facilities during the period of suspension.

(f) A licensee commits an offense if he operates or owns a boarding home facility that admits new residents during the time that the suspension of the license is in effect.

#### **SEC. 8A-11. REVOCATION OF LICENSE.**

(a) Except as provided in Subsection (b), the director shall revoke any license issued to operate a boarding home facility if the director determines that:

(1) the licensee fails to meet the criminal history qualifications of Section 8A-37 of this chapter or employs a person at the facility who fails to meet the criminal history qualifications.

(2) the licensee intentionally made a false statement as to a material matter in the application or in a hearing concerning the license;

(3) the licensee failed to pay a fee required by this chapter at the time it was due; or

(4) a cause for suspension under Section 8A-10 has occurred and the license has already been suspended at least once within the preceding 12 months.

(b) In lieu of revoking a license for a boarding home facility, the director, at his sole discretion, may enter into a good neighbor agreement with a licensee if the director determines that the good neighbor agreement would eliminate the noncompliance that would otherwise justify a revocation, result in prompt future inspections, and elevate one or more conditions at the boarding home facility to a standard above the requirements of this chapter.



(c) Before revoking a license under Subsection (a), the director shall notify the licensee in writing by certified mail, return receipt requested, that the license is being considered for revocation. The notice must include the reason for the proposed revocation, action the licensee must take to prevent the revocation, and a statement that the licensee has 10 days to comply with the notice.

(d) If, after 10 days from the date the notice required in Subsection (c) was sent or delivered, the licensee has not complied with required actions listed in the notice, the director shall revoke the license and notify the licensee in writing of the revocation. The notice must include the reason for the revocation, and a statement informing the licensee of the right of appeal.

(e) If a license has been revoked, the licensee has 10 days to relocate the residents of the facility and cease operations. An appeal of the revocation does not suspend or toll this deadline.

#### **SEC. 8A-12. APPEALS.**

If the director denies issuance or renewal of a license or suspends or revokes a license issued under this chapter, the action is final unless the licensee files an appeal with the permit and license appeal board in accordance with Section 2-96 of this code.

#### **SEC. 8A-13. EXPIRATION AND RENEWAL OF LICENSE.**

(a) A license to operate a boarding home facility expires one year after the date of issuance.

(b) A licensee shall apply for renewal at least 30 days before the expiration of the license on a form provided by the director. The licensee shall update the information contained in the original license application required under Section 8A-6 of this chapter, or any subsequent renewals under this section, if any of the information has changed. The licensee shall sign a statement affirming that there is either no change in the information contained on the original license application and any subsequent renewal applications, or that any information that has been updated is accurate and complete.

(c) The director shall follow the procedures set forth in Section 8A-9 when determining whether to renew a license.

#### **SEC. 8A-14. NONTRANSFERABILITY.**

A license to operate a boarding home facility is not transferable to another owner, operator, or location.

**SEC. 8A-15. RECORDS.**

(a) The licensee shall maintain the records listed in Subsection (b) either at the boarding home facility to which the records pertain or at a single location within the city. The licensee shall make those records available for inspection by the director or a peace officer at reasonable times upon request for purposes of administering this chapter.

(b) Records that must be maintained by the licensee include, but are not limited to:

(1) current records of ownership of the property where the boarding home facility is located;

(2) a copy of any current good neighbor agreement as described in Sections 8A-10 and 8A-11;

(3) records documenting any reasonable accommodation granted under Section 8A-19;

(4) records demonstrating compliance with applicable laws and regulations, as required by Section 8A-20;

(5) records documenting that each resident has received training on the emergency evacuation plan of the boarding home facility at least two times per calendar year, as required by Section 8A-29;

(6) records documenting that each resident was shown how to use all emergency exits from the facility within 24 hours of arrival at the facility, as required by Section 8A-30;

(7) records documenting the results of water sample testing if the boarding home facility obtains drinking water from a water well, as required by Section 8A-30;

(8) records documenting the initial screening of potential residents and the quarterly individualized assessments of residents, as required by Section 8A-34;

(9) records documenting whether residents have taken, or been reminded to take, their medication, as required by Section 8A-34;

(10) records documenting injuries, incidents, and unusual accidents that involve residents, as required by Section 8A-34;

(11) records documenting any allegations of abuse, neglect, or exploitation of a resident, as required by Section 8A-34;

(12) financial records for each resident for which the licensee is the representative payee, as required by Section 8A-34;

(13) a copy of the service agreement signed by each current resident, as required by Section 8A-34;

(14) records documenting required in-service education of boarding home facility staff;

(15) records documenting annual assessment and periodic monitoring of current residents to determine if residents are capable of self-administering medication and completing basic elements of personal care, as required by Section 8A-39;

(16) a roll of current residents, including their date of arrival, assigned room, and the name, address, and telephone number of the person or entity that referred them to the facility;

(17) a roll of former residents, including their date of departure, and the name, address, and telephone number of the person or entity in control of the residence to which they moved (if known); and

(18) any other records deemed necessary by the director for the administration and enforcement of this chapter.

(c) Except as otherwise provided, a licensee shall maintain a record that concerns a resident for three years after the resident no longer resides at the boarding home facility.

(d) Except as otherwise provided, a licensee shall maintain a record that does not concern a resident for three years.

#### **SEC. 8A-16. POSTING REQUIREMENTS.**

The licensee shall prominently and conspicuously post for display in a public area inside the boarding home facility that is readily available to residents, the operator, employees, and visitors the following:

(1) The license issued under this chapter to operate the boarding home facility. The license must be presented upon request to the director or to a peace officer for examination.

(2) A sign prescribed by the director specifying how complaints may be registered with the city.

(3) A notice in a form prescribed by the director stating that inspection and related reports are available at the facility for public inspection and providing a telephone number that may be used to obtain information concerning the facility.

(4) A copy of the most recent inspection report relating to the facility by the city or a concise and accurate summary of that inspection report.

(5) A notice in a form prescribed by the director that lists the name, location, and contact information for:

(A) the closest local public health services agency in the proximity of the facility; and

(B) a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

**SEC. 8A-17. EMERGENCY RESPONSE INFORMATION.**

(a) The licensee shall provide the director with the name, street address, mailing address, e-mail address, and telephone number of a person or persons who can be contacted 24 hours a day, seven days a week in the event of an emergency condition on the property where the boarding home facility is located.

(b) The licensee shall notify the director within five days after any change in the emergency response information.

(c) The licensee, or an authorized agent, must arrive at the property within one hour after a contact person named under this section is notified by a city employee or emergency response personnel that an emergency condition has occurred on the property.

**SEC. 8A-18. FAILURE TO PAY AD VALOREM TAXES, FEES, FINES AND PENALTIES.**

A licensee commits an offense if he allows any ad valorem taxes, fees, fines, or penalties owed to the city in connection with the boarding home facility to become delinquent.

**SEC. 8A-19. REASONABLE ACCOMMODATIONS.**

(a) Purpose. The city, pursuant to the Fair Housing Amendments Act of 1988 ("FHAA") 42 U.S.C. § 3601, et seq., as amended, and the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, et seq., as amended, intends to ensure that all persons with a disability have an equal opportunity to use and enjoy a dwelling by providing such persons with reasonable accommodations in rules, policies, practices, and procedures promulgated under this chapter. This section allows a person to seek relief from the enforcement of any regulation contained in this chapter that would result in illegal discrimination against the disabled.

(b) Method of submitting a request for a reasonable accommodation; fees; confidentiality.

(1) A request for a reasonable accommodation may be submitted at any time that the accommodation may be necessary to ensure equal access to housing.

(2) A request for a reasonable accommodation may be submitted by an individual with a disability, the person's representative, or a licensee providing housing for one or more individuals with disabilities.

(3) A request for a reasonable accommodation must be submitted in writing to the director on the form provided by the department, or in the form of a letter.

(4) There is no fee for an application requesting a reasonable accommodation.

(5) The city will retain any information identified by an applicant as confidential in compliance with applicable law and will not disclose the information unless required by law.

(6) If an individual needs assistance in making a request for a reasonable accommodation, the city will provide assistance to ensure that the application process is accessible to the individual.

(c) Application. An applicant shall submit the following information before an application for a reasonable accommodation is considered to be complete:

(1) The applicant's name, mailing address, street address, telephone number, and email address.

(2) The applicant's relation to the individual or individuals with a disability, if applicable.

(3) The address of the property to which the requested reasonable accommodation would apply.

(4) Information substantiating that the individual who would obtain the benefit of the reasonable accommodation is disabled.

(5) The section or sections of this chapter from which a reasonable accommodation is being requested.

(6) A brief explanation of why the requested accommodation is necessary for the individual or individuals with disabilities to have equal access to housing.

(d) Review of application by director; required findings; appeals.

(1) Upon receipt of a complete application for a reasonable accommodation, the director shall review the application and issue a written ruling that grants, grants with conditions, or denies the application.

(2) Before making a decision, the director may request an inspection of the boarding home facility and the land on which it is located. If the director makes such a request:

(A) the director has no obligation to make a decision until 10 days after the date the inspection occurs; and

(B) the applicant must make the property, the facility, and its records available for the inspection within 20 days after the date of the request or the request is automatically denied.

(3) Before making a decision, the director shall consult with the city attorney and the director of the office of fair housing to determine whether the accommodation should be granted.

(4) The director may impose reasonable conditions on any accommodation granted consistent with the purpose of this chapter.

(5) The written decision must be consistent with the FHAA and based on a consideration of the following factors:

(A) Whether the housing that is the subject of the request will be used by one or more individuals with a disability.

(B) Whether the requested accommodation is necessary to make specific housing available to one or more individuals with a disability.

(C) Whether the requested accommodation would impose an undue financial or administrative burden on the city.

(D) Whether the requested accommodation would require a fundamental alteration in the nature of a city program or law.

(E) The potential impacts of the requested accommodation on the applicant, the other residents of the boarding home facility, and the surrounding neighbourhood.

(F) Whether a failure to grant an accommodation would result in the property having no economically viable use.

(G) Whether there are alternative accommodations that are reasonable and have an equal or less of an impact on the city, the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.

(6) The director shall issue a written decision within 20 business days of receipt of a completed application, provided that the director is able to issue a decision based on the information provided in the original request. If the director deems it necessary to request additional information from the applicant consistent with federal law, the director shall contact the applicant in writing and specify the additional information that is required. In the event that a request for additional information is made, the 20-day period to issue a decision is stayed until the applicant responds to the request.

(7) All written decisions must explain in detail the basis of the decision and notify the applicant of the right to appeal the director's decision to the permit and license appeal board.

(8) If the director denies an application for a reasonable accommodation, the action is final unless the applicant files an appeal with the permit and license appeal board in accordance with Section 2-96 of this code.

**SEC. 8A-20. INSPECTIONS; FEES.**

(a) Required inspections.

(1) A boarding home facility must pass all required inspections.

(2) The licensee shall keep a current file of reports and other documentation on site that is needed to demonstrate compliance with applicable ordinances, laws, and regulations. Inspection records must be signed and dated by the appropriate authority and there must be no pending corrective actions.

(3) The following inspections are required:

(A) Licensing inspection.

(B) Annual licensing renewal inspection.

(C) Annual fire inspection.

(D) Annual kitchen inspection for a boarding home facility that provides meal preparation.

(E) A gas pipe pressure test performed every three years by the local gas company or a licensed plumber for a boarding home facility that receives natural gas service.

(F) Annual inspection of liquefied natural gas systems performed by an inspector certified by the Texas Railroad Commission for a boarding home facility with a liquefied natural gas system.

(b) Other inspections. The director may inspect any boarding home facility for the purpose of ascertaining whether violations of this chapter or any other city ordinances exist. The director is authorized at a reasonable time to inspect:

(1) the exterior of a structure and the surrounding premises; and

(2) the interior of a structure if the permission of the owner, occupant, or person in control is given or a search warrant is obtained.

(c) Consequences of refusal to inspect. If the owner, occupant, or person in control denies permission to search any part of the interior or exterior of the structure or the surrounding premises, the director may suspend the license to operate a boarding home facility in accordance with Section 8A-10(a)(2).

(d) Reinspections. Whenever a boarding home facility is inspected by the director and a violation of this code is found, the building or premises will, after the expiration of any time limit for compliance given in the notice or order issued because of the violation, be reinspected by the director to determine that the violation has been eliminated.

(e) Reinspection fee. The licensee shall pay:

(1) to the director of code compliance \$50 for each reinspection after the first reinspection by that department that must be conducted before the violation is determined to be eliminated; and

(2) to the director of any other city department the fee required (if any) by the applicable code for each reinspection by that department that must be conducted before the violation is determined to be eliminated.

#### **SEC. 8A-21. REPORTS TO THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION.**

Before September 30 of each year, the director shall submit a report to the Texas Health and Human Services Commission. The report must contain the following information:

(1) The total number of boarding home facilities licensed by the city during the preceding state fiscal year.

(2) The total number of boarding home facility applications for which licenses were denied, including a summary of the causes for denial.

(3) The total number of boarding home facility licenses that were active on August 31 of the preceding state fiscal year.



- (4) The total number of residents housed in each boarding home facility reported.
- (5) The total number of inspections conducted by the city at each boarding home facility.
- (6) The total number of licenses suspended or revoked as a result of an inspection.
- (7) A summary of the outcome for any residents displaced by suspension or revocation of a license.

### **ARTICLE III.**

#### **STRUCTURE AND MAINTENANCE.**

##### **SEC. 8A-22. CONSTRUCTION, REMODELING, AND MAINTENANCE.**

(a) In general. Each licensee shall ensure the residents' health, safety, comfort, and protection through the standards contained in this section that address the construction, remodeling, and maintenance of a boarding home facility.

(b) Applicable regulations. Each boarding home facility must comply with the following codes and regulations:

- (1) The Dallas Development Code.
- (2) The Dallas Building Code, the Dallas One- and Two-Family Dwelling Code, or the Dallas Existing Building Code, as applicable.
- (3) The Dallas Fire Code and any other applicable federal, state, or local fire codes and standards.
- (4) Federal, state, and local health and safety codes.
- (5) Federal and state accessibility regulations.

(c) Interior doors. An interior door to a living space, bedroom, bathroom, or toilet room must fit the opening in which it is hung, be properly equipped with hardware, and be maintained in good working condition. Unless a resident has a disability that requires frequent check-ups by others, a door with a locking device must be provided to provide privacy to and protection of the resident.

(1) Every closet door latch must be such that it can be readily opened from the inside in case of emergency.

(2) Every bathroom door or door lock must permit immediate opening of the locked door in case of emergency.

(d) Public pathways and stairways. A public pathway or stairway in a building must maintain a minimum unobstructed width in accordance with the Dallas Fire Code, as amended, and must be provided with a convenient light switch controlling an adequate light system.

(e) Windows and exterior doors.

(1) Every habitable room must have at least one window that can be easily opened, or such other device as will ventilate the room.

(2) Locks that can be easily opened manually from inside must be provided on all exterior doors.

(3) All windows must be capable of being opened without tools. Window openings must meet the requirements of the Dallas Building Code, Dallas Existing Building Code, the Dallas One- and Two-Family Dwelling Code, and the Dallas Fire Code, as applicable, for emergency egress.

(4) The bottom of the window opening must be not more than 44 inches above the floor in accordance with the Dallas Fire Code, as amended.

(f) Maintenance.

(1) The licensee shall maintain the dwelling and premises in a clean and sanitary condition.

(2) The licensee shall keep a boarding home facility in good repair and maintenance in a manner that will promote the health, comfort, safety, and well-being of residents.

#### **SEC. 8A-23. SLEEPING ROOMS.**

(a) Sleeping space per person. Each room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one person must contain at least 50 square feet of floor space for each occupant in accordance with Section 27-15 of this code.

(b) Bed spacing. If a boarding home facility has a resident with a mobility impairment, beds must be spaced at least three feet apart when placed side-by-side or end-to-end.

(c) Ceiling height. A sleeping room must have a ceiling height of at least seven feet in accordance with Section 27-15 of this code.

(d) Accessibility. A sleeping room must provide accessibility for non-ambulatory residents and residents with conditions that substantially limit ambulation or mobility.

(e) Beds.

(1) The licensee shall provide one bed for every resident. It is presumed that the boarding home facility has one resident for every bed present in the facility.

(2) All beds must be at least six feet long and three feet wide.

(3) The licensee shall equip all beds with a bed frame, supportive springs, and a clean, unsoiled supportive mattress, all of which must be in good condition.

(4) The licensee shall equip all beds provided for non-ambulatory residents or residents with a mobility impairment or reduced bladder or bowel function with mattress covers that prevent bodily fluids from soiling the mattress.

(5) More than two levels of stacked bunk beds are prohibited.

(6) The clear space above the top of the lower mattress of a double decker bunk bed and the bottom of the upper bunk must be at least 27 inches.

(7) The distance from the top of the upper mattress to the ceiling must be at least 36 inches.

(f) Pillows and sheets.

(1) The licensee shall provide each bed with at least one pillow with a clean, unsoiled pillow case, at least two clean, unsoiled sheets, and a cover such as a blanket or quilt.

(2) The licensee shall provide each resident with at least two extra, unsoiled pillow cases, sheets, and blankets.

(g) Storage.

(1) The licensee shall provide at least one chest of drawers in good working condition, or its equivalent, for each resident. The chest of drawers must contain a sufficient number of lockable drawers to house all necessary items of clothing and personal belongings of a resident.

(2) The licensee shall provide sufficient space in each resident's room or closet for residents to hang up clothes that are not stored in a chest of drawers.

(3) Clothing may not be stored on the floor.

(h) Personal hygiene items. The licensee shall provide bath towels, washcloths, soap, combs or brushes, and toothbrushes at all times in a quantity sufficient to meet the needs of residents.

(i) Emergency exit. Each sleeping room must provide access to an emergency exit without passing through another sleeping room in accordance with the Dallas Fire Code, as amended.

**SEC. 8A-24. BATHROOM FACILITIES.**

(a) If a boarding home facility has a resident who is non-ambulatory or has a mobility impairment:

(1) the licensee shall provide a toilet, lavatory, and bathtub or shower on each floor when not provided in an individual room; and

(2) a bathroom door must have a minimum opening of 32 inches with the door open 90 degrees, measured between the face of the door and the opposite stop.

(b) The licensee shall provide toilets, lavatories, and bathtubs or showers at a ratio of one toilet, one lavatory, and one bathtub or shower for each eight residents, or fraction of eight residents.

(c) Toilets, lavatories, and bathtubs or showers must be accessible to residents without going outside of the building or without going through a sleeping room of another resident.

(d) The licensee shall keep all bathroom facilities clean and in good repair.

(e) The licensee shall ensure that all bathroom facilities are well-lighted and ventilated.

(f) The licensee shall adequately supply all bathroom facilities with toilet paper, soap, and hand towels.

(g) The licensee shall supply bathtubs and showers with non-slip surfaces and curtains or other safe enclosures for privacy.

**SEC. 8A-25. TELEPHONE.**

A telephone that is connected to a land line must be available 24 hours a day, be easily accessible, and afford privacy for use by residents. A list of emergency telephone numbers, including the numbers of the Dallas Police Department, Dallas Fire-Rescue Department, ambulance, the director, the Texas Department of Family and Protective Services (DFPS), the local mental health authority, and the Texas Information and Referral Network, must be placed in plain view on or next to the telephone and made accessible to persons who are visually or hearing impaired, as needed.

**SEC. 8A-26.**            **LAUNDRY FACILITIES.**

A washer or dryer:

- (1) cannot be located in the kitchen area; and
- (2) must be properly vented to the outside of the structure.

**SEC. 8A-27.**            **KITCHEN.**

(a) A kitchen must be accessible to each resident without going through a sleeping room of another resident.

(b) A kitchen must have a food preparation area of at least six square feet that is smooth, impermeable, free of cracks, and easily cleanable. This surface area must not be primarily used for eating.

(c) If a boarding home facility has a kitchen without a dining area attached, the licensee shall provide a separate dining area of 15 square feet per resident. A kitchen with an attached dining area must be at least 100 square feet in area.

(d) A kitchen must contain a sink with at least two compartments for manual dishwashing.

(e) A kitchen must contain an operational cooking stove with at least two burners fuelled by gas or electricity or an operational microwave oven.

(f) A kitchen must contain at least one cabinet with a minimum of five cubic feet of storage space per resident, suitable for storage of food and utensils.

(g) A kitchen must be equipped with at least one electrical outlet suitable for plugging in small kitchen appliances.

(h) The licensee shall keep the kitchen in a clean and sanitary condition.

(i) A kitchen must contain a refrigerator that is equipped with a thermometer and is maintained in an operational, clean, and sanitary condition. A refrigerator must maintain foods at the temperatures required by Section 8A-33.

**SEC. 8A-28.**            **DINING ROOM.**

(a) A dining room must be accessible to residents without going through the sleeping room of another resident.

(b) The minimum floor area for a dining room is 15 square feet per resident.

(c) If a boarding home facility provides community meals, the licensee shall equip a dining room with one dining chair and two linear feet of dining table space for each resident.

#### **ARTICLE IV.**

#### **RESIDENT HEALTH AND SAFETY.**

#### **SEC. 8A-29. EMERGENCY PRECAUTIONS.**

(a) The licensee shall provide fire escapes and exits that are kept in good repair and accessible at all times in accordance with the Dallas Fire Code, as amended.

(b) The licensee shall implement a written fire and evacuation plan that sets forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency. If a boarding home facility has a resident who is non-ambulatory or has a mobility impairment, the licensee shall submit the written plan to Dallas Fire-Rescue and obtain its approval of the plan.

(c) The licensee shall post an emergency evacuation plan in each sleeping room and the kitchen of the facility.

(d) The licensee shall ensure that each resident receives training on the emergency evacuation plan at least two times per year and shall maintain documentation of such training.

(e) Flammable supplies and gasoline-operated maintenance equipment and lawn care equipment must be stored in the garage of the facility or in a detached storage shed.

(f) The licensee shall provide a sufficient number of accessible fire extinguishers in accordance with the Dallas Fire Code, as amended. The licensee shall ensure that a person licensed to inspect fire extinguishers inspects the fire extinguishers annually. The licensee shall ensure the fire extinguishers are recharged when needed by a person licensed to inspect fire extinguishers.

(g) The licensee shall provide a smoke alarm approved by the fire marshal in each place in the facility required by the Dallas Fire Code, as amended. The licensee shall maintain a smoke alarm in good working order.

(h) If a boarding home facility has a resident that is hearing impaired, the licensee 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 in accordance with the Dallas Fire Code, as amended.

(i) The licensee shall install and properly maintain carbon monoxide detectors near sleeping rooms in accordance with Section 42.060 of the Texas Human Resources Code, as amended.

(j) The licensee shall ensure that all residents are shown how to use all emergency exits from the boarding home facility within 24 hours after arrival at the boarding home facility. The licensee shall maintain documentation of such training.

(k) First aid supplies.

(1) The licensee shall provide first aid supplies that are equivalent to the 16-unit first aid kit that complies with the latest edition of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) standard Z308.1.

(2) The licensee shall ensure that the first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

(3) The licensee shall provide one set of such supplies for each 50 persons, or fraction of 50 persons, residing in the boarding home facility.

#### **SEC. 8A-30. WATER QUALITY.**

If a boarding home facility uses well water, the licensee shall supply the director with annual test results for water samples taken from the water well from a laboratory accredited by the State of Texas under the National Environmental Laboratory Accreditation Program. If the sample results show coliform bacteria present, a resample must be taken within seven days after receipt of the results. The licensee shall supply results of testing the resample to the director within seven business days of receipt.

#### **SEC. 8A-31. LINENS AND LAUNDRY.**

(a) If a boarding home facility provides laundry service or has laundry facilities on site, all linens and laundry must be placed in a closed bag or covered hamper before being transported to the laundry area.

(b) If a boarding home facility provides laundry service, all linens and laundry must be properly identified to prevent loss.

(c) Soiled linens and laundry must not be sorted or processed in kitchens, food preparation areas, or food storage areas.

#### **SEC. 8A-32. POISONOUS, TOXIC, AND FLAMMABLE MATERIALS.**

(a) The licensee shall ensure that poisonous, toxic, and flammable materials:

(1) are stored and maintained away from bed linens, towels, food items, and kitchen equipment; and

(2) are not used in a way that contaminates food equipment or utensils or constitutes a hazard to employees or residents.

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(b) The licensee shall prominently and distinctly label poisonous, toxic, and flammable materials for easy identification of contents.

**SEC. 8A-33. FOOD AND DRINK; MEALS.**

(a) General. If a boarding home facility serves meals to one or more residents, the licensee shall ensure the following:

(1) All food and drink is clean and free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances.

(2) All food and drink is prepared, stored, handled, and served so as to be safe for human consumption.

(3) All food or drink subject to spoilage is maintained at a temperature of 41 degrees Fahrenheit or below.

(4) Hot foods that are ready to be served are maintained at 135 degrees Fahrenheit or above at all times.

(5) All food or drink stored in the freezer is maintained at a temperature of no higher than 0 degrees Fahrenheit.

(6) Alternative food selections are provided for residents on medically prescribed diets.

(7) A time schedule for meals is posted daily.

(8) Meals are:

(A) nutritionally balanced and provide the U.S. Department of Agriculture recommended daily allowance of vitamins, minerals, and calories;

(B) of sufficient quantity and quality to meet the nutritional needs of residents; and

(C) served with not more than 14 hours between the beginning of the evening meal and the beginning of the morning meal.

(9) A valid food handler's certificate issued under Section 17-2.2 of this code has been issued in the name of the licensee.

(10) After each usage, all eating and drinking utensils are thoroughly washed and sanitized in hot water containing a suitable soap or synthetic detergent and rinsed in clean hot water. If a mechanical dishwasher is used, dish detergent is required.



(b) Animals prohibited. With the exception of service animals for persons with disabilities, birds, cats, dogs, or other animals are not permitted in areas where food is prepared or stored, or where utensils are washed or stored.

(c) Food handling.

(1) An owner, operator, employee, or resident engaged in food handling shall:

(A) observe sanitary methods, including hand washing; and

(B) not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.

(2) If preparing meals for residents, staff must meet food handling requirements and training approved by the director.

**SEC. 8A-34. POLICIES AND PROCEDURES TO ENSURE RESIDENT HEALTH AND SAFETY.**

(a) Initial screening. Before permitting a potential resident to move into a boarding home facility, the licensee shall ask each potential resident whether he or she:

(1) has the ability to comply with the requirements of being a resident at the boarding home facility, including:

(A) paying rent or other fees in accordance with the service agreement between the operator and the resident, unless the payment of rent or other fees is excused under the service agreement or by law;

(B) complying with the rules for the boarding home facility established by the licensee;

(C) paying for any damage to the boarding home facility caused by the resident; and

(D) timely vacating the premises when the service agreement, including any extension, expires or is terminated;

(2) is qualified to reside at the boarding home facility if the boarding home facility is available only to persons with disabilities or to persons with a particular type of disability;

(3) is currently an illegal abuser or addict of a controlled substance;

(4) is currently on probation or parole;

(5) is currently using any prescription drugs; or

(6) has been convicted of the illegal manufacture or distribution of a controlled substance.

(b) Individualized assessment.

(1) Before allowing an individual to reside at a boarding home facility, the licensee shall conduct an individualized assessment of that individual to determine if the individual would constitute a direct threat. The assessment must consider:

(A) any prior criminal or violent acts of the person;

(B) the amount of time that has elapsed since the commission of any such acts; and

(C) any treatment or medication received by the person that may have eliminated the direct threat.

(2) In the case of any resident or potential resident who has been convicted of an offense requiring registration with any sex offender registry, the individualized assessment must include a psycho-sexual evaluation of such person performed by a duly licensed psychiatrist or an individual having a Ph.D. in psychology. The licensee shall be responsible for determining whether any resident or potential resident has been convicted of an offense requiring registration with any sex offender registry.

(3) Prior to the occupancy of any boarding home facility and at least quarterly thereafter, the licensee shall certify in a sworn affidavit to the director that, based on the individualized assessment performed for each resident, no person will or does reside in the boarding home facility whose tenancy would likely constitute a direct threat to the health or safety of that person or other individuals or whose tenancy would result in substantial physical damage to the property of others.

(c) Persons who may not reside in a boarding home facility. The licensee shall not allow the following individuals to reside at a boarding home facility:

(1) An individual convicted of the illegal manufacture or distribution of a controlled substance.

(2) An individual who, based upon an individualized assessment, is likely to constitute a direct threat to the health or safety of the individual or other individuals or whose tenancy would likely result in substantial damage to the property of others.

(3) An individual who requires the provision of personal care services or other services that state law requires a license to provide.

(d) Illegal drug use.

(1) All residents in a boarding home facility shall completely abstain from using controlled substances. The licensee shall immediately expel any resident who uses a controlled substance, whether on or off the premises, and shall not readmit the resident to any boarding home facility under the control of the licensee for a period of at least 60 days following the violation. However, nothing contained in this subsection may be construed to prohibit a resident from taking a prescription drug for which that resident has a valid and current prescription.

(2) If the boarding home facility has residents who are recovering from an addiction to a controlled substance, the licensee must develop a written plan for ensuring that the residents continue to refrain from using controlled substances, including any and all rules by which residents must abide, and must provide such plan to the director at his request.

(e) Duty to document. The licensee shall document the following:

(1) A resident's illegal use of a controlled substance.

(2) A resident who poses a direct threat to the health or safety of other individuals.

(3) A resident who poses a direct threat of substantial damage to the property of others.

(f) Log. If a resident is currently taking a prescription medication, the licensee shall note whether the resident has taken, or been reminded to take, his or her medication. Unless prohibited by law, the licensee shall make copies of the log available to the director for inspection upon request.

(g) Injuries, incidents, and unusual accidents.

(1) The licensee shall notify a resident's legal guardian, resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative of any injury, incident, or unusual accident involving the resident.

(2) The licensee shall investigate and document on a form provided by the director any injuries, incidents, or unusual accidents to a resident by providing the following information:

(A) The resident's name.

(B) The date and time the injury, incident, or unusual accident occurred.

(C) Description of the injury, incident, or unusual accident.

(D) Description of any medical or mental health treatment the resident received.

(E) Steps taken by the owner or operator to prevent future injuries, incidents, or unusual accidents if a problem at the boarding home facility resulted in the injury, incident, or unusual accident.

(F) When the resident's legal guardian, resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative was notified about the injury, incident, or unusual accident.

(h) Access to records. Within one business day after a request by a resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative, the licensee shall allow access to, and provide copies at a reasonable cost of, the records documenting any injury, incident, or unusual accident involving that resident. Upon request, the licensee must explain how to examine the records.

(i) Abuse, neglect, and exploitation.

(1) A licensee shall report any allegations of abuse, neglect, or exploitation of a minor, an adult age 65 or older, or an adult with a disability to the Texas Department of Family and Protective Services. Failure to report suspected abuse, neglect, or exploitation of a minor, an elderly adult, or an adult with a disability is a Class A misdemeanor under Texas law.

(2) A licensee shall ensure that no resident is harassed, threatened, or intimidated at any time for making a report of abuse, neglect, or exploitation.

(3) A licensee shall provide each resident with a copy of the definitions of abuse, neglect, or exploitation as outlined in Chapter 48 of the Texas Human Resources Code, as amended.

(4) A licensee shall allow law enforcement, emergency medical, and fire personnel access to the boarding home facility when these professionals are responding to a call at the boarding home facility.

(5) An owner, operator, or employee may not refer a person to the boarding home facility with which he is associated or to any other facility if he knows or reasonably should know that the facility or its services are not appropriate for the condition of the person being referred.

(6) If the licensee or an employee has any medical or mental health professional examine, diagnose, treat, or provide any other medical or mental health services to a resident, the licensee or employee must provide the resident with:

(A) the name, business address, and telephone number of the person who examined, diagnosed, treated, or provided any other service to the resident;

(B) a written explanation of the nature and results of the examination, diagnosis, treatment, or other service; and

(C) a copy of any prescription for any medicine.

(7) No licensee or employee may:

(A) use corporal punishment on a resident; or

(B) involuntarily seclude a resident from other residents.

(8) Physical and chemical restraints.

(A) No licensee or employee may use a physical restraint or chemical restraint on a resident.

(B) For purposes of Subsection (i)(8)(A), a physical restraint includes a vest, a hand mitt, and a seatbelt, and a chemical restraint includes an anti-psychotic drug and a sedative.

(C) It is a defense to prosecution under Subsection (i)(8)(A) that:

(i) the restraint was authorized by a physician, in writing, for a specified and limited period of time; or

(ii) the licensee or employee is the spouse, legal guardian, or next of kin of the resident or former resident.

(9) Access.

(A) A licensee shall allow a resident's personal physician, nurse, or other health care provider to have immediate access to the resident.

(B) A licensee shall allow the relatives, the guardian, and the legally authorized representative of a resident to have immediate access to the resident during the boarding home facility's visiting hours unless the resident objects.

(j) Conflicts of interests. The purposes of this subsection are to ensure both that residents have the right to manage their own affairs or to choose someone they trust to manage their affairs for them and that licensees and employees do not abuse their positions of power and trust for their own private gain.

(l) A licensee or employee of a boarding home facility shall not:

- (A) borrow money from or loan money to residents;
  - (B) be a beneficiary of a current or former resident's will or life insurance;
  - (C) co-mingle a resident's funds with the funds of the licensee, employee, or another resident;
  - (D) employ a resident;
  - (E) go into business with a resident;
  - (F) serve as an employee or independent contractor of a resident;
  - (G) have sexual relations with a resident; or
  - (H) have a power of attorney for a resident's affairs for any purpose.
- (2) It is a defense to prosecution:
- (A) under Paragraph (1) that the licensee or employee is the spouse, legal guardian, or next of kin of the resident or former resident;
  - (B) under Paragraph (1)(D) that the licensee or employee employed the resident on the property where the boarding home facility is located; and
  - (C) under Paragraph (1)(H) that the licensee or employee is assisting the resident to establish eligibility for a federal or state program that provides financial assistance for medical services, such as Medicaid, or other services needed by the resident.
- (3) No licensee or employee may be a representative payee for a resident or assist a resident with general money management unless the resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative authorizes in writing the licensee or employee to be a representative payee or assist the resident with general money management.
- (4) If a licensee or employee becomes the representative payee for a resident or assists a resident with general money management, the licensee or employee shall do the following:
- (A) Maintain separate financial records for each resident for which the licensee or employee is the representative payee for the entire period of time the licensee or employee is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the licensee or employee is the resident's representative payee.

(B) Include in the records an itemized list of expenditures that the licensee or employee has made on behalf of the resident, including the charges that are assessed by the licensee or employee.

(C) Maintain receipts for all expenditures in addition to the itemized documentation.

(D) Develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended.

(E) Within one business day after receiving a request, allow the resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative access to the resident's financial records that are maintained by the licensee or employee.

(k) Service agreement.

(1) A licensee shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident, the resident's guardian, or the resident's legally authorized representative. The licensee shall give a copy of the signed agreement to the resident, the resident's guardian, or the resident's legally authorized representative.

(2) The service agreement must specify the following:

(A) The length of the contract.

(B) The amount of rent charged and the date upon which rent is due.

(C) If service is accepted in lieu of rent, the dollar amount the rent is reduced per hour of service.

(D) The amounts of other fees or fines charged, an explanation of what those fees and fines are for, when they are charged, and why.

(E) The party responsible for paying the monthly rent and other fees.

(F) Any services to be provided or that could be provided by the boarding home facility.

(G) If the resident has a guardian, legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative, that person's name, address, e-mail address, and telephone number.

(H) The rules and regulations of the boarding home facility.

(I) That a resident will be expelled if the owner or operator determines that the resident:

(i) has used a controlled substance within the past 30 days without a valid prescription;

(ii) has violated the rules of the boarding home facility if those rules require the expulsion for the violation;

(iii) poses a direct threat to the health or safety of other individuals; or

(iv) poses a direct threat of substantial damage to the property of others.

(J) If the resident earns any income from the licensee or an employee of the boarding home facility that exceeds the monthly rent owed, the licensee or employee's plan to allocate the income or system of disbursement of that income.

(l) Disclosure of charges and fees to resident. No licensee or employee may charge a resident for a service or item unless the licensee or employee has previously disclosed in writing that providing the service or item will incur an additional fee and the amount of that fee.

(m) Visitors. Operators, employees, and volunteers of the boarding home facility shall not have visitors on the premises, except for visitation necessary for the operation of the facility, for emergencies, or by family members of an operator, employee, or a volunteer.

**SEC. 8A-35. ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION.**

(a) Assistance with self-administration of medication may be provided to an adult resident who can identify his or her medication and knows when the medication should be taken but requires assistance with self-administration. Assistance with self-administration of medication may not be provided to a minor.

(b) Assistance with self-administration of medication is limited to:

(1) reminding the resident to take medication;

(2) opening a container, removing medication from a container, and placing medication in a resident's hand or in or on a clean surface, such as a pill cup or medication reminder box, for the resident's self-administration; and

(3) reminding the resident when a prescription needs to be refilled.



(c) The licensee shall remind a resident to take medication if the licensee knows that the resident is required to take medication and needs assistance with remembering to take the medication.

(d) The licensee shall store all residents' medication in a locked area. The licensee shall provide a central locked storage area or individual locked storage areas at the boarding home facility for each resident's medication.

(1) If the boarding home facility uses a central medication storage area, a boarding home employee must be available to provide access at all times and each resident's medication must be stored separately from other residents' medications within the storage area.

(2) If a resident's medication requires refrigeration, the licensee shall provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.

(3) The licensee shall store medications labeled for "external use only" separately within the locked area.

(e) The licensee shall ensure that poisonous substances are labeled and safely stored within a locked area separately from medications.

(f) If a boarding home facility stores controlled substances, the licensee shall adopt and enforce a written policy for preventing the diversion of the controlled substances.

(g) After a resident ceases to reside in the boarding home facility, the licensee shall properly dispose of any of the resident's remaining medication in accordance with applicable laws.

**SEC. 8A-36. REQUIREMENTS FOR IN-SERVICE EDUCATION OF BOARDING HOME FACILITY STAFF.**

(a) Each licensee and employee of a boarding home facility must be trained on the following subjects prior to contact with residents or within five days of beginning work, ownership, or management of the facility, whichever is later:

(1) Employer rules and policies.

(2) Preventing, recognizing, and reporting abuse, neglect, and exploitation of residents.

(3) Residents' rights, including all applicable rights from the following:

(A) Chapter 102 (Rights of the Elderly) of the Texas Human Resource Code, as amended.

(B) Chapter 112 (Developmental Disabilities) of the Texas Human Resource Code, as amended.

(C) Chapter 301 (Fair Housing Practices) of the Texas Property Code, as amended.

(D) Chapter 92 (Residential Tenancies) of the Texas Property Code, as amended.

(4) Policies and procedures for contacting emergency personnel when health or safety of a resident or another individual is at risk.

(5) Complaint process specific to the city and the boarding home facility.

(6) Assisting residents with self-administration of medication.

(7) Prevention, recognition, and reporting of injuries, incidents, and unusual accidents to residents and others in the boarding home facility.

(8) Emergency, evacuation, and disaster plans.

(9) Assisting residents with obtaining health and social services.

(10) Services provided by the boarding home facility, including:

(A) nutrition, meal preparation, and dietary needs, if the boarding home facility provides meal preparation;

(B) sanitation;

(C) laundry, if the boarding home facility provides laundry services;  
and

(D) house work, if the boarding home facility provides house work.

(b) Each licensee and employee of a boarding home facility must be trained on the following subjects:

(1) Updates and changes in any policies and procedures within 10 days after the licensee or employee becomes aware of the change.

(2) Orientation specific to the needs of each new resident within three business days of the resident moving into the facility.

(3) Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization, or other circumstances that affect the resident's needs within one day after licensee or employee becoming aware of the change.

**SEC. 8A-37. CRIMINAL HISTORY.**

(a) A person may not own or operate a boarding home facility or be employed in a position the duties of which involve direct contact with a resident in a boarding home facility before the 10th anniversary of the date the person is convicted of any of the following offenses:

(1) Sections 481.112, 481.1121, 481.1122, 481.113, 481.114, 481.122, Texas Health and Safety Code (illegal manufacture or delivery of a controlled substance), as amended.

(2) Chapter 19, Texas Penal Code (criminal homicide), as amended.

(3) Chapter 20, Texas Penal Code (kidnapping and unlawful restraint), as amended.

(4) Section 21.02, Texas Penal Code (continuous sexual abuse of young child or children), as amended, or Section 21.11, Texas Penal Code (indecency with a child), as amended.

(5) Section 22.011, Texas Penal Code (sexual assault), as amended.

(6) Section 22.02, Texas Penal Code (aggravated assault), as amended.

(7) Section 22.04, Texas Penal Code (injury to a child, elderly individual, or disabled individual), as amended.

(8) Section 22.041, Texas Penal Code (abandoning or endangering child), as amended.

(9) Section 22.08, Texas Penal Code (aiding suicide), as amended.

(10) Section 25.031, Texas Penal Code (agreement to abduct from custody), as amended.

(11) Section 25.08, Texas Penal Code (sale or purchase of a child), as amended.

(12) Section 28.02, Texas Penal Code (arson), as amended.

(13) Section 29.02, Texas Penal Code (robbery), as amended.

(14) Section 29.03, Texas Penal Code (aggravated robbery), as amended.

(15) Section 21.08, Texas Penal Code (indecent exposure), as amended.

(16) Section 21.12, Texas Penal Code (improper relationship between educator and student), as amended.

(17) Section 21.15, Texas Penal Code (improper photography or visual recording), as amended.

(18) Section 22.05, Texas Penal Code (deadly conduct), as amended.

(19) Section 22.021, Texas Penal Code (aggravated sexual assault), as amended.

(20) Section 22.07, Texas Penal Code (terroristic threat), as amended.

(21) Section 33.021, Texas Penal Code (online solicitation of a minor), as amended.

(22) Section 34.02, Texas Penal Code (money laundering), as amended.

(23) Section 35A.02, Texas Penal Code (Medicaid fraud), as amended.

(24) Section 42.09, Texas Penal Code (cruelty to animals), as amended.

(25) Chapter 31, Texas Penal Code (theft), as amended, that is punishable as a felony.

(26) Section 30.02, Texas Penal Code (burglary), as amended.

(27) The laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

(b) A person may not own or operate a boarding home facility or be employed in a position the duties of which involve direct contact with a resident in a boarding home facility before the fifth anniversary of the date the person is convicted of any felony offense not listed in Subsection (a) or any of the following non-felony offenses:

(1) Section 22.01, Texas Penal Code (assault), as amended, that is punishable as a Class A misdemeanor.

(2) Section 32.45, Texas Penal Code (misapplication of fiduciary property or property of a financial institution), as amended, that is punishable as a Class A misdemeanor or a felony.

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(3) Section 32.46, Texas Penal Code (securing execution of a document by deception), as amended, that is punishable as a Class A misdemeanor or a felony.

(4) Section 37.12, Texas Penal Code (false identification as peace officer), as amended.

(5) Section 42.01(a)(7), (8), or (9), Texas Penal Code (disorderly conduct involving a firearm), as amended.

(6) The laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

(c) The licensee shall ensure that all employees (including volunteers who are not residents) have had a background check of conviction records, pending charges, and disciplinary board decisions completed within the past two years, and is repeated every year thereafter, and that the individual is not disqualified under this section. The owner or operator shall immediately discharge any employee or volunteer whose criminal history reveals conviction of a crime that bars employment or volunteer service at a boarding home facility.

**SEC. 8A-38. QUALIFICATIONS TO OWN, OPERATE, OR WORK IN FACILITIES WITH PERSONS RECOVERING FROM SUBSTANCE OR ALCOHOL ABUSE.**

(a) If a boarding home facility allows an individual who has an impairment due to the illegal abuse of or addiction to a controlled substance to be a resident, the licensee and all employees and volunteers (other than residents) shall not have used a controlled substance within the previous year without a prescription from a licensed professional.

(b) All operators, employees, and volunteers of a boarding home facility shall completely abstain from illegally using controlled substances. The licensee shall immediately remove from the premises of the boarding home facility any owner, operator, employee, or volunteer who illegally uses a controlled substance, whether on or off the premises, and shall not allow that person to enter the premises of any boarding home facility under the control of the owner or operator for a period of at least one year following the violation. However, nothing contained in this subsection shall be construed to prohibit an operator, employee, or volunteer from taking a prescription drug for which that person has a valid and current prescription.

(c) The licensee shall immediately remove from the premises of a boarding home facility any owner, operator, employee, or volunteer who currently abuses alcohol, whether on or off the premises, such that the abuse of alcohol prevents that person from performing his or her job duties, if any, at the boarding home facility or who, by reason of such current alcohol abuse, constitutes a direct threat to the property or safety of others.

(d) If the licensee removes a person from the premises of a boarding home facility under Subsection (c), the licensee shall not allow that person to re-enter the premises of any boarding home facility under the control of the owner or operator until that person is able to perform his or her job duties, if any, at a boarding home facility and does not constitute a direct threat to the property or safety of others.

**SEC. 8A-39. ASSESSMENT AND PERIODIC MONITORING OF RESIDENTS.**

(a) The licensee, or a designee of the licensee, shall complete and document an annual assessment and conduct periodic monitoring to ensure that each resident is capable of self-administering medication and completing basic elements of personal care as listed in Subsections (b) and (c). The assessment will be used as a tool to determine if the needs of the resident can be provided by a boarding home facility or if the resident needs personal care services or medication administration that cannot be provided by the boarding home facility. The initial assessment of a resident must be completed within 30 days after the date the resident began residing at the facility.

(b) Elements of the self-administration of medication to be assessed include the ability to perform each of the following tasks with little assistance:

(1) Identifying the name of the medication.

(2) Providing a reason for the medication (the owner or operator cannot force the resident to disclose a health condition that is the basis for the medication if the resident refuses).

(3) Distinguishing color or shape.

(4) Preparing the correct number of pills (dosage).

(5) Confirming the time to take medications.

(6) Reading labels.

(c) Elements of personal care to be assessed by the licensee include but are not limited to the resident's ability to do the following:

(1) Eat independently.

(2) Bathe without assistance.

(3) Dress without assistance.

(4) Move and transfer independently.

(d) As a result of an assessment, if a licensee finds that a resident is in a state of possible self-neglect due to no longer being able to perform basic elements of personal care as listed in Subsection (c) and believes that a higher level of care is needed, the owner or operator shall:

(1) contact the Texas Department of Family and Protective Services by phoning the state-wide intake division at 1-800-252-5400;

(2) notify the resident's guardian or legally authorized representative;

(3) notify a family member designated by the resident, the legal guardian, or the legally authorized representative; and

(4) contact the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility.

(e) A state of self-neglect does not exist if the resident receives outside professional services that meet the resident's need for personal care or self-administration of medication. In these cases, the resident can remain in the boarding home facility provided that all needs for personal care and self-administration of medication are met.

## ARTICLE V.

### ENFORCEMENT.

#### SEC. 8A-40. VIOLATIONS; PENALTY.

(a) A person who violates any provision of this chapter, or who fails to perform a duty required by this chapter, commits an offense.

(b) A licensee, employee, or other person in control of a boarding home facility commits an offense if he or she knowingly operates an unsafe facility that represents an immediate threat to the health or safety of a resident, including a situation that has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(c) An offense under this chapter is punishable by a fine not to exceed:

(1) \$2,000 if the provision violated governs fire safety, public health, or sanitation; or

(2) \$500 for all other offenses.

(d) A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.

(e) Emergency closing order.

(1) If the director finds a boarding home facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the director may order immediate closing of all or part of the facility.

(2) The order of immediate closure under Paragraph (1) is effective immediately on providing written notice of the order to the owner or operator by facsimile, email, or hand-delivery.

(3) The order of closure of all or part of a boarding home facility is valid for 10 days after its effective date.

(4) If the licensee does not promptly relocate the residents of the boarding home facility upon receiving the order of closure for that facility, the city shall provide for the relocation of those residents. If possible, the city will relocate those residents to a boarding home facility in the city for which there is a current valid license. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. The director is authorized to seek to recover the cost of relocating the residents from the owner and operator of the closed facility.

(5) The director and the permit and license appeal board shall expedite any hearing or decision involving an emergency closing order issued under this section.

(f) The city attorney may petition a district court or a county court at law for civil penalties and for injunctive relief to restrain a continuing violation of the standards or licensing requirements for a boarding home facility under this chapter if the violation creates an immediate threat to the health or safety of the facility residents.

(g) The remedies and procedures in this section and in other laws are cumulative law, and the use of any particular remedy or procedure does not prevent the enforcement of any other law."

SECTION 2. That CHAPTER 33, "PERSONAL CARE FACILITIES," of the Dallas City Code, as amended, is amended to read as follows:



**“CHAPTER 33**

**ASSISTED LIVING [~~PERSONAL CARE~~] FACILITIES**

**SEC. 33-1. PURPOSE AND CONSTRUCTION.**

(a) The purpose of this chapter is to implement the provisions of Chapter 247, Texas Health and Safety Code, as amended, which establish regulations for the protection of the health and safety of residents of assisted living [~~personal care~~] facilities, by providing for municipal enforcement to the extent permitted by that state law. In the event of a conflict, this chapter must be construed so as to comply with Chapter 247, Texas Health and Safety Code, as amended.

(b) It is the intent and purpose of the city to administer and enforce this chapter to ensure quality care and the protection of the health and safety of assisted living [~~personal care~~] facility residents by requiring assisted living [~~personal care~~] facilities operating within the city limits to comply with state regulations. It is the further intent of the city to administer and enforce this chapter in compliance with the Federal Fair Housing Amendments Act and to ensure that all persons have equal opportunity to use and enjoy a dwelling. In the event of a conflict, this chapter must be construed so as to comply with the Federal Fair Housing Amendments Act.

**SEC. 33-2. DEFINITIONS.**

In this chapter:

(1) ASSISTED LIVING FACILITY has the meaning given that term in Section 247.002 of the Texas Health and Safety Code, as amended.

(2) DIRECTOR means the director of the city department designated by the city manager to enforce and implement this chapter, or the director's designated representative.

(3[2]) FEDERAL FAIR HOUSING AMENDMENTS ACT means the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), as amended.

(4[3]) IMMEDIATE THREAT means a situation in which there is a high probability that serious harm or injury to a resident of an assisted living [~~personal care~~] facility could occur at any time, or has already occurred and may occur again, if the resident is not protected effectively from the harm or if the threat is not removed.

(5[4]) LICENSE means a current, valid license to operate an assisted living [~~personal care~~] facility issued by the Texas Department of Aging and Disability [~~Human~~] Services pursuant to Chapter 247, Texas Health and Safety Code, as amended.

(6[5]) PERSON means an individual, partnership, company, corporation, association, firm, organization, institution, or similar entity.

~~[(6) PERSONAL CARE FACILITY has the meaning given that term in Section 247.002 of the Texas Health and Safety Code, as amended.]~~

(7) PERSONAL CARE SERVICES has the meaning given that term in Section 247.002 of the Texas Health and Safety Code, as amended.

**SEC. 33-3. STATE LICENSE REQUIRED.**

A person commits an offense if he establishes or operates an assisted living [~~personal care~~] facility in the city without a license.

**SEC. 33-4. CITY HEALTH, SAFETY, AND CONSTRUCTION STANDARDS APPLICABLE.**

All health, safety, and construction standards established by the city in this code, the fire code, the construction codes, and any other applicable city ordinance or regulation apply to all assisted living [~~personal care~~] facilities located within the city.

**SEC. 33-5. INSPECTION.**

(a) The director may inspect any facility at reasonable times as necessary to determine if it is an assisted living [~~personal care~~] facility and to ensure compliance with this chapter and Chapter 247, Texas Health and Safety Code, as amended.

(b) Upon request of the Texas Department of Aging and Disability [~~Human~~] Services, the city attorney may petition a district court for a temporary restraining order to inspect a facility that is allegedly required to be licensed as an assisted living [~~personal care~~] facility and that is operating without a license, when admission to the facility cannot be obtained.

(c) The director shall report to the Texas Department of Aging and Disability [~~Human~~] Services any assisted living [~~personal care~~] facility that the director finds:

(1) is established or operating in the city without a license;

(2) poses an immediate threat to the health and safety of a resident of the assisted living [~~personal care~~] facility; or

(3) is otherwise violating a provision of Chapter 247, Texas Health and Safety Code, as amended, or any rule, regulation, or standard governing assisted living [~~personal care~~] facilities promulgated by the Texas Department of Aging and Disability [~~Human~~] Services under Chapter 247, Texas Health and Safety Code, as amended.

**SEC. 33-6. INJUNCTION.**

Upon request of the Texas Department of Aging and Disability [~~Human~~] Services, the city attorney may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements for assisted living [~~personal-care~~] facilities under Chapter 247 of the Texas Health and Safety Code, as amended, if the Texas Department of Aging and Disability [~~Human~~] Services finds that the violation creates an immediate threat to the health and safety of the assisted living [~~personal-care~~] facility residents.

**SEC. 33-7. CIVIL PENALTIES.**

[(a)] The city attorney shall, upon being referred a case by the Texas Department of Aging and Disability [~~Human~~] Services, file suit in district court to collect and retain the civil penalty provided in Section 247.045, Texas Health and Safety Code, as amended. The city attorney and the Texas Department of Aging and Disability [~~Human~~] Services shall work in close cooperation throughout any legal proceedings requested by the Texas Department of Aging and Disability [~~Human~~] Services.

**SEC. 33-8. OFFENSES AND CRIMINAL PENALTIES.**

- (a) A person commits an offense if he:
  - (1) violates Section 33-3 of this chapter; or
  - (2) refuses to allow or interferes with an inspection authorized under Section 33-5(a) of this chapter.
- (b) An offense under this chapter is punishable by a fine of not less than \$200 or more than \$2,000. A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.
- (c) Prosecution in municipal court for an offense under this section does not prevent the use of other enforcement remedies or procedures provided by other city ordinances or state or federal laws that are applicable to the person charged with or the conduct involved in the offense."

SECTION 3. That Chapter 33 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

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SECTION 5. That this ordinance shall take effect on October 1, 2012, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By Chris Bowers  
Assistant City Attorney

Passed JUN 27 2012

CB/DCC/00001