

AN ORDINANCE AMENDING CHAPTERS 1 AND 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO BOARDING HOMES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, facilities providing living quarters and limited life services to special needs individuals, commonly known as boarding home facilities, have proliferated throughout Texas in recent years, but predominately in major urban areas; and

WHEREAS, because of their special needs, the residents of boarding home facilities have a strong likelihood of requiring personal care, medical, mental health, social, and financial management services, and are especially vulnerable to exploitation regarding such services; and

WHEREAS, the Texas Legislature, recognizing the potential for such exploitation, as well the existence of empirical and case history data indicating instances of such exploitation within the boarding home industry, enacted Chapter 260 of the Texas Health and Safety Code authorizing municipalities to provide oversight of boarding home facilities; and,

WHEREAS, the Houston Police Department has likewise identified instances of exploitation of residents in boarding homes in the City of Houston which could be ameliorated through municipal oversight; and

WHEREAS, for these reasons the City Council of the City of Houston believes it is in the interest of the public health, safety and welfare to require the registration of and oversight for the operation of boarding homes in the City of Houston; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That the catchline of Section 1-9 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 1-9. Procedures for denial, suspension or revocation of licenses, permits, and registrations—Generally.”

Section 3. That Section 1-9 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Item (g) that reads as follows:

“(g) Proceedings relating to registrations issued under article XIV of chapter 28 of this Code shall additionally be governed by the procedures established in this section. Applicants for registration under article XIV of Chapter 28 of this Code who are denied such registration on the basis of one or more criminal convictions shall be considered applicants for purpose of this section, and those receiving registration under article XIV of Chapter 28 of this Code later found subject to revocation or suspension of that registration on the basis of one or more criminal convictions for themselves or their employee(s) shall be considered licensees/permittees for purposes of this section.”

Section 4. That the catchline of Section 1-10 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 1-10. Same-Specific permits, licenses, and registrations.”

Section 5. That Subsection (b) of Section 1-10 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Item (6) that reads as follows:

- “(6) Registrations for boarding homes and boarding home operators issued pursuant to chapter 28, article XIV of this Code:
- a. Any offense involving fraud or theft;
 - b.
 - c. Any offense involving forgery;
 - d. Any violation of state or federal laws regulating firearms;
 - e.

- f. Any offense involving the possession, use of or sale of drugs except for conduct that is classified as no greater than a Class C misdemeanor under the laws of this state;
- g. Any offense involving prostitution or the promotion of prostitution;
- h. Any offense involving rape, sexual abuse, sexual assault, rape of a child, sexual abuse of a child or indecency with a child;
- i. Any other felony offense listed under Title 5 to the Texas Penal Code.

The above listed offenses shall be grounds for the denial, revocation or nonrenewal of authorizations issued under article XIV of chapter 28, as enumerated, because the authorizations thereunder allow persons to engage in businesses and occupations in which there is a high degree of danger to the elderly, the disabled, and members of the general public through the operation of boarding homes. Such activities involve the operation of boarding homes and providing direct personal assistance and services in a closed facility to disabled and elderly individuals who cannot fend for themselves; such assistance and services include lodging, meal preparation, light housework, transportation, grocery shopping, money management, and assistance with self-administration of medication. Providing these services affords special opportunities for theft, fraud, personal and sexual abuse, assault, transportation related offenses and injuries, misuse and theft of drugs, assault with a deadly weapon, and other crimes traditionally committed against the infirm and the defenseless. Therefore, there is a serious need to protect the individuals housed in these facilities and members of the general public from the types of criminal conduct represented by such offenses.”

Section 6. That Subsection (a) of Section 1-15 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Item (10) that reads as follows:

“(10) Registrations for boarding homes issued pursuant to article XIV of chapter 28 of this Code.”

Section 7. That Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XIV that reads as follows:

“Article XIV. BOARDING HOMES

Sec. 28-451. Definitions.

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

Assistance with self-administering medication means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

Boarding home or boarding home facility means an establishment that:

- (1) Furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
- (2) Provides residents with 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 as defined by Section 247.002 of the Texas Health and Safety Code to those persons.

Director, unless otherwise clearly specified in this article, means the chief of police and such employees of the Houston Police Department as the chief may designate to perform the duties of the ‘director’ under this article.

Elderly person means a person 65 years of age or older.

Employee means a person who regularly works in a boarding home facility.

Operator means the person in control of a boarding home facility.

Owner means a person who owns or has an ownership interest in a corporation or other legal entity operating a boarding home facility.

Person with a disability means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is:

- (1) 18 years of age or older; or
- (2) Under 18 years of age and who has had the disabilities of minority removed.

Registration certificate means a certificate issued for a boarding home as provided under this article.

Resident means a person who is residing in a boarding home facility.

Sec. 28-452. Exemptions.

This article does not apply to:

- (1) Home and community support services licensed under Texas Health and Safety Code ch. 142, as amended.
- (2) Convalescent and nursing homes and related institutions licensed under Texas Health and Safety Code ch. 242, as amended.
- (3) Continuing care facilities licensed under Texas Health and Safety Code ch. 246, as amended.
- (4) Assisted living facilities licensed under Texas Health and Safety Code ch. 247, as amended.
- (5) Intermediate care facilities for the mentally retarded licensed under Texas Health and Safety Code ch. 252, 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 as defined in Texas Health and Safety Code § 142.003(a)(19), as amended.
- (7) An establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules as defined in Texas Health and Safety Code § 242.003(3), as amended.
- (8) A facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by a state department or agency and that is monitored by a state department or agency or its designated local mental retardation authority in accordance with standards set by the state department or agency, as defined in Texas Health and Safety Code § 247.004(4), as amended.
- (9) A hotel as defined by Texas Tax Code § 156.001, as amended.
- (10) A retirement community as defined by Texas Tax Code § 11.18, as amended.
- (11) The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows, such as a monastery or convent.
- (12) A childcare facility as defined by Texas Human Resources Code § 42.002, as amended.
- (13) A family violence shelter center as defined by Texas Human Resources Code § 51.002, as amended.
- (14) A fraternity or sorority house, or other dormitory, associated with an institution of higher education.

(15) A multi-family rental building, as defined in section 10-152 of this Code.

Sec. 28-453. Registration required.

It shall be unlawful for any person to operate a boarding home within the city limits without first registering with the city in accordance with this article.

Sec. 28-454. Registration procedure.

(a) In order to register a boarding home, the operator of a boarding home shall annually provide the following information to the Director of Administration and Regulatory Affairs (ARA):

- (1) a. The name, street address (and mailing address if different) and Texas driver's license number of the intended operator;
- b. The name and street address (and mailing address if different) of the owner(s);
- (2) If the boarding home is to be operated under an assumed name, a certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Business and Commerce Code, chapter 36);
- (3) If the boarding home is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (4) If the boarding home is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
- (5) If the boarding home is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act or its successor statute;
- (6) If the boarding home is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act or its successor statute;

- (7) The address and legal description of the tract of land on which the boarding home is to be located;
- (8) Proof of the current fee ownership of the tract of land on which the boarding home is to be situated in the form of a copy of the recorded deed;
- (9) If the persons identified as the fee owner(s) of the tract of land in item (8) are not also the owners of the boarding home, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the boarding home to have or obtain the use and possession of the tract or portion thereof that is to be used for the boarding home for the purpose of the operation of the boarding home;
- (10) The name under which the boarding home is to be operated;
- (11) A general description of the services to be or currently provided, and if in current operation, the total number of residents;
- (12) The maximum number of beds which are provided as well as the number of beds which are intended to be used;
- (13) All security and resident monitoring plans and any additional security and monitoring measures which are to be implemented;
- (14) The telephone number of the boarding home;
- (15) If the boarding home is in operation, the date on which the owner(s) acquired the boarding home, and the date on which the boarding home began operations as a boarding home at the location;
- (16) If the boarding home is not in operation, the expected start-up date;
- (17) A statement by the both the owner and operator of the boarding home facility, supported by a sworn affidavit properly verified by a notary or other individual authorized to administer oaths, that neither the owner, nor the operator, nor any of the employees of the boarding home facility have been convicted of any of the criminal offenses designated in section 1-10(b)(6) of this Code within the five-year period immediately preceding the date of the filing of the application, and stating further that the owner and operator

acknowledge that non-compliance with section 1-10(b)(6) of this Code shall constitute cause to deny, revoke, suspend, or refuse for renewal, as applicable, the registration for the boarding home facility; and

- (18) A statement by the operator of the home that it is in full compliance with Chapter 325 of the Texas Health and Safety Code.

(b) Registration shall be submitted to ARA and shall be accompanied by payment in full of the annual, non-refundable registration fee for an original registration or for a renewal registration, as applicable, stated for this provision in the city fee schedule.

(d) A separate registration shall be required for each boarding home.

(e) Each boarding home facility registered under this article shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement in a form acceptable to the director that the employee acknowledges that the employee may be criminally liable under Section 48.052, Texas Human Resources Code, for failure to report abuse, neglect, or exploitation of any resident. Copies of said statements shall accompany each registration, and each boarding home facility shall provide the director copies of said statements for new employees within 10 days of their hire.

Sec. 28-455. Criminal background history checks.

(a) The registration for a boarding home facility may be denied, revoked, suspended, or denied for renewal in accordance with section 1-9 of this Code if (1) the owner or operator has been convicted of a criminal offense listed in section 1-10(b)(6) of this Code, or if (2) the owner, operator, or boarding home facility has any employee convicted of a criminal offense listed in section 1-10(b)(6) of this Code.

(b) As part of the annual registration process, the owner and operator shall consent to and complete any state or federal request and release forms that are required for the city to obtain a criminal history report for the owner and operator. In addition to the registration fee required by section 28-454(b) of this Code, the owner and operator shall reimburse the city for any fees imposed by state or federal agencies for the report.

Sec. 28-456. Posting.

A boarding home facility shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents and visitors (1) the registration certificate issued by the city under this article, and (2) in a font of sufficient size to be easily read, the provisions of Section 102.003 of the Texas Human Resources Code.

Sec. 28-457. Records, reporting, and inspections.

(a) The owner and operator of each boarding home facility shall maintain on the premises of the facility records sufficient to verify and substantiate all information provided under section 28-454 of this Code. In addition, the owner and operator of each boarding home shall maintain on the premises of the boarding home documentation showing staffing and shift assignments for all employees; resident service agreements signed by each resident or the resident's legal representative detailing the services to be provided to the resident by the boarding home facility, and the cost of those services; the name of each resident, accompanied by personal identifier information, including date of birth, driver's license, social security card, or other acceptable state recognized identification; and contact information for the resident's legal representative, if any. The information required under this section shall be maintained for a period of at least five years.

(b) The owner and operator of each boarding home facility shall immediately notify the director of any fatality or criminal activity which occurs on the premises of the boarding home facility.

(c) The director may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation to assure compliance with this ordinance and to protect the health, safety, or welfare of the residents of a boarding home. The director may be assisted in any investigation by representatives of the department of public works and engineering, the fire department, the neighborhood protection official, the health and human services department, or other city agencies or entities with appropriate jurisdiction over matters affecting the health, safety, or welfare of the residents of a boarding home. During the course of any inspection, the owner, operator, and any employee of the boarding home facility shall be required to identify themselves and provide documentation of their identity upon the request of the director or any other city representative participating in the inspection.

(d) At the time of any inspection, each boarding home facility shall provide the director access to books, records, and other documents maintained by or on behalf of a boarding home facility as required under this section.

Sec. 28-458. Accurate information required.

It shall be unlawful for a boarding home facility or its representative to:

- (1) fail to supply all of the information required by this article; or
- (2) give materially false, fraudulent or untruthful information.

Sec. 28-459. Effect of registration.

Registration under this article shall not be interpreted to excuse or relieve a boarding home facility or its owners, operators, or employees from compliance with any state laws or other ordinances of the city as the same shall apply.

Sec. 28-460. Penalty; continuing violations.

(a) Violation of any provision of this article shall be punishable by a fine in accordance with section 1-6 of this Code. Each day any violation continues shall constitute and be punishable as a separate offense.

(b) All fines and fees collected by the city pursuant to this article shall be used to administer the registration process or for other purposes directly related to providing boarding home facility or other similar assisted living services to elderly persons and persons with disabilities.”

Section 8. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 9. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the 120th day after the date of passage.

PASSED AND ADOPTED this ___ day of _____, 2013.

APPROVED this ___ day of _____, 2013.

Mayor of the City of Houston

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

City Secretary

Prepared by Legal Dept. _____
CMH :asw 05/06/2013 Senior Assistant City Attorney
Requested by C. A. McClelland, Chief of Police
L.D. File No. 0621100319001