

ORDINANCE NO. ORD-2015-9654

AN ORDINANCE AMENDING THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY ADDING CHAPTER 8A, "BOARDING HOME FACILITIES;" PROVIDING DEFINITIONS; PROVIDING PERMITTING PROCEDURES, REQUIREMENTS, QUALIFICATIONS, AND FEES FOR BOARDING HOME FACILITIES; PROVIDING FOR INSPECTION OF BOARDING HOME FACILITIES; PROVIDING REPORTING AND RECORD-KEEPING REQUIREMENTS FOR BOARDING HOME FACILITIES; PROVIDING FOR CRIMINAL BACKGROUND CHECKS FOR THE OWNERS, OPERATORS, AND EMPLOYEES OF BOARDING HOME FACILITIES; PROVIDING VIOLATIONS AND PENALTIES; PROVIDING A SEVERABILITY 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, but concluded that there were undoubtedly more facilities in existence because they were difficult to identify and locate; and

WHEREAS, the Study found that many low-income Texans reside in unlicensed boarding home facilities, particularly the elderly, disabled, mentally ill, and persons with a history of substance abuse; 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 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, the Study further found that some facilities are unsafe and unsanitary and even unacceptably dangerous because they are unclean; and

WHEREAS, many boarding home facilities leave residents in isolated environments, which subjects them to neglect and abuse; 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 have been extensively documented by the Study; and

WHEREAS, the Study recognized the municipalities may require permitting 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, 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 to operate a boarding home facility; 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 City Council believes it is in the interest of the public health, safety and welfare to regulate and license boarding home facilities; and

WHEREAS, the City Council believes that the standards in this ordinance will provide adequate protection for the health and safety of residents of boarding home facilities, ensure 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 Irving until the respective time periods designated in this ordinance 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 permit to operate a boarding home facility;
- (3) The extent to which a permit 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 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 persons who are not related to the owner or operator of the boarding home facility; and

WHEREAS, the City Council has determined that no person who has been convicted of a crime listed 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 this ordinance have expired, and thus, should be disqualified from being issued a license to own or operator a boarding home facility until the expiration of those time periods;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION 1. That The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended by adding a new Chapter 8A, "Boarding Home Facilities," to read as follows:

#### Chapter 8A

### **BOARDING HOME FACILITIES**

#### **Sec. 8A-1. Purpose of chapter.**

(a) The purpose of this chapter is for the city to protect the health, safety and welfare of residents of boarding home facilities and to maintain a record of boarding home facilities. These records will enable the city to try to ensure adequate fire, police, or emergency response personnel and vehicles are available, to identify and facilitate appropriate emergency responses for residents who may require special assistance during an emergency, and to enable enforcement of the spacing requirement between 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 or permit lawful businesses subject to the city's police power granted by V.T.C.A., Local Government Code §§ 54.004 and 215.075.

(b) The city seeks and intends that this chapter is legally compliant with the Federal Fair Housing Amendments Act of 1988 ("FHAA"), 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 is applied and enforced in a manner consistent with the FHAA, the ADA, and other applicable federal and state legislation.

#### **Sec. 8A-2. Definitions.**

The following definitions apply:

*Boarding home facility* means an establishment, including a residence or dwelling, that furnishes, in one or more buildings, to persons under separate rental agreements, whether oral or written, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage, but does not provide personal care services as defined by Section 247.02 of the Texas Health and Safety Code, and is not listed in section 8A-4.

*Department* means the code enforcement department which shall enforce and administer this chapter.

*Director* means the director of the code enforcement department who shall oversee the enforcement and administration of this chapter, and includes representatives, agents, or department employees designated by the director.

*Disability* means a disability as defined in 42 U.S.C. § 12102, as amended.

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

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

*Habitable space* means space in a residence or dwelling used for living, sleeping, eating, or cooking and includes bathrooms, closets, and hallways but does not include garages, attics, or porches.

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

*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.

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

*Sleeping room* means a room intended and used for sleeping purposes but does not include a kitchen, dining room, living room, bathroom, hallway, or garage.

### **Sec. 8A-3. Permit required.**

(a) A person commits an offense if he owns or operates a boarding home facility within the city without a valid permit 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-5 is pending.

(c) It is a defense to prosecution under this chapter if a person operates a facility listed in section 8A-4 of this chapter.

#### **Sec. 8A-4. Exemptions.**

This chapter does not apply to:

- (1) Home and community support services licensed under V.T.C.A., Health and Safety Code ch. 142, as amended;
- (2) Convalescent and nursing homes and related institutions licensed under V.T.C.A., Health and Safety Code ch. 242, as amended;
- (3) Continuing care facilities licensed under V.T.C.A., Health and Safety Code ch. 246, as amended;
- (4) Assisted living facilities licensed under V.T.C.A., Health and Safety Code ch. 247, as amended;
- (5) Intermediate care facilities for the mentally retarded licensed under V.T.C.A., 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 the Texas Department of Mental Health and Mental Retardation or its successor ("TDMHMR") and monitored by TDMHMR or its designated local authority in accordance with standards set by TDMHMR;
- (7) An establishment conducted by or for adherents of a well-recognized church or religious denomination for the purpose of providing facilities to care and treat the sick who depend exclusively on prayer and spiritual means for healing, without the use of any drug or material remedy;
- (8) A hotel as defined by V.T.C.A., Tax Code § 156.001, as amended;
- (9) A retirement community as defined by V.T.C.A., Tax Code § 11.18, as amended;
- (10) A monastery or convent;
- (11) A child-care facility as defined by V.T.C.A., Human Resources Code § 42.002, as amended;
- (12) A family violence shelter as defined by V.T.C.A., Human Resources Code § 51.002, as amended;
- (13) A dormitory, sorority, or fraternity house located on the property of an institution of higher education; and
- (14) A halfway house as defined under section 52-75 of the Irving Land Development Code, as amended.

#### **Sec. 8A-5. Permit application.**

To obtain an annual permit to operate a boarding home facility, a person must submit an application to the director on a form provided for that purpose and pay the permit fee. 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 submit the form. The application must contain the following information before it is considered complete and subject to review:

- (1) The name, mailing address, email address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and the date of birth of the applicant. The mailing 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, form of business, mailing address, email 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. If the applicant is a legal entity, such as a corporation, partnership, association or non-profit, a copy of the documents establishing the entity. The mailing 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 names, mailing addresses, email 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 mailing 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.
- (4) If the operator of the boarding home facility is renting or leasing the home or facility, then the operator must present a letter from the owner of the real property authorizing the use of the rental property to operate a boarding home facility and acknowledging the requirements for the property to be used as a boarding home facility set out within this chapter.
- (5) The street address and telephone number of the boarding home facility.
- (6) The name, mailing address, email address, and telephone number of a person(s) to contact in an emergency.
- (7) 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. To the extent that the criminal history report does not provide information regarding the final disposition of a criminal case, then the owner and operator shall provide such information to the city upon request.
- (8) The maximum number of residents that will reside at the boarding home facility pursuant to section 8A-19 of this chapter.
- (9) The services to be offered or provided to the residents of the boarding home facility.

- (10) A verification from the city's planning department stating that the proposed use of the property is not prohibited under the city's zoning regulations.
- (11) If the boarding home facility has one or more residents with a disability, a list of the general disabilities of the resident(s) and information as to whether the individuals with disabilities are ambulatory or suffer from a mobility impairment.
- (12) 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 a 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 controlled substances, including all rules by which the residents must abide.
- (13) A statement that, by filing this 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.
- (14) Such additional information as the applicant desires to include or that the director deems necessary to aid in the determination of whether the requested permit should be granted.

**Sec. 8A-6. Notification of change of information.**

The permit holder shall notify the director within 10 days after any material change in the information contained in the application for a permit to operate a boarding home facility, including any change in ownership.

**Sec. 8A-7. Permit fees.**

The non-refundable annual fee for a permit to operate a boarding home facility is \$100.00.

**Sec. 8A-8. Issuance or denial of permit.**

(a) Upon payment of the fee and the submission of a complete application, the director shall issue an annual permit to operate a boarding home facility to the applicant, to include the number of authorized residents, if the director determines that:

- (1) The applicant has complied with all requirements within this chapter for issuance of the permit;
- (2) The applicant, owner(s), operator(s) and employee(s) of the boarding home facility meet the criminal history qualifications of section 8A-22 of this chapter;

- (3) The applicant, owner(s), operator(s), or employee(s) of the boarding home facility do not own or operate another permitted boarding home facility in the city for which the permit 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 permit;
- (5) The condition of the boarding home facility complies with the minimum housing standards in chapter 8 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, and the boarding home facility has passed the required inspection; and
- (6) The proposed boarding home facility is not within 1,000 feet of an existing boarding home facility. For purposes of this section, the measurement consists of a straight line without regard to intervening structures or objects, from the nearest property line of the lot or tract on which the proposed boarding home facility is located to the nearest property line of the existing registered or permitted boarding home facility, which requires separation. An exception exists where two or more boarding home facilities exist within 1,000 feet of each other as of the adoption date of this chapter, such boarding home facilities are exempt from this distance requirement and may remain in operation, but only where they are issued a permit by the city and comply with the remaining requirements of this chapter. Following the issuance of a permit, should the permit be revoked or a boarding home facility cease operations for a period of time greater than 90 days, then the distance requirement will apply.

(b) If the director determines that the requirements of (a) have not been met and, if applicable, a variance under the chapter has been denied, the director shall deny the permit and notify the applicant in writing that the application is denied, the reason for denial, and a statement informing the applicant of the right to appeal.

#### **Sec. 8A-9. Variance from distance requirement.**

(a) The zoning board of adjustment, sitting as a permit license and appeal board, may grant a variance to a proposed boarding home facility authorizing its location within 1,000 feet of another boarding home facility.

(b) The variance procedure is as follows:

(1) *Application.* When requesting a variance from the distance requirement found within section 8A-8, the applicant must submit the following information to the director:

a. Completed variance request form with the following information:

1. The name and address of the applicant for the boarding home facility;
2. The name and address of the boarding home facility subject to the request, if applicable;



3. The name of the property owner for the property where the boarding home facility is proposed to be located;
  4. The name and address of the boarding home facility currently in existence which triggered the request for variance;
  5. Notarized authorization of the property owner consenting to the variance request; and
  6. The payment of a \$750 fee for the variance, which is non-refundable.
- b. Statement of justification as to how the requested variance meets the criteria in subsection (b)(4) of this section.
  - c. A site and floor plan showing the following information:
    1. North arrow and scale;
    2. Boundaries of the property;
    3. Location and dimensions of all buildings and structures;
    4. Interior floor plan; and
    5. All fences, parking area, and landscape area.
- (2) *Hearing.* The director shall set a date for a public hearing before the zoning board of adjustment within 60 days from the date a complete variance application is received.
- (3) *Notices.* No later than 10 days prior to the date of the hearing, the director shall send written notice of the variance request, to include the date and time of the scheduled public hearing, to:
- a. The property owner of the boarding home facility currently in existence which triggered the request for variance;
  - b. The applicant requesting the variance; and
  - c. Each owner, as indicated by the most recently approved municipal tax roll, of real property, within 200 feet of the property.

(4) *Board decision; criteria.*

- a. In determining whether to grant a variance, the zoning board of adjustment must find by a majority vote that the enforcement of the distance requirement is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a permit, does not serve its intended purpose, and/or is not effective or necessary. For purposes of this section, a self-created or financial/economic hardship does not constitute an undue hardship.
  - b. If at the conclusion of the public hearing the zoning board of adjustment grants the applicant's request for a variance, the zoning board of adjustment may impose additional conditions on the granting of the variance where such conditions are intended to mitigate the impacts caused by the boarding home facility and are in the public interest.
  - c. The decision by the board is final and no rehearing may be granted.
- (5) *Renewal and non-transferability.* A variance granted pursuant to this subsection is valid for subsequent renewals of the permit for which a variance was sought. A variance granted pursuant to this subsection is not transferable to another owner, operator, or location.
- (6) *Variance violation.* The director may request the city attorney to seek any and all remedies available at law and/or equity to assure the conditions imposed on the granting of the variance are enforced.
- (7) *Denial.* If a variance is denied under this section, no new application for a boarding home facility permit for the same location will be accepted within 12 months from date of the denial.

**Sec. 8A-10. Suspension of permit; prohibition of new residents.**

(a) The director may suspend a permit for a boarding home facility for a period not to exceed 90 days if the director finds that the permit holder 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;
- (2) Intentionally or knowingly impeded or refused to allow an inspection by the director authorized under this chapter; or
- (3) Failed to pay a fee required by this chapter at the time it was due.

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

(c) A permit holder whose permit is suspended may not be granted a permit to operate any additional boarding home facility during the suspension period.

(d) A permit holder commits an offense if he operates or owns a boarding home facility that admits new residents during the time that the suspension of the permit is in effect. Within 10 days of receipt of notice of the suspension, the permit holder must submit to the director in writing a list of current residents of the boarding home facility.

(e) During the period of suspension of a permit for a boarding home facility, the permit holder shall enter into a compliance agreement with the city to agree to eliminate the noncompliance, ensure prompt future inspections, and elevate one or more conditions at the boarding home facility to the standards of this chapter. Failure to enter into the compliance agreement within the suspension period is cause for revocation of the permit.

#### **Sec. 8A-11. Revocation of permit.**

(a) Except as provided in subsection (b), the director may revoke any permit issued to operate a boarding home facility if the director determines that:

- (1) The permit holder intentionally made a false statement as to a material matter in the application or in a hearing concerning the permit;
- (2) The permit holder has failed to enter into a compliance agreement during a period of suspension;
- (3) A cause for suspension has occurred and the permit has already been suspended at least once within the preceding 12 months;
- (4) The permit holder fails to meet the criminal history qualifications of this chapter or employs a person at the boarding home facility who fails to meet the criminal history qualifications;
- (5) Failure 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
- (6) Failure to implement and abide by any plan or rules for the boarding home facility required by the provisions of this chapter.

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

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

(d) If a permit has been revoked, the permit holder has 10 days from the date the notice was delivered or from the date of final determination on the appeal pursuant to section 8A-12,

whichever is later, to relocate the residents of the facility and cease operations.

#### **Sec. 8A-12. Appeals.**

If the director denies the issuance or renewal of a permit or suspends or revokes a permit issued under this chapter, the action is final unless the permit holder files a written appeal within 10 days of the director's action with the zoning board of adjustment. For purposes of an appeal under this chapter, the zoning board of adjustment shall sit as a permit license and appeal board. If a written request for a hearing is filed timely, the zoning board of adjustment shall hear the appeal within 60 days after the date the appeal is filed. The board shall hear and consider evidence offered by any interested person; the formal rules of evidence do not apply. The zoning board of adjustment's decision must be by a majority vote. Failure to reach a majority vote will leave the decision of the director unchanged. The decision of the board is final and no rehearing may be granted.

#### **Sec. 8A-13. Expiration and renewal of permit.**

(a) The annual permit to operate a boarding home facility expires one year after the date of issuance.

(b) A permit holder must apply for renewal at least 30 days before the expiration of the annual permit on a form provided by the director. The permit holder must update the information contained in the original permit application required under this chapter if any of the information has changed. The permit holder shall sign a statement affirming that there is either no change in the information contained on the original permit application and any subsequent renewal applications or that any information that has been updated is accurate and complete and pay the annual fee.

(c) The director shall follow the procedures set forth in this chapter when determining whether to renew a permit.

#### **Sec. 8A-14. Non-transferability.**

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

#### **Sec. 8A-15. Records.**

(a) The permit holder 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 permit holder 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 permit holder include, but are not limited to:

- (1) Current records of ownership of the property where the boarding home facility is located;
- (2) Records documenting any reasonable accommodation granted under section 8A-17;
- (3) Records demonstrating compliance with applicable laws and regulations;

- (4) Records documenting that each resident has been shown how to use all emergency exits and received training on the emergency evacuation plan of the boarding home facility at least 2 times per calendar year, as required by section 8A-21;
- (5) Records documenting the initial screening of potential residents, including criminal background checks;
- (6) A copy of the written lease or agreement signed by each current resident;
- (7) 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;
- (8) 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);
- (9) A list of all state driver's license numbers for each licensed driver who owns, operates, or resides at the boarding home facility;
- (10) A list of the vehicle identification information, including make, model and year, for each vehicle belonging to any owner, operator or resident of the boarding home facility which will be parked on the lot or tract for which the boarding home facility is located in accordance with section 8A-20 or used for transporting individuals to and from the boarding home facility; and
- (11) Any other records deemed necessary by the director for the administration and enforcement of this chapter.

(c) Except as otherwise provided, a permit holder shall maintain a record that concerns a resident for 3 years after the resident no longer resides at the boarding home facility.

(d) Except as otherwise provided, a permit holder shall maintain a record that does not concern a resident for 3 years.

#### **Sec. 8A-16. Posting requirements.**

The permit holder 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 permit issued under this chapter to operate the boarding home facility. The permit must be presented upon request to the director for examination.

- (2) A sign provided by the director specifying how complaints may be registered with the city and a copy of the most recent inspection report conducted by the director.
- (3) A notice in a form prescribed by the director stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility.
- (4) A copy of the most recent inspection report relating to the facility or a concise and accurate summary of the most recent 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 boarding home 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. Reasonable accommodations.**

(a) The city intends to ensure that all persons with a disability have 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 consistent with the FHAA and the ADA, as amended.

(b) The method of submitting a request for reasonable accommodation is as follows:

- (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 permit holder 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) 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) 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(s) with a disability, if applicable;
- (3) The address of the property to which the requested reasonable accommodation would apply;
- (4) Information that substantiates that the individual who would obtain the benefit of the reasonable accommodation is disabled;
- (5) The section(s) of this chapter from which a reasonable accommodation is being requested; and
- (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) 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.

(e) Before making a decision, the director may request an inspection of the boarding home facility and the property on which it is located. If the director makes such a request, 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 application is automatically denied.

(f) If the director deems it necessary to request additional information from the applicant consistent with federal and state law, the director shall contact the applicant in writing and specify the additional information that is required. If the director makes such a request, the applicant must provide the additional information to the director within 20 days after the date of the request or the application is automatically denied.

(g) All proposed decisions of the director must be submitted to the city attorney for legal review to determine compliance with local, state, and federal laws and regulations.

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

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

- (1) Whether the housing that is the subject of the request will be used by one or more individuals with a disability;
- (2) Whether the requested accommodation is necessary to make specific housing available to one or more individuals with a disability;
- (3) Whether the requested accommodation would impose an undue financial or administrative burden on the city;

- (4) Whether the requested accommodation would require a fundamental alteration in the nature of city regulations;
- (5) The potential impacts of the requested accommodation on the applicant, the other residents of the boarding home facility, and the surrounding neighborhood;
- (6) Whether a failure to grant an accommodation would result in the property having no economically viable use; and
- (7) Whether there are alternative accommodations that are reasonable and have an equal, or less of an impact on the city, applicant, other residents of the boarding home facility, and the surrounding neighborhood.

(j) The director shall issue a written decision within 30 days of:

- (1) Receipt of a completed application, provided that the director is able to issue a decision based on the information provided in the original request; or
- (2) The completed inspection of the property, facility, and its records, as requested by the director; or
- (3) The director's receipt of all additional requested information.

(k) The director's written decision must explain in detail the basis of the decision and notify the applicant of the right to appeal the director's decision to the zoning board of adjustment.

(l) If the director denies an application for a reasonable accommodation, the action is final unless the applicant files an appeal with the zoning board of adjustment, sitting as a permit license and appeals board.

#### **Sec. 8A-18. Inspection; fees.**

(a) *Required inspections.*

- (1) A boarding home facility must pass all required inspections.
- (2) The permit holder shall keep a current file of reports and other documentation on site that is needed to demonstrate compliance with applicable city ordinances and federal and state laws. Inspection records must be signed and dated by the appropriate authority and there may not be any pending corrective actions.
- (3) The following inspections are required to determine if the boarding home facility complies with the city's codes, including, but not limited to, zoning, building, and fire codes:
  - a. Initial inspection prior to issuance of the permit.
  - b. Annual inspection prior to renewal of the permit.



(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 permit to operate a boarding home facility.

(d) *Re-inspections.* 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) *Re-inspection fee.* The permit holder shall pay the director a \$100 fee for each re-inspection until the violation is determined to be eliminated, including any other applicable fees from other departments.

#### **Sec. 8A-19. Residential density.**

A boarding home facility operating in any single-family residential structure is subject to residential density limitations calculated as either the maximum number of occupants permitted under section 8-31 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, or 10 persons, whichever is less.

#### **Sec. 8A-20. Parking.**

(a) Off-street parking spaces must be provided for residential parking and shall be calculated by multiplying the number of residents authorized by the boarding home facility permit by 75 percent, with any resulting fraction for the number of spaces being rounded up.

(b) A boarding home owner or operator may seek a variance from the requirements of this section by filing an application for a variance with the zoning board of adjustment, sitting as a permit license and appeal board.

(c) The variance procedure is as follows:

- (1) *Application.* When requesting a variance from the parking requirement found in this section, the applicant must submit the following information to the director:

- a. Completed variance request form with the following information:
    1. The name and address of the applicant for the boarding home facility;
    2. The name and address of the boarding home facility subject to the request, if applicable;
    3. The name of the property owner for the property where the boarding home facility is proposed to be located;
    4. Notarized authorization of the property owner consenting to the variance request; and
    5. The payment of a \$750 fee for the variance, which is nonrefundable.
  - b. Statement of justification as to how the requested variance meets the criteria in subsection (b)(4) of this section.
  - c. A site and floor plan showing the size and layout of the boarding home facility; the number of bedrooms in the boarding home facility; and the parking area to be provided.
- (2) *Hearing.* The director shall set a date for a public hearing before the zoning board of adjustment within 60 days from the date a complete variance application is received;
- (3) *Notices.* No later than 10 days prior to the date of the hearing, the director shall send written notice of the variance request, to include the date and time of the scheduled public hearing, to:
- a. The property owner of the boarding home facility currently in existence which triggered the request for variance;
  - b. The applicant requesting the variance; and
  - c. Each owner, as indicated by the most recently approved municipal tax roll, of real property, within 200 feet of the property.
- (4) *Board decision; criteria.*
- a. In determining whether to grant a variance, the zoning board of adjustment must find by a majority vote that the enforcement of the parking requirement is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a permit, does not serve its intended purpose, and/or is not effective or necessary. For purposes of this section, a self-created or financial/economic hardship does not constitute an undue hardship.

- b. If at the conclusion of the public hearing the zoning board of adjustment grants the applicant's request for a variance, the zoning board of adjustment may impose additional conditions on the granting of the variance where such conditions are intended to mitigate the impacts caused by the boarding home facility and are in the public interest.
  - c. The decision by the board is final and no rehearing may be granted.
- (5) *Renewal and non-transferability.* A variance granted pursuant to this subsection is valid for subsequent renewals of the permit for which a variance was sought. A variance granted pursuant to this subsection is not transferable to another owner, operator, or location.
  - (6) *Variance violation.* The director may request the city attorney to seek any and all remedies available at law and or equity to assure the conditions imposed on the granting of the variance are enforced.
  - (7) *Denial.* If a variance is denied under this section, no new application for a parking variance for the same location will be accepted within 12 months from date of the denial.

**Sec. 8A-21. Operational and emergency prevention standards.**

- (a) Each permit holder shall ensure the residents' health, safety, comfort, and protection from hazards and shall comply with the following:
  - (1) City adopted fire and building codes; city zoning regulations, federal, state, and city health and safety codes; federal and state accessibility regulations; and other applicable ordinances;
  - (2) Mobile homes and HUD-code manufactured homes may not be used as a boarding home facility;
  - (3) Smoke alarms and carbon monoxide detectors shall be installed in compliance with the city's building code provisions for either new construction or building alterations requiring a permit, and shall be maintained in compliance with the city's fire code;
  - (4) Maintain the residence or dwelling and its premises in a clean and sanitary condition;
  - (5) Pathways, stairways and exits must be kept in good repair, unobstructed, and accessible at all times;
  - (6) Provide from each room used for sleeping purposes at least one emergency escape and rescue opening;
  - (7) Store any flammable supplies or gasoline-operated maintenance equipment and lawn care equipment in the garage of the facility or in a detached storage shed;
  - (8) Provide a sufficient number of properly charged and accessible fire extinguishers; and

- (9) Install and properly maintain a visual smoke alarm that is capable of alerting a hearing impaired person of the presence of fire or smoke, if the boarding home facility has a resident who is hearing impaired.

(b) Each permit holder shall implement a written fire and evacuation plan that complies with the following:

- (1) The plan must set forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency.
- (2) If a boarding home facility has a resident who has a mobility impairment, the permit holder shall submit the written plan to the Irving Fire Department and obtain its approval of the plan.
- (3) The emergency evacuation plan must be posted in each sleeping room and the kitchen of the facility.
- (4) The permit holder shall ensure that all residents are shown how to use all emergency exits from the boarding home facility and that each resident receives training on the emergency evacuation plan within 10 days of moving into the boarding home facility and at least one more time during the same calendar year. The permit holder shall maintain documentation of such training.

(c) Operation of a boarding home facility may not result in illegal or nuisance activities, including disturbance of the peace, illegal drug activity, harassment of passers-by, public urination, theft, assault, vandalism, littering, illegal parking, loud noise, disorderly conduct, lewd conduct, or police detention and/or arrests.

#### **Sec. 8A-22. Emergency response contact information and telephone.**

(a) The permit holder 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, 7 days a week in the event of an emergency condition on the property where the boarding home facility is located.

(b) The permit holder shall notify the director within 5 days after any change in the emergency response contact information.

(c) The permit holder, or an authorized agent, must arrive at the property within 1 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.

(d) A telephone that is connected to a land line must be available 24 hours a day and be easily accessible, and afford privacy for use by residents to report an emergency condition, a violation of this chapter, or an instance of abuse, neglect or a crime occurring on the property where the boarding home facility is located. A list of emergency telephone numbers, including the numbers of the Irving

Police Department, Irving Fire Department, 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-23. 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) Section 481.120, punishable by a felony, Texas Health and Safety Code (delivery of marijuana) and Section 481.124, punishable by a felony, Texas Health and Safety Code (possession or transport of certain chemicals with intent to manufacture controlled substance), as amended.
- (3) Chapter 19, Texas Penal Code (criminal homicide), as amended.
- (4) Chapter 20, Texas Penal Code (kidnapping, unlawful restraint and smuggling of persons), as amended.
- (5) Chapter 20A, Texas Penal Code (trafficking of persons), as amended.
- (6) Section 21.02, Texas Penal Code (continuous sexual abuse of young child or children), as amended, or Section 21.11, Texas Penal Code (indecent with a child), as amended.
- (7) Section 22.011, Texas Penal Code (sexual assault), as amended.
- (8) Section 22.02, Texas Penal Code (aggravated assault), as amended.
- (9) Section 22.04, Texas Penal Code (injury to a child, elderly individual, or disabled individual), as amended.
- (10) Section 22.041, Texas Penal Code (abandoning or endangering child), as amended.
- (11) Section 22.08, Texas Penal Code (aiding suicide), as amended.
- (12) Section 25.031, Texas Penal Code (agreement to abduct from custody), as amended.
- (13) Section 25.08, Texas Penal Code (sale or purchase of a child), as amended.
- (14) Section 28.02, Texas Penal Code (arson), as amended.
- (15) Section 29.02, Texas Penal Code (robbery), as amended.
- (16) Section 29.03, Texas Penal Code (aggravated robbery), as amended.

- (17) Section 21.08, Texas Penal Code (indecent exposure), as amended.
- (18) Section 21.12, Texas Penal Code (improper relationship between educator and student), as amended.
- (19) Section 21.15, Texas Penal Code (improper photography or visual recording), as amended.
- (20) Section 22.05, Texas Penal Code (deadly conduct), as amended.
- (21) Section 22.01(b)(1), Texas Penal Code (assault on a public servant).
- (22) Section 22.021, Texas Penal Code (aggravated sexual assault), as amended.
- (23) Section 22.07, Texas Penal Code (terroristic threat), as amended.
- (24) Section 33.021, Texas Penal Code (online solicitation of a minor), as amended.
- (25) Section 34.02, Texas Penal Code (money laundering), as amended.
- (26) Section 35A.02, Texas Penal Code (Medicaid fraud), as amended.
- (27) Section 42.09, Texas Penal Code (cruelty to animals), as amended.
- (28) Chapter 31, Texas Penal Code (theft), as amended, that is punishable as a felony.
- (29) Section 30.02, Texas Penal Code (burglary), as amended.
- (30) 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.
- (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 permit holder 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 2 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 under this section.

**Sec. 8A-24. 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 permit holder 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 permit holder 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 1 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 permit holder 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 permit holder removes a person from the premises of a boarding home facility under subsection (c), the permit holder 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-25. Violations; penalty.**

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

(b) A permit holder, 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 \$2,000.00.

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

(e) If the director, building official, or fire chief finds a boarding home facility operating in violation of the standards prescribed by this chapter and the violation creates an immediate threat to the health and safety of a resident in the facility, the director, building official or fire chief may order immediate closing of all or part of the facility. An order of immediate closure is effective immediately on providing written notice of the order to the owner or operator by facsimile, email, or hand-delivery. The order of closure of all or part of a boarding home facility is valid until the violation is corrected and the director, building official, or fire chief has verified that the violation has been abated and that the boarding home facility no longer poses an immediate threat to health and safety of a resident of the facility.

(f) The city council may authorize the city attorney to petition the appropriate court for civil penalties and/or for injunctive relief available under state law for a violation of the requirements for a boarding home facility under this chapter or other applicable law.

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

SECTION 2. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in the ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

SECTION 3. That this ordinance shall become effective on the 1st day of the month after 30 days from the adoption of the ordinance.



PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on January 15, 2015.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney

## AGENDA ITEM SUMMARY

**Meeting:** 1/15/2015

**Recommending Department:** Code Enforcement

**DOC ID:** 6455

**LSR No:** 15529

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### **Ordinance -- Amending The Code of Civil and Criminal Ordinances of the City of Irving, Texas, by Adding Chapter 8A Entitled "Boarding Home Facilities"**

#### **Administrative Comments**

1. This item supports Strategic Goal No. 2: Vibrant Neighborhoods.
2. **Impact:** If adopted, this ordinance would create a new Chapter 8A of the Code of Civil and Criminal Ordinances, Entitled "Boarding Home Facilities," to regulate boarding homes in Irving in an effort to help maintain the integrity of residential neighborhoods. The ordinance provides for permitting, inspections, distance separation requirements and other regulations to operate a boarding home facility in Irving.
3. In 2009, the State Legislature passed H.B. 216, now codified in Chapter 260 of the Texas Health and Safety Code, which authorizes municipalities to require boarding home facilities to obtain a permit to operate a boarding home.
4. Homeowners voiced concerns regarding the potentially negative impact the opening of a new boarding home facility in their neighborhood could have at a community meeting attended by Councilman Webb on December 17, 2013.
5. A general discussion regarding public safety and fire safety concerns related to boarding homes in residential neighborhoods occurred at the February 19, 2014 Public Safety Committee Meeting. The committee requested staff to begin the process of developing ordinance language for future consideration.
6. Staff provided a summary of proposed boarding home facility regulations to the Community Services Committee at their March 24, 2014 meeting. Understanding that existing facilities would be required to comply in the proposed Boarding Home Facilities ordinance, there was a consensus amongst this committee to bring the item before the Planning and Development Committee for further review.
7. At the April 17, 2014 Planning and Development Committee meeting, the committee expressed their support of the Boarding Home Facilities draft ordinance as written.
8. While not the purview of the Planning and Zoning Commission, staff provided a brief summary to highlight the Zoning Board of Adjustment's role in the appeal process in the proposed draft ordinance at the June 16, 2014 meeting.

#### **Recommendation**

The ordinance be adopted.

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#### **ADDITIONAL COMMENTS:**

**Contract Required:** No  
**Previous Action:** N/A

**Review Completed By:** Janet Spugnardi  
**Council Action:** Yes

**CURRENT YEAR FINANCIAL IMPACT:**

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NONE

**REVISION INFORMATION:**

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Prepared: 9/23/2014 09:11 AM by Belinda Rowlett  
Last Updated: 1/9/2015 11:16 AM by Belinda Rowlett