

ORDINANCE O-12-021

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16, OCCUPATIONAL LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS FOR THE PURPOSE OF PROVIDING FOR A NEW ARTICLE III, REGULATION OF BOARDING HOME FACILITIES, REQUIRING PERMITS AND PAYMENT OF FEES, ADOPTING STANDARDS REGARDING CONSTRUCTION AND REMODELING OF BOARDING HOMES; SANITARY AND RELATED CONDITIONS; REQUIRING THE REPORTING AND INVESTIGATION OF INJURIES, INCIDENTS, AND UNUSUAL ACCIDENTS AND THE ESTABLISHMENT OF POLICIES AND PROCEDURES TO ENSURE RESIDENT HEALTH AND SAFETY; SETTING FORTH PROCEDURES FOR ASSISTANCE WITH SELF-ADMINISTERING OF MEDICATION; REQUIRING IN-SERVICE EDUCATION OF THE FACILITY'S STAFF, CRIMINAL HISTORY RECORD CHECKS, ASSESSMENT AND PERIODIC MONITORING OF RESIDENTS; PROVIDING FOR PENALTIES, REVOCATION OF PERMIT, AND APPEALS PROCESS; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.

WHEREAS, Chapter 260 of the Texas Health and Safety Code provides for local regulation of boarding home facilities by municipalities; and

WHEREAS, a boarding home facility is defined in Chapter 260 of the Texas Health and Safety Code as an establishment that furnishes 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 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, as defined herein; and

WHEREAS, it has been the experience of the City of Brenham that unregulated and unlicensed boarding home facilities for the disabled or elderly persons may not provide adequately for the health and safety of the residents; and

WHEREAS, residents residing in a boarding home facility are especially vulnerable to abuse and exploitation, and therefore the City recognizes the need to regulate businesses and persons providing boarding home facility services; and

WHEREAS, Chapter 260 of the Texas Health and Safety Code prohibits the City from restricting boarding home facilities from residentially zoned areas if the boarding home facility complies with the regulatory requirements established by the City; and

WHEREAS, the City of Brenham City Council has determined that the regulation of boarding home facilities within the City is in the best interest of the public and will promote the general health, safety, and welfare of the public;

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

SECTION 1.

Chapter 16 of the Code of Ordinances of the City of Brenham, Texas is hereby amended by adding Article III to read as follows:

ARTICLE III. REGULATION OF BOARDING HOME FACILITIES

Sec. 16-50. Purpose.

The purpose of this Article is to implement the provisions of Chapter 260, Texas Health and Safety Code, as amended, which allows the City to establish regulations for the protection of the health and safety of persons residing in boarding home facilities. In the event of a conflict, this Article must be construed so as to comply with Chapter 260, Texas Health and Safety Code. It is the intent and purpose of the City to administer and enforce this Article to ensure quality care and the protection of the health and safety of boarding home facility residents by establishing standards, requiring permits and requiring boarding home facilities operating within the City limits to comply with these regulations.

Sec. 16-51. Scope.

This Article applies to all boarding home facilities within the City of Brenham. This Article does not apply to:

1. Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code;
2. Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code;
3. Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code;

4. Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code;
5. Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code;
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 State Health Services (DSHS) or the Texas Department of Aging and Disability Services (DADS) or their designated local authorities in accordance with state standards;
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 or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;
8. A retirement community;
9. A monastery or convent;
10. A child-care facility as defined by Section 42.002 of the Texas Human Resources Code;
11. Family violence shelter center as defined by Section 51.002 of the Texas Human Resources Code;
12. A sorority or fraternity house or other dormitory associated with an institution of higher education; or
13. A hotel as defined by Section 156.001, Texas Tax Code.

Sec. 16-52. Definitions.

A. **“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 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.

“Boarding home facility” is a separate term unrelated to the terms “boardinghouse,” “lodginghouse,” and “roominghouse” as defined and used in the Zoning Ordinance, set out in Appendix A of the City’s Code of Ordinances.

B. **“Personal care services”** means:

1. Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
2. The administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
3. 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.

C. **“Assistance with self-administration of medication”** means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, placing medication in a resident’s hand or in/on a clean surface such as a pill cup or a medication reminder box and reminding the resident when a prescription medication needs to be refilled.

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

E. **“Elderly person”** means a person who is 65 years of age or older.

F. **“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

1. Who is 18 years of age or older; or
2. Under 18 years of age and who has had the disabilities of minority removed.

G. **“An injury, incident or unusual accident”** is an event that resulted in a change in the resident's physical or mental status that occurred in the boarding home facility or on the grounds of the boarding home facility that requires intervention by a private or public entity responsible for physical or mental health services, or an event that requires the facility taking resident safety and protection measures including:

1. An allegation of abuse, neglect, or exploitation;
2. Death;
3. A resident’s absence from the facility when circumstances place the resident’s health, safety or welfare at risk;
4. Fire;
5. Criminal acts; and
6. Altercations between residents.

H. "Abuse, neglect and exploitation" is defined in the Texas Human Resource Code Section 48.002 as the following:

1. "Abuse" means:

- (a) The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
 - (b) Sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.
2. "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.
3. "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

Sec. 16-53. Permit required and fee.

Within one hundred and twenty (120) days after the effective date of this Article, no person shall operate a boarding home facility, as defined in this Article, without first obtaining a permit from the City and paying the established fee for such permit. The Office of the City Secretary is the responsible department for issuance of a permit. A permit issued under this Article shall authorize the permittee to engage in the operation of a boarding home facility, provided that the permittee is in compliance with all other provisions of this Article.

Permit fees collected shall be used for the administration of the City's permitting program, to include permitting, renewal of the permit and inspections, or for purposes directly related to providing boarding facility services or other assisted living facility services to elderly persons or persons with disabilities.

As part of the boarding home facility operational permitting process, boarding home facility owners/operators will be required to provide documentation of any applicable building construction or remodeling permits issued after the effective date of this Article.

All permits received from the City must be prominently displayed in the boarding home facility.

Sec. 16-54. Restrictions on number of residents, location, and number of vehicles.

A boarding home facility shall at all times maintain a minimum supervisor/resident ratio of at least one (1) supervisor per three (3) residents

After the effective date of this Article, a boarding home facility may not be established within one-half mile of an existing boarding home facility.

Except as otherwise provided by municipal ordinance, the residents of a boarding home facility may not keep for the use of the residents of the facility, either on the premises of the facility or on a public right-of-way adjacent to the facility, motor vehicles in numbers that exceed the number of bedrooms in the boarding home facility.

Sec. 16-55. Inspections.

A boarding home facility must pass all required inspections and the owner/operator must keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. Proof that all required inspections have been completed must be provided to the Office of the City Secretary prior to the issuance of a permit. The following inspections are required:

1. Annual fire inspection by the local Fire Marshal, or his designee.
2. Annual boarding home inspection by the local Health Inspector.
3. Annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission, if applicable.

The City may conduct any inspection, survey, or investigation that it considers necessary and may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation. The City is entitled to access to books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards and provisions of this Article.

Sec. 16-56. Construction/remodeling.

Each owner/operator of a boarding home facility must ensure the residents' health, safety, comfort and protection through the following standards that address the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation and other housing conditions.

Each facility must meet the following applicable codes and regulations: local zoning and building codes; state and local fire codes; state and local health and safety codes; and federal and state accessibility regulations:

- A. Mobile homes and manufactured homes shall not be permitted for use as boarding home facilities or additions to existing boarding home facilities.
- B. Interior doors to living spaces, bedrooms, bathrooms and toilet rooms must fit the openings in which they are hung, be properly equipped with hardware, and be maintained in good working condition. Doors with locking devices must be provided where necessary to provide privacy and protection of the resident.
 - 1. Every closet door latch will be such that it can be readily opened from the inside in case of an emergency.
 - 2. Every bathroom door or door lock must permit the opening of the locked door in case of an emergency.
- C. Locks that can be easily opened manually from the inside must be provided on all exterior doors.
- D. Public pathways and stairways in buildings must maintain a minimum unobstructed width concurrent with applicable fire codes and must be provided with convenient light switches controlling an adequate lighting system.
- E. Boarding home facilities must be supplied with electric service and fixtures that are properly installed and maintained in safe working condition and connected to a source of electrical power.
- F. Every boarding home facility must have heating and cooling equipment that are properly installed, vented, and maintained in a safe, good working condition. The temperature of rooms intended for human occupancy will remain at a temperature between sixty-eight (68) and eighty-two (82) degrees Fahrenheit.
- G. Every boarding home facility must have water heating facilities that are properly installed, vented, in good working condition, and are properly connected with hot and cold water lines. The temperature of water drawn at every required sink, lavatory basin, bathtub or shower will remain at a temperature between one hundred and ten (110) and one hundred and twenty (120) degrees Fahrenheit.
- H. Every habitable room must have at least one window that can be easily opened, or such other device as will ventilate the room. All windows must be capable of being opened without tools. The window opening must meet local codes for emergency egress. The bottom of the window opening must not be more than forty-four (44) inches above the floor.

I. Sleeping rooms must have:

1. At least seventy (70) square feet of floor space in single-occupancy rooms;
2. At least sixty (60) square feet of floor space for each occupant in multi- occupancy rooms;
3. Beds spaced at least three feet (3') apart when placed side by side or end-to-end;
4. At least a seven feet, six inches (7'6") ceiling height;
5. Required accessibility for non-ambulatory residents and residents with conditions that substantially limit ambulation and/or mobility;
6. Beds at least six feet (6') long and three feet (3') wide equipped with supportive springs in good condition and a clean supportive mattress in good condition, and a mattress cover that prevents bodily fluids from soiling the mattress;
7. At least one pillow with a clean pillowcase, two (2) clean sheets, and a cover such as a blanket or quilt, in good condition, per bed, cleaned weekly or more often if soiled;
8. Extra bed linens, including sheets, pillowcase and blankets must be available to each resident;
9. At least one (1) chest of drawers or equivalent, in good condition having a sufficient number of drawers or other areas to contain all necessary items of clothing and personal belongings of each resident that can be locked/secured;
10. At least one (1) chair in good condition in each sleeping room;
11. At least one (1) end table in good condition located adjacent to each bed in each sleeping room;
12. Sufficient closet space to allow clothes not stored in drawers to be hung. Clothing cannot be stored on the floor;
13. Bath towels, washcloths, soap, individual comb and toothbrush must be available at all times and in quantity sufficient to meet the needs of the residents; and
14. Access to emergency exit without passing through another sleeping room.

J. All equipment, fixtures, furniture, and furnishings, including windows, draperies, curtains, and carpets, must be kept clean and free of dust, dirt, vermin, and other contaminants, and must be maintained in good order and repair.

K. Water closets, lavatories, and bathtubs or showers must be:

1. Available on each floor when not provided in each individual room;
2. Provided in the ratio of one (1) toilet and one (1) lavatory, and one (1) bathtub or shower for every six (6) residents, or fraction thereof; and
3. Accessible to the residents without going outside of the building or without going through a sleeping room of another resident.

L. A telephone must be available, twenty-four (24) hours per day, must be easily accessible, and must afford privacy for use by residents.

1. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, the office of the local governmental entity that issued the boarding house permit, 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 accessible to persons who are visually or hearing impaired, as needed.

M. Each boarding home facility must provide:

1. A washer and dryer for every ten (10) residents, or fraction thereof that is properly vented to the outside. Washer or dryer must be in a utility room/ area that are not in the kitchen area.
2. A sitting/communal/recreational room for the common use of all residents. Furniture must include comfortable chairs and tables, and lamps in good repair and appearance.
3. A dining room located on the same floor as the communal kitchen and must:
 - (a) Be as nearly adjacent to the communal kitchen as practicable;
 - (b) Be accessible to the residents, without going through a sleeping room or sleeping dormitory of another resident;
 - (c) Contain not less than seventy (70) square feet of floor area; and
 - (d) Be supplied with one (1) dining chair and two (2) linear feet of dining table space for each resident of a boarding home facility.
4. A kitchen that:
 - (a) Is accessible to the residents sharing the use without going through a sleeping room of another resident;
 - (b) Has a food preparation area with a total of not less than six (6) square feet;
 - (c) Contains a minimum floor space of sixty (60) square feet for dining area or, each kitchen with dining attached must be at least one hundred (100) square feet;
 - (d) Has a minimum two (2) compartment sink for manual dishwashing;
 - (e) Has a cooking stove fueled by gas or electricity;
 - (f) Contains at least one (1) cabinet of adequate size, suitable for storage of food and utensils; and
 - (g) Is properly equipped to allow for the preparation of meals.

N. Fire precautions must include:

1. Providing suitable fire escapes/exits that must be kept in good repair and accessible at all times;

2. Having a written fire and evacuation plan that sets forth responsibilities and steps to be taken by staff and residents in the event of fire or other emergency;
3. Posting an emergency evacuation plan throughout the facility; and
4. Not storing gasoline operated maintenance equipment, lawn care equipment, and flammable supplies inside the boarding home facility.

O. Fire precautions must also include the following:

1. At least one (1) all-purpose dry chemical fire extinguisher rated no less than 2A:10B:C must be properly installed in each dwelling unit, checked at least monthly by the owner/operator of the boarding home facility, and must be inspected annually by a service provider who is properly licensed by the State Fire Marshal to perform fire extinguisher installation and maintenance.
2. All fire protection measures must be in accordance with requirements of the local fire authority.
3. In new boarding home facilities or in existing dwellings newly converted to boarding home facility use, functional hard-wired smoke detectors shall be present in each bedroom, in corridors or hallways on each floor, and in laundry and basement areas. Such smoke detectors shall be powered by the building's electrical system and interconnected so that any active detector will activate all of the detectors simultaneously, providing an audible alarm from each detector. Excepted from this rule are existing boarding home facilities using single-station, battery-powered smoke detectors, providing the detectors are installed in each location listed above and each detector is fully functional.
4. If a boarding home facility has a resident who is hearing impaired, a boarding home facility owner/operator must install a visual smoke detector that is capable of alerting a person with a hearing impairment of the presence of fire or smoke.
5. At least one functional carbon monoxide detector shall be installed in each dwelling unit, and located near sleeping areas, with one exception: all-electric dwellings with no natural gas or LP gas service to the building are exempt from this requirement.

P. All residents must be shown how to use all emergency exits from the facility within twenty-four (24) hours of arrival to the facility.

Q. The boarding home facility and associated site must pass all required inspections and the owner/operator must keep a current file of reports and other documentation on-site needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. The following inspections are required:

1. Annual inspection by the local Fire Marshal, or his designee;
2. Where a full fire detection and alarm system is installed, the fire alarm system shall be inspected annually by a service provider who is licensed by the State Fire Marshal to perform installation and maintenance of fire alarm systems;

3. Annual health inspection by the local Health Inspector;
4. Gas pipe pressure test once every three (3) years by a licensed plumber;
5. Annual inspection and maintenance of fire extinguishers by a service provider who is licensed by the State Fire Marshal to perform these duties; and
6. Annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission, if applicable.

Sec. 16-57. Sanitary and related conditions.

Each owner/operator of a boarding home facility must be responsible for maintaining the dwelling and premises in a clean and sanitary condition.

Every boarding home facility must be kept in good repair, and so maintained as to promote the health, comfort, safety and well-being of residents.

- A. Interior walls, ceilings and floors must be capable of affording privacy and must be maintained free of holes, cracks, loose or deteriorated material, or any other condition that constitutes a hazard to the residents or is a harborage for insects, pests or vermin.
- B. Every window, exterior door and basement hatchway must be weather tight, watertight, insect and rodent-proof and must be kept in good working condition.
- C. The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system approved by the Texas Commission on Environmental Quality (TCEQ).
- D. Every plumbing fixture, water pipe and waste pipe must be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions and properly connected to an approved sewage disposal system.
- E. Every boarding home facility utilizing well water must provide water samples at least annually to the permit issuing entity. If the sample results show coliform present, a resample must be taken within seven (7) days of receipt of the results.
- F. All garbage and refuse must be kept in watertight, covered containers. The garbage and refuse area must be kept in a clean and sanitary condition. A sufficient number of garbage receptacles must be provided by the boarding home facility. All garbage, trash and refuse must be removed from the premises frequently to prevent nuisance and unsightly conditions.
- G. Each owner/operator must be responsible for the extermination of any insects, rodents or other pests in the rooms occupied by residents, storage areas, attics or on the premises and yard.

H. Water closets, lavatories, and bathtubs or showers must be:

1. Kept clean and in good repair and must be well-lighted and ventilated;
2. Adequately supplied with toilet paper, soap, and hand towels for each bathroom; and
3. Supplied with non-slip surfaces in bathtub or shower, and curtains or other safe enclosures for privacy.

I. Each kitchen in a boarding home must:

1. Be kept in a clean and sanitary condition;
2. Have a food preparation area with a surface area that is smooth, impermeable, free of cracks and easily cleanable, that shall not be used for eating; and
3. Have a refrigerator that is equipped with a thermometer and is maintained in an operational, clean and sanitary condition that is adequate to maintain foods at the required temperature.

J. Each facility shall meet all applicable state and local sanitary codes.

K. All linens and laundry shall be:

1. Bagged or placed in a hamper before being transported to the laundry area;
2. Properly identified to prevent loss; and
3. If soiled, not transported through, sorted, processed, or stored in kitchens, food preparation areas, or food storage areas.

L. Poisonous, toxic, and flammable materials shall:

1. Be stored and maintained away from bed linens, towels, or kitchen equipment;
2. Be prominently and distinctly labeled for easy identification of contents; and
3. Not be used in a way that contaminates food equipment or utensils, or in a way that constitutes a hazard to employees or residents.

M. After each usage, all eating and drinking utensils shall be thoroughly washed and sanitized in hot water containing a suitable soap or synthetic detergent and rinsed in clean hot water. In the event a mechanical dishwasher is used, dish detergent is required.

N. All food and drink shall be:

1. Clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
2. Prepared, stored, handled, and served so as to be safe for human consumption;
3. Maintained at a temperature of 41 degrees Fahrenheit or below for foods subject to spoilage;
4. Maintained at 135 degrees Fahrenheit or above at all times for hot foods ready to serve;

5. Maintained in the freezer at a temperature of 0 degrees Fahrenheit or below for foods stored as frozen; and
 6. Stored in food containers that are appropriately labeled, dated, and protected from flies, insects, rodents, dust, and moisture.
- O. Meals provided by the facility shall be nutritionally balanced and shall provide the United States Department of Agriculture's (USDA's) recommended daily allowances of vitamins, minerals and calories.
- P. With the exception of service animals for persons with disabilities, birds, cats, dogs or other animals are not permitted in areas in which food is prepared, stored or where utensils are washed or stored.
- Q. Meals shall be served:
1. At least three (3) times per day;
 2. In sufficient quantity and quality to meet the nutritional needs of the residents;
 3. Daily at regular hours, with at least one (1) hot meal per day;
 4. With no more than fourteen (14) hours between the beginning of the evening meal and the beginning of the morning meal; and
 5. With alternative selections for residents on medically prescribed diets.
- R. A time schedule of meals shall be posted daily.
- S. Employees or residents engaged in food handling shall:
1. Observe sanitary methods, including hand washing as appropriate; and
 2. Not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.
- T. Regardless of the number of residents, each boarding home facility shall hold a valid food establishment permit issued by the applicable local or state regulatory authority in the name of the owner/operator and for the specific boarding home facility.
- U. If preparing meals for residents, staff must have a food-handler's permit.
- V. Each boarding home facility shall maintain a minimum food and water supply sufficient for all residents as recommended by the American Red Cross.
- W. Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

Sec. 16-58. Reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures to ensure resident health and safety.

Each owner/operator of a boarding home facility must develop and implement policies and procedures for investigating and documenting injuries, incidents and unusual accidents that involve residents. Owners/operators must also establish policies and procedures necessary to ensure resident health and safety.

1. Minimum requirements for the documentation of injuries, incidents or unusual accidents should include, but are not limited to:
 - (a) Date and time the injury, incident or unusual accident occurred;
 - (b) Description of the injury, incident or unusual accident;
 - (c) Description of any medical or mental health treatment the resident received;
 - (d) When the residents' legal guardian or legally authorized representative was notified about the injury, incident or unusual accident; and
 - (e) Steps taken by the owner/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.
2. Residents, the resident's guardian, or legally authorized representatives should be given access to all inspection records within forty-eight (48) hours of requesting the records from the owner/operator.

In addition to investigating and documenting injuries, incidents or unusual accidents, an owner/operator must report any allegations of abuse, neglect or exploitation of an adult age sixty-five (65) years 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 an elderly adult or adult with a disability is a Class A misdemeanor. Each owner/operator shall:

1. Ensure that each resident has access to a telephone twenty-four (24) hours per day that is easily accessible and affords privacy for use by residents.
2. Ensure that no resident is harassed, retaliated against, threatened or intimidated at any time for making a report of abuse, neglect or exploitation.
3. Provide each resident with a copy of the definitions of abuse, neglect or exploitation as outlined in Chapter 48 of the Human Resources Code.
4. Allow law enforcement personnel, emergency medical and fire personnel access to the boarding home facility when these professionals are responding to a call at the owner/operator's facility.

A boarding home facility must have sufficient staff – either owner/operator of the boarding home facility or employee – on-site at all times to promptly assist residents.

No owner/operator or other employee of a boarding home facility shall provide services or engage in behavior that constitutes a financial conflict of interest including but not limited to:

1. Borrowing from or loaning money to residents;
2. Witnessing wills in which the owner/operator or employee is a beneficiary;
3. Co-mingling the resident's funds with the owner's/operator's or other residents' funds; or
4. Becoming the guardian, conservator or power of attorney for a resident.

If an owner/operator becomes the representative payee for a resident or assists a resident with general money management, the owner/operator shall:

1. Maintain separate financial records for each resident for which the owner/operator is the representative payee for the entire period of time the owner/operator is the resident's representative payee and continue to maintain the resident's records for at least one (1) year after the last calendar day the owner/operator is the resident's representative payee;
2. Include in the records an itemized list of expenditures that the owner/operator has made on behalf of the resident, including the charges that are assessed by the owner/operator;
3. Maintain receipts for all expenditures in addition to the itemized documentation;
4. 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; and
5. The owner/operator will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the owner/operator within 48 hours of receiving a request.

An owner/operator of a boarding home facility shall develop a written service agreement with each resident and maintain a copy of the agreement signed by the resident.

Sec. 16-59. Assistance with self-administration of medication.

Assistance with self-administration of medication may be provided to adult residents who can identify their medication and know when their medication should be taken but require assistance with self-administration. Assistance with self-administration of medication may not be provided to minors.

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/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.

All residents' medication must be stored in a locked area. The boarding home facility must provide a central locked storage or individual locked storage areas for each resident's medication.

If the boarding home facility uses a central medication storage area, a boarding home facility 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.

If a resident's medication requires refrigeration, the boarding home facility must provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.

Medications labeled for "external use only" must be stored separately within the locked area.

Poisonous substances must be labeled, stored safely, and stored separately from medications within a locked area.

If a boarding home facility stores controlled drugs, the facility must adopt and enforce a written policy for preventing the diversion of the controlled drugs.

A boarding home facility must have staff – either owner/operator of the boarding home facility or employee – on-site at all times to promptly assist residents with self-administration of medication.

Medication that remains in the boarding home facility after a resident is no longer lodging in the facility must be properly disposed of by the owner/operator in accordance with applicable legal requirements.

Sec. 16-60. Posting requirements.

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

1. The boarding home permit issued by the City;
2. A sign prescribed by the City specifying how ordinance violation complaints may be registered with the City;

3. A notice in a form prescribed by the City 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 boarding home facility;
4. A concise summary of the most recent inspection report relating to the boarding home facility; and
5. A notice in a form prescribed by the City 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. 16-61. Requirements for in-service education of facility's staff.

Each owner/operator and employee is subject to the following initial training requirements prior to contact with residents:

1. Employer rules and policies;
2. Recognizing and reporting abuse, neglect and exploitation;
3. Resident's rights, including all applicable rights from the following:
 - (a) Texas Human Resource Code, Chapter 102, Rights of the Elderly;
 - (b) Texas Human Resource Code, Chapter 112, Developmental Disabilities;
 - (c) Texas Property Code, Chapter 301, Fair Housing Practices; and
 - (d) Texas Property Code, Chapter 92, Residential Tenancies.
4. Policies and procedures for contacting emergency personnel when the assistance of the owner/operator, or on-site staff is insufficient to eliminate the risk presented to a resident's health or safety;
5. Complaint process specific to the City and the boarding home facility;
6. Assistance with self-administration of medication;
7. Prevention of injuries, incidents and unusual accidents;
8. Emergency, evacuation and disaster plan; and
9. Service specific orientation that includes, but is not limited to:
 - (a) Nutrition, including meal preparation and dietary needs;
 - (b) Sanitation;
 - (c) Laundry; and
 - (d) Housework.

Each owner/operator and employee is also subject to the following on-going training requirements:

1. Updates and changes in any policies and procedures within ten (10) days of the owner, operator or employee becoming aware of the change;
2. Orientation specific to the needs of each new resident within one (1) day of the resident moving into the facility; and
3. Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization or other circumstances which affect the resident's needs within one (1) day of the owner, operator, or employee becoming aware of the change.

Sec. 16-62. Criminal background history checks.

A boarding home facility owner/operators permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator has been convicted of a criminal offense listed in this section, or if the owner/operator has in its employ any person convicted of a criminal offense listed in this section.

The owner/operator must complete any state or federal request and release forms that are required to obtain a criminal history report for the owner/operator. The owner/operator will provide funding to the appropriate agency in a manner specified by the appropriate agency to cover any fees imposed by state or federal agencies for the report.

The following histories will disqualify an owner/operator from obtaining a permit to operate a boarding home facility and will disqualify a person from being employed by a boarding home facility:

1. An offense under Chapter 19, Penal Code (criminal homicide);
2. An offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
3. An offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecent with a child);
4. An offense under Section 22.011, Penal Code (sexual assault);
5. An offense under Section 22.02, Penal Code (aggravated assault);
6. An offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
7. An offense under Section 22.041, Penal Code (abandoning or endangering child);
8. An offense under Section 22.08, Penal Code (aiding suicide);
9. An offense under Section 25.031, Penal Code (agreement to abduct from custody);

10. An offense under Section 25.08, Penal Code (sale or purchase of a child);
11. An offense under Section 28.02, Penal Code (arson);
12. An offense under Section 29.02, Penal Code (robbery);
13. An offense under Section 29.03, Penal Code (aggravated robbery);
14. An offense under Section 21.08, Penal Code (indecent exposure);
15. An offense under Section 21.12, Penal Code (improper relationship between educator and student);
16. An offense under Section 21.15, Penal Code (improper photography or visual recording);
17. An offense under Section 22.05, Penal Code (deadly conduct);
18. An offense under Section 22.021, Penal Code (aggravated sexual assault);
19. An offense under Section 22.07, Penal Code (terroristic threat);
20. An offense under Section 33.021, Penal Code (online solicitation of a minor);
21. An offense under Section 34.02, Penal Code (money laundering);
22. An offense under Section 35A.02, Penal Code (Medicaid fraud);
23. An offense under Section 42.09, Penal Code (cruelty to animals);
24. An offense under Section 30.02, Penal Code (burglary);
25. An offense under Chapter 31, Penal Code (theft), that is punishable as a felony; or
26. A conviction under 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.

A person may not own or operate a boarding home facility or be employed in a position that involves direct contact with a resident in a boarding home facility before the fifth (5th) anniversary of the date the person is convicted of any felony offense not listed in this section or any of the following non-felony offenses:

1. An offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor;
2. An offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor;
3. An offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor;
4. An offense under Section 37.12, Penal Code (false identification as peace officer);
5. An offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct); or

6. A conviction under 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.

The owner/operator must ensure that all employees (or volunteers who are not residents) who are hired or begin volunteering for the facility after the effective date of this Article, have had a background check of conviction records, pending charges and disciplinary board decisions completed no more than thirty (30) days prior to their date of employment or date they began volunteering at the facility and is repeated annually thereafter, and that the individual is not disqualified under the provisions of this section.

The owner/operator must ensure that all existing employees or volunteers who are working for or volunteering at the facility on the effective date of this Article shall have a background check or conviction records, pending charges and disciplinary board decisions completed within sixty (60) days after the effective date of this Article, and is repeated annually thereafter, and that the individual is not disqualified under the provisions of this section.

The owner/operator or each boarding home facility shall submit an affidavit to the City with its original application and annual renewal certifying that the owner has performed criminal history background check on each owner/operator, employee and volunteer, and that no owner/operator, employee or volunteer has been convicted of a disqualifying criminal offense set forth in this section. The owner/operator will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a criminal offense that bars employment or volunteer service with the boarding home facility. Further, if an owner/operator, employee, or volunteer is convicted of a disqualifying criminal offense during the period that a permit is in effect; the owner/operator must report such conviction to the City within ten (10) calendar days of such conviction.

Sec. 16-63. Assessment and periodic monitoring of residents.

Owners/operators of a boarding home facility or their designee will complete and document an annual assessment and conduct periodic monitoring to ensure that a resident is capable of self-administering medication and completing basic elements of personal care as listed in this section. The assessment will be used as a tool to determine if the needs of the resident can be addressed in a boarding home facility or if the resident needs personal care services and/or medication administration that cannot be provided by the boarding home facility.

Elements of the self-administration of medication to be assessed by the boarding home facility owner/operator or designee 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/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 correct number of pills (dosage);
5. Confirming the time to take medication(s); and
6. Reading labels.

Elements of personal care to be assessed by the boarding home facility owner/operator include the residents' ability to:

1. Eat independently;
2. Bathe without assistance;
3. Dress without assistance; and
4. Move and transfer independently.

As a result of an assessment, if an owner/operator 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 this section and believes that a higher level of care is needed, the owner/operator is responsible for the following:

1. Contacting the Department of Family and Protective Services (DFPS) by phoning the Statewide Intake Division at 1-800-252- 5400;
2. Notifying the resident's guardian or legally authorized representative; and
3. Contacting the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility

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.

Sec. 16-64. Required reports to the Health and Human Services Commission.

With the exception of the year this article is adopted, each year thereafter, prior to September 30, the City Secretary shall submit a report to the Health and Human Services Commission. The report shall contain the following information:

1. The total number of boarding home facilities permitted during the preceding state fiscal year (September 1 – August 31);
2. The total number of boarding home facility applications denied permitting, including a summary of cause for denial;
3. The total number of boarding home facility permits active on August 31 of the preceding state fiscal year;

4. The total number of residents reported housed in each boarding home facility reported;
5. The total number of inspections conducted at each boarding home facility by the City;
6. The total number of permits revoked or suspended as a result of an inspection; and
7. A summary of the outcome for the residents displaced by revocation or suspension of a permit.

Sec. 16-65. Expiration and renewal of permits.

At least sixty (60) days prior to the expiration date of a boarding home facility permit, the owner/operator shall submit to the City Secretary's Office a permit renewal application and associated fees. An owner/operator that fails to timely renew its permit shall forfeit the right to operate the boarding home facility within the City until such time as the renewal is approved.

Sec. 16-66. Complaints.

All complaints related to a boarding home facility shall be submitted in writing to the Code Enforcement Officer on a form prescribed by the City. The Code Enforcement Officer shall investigate each complaint to the extent he or she deems necessary. The Code Enforcement Officer shall report any violations to the City Secretary for further action in accordance with this Article.

Sec. 16-67. Suspension, denial or revocation of permit.

The City Secretary shall issue a written notice of intent to suspend, deny or revoke a boarding home facility permit if it is determined that an owner/operator has:

- (1) Violated or is not in compliance with any provision of this Article; or
- (2) Refused or failed to allow an inspection of the boarding home facility as authorized by this Article.

Sec. 16-68. Denial, suspension and revocation procedures.

If the City Secretary determines that facts exist for denial, suspension or revocation of a permit under this Article, he/she shall notify the owner/operator (respondent) in writing of the intent to deny, suspend or revoke the permit, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the owner/operator at the most current business address of the boarding home facility on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the City Secretary, in writing, a response that shall include a statement of reasons why the permit should not be denied, suspended or revoked. Within ten (10) business days of the receipt of respondent's written response, the City Secretary shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

Within fifteen (15) business days of the City Secretary's receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Secretary in the time stated above or, if after the hearing, the City Manager finds that grounds as specified in this Article exist for denial, suspension or revocation, then such denial, suspension, or revocation shall become final five (5) business days after the hearing unless within that time the City Manager sends, by certified mail, written notice that the permit has been denied, suspended, or revoked or if the permit will be issued or allowed to remain in effect. If the permit is denied, suspended or revoked such notice shall include a statement advising the applicant or permittee of the right to appeal such decision to a court of competent jurisdiction.

If after a hearing, the City Manager finds that insufficient grounds exist for the denial, suspension or revocation of a permit, then within five (5) business days after the hearing, the City Manager shall withdraw the intent to deny, suspend or revoke the permit, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the permit or allow the permit to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a permit becomes final, the applicant or permittee (aggrieved party) whose application for a permit has been denied, or whose permit has been suspended or revoked, shall have the immediate right to appeal such action to a court of competent jurisdiction. Until the court of competent jurisdiction issues its final judgment, the decision to deny, suspends or revoke a permit shall remain in effect and be enforced.

A boarding home facility which is directly or indirectly a part of civil litigation, an administrative hearing, or procedures regarding the denial, suspension or revocation of the permit, such permit shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.

Sec. 16-69. Transfer of permit.

A person commits a violation if the person transfers a permit or permits to another person the operation of a boarding home facility under the authority of a permit at any place other than the address designated on the permit. A transfer of a permit is deemed to have occurred if there is a transfer of ownership or control of the boarding home facility.

Sec. 16-70. Offenses and criminal penalties.

Any person who shall violate any provision of this Article shall be deemed guilty of a misdemeanor and punished by a fine not less than one dollar (\$1.00) and not exceeding two thousand dollars (\$2,000.00) ; and if such violation shall continue from day to day, each day's violation shall constitute a separate offense.

Sec. 16-71. Notice of violation.

The City shall provide to the boarding home written notice of each alleged violation of this Article. The notice may be sent by certified mail, return receipt requested, to the owner/operator at the business address of the boarding home facility as it appears on its permit application, to the attention of the permittee, as it appears on the permit application, or may be personally delivered to the permittee. Failure of the City to provide such notice is not a violation of this Article, and shall not affect or invalidate any subsequent prosecution of a violation of this Article.

Sec. 16-72-79. Reserved.

SECTION 2.
SAVINGS CLAUSE

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions shall remain in full force and effect.

SECTION 3.
SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentences and clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 4.
REPEALER

Any other ordinance or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 5.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 6.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this Ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on its first reading this the 2nd day of August, 2012.

PASSED AND APPROVED on its second reading this the 6th day of September, 2012.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary