

Chapter 16

OCCUPATIONAL LICENSES AND BUSINESS REGULATIONS*

* **Editors Note:** Ord. No. O-09-022, § 1, adopted Dec. 3, 2009, amended the former Ch. 16, §§ 16-1--16-12, and enacted a new Ch. 16 as set out herein. The former Ch. 16 pertained to similar subject matter and derived from Code 1894, Ords. 138, 140; Ord. of Nov. 16, 1920, § 1; Ord. of Dec. 18, 1922, §§ 1--5; Ord. of May 5, 1941, §§ 1, 2; Ord. of Dec. 27, 1972, §§ 1, 2; Ord. of Aug. 1, 1991, §§ 1--7; Ord. of Dec. 2, 1993, §§ I, II; Ord. of Mar. 20, 2003, §§ I, II.

Cross References: Mobile home park license, § 14-2; dog kennel license, § 5-54.

State Law References: Authority to levy 1/2 of state tax, Const. art. 8, § 1; various state occupation taxes set out in V.A.T.S. Tax.-Gen. art. 19.01 et seq.; general licensing authority, V.T.C.S. art. 1175(23); authority to levy gross receipts tax on vehicles for hire, art. 6698; admissions tax, V.A.T.S. Tax.-Gen. art. 21.02; detective licenses, V.T.C.S. art. 4413(29bb); tax on coin-operated machines, V.A.T.S. Tax.-Gen. art. 13.01 et seq.

Art. I. In General, §§ 16-1--16-19

Art. II. Sexually Oriented Businesses, §§ 16-20--16-49

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ARTICLE I.

IN GENERAL*

* **Editors Note:** For purposes of maintaining the style of this Code, Art. I has been added at the discretion of the editor.

Sec. 16-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings:

Canvasser shall mean a person who makes, or attempts to make, personal contact with a resident at his or her residence without prior specific invitation from or appointment with the resident, for the primary purpose of:

- (1) Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, measure or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause;
- (2) Attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political, or religious purpose; or
- (3) Distributing a handbill or flyer advertising a non-commercial event or service.

Charitable purpose shall mean philanthropic, religious or other nonprofit objectives, including the benefit of poor, needy, sick, refugee, or disabled persons; the benefit of any religious or church society, sect,

group or order; the benefit of a patriotic or veterans association or organization; the benefit of any fraternal, social or civic organization, or the benefit of any educational institution. The term "charitable purpose" shall not be construed to include the direct benefit of the individual making the solicitation. Nor shall the term be construed to include the benefit of any political group, committee or organization which is subject to financial disclosure under federal or state law.

Charitable organization shall mean any organization holding a certificate of exemption from federal income tax or state sales or franchise taxes based on the organization's status as a charitable organization.

Christmas tree sales shall mean sales made by a charitable organization of Christmas trees during the Christmas holiday season, that is, during the months of November and December each year.

Handbill shall mean any printed or written matter or notice in the form of a circular, leaflet, pamphlet, paper or any other printed or otherwise reproduced original or copies of any manner of literature.

Itinerant vendor or hawker shall mean any person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, selling or taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five (45) days or less; and exists whether operating from a stand, vehicle, or freestanding.

Peddler shall mean any person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. A "peddler" does not include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of the visit. Such a person is a "solicitor".

Person means a natural person or any firm, corporation, partnership, company, sole proprietorship, entity, association, club, society or other organization or entity.

Solicitor shall mean any person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident, for the primary purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future, or (2) distributing a handbill or flyer advertising a commercial event or service.
(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-2. License required for solicitors, peddlers, and itinerant vendors; available for canvassers.

No person shall act as a solicitor, peddler or itinerant vendor within the city without first obtaining and possessing a valid license in accordance with this chapter. A canvasser is not required to have a license but any canvasser wanting a license for the purpose of reassuring city residents of the canvasser's good faith shall be issued a permit upon request. It is an offense to act as a solicitor, peddler or itinerant vendor within the city without first obtaining and possessing a valid license as required herein.
(Ord. No. O-09-022, § 1, 12-3-09)

Cross References: Offenses and miscellaneous provisions, Ch. 17; traffic, Ch. 25.

Sec. 16-3. Application.

Any person or organization may apply for a license required by this chapter by completing the appropriate application form and submitting the form and any applicable fees to the city secretary during regular office hours. Incomplete applications and/or applications not accompanied with the appropriate fee shall be deemed incomplete and will not be processed.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-4. Contents of application.

The applicant shall appear in person at the office of the city secretary and provide the following information on an application form furnished by the city secretary:

- (1) Legal name of applicant.
- (2) A driver's license, state identification card, passport, or other government-issued identification card (issued within the United States) containing the name, physical description, and photograph of the applicant. The applicant shall also provide two (2) photographs of the applicant which have been taken within sixty (60) days immediately prior to the date of filing the application. The photographs shall show the head and shoulders of the applicant in a clear and distinguishable manner.
- (3) The permanent and local (if any) addresses of the applicant.
- (4) Telephone number of applicant.
- (5) Form of business entity, state of formation/incorporation, Texas state sales tax number, and federal tax identification number.
- (6) A brief description of the proposed activity related to the license sought, including but not limited to the hours and location(s) for which the license is requested. (Copies of literature to be distributed may be included in this description at the option of the applicant.)
- (7) The applicant's date of birth and place of birth.
- (8) A list of all the applicant's infractions, offenses, and criminal convictions for the seven (7) years immediately prior to the application.
- (9) The make, model, year, color, and state license plate number of any vehicle that will be used by the applicant in any activity regulated by this chapter.
- (10) If applicable, with regard to a peddler:
 - a. The name and permanent address of the business offering the event, activity, goods or service (i.e., the peddler's principal).

- (11) If applicable, with regard to a solicitor:
 - a. The name, permanent address, and telephone number of the organization, person or group for whom donations or proceeds are accepted.
 - b. The web address for the applying organization, person or group where residents having subsequent questions can go for more information.
- (12) Any other information the applicant wishes to provide, including copies of literature to be distributed, and references to other municipalities where similar activities have occurred.

All applicants must seek a license for itself covering all of the applicant's employees and/or agents that will be operating within the city limits. The application shall include a statement that the applicant recognizes the other individuals listed under the applicant's license are employees/agents and not as independent contractors, and that the applicant accepts the responsibilities imposed by state law, this chapter and other applicable laws and regulations for the acts of its employees/agents. If a person requests a license for employees/agents, the following information must be supplied for each individual employee/agent:

- (1) Employee/agent's full legal name.
- (2) Residence address of employee/agent.
- (3) Date of birth and place of birth of employee/agent.
- (4) Driver's license number, state identification card, passport, or other government-issued identification card (issued within the United States) containing the name, physical description, and photograph of the applicant of employee/agent.
- (5) Statement of any criminal offense involving crimes against property, moral turpitude and/or felony convictions.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-5. Investigation.

After the submission of an application to the city secretary's office, the city manager, or his/her designee, shall investigate the truth and accuracy of the information contained in the application.

The license shall be issued within five (5) business days after the date the application is received by the city secretary. If the city has not completed the investigation within five (5) business days, the license shall be issued, subject to, however, administrative revocation upon completion of the investigation.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-6. Denial or revocation of license.

Any application for a license may be denied or revoked if it is determined that:

- (1) The applicant/licensee has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven (7) years;
- (2) The individual for whom a license is requested or issued has been convicted of any felony or misdemeanor involving moral turpitude within the past seven (7) years;
- (3) Any statement upon the application if false; or
- (4) The applicant/licensee and/or an employee/agent of the applicant/licensee fails to comply with any other provision of this chapter. Additionally, if a licensee is convicted of any felony or a misdemeanor involving moral turpitude during the term of the license, the licensee shall notify the city secretary of such conviction, shall forfeit the existing license, and shall be required to submit a new license application for review and consideration by the city manager.

If the city manager denies or revokes a license, the applicant or licensee shall be notified within two (2) business days after the denial or revocation. The reason for the denial or revocation shall be in writing and made immediately available to the applicant or licensee.

The applicant or licensee may appeal the denial or revocation of a license to the city council. The applicant or licensee shall have ten (10) days from the date of the denial or revocation in which to file written notice, with the city secretary, of the applicant's/licensee's appeal of the denial or revocation to the city council. The applicant/licensee's written notice of appeal shall state the basis of the appeal and the reasons supporting the issuance or reinstatement of the license, including any relevant documentation supporting the appeal. The city council shall hold the appeal hearing within twenty (20) days after the written request is received by the city secretary. After holding the hearing on the revocation or denial, the city council shall by majority vote either (1) sustain the denial or revocation of the license; or (2) issue an order approving the issuance or reinstatement of the license, as applicable.

In the event of the filing of an appeal from a revocation of a license issued under the provisions of this chapter, then until such appeal has been heard and determined by the city council, such revocation order shall be stayed.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-7. Fees.

The fee for a license shall be:

- (1) Itinerant vendor: A license fee of twenty-five dollars (\$25.00) and a badge fee of three dollars (\$3.00) per person.
- (2) Peddler: A license fee of twenty-five dollars (\$25.00) and a badge fee of three dollars (\$3.00) per person.
- (3) Solicitor: A license fee of twenty-five dollars (\$25.00) and a badge fee of three dollars (\$3.00) per person.

The city manager or his/her designee shall have the right to waive any and all fees.
(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-8. Duration of licenses.

The duration of licenses shall be for the time period(s) indicated below:

- (1) An itinerant vendor's license shall be valid for thirty (30) days and can be renewed.
- (2) A peddler's license shall be valid for thirty (30) days and can be renewed.
- (3) A solicitor's license shall be valid for thirty (30) days and can be renewed.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-9. Display of license.

Each license shall be worn on the outer clothing of the individual for whom it was issued so as to be immediately visible to any person who might be approached by said person.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-10. Distribution of handbills.

In addition to the other regulations contained herein, a peddler, solicitor, itinerant vendor or canvasser leaving handbills shall observe the following regulations:

- (1) No handbill shall be left at, or attached to any sign, utility pole, or other structure in the public right-of-way. Any authorized representative of the city is authorized to remove any handbill found within the public right-of-way.
- (2) No handbill shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.
- (3) No handbill or flyer shall be left at, or attached to any of the property having a "no solicitor" sign.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-11. General prohibitions and hours permitted.

No solicitor, peddler or canvasser shall:

- (1) Solicit or peddle for a purpose other than that set out in the application upon which the license was issued.
- (2) Act as a canvasser, peddler or solicitor except during the hours between 10:00 a.m. and 8:00 p.m.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-12. Restrictions.

No solicitor, peddler, itinerant vendor or canvasser shall:

- (1) Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right-of-way (public or private) indicating a prohibition against peddling, soliciting and/or canvassing. Such sign need not exceed one (1) square foot in size and may contain words such as "no soliciting" or "no solicitors" in letters of at least two (2) inches in height. (The phrase "no soliciting" or "no solicitors" shall also prohibit peddlers, itinerant vendors, and canvassers). This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the posted property.
- (2) Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way leading into the residence or dwelling at which guests would normally enter, which sign contains the words "no soliciting" or "no solicitors" and which is clearly visible to the solicitor, peddler, itinerant vendor or canvasser. This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the posted property.
- (3) Remain on any private property without the permission of the owner or occupant, or if asked to leave.
- (4) Use or attempt to use any entrance other than the front or main entrance to the residence or dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
- (5) Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite solicitors.
- (6) Enter upon the property of another except between the hours of 10:00 a.m. and 8:00 p.m. This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the property.
- (7) Shall not locate in any street or highway right-of-way.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-13. Exemptions.

Under this chapter the following are exempt in whole or in part:

- (1) Any person acting as a canvasser shall not be required to obtain a license.
- (2) Any person or other business entity engaging in interstate commerce shall be required to obtain a

license but shall not be required to pay an application fee.

- (3) Christmas tree sales are exempt during the Christmas holiday season - November 1 thru December 31.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-14. Violations.

It shall be unlawful for any itinerant vendor, peddler or solicitor to act without a current, valid license issued under this chapter, or for any itinerant vendor, peddler, solicitor, or canvasser to fail to comply with each and every applicable provision of this chapter and all other applicable laws and regulations.

It shall be the duty of all city police officers and other authorized representatives of the city to examine all places of business and persons subject to the provisions of this chapter to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be in violation of the same.

(Ord. No. O-09-022, § 1, 12-3-09)

Sec. 16-15. Inns, hotels and motels.

(a) *Scope; definitions.* The scope of this section shall include any lodging enterprise which is subject to taxation under chapter 351 of the Texas Tax Code and all definitions included under such chapter are incorporated by reference.

(b) *Compliance with state health and safety codes.* All persons operating an inn, hotel or motel shall comply with the provisions of section 341.066 of the Texas Health and Safety Code and violations thereof shall be subject to a penalty as provided herein.

(c) *Violation of city mechanical, electrical, substandard buildings, plumbing and gas codes.* Any inn, hotel or motel which violates the city's mechanical code, electric code, substandard building code, plumbing code or gas code shall be subject to a penalty as provided herein.

(d) *Signs promoting sexually oriented films.* No inn, hotel or motel shall establish a sign which promotes the showing of sexually oriented films and violations thereof shall be subject to a penalty as provided herein.

(e) *Swimming pools.* All inns, hotels and motels which have swimming pools shall maintain at least one (1) life preserver and one (1) rescue pole per pool and maintain such equipment in good working order and violation thereof shall be subject to a penalty as provided herein.

(f) *Smoke detectors.* All inns, hotels and motels shall maintain working smoke detectors in each unit which is available for rent in accordance with chapter 792 of the Texas Health and Safety Code and violation thereof shall be subject to a penalty as provided herein.

(g) *Penalty provisions.* Any person who shall violate any of the provisions of this section, or shall fail to comply therewith or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and

shall be liable to a fine, and upon conviction of any such violation shall be fined in any sum of not more than five hundred dollars (\$500.00), and each day any such violation shall be permitted to exist shall constitute a separate and distinct offense.

(Ord. No. O-09-022, § 1, 12-3-09)

Cross References: Hotel/motel occupancy tax, § 24-21 et seq.

Secs. 16-16--16-19. Reserved.

Editors Note: Section 2 of Ord. No. O-11-009, adopted July 25, 2011, repealed § 16-16, which pertained to sexually oriented commercial activities and derived from Ord. No. O-09-022, § 1, adopted Dec. 3, 2009.

ARTICLE II.

SEXUALLY ORIENTED BUSINESSES

Sec. 16-20. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses, to promote the health, safety, and general welfare of the citizens of the City of Brenham, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in close proximity to each other within the city. The regulations contained herein have also been established for the purpose of limiting, the well-documented, adverse secondary effects suffered by properties located within one thousand three hundred twenty (1,320) feet of a sexually oriented business.

The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-21. Findings and basis for regulation.

The regulations contained herein, including those pertaining to the licensing, operation, and location of sexually oriented businesses, are based on studies, reports, findings, court case decisions, and evidence made available to and considered by the city council. These regulations have also been established under the authority granted to municipalities by chapter 243 of the Texas Local Government Code.

A copy of the city secretary's report on sexually oriented businesses (dated June 2, 2011), together with the studies, reports, findings, and court case decisions (as referenced herein) are on file in the office of the city secretary.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-22. Definitions.

Adult arcade. Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines,

projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by regularly depicting or describing specified sexual activities or specified anatomical areas.

Adult bookstore, adult novelty store or adult video store. A commercial establishment which regularly offers a service or regularly sells, rents or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVDs, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A commercial establishment that regularly features the offering to customers of live entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customer; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities.

Adult motel. A hotel, motel, or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the regular depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from any public right-of-way that advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by the depiction or description of specified sexual activities.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business is requested to be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by section 16-26;
- (3) Each individual who is an officer of a sexually oriented business for which a license application is made under section 16-26, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license application is made under section 16-26, regardless of whether the individual's name or signature appears on the application; and
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under section 16-26, regardless of whether the individual's name or signature appears on the application.

Chief of police. The Chief of Police of the City of Brenham or the chief's designee.

Child-care facility. A facility licensed by the State of Texas, or other governmental entity having jurisdiction, or an agency thereof, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. Conviction includes disposition or charges against a person by probation, deferred disposition or deferred adjudication.

Distinguished or characterized by an emphasis upon. The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

Employee. Any individual who:

- (1) Is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or
- (2) Performs or provides entertainment or any other services on the sexually oriented business premises for any form of compensation or consideration.

Entertainer. A person who, for consideration, entertains for others.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease or other live performance that is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities, for another person.

Escort agency. A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes, for a fee, tip, or other consideration.

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) Any building, structure or premises operated as a sexually oriented business.

Hearing officer. The city manager or his designee. The hearing officer shall exercise those powers authorized under applicable state law, the Charter of the city, and the Code of Ordinances of the city, as appropriate in the furtherance of his duties.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for

which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application.

Manager. A person responsible for planning and/or directing the work of others and monitoring them when necessary.

Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, viewed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

Nudity or a state of nudity. A state of dress which fails to fully and opaquely cover the anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed, or shows the covered male genitals in a discernibly turgid state.

Operates or causes to be operated. To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operation control of the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Public park. Any city park as defined by chapter 19 of the Code of Ordinances, or any park or recreational area operated by a city/county/state government, or any park to which the general public has access.

Regularly features or regularly shown. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Religious institution. A building or group of buildings in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. For the purposes of this definition, the term religious institution shall include, but not be limited to, a church, synagogue, mosque or temple.

Residential district. A single-family, duplex, townhouse, multiple-family, manufactured home, mobile home, or other residential zoning district as defined in the city's zoning ordinance.

Residential use. A single-family, duplex, multiple-family, manufactured home park, manufactured home subdivision, mobile home park, mobile home subdivision, campground, or other residential use as defined in the city's zoning ordinance.

Semi-nude or semi-nudity or state of semi-nudity. The exposure of the female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the

anus, genitals, pubic region and the perineum anal region of the human body. The term semi-nude shall not apply to an individual exposing a female nipple or areola in the process of breastfeeding a child under that person's care.

Sexual encounter center. A business or commercial establishment that as one (1) of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or other commercial enterprise which regularly offers a service or regularly sells, rents, or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The term "sexually oriented business" shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio.

Sign. Any display, design, message, pictorial, image or other representation that is:

- (1) Constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and
- (2) Used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

The term "sign" also includes any representation painted on or otherwise affixed to any exterior portion of a sexually oriented business establishment or to any part of the tract upon which the establishment is situated.

Specified anatomical areas.

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
 - a. Any human genitals, pubic region, or pubic hair;
 - b. Any buttock; or
 - c. Any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities. Any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

Transfer of ownership or control of a sexually oriented business. Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-23. Classification.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores, adult novelty stores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult theaters;
- (6) Adult motion picture theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-24. Nonconforming uses.

(a) Any sexually oriented business that is in violation of section 16-25, or any other location requirement of any other city ordinance that was legally operating at the time it was licensed, or the effective date of any amendment of such ordinance or regulation, shall be deemed a nonconforming use.

(b) Any legally established, sexually oriented business that is in violation of this article because of annexation into the city shall be deemed to be a nonconforming use.

(c) A sexually oriented business that is lawfully operating within the city on or after the effective date of this article shall not be rendered a nonconforming use by the subsequent location of a protected use listed in section 16-25 within one thousand three hundred twenty (1,320) feet of the sexually oriented business.

(d) Notwithstanding anything contained in this article or in the city's zoning ordinance as amended to the contrary, a legal nonconforming sexually oriented business shall be required to meet all applicable requirements of this article except locational requirements established by section 16-25 within sixty (60) days of the date the sexually oriented business becomes nonconforming. The board of adjustment may grant a nonconforming sexually oriented business an extension of time to comply with these requirements if the business shows, upon timely written application, that meeting these requirements within sixty (60) days imposes an unnecessary hardship on the business.

(e) Legal nonconforming sexually oriented businesses shall not be increased, enlarged, extended or altered except that the use may be changed to a use other than a sexually oriented business to the extent allowed by the city's zoning ordinance. A person commits an offense if he increases, enlarges, extends or alters, or causes to be increased, enlarged, extended or altered, a nonconforming sexually oriented business.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-25. Location requirements.

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the city's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand three hundred twenty (1,320) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A boundary of a residential zoning district as defined in the city's zoning ordinance;

- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the city, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the city's zoning ordinance;
- (6) A family oriented recreation facility including, but not limited to, a roller skating rink, amusement park, ice skating rink, go-kart track, miniature golf course, or a facility used primarily for youth or children's recreational, entertainment or athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof;
- (8) A public library; or
- (9) A hotel, motel or similar establishment in which members of the public obtain sleeping accommodations for consideration. The term includes without limitation a hotel, motel, inn, or bed and breakfast or similar establishment. The term does not include:
 - a. A hospital, sanitarium, or nursing home; or
 - b. A dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand three hundred twenty (1,320) feet of another sexually oriented business.

A person commits a violation if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsections (1) through (9) above. The presence of a city, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of

the structure in which each business is located.

(Ord. No. O-11-009, § 3, 7-25-11; Ord. No. O-11-022, § 1, 11-3-11)

Sec. 16-26. Sexually oriented business license required.

A person commits an offense if the person operates or causes to be operated a sexually oriented business without a valid license, issued by the city for the particular classification of a sexually oriented business. The person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make an application on a form provided by the city secretary.

The fact that a person, association, firm, partnership, corporation or other legal entity possesses other types of state or city permits or licenses does not exempt the person from the requirement of obtaining a license for a sexually oriented business.

An application for a sexually oriented business license shall only be considered to be complete if it contains all information specified in subsections (1) through (14) below:

- (1) The applicant's full and true name along with any other names used in the preceding five (5) years. Any person with interest in the business shall:
 - a. Be considered to be an applicant and shall sign the license application form;
 - b. Provide all information and documentation required of the applicant;
 - c. Be considered a licensee if a license is granted.
- (2) The applicant's current address;
- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this article, and the applicant's Social Security number, to be used for the same purpose;
- (4) The business name as it is to be displayed on the premises, the company name, if different than the preceding, the property address and legal description, the business mailing address, business telephone number, and any e-mail or website addresses that are to be used in conjunction with the business;
- (5) Written proof of age, in the form of a birth certificate accompanied by a current photograph, a current driver's license, or other picture identification issued by a domestic governmental agency;
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) The name and address of the statutory agent or other agent authorized to receive service of process;

- (8) A diagram showing a plan of the premises. The diagram shall:
 - a. Be oriented to the north, or to a designated street;
 - b. Be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches;
 - c. Designate any portion of the premises in which customers will not be permitted;
 - d. Specify the location of all manager's stations, if applicable; and
 - e. Designate the place at which the license, if granted, will be conspicuously displayed.
- (9) An approved city sign permit accompanied by a photograph verifying posting of notification signage required by Section 243.075 of the Texas Local Government Code;
- (10) A list of all employees, or prospective employees, along with copies of complete updated employment application, valid driver's license, state identification card, or passport containing a photograph of the employee;
- (11) A notarized affidavit signed by each applicant and certifying all information and documentation provided with the application to be true and correct;
- (12) A nonrefundable application fee in the amount of seven hundred and fifty dollars (\$750.00);
- (13) A certificate of occupancy, if required, issued by the city's building inspector; and
- (14) All information, supported by any necessary documentation, required by this article.

An application submitted without all of the required information, or without the application fee, shall be deemed incomplete. Incomplete applications shall be denied and within forty-five (45) business days of its receipt by the city secretary, be returned to the applicant, accompanied by a notice specifying the reasons for application denial.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-27. Issuance of sexually oriented business license.

The annual fee for a sexually oriented business license shall be seven hundred and fifty dollars (\$750.00). A sexually oriented business license shall be valid from the date of issuance through January 31 of the following year. The annual fee shall not be prorated.

The chief of police, or his designee, shall approve the issuance of a license by the city secretary to an applicant within forty-five (45) days after receipt of an application, unless the Chief, or his designee, finds one (1) or more of the following to be true:

- (1) The location of the sexually oriented business is or would be in violation of section 16-25 of this article.
- (2) The applicant failed to supply all of the information requested on the application.
- (3) The applicant gave false, fraudulent or untruthful information on the application.
- (4) An applicant is under eighteen (18) years of age.
- (5) An applicant or an applicant's spouse is overdue in payment to the secretary of state or the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (7) The license fee required by this article has not been paid.
- (8) The applicant has not demonstrated that the owner of the sexually oriented business owns or holds a lease for the property or the applicable portion thereof upon which the sexually oriented business will be situated or has a legally enforceable right to acquire the same.
- (9) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:
 - a. Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection; or
 - b. Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same;
 - c. Any of the following offenses as described in chapter 43 of the Texas Penal Code:
 1. Prostitution;
 2. Promotion of prostitution;
 3. Aggravated promotion of prostitution;
 4. Compelling prostitution;
 5. Obscenity;
 6. Sale, distribution or display of harmful material to a minor;

7. Sexual performance by a child;
 8. Possession of child pornography;
- d. Any of the following offenses as described in of the Texas Penal Code:
1. Public lewdness;
 2. Indecent exposure;
 3. Indecency with a child;
 4. Sexual assault or aggravated sexual assault as described in chapter 22 of the Texas Penal Code;
 5. Incest, solicitation of a child or harboring a runaway child as described in chapter 25 of the Texas Penal Code; or
 6. Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;
- e. For which:
1. Less than two (2) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense; or
 2. Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
 3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.
- (10) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of chapter 62 of the Texas Code of Criminal Procedure.
- (11) The applicant failed to comply with any of the requirements of Section 243.0075 of the Texas

Local Government Code regarding the posting of an outdoor sign.

- (12) The applicant of the proposed establishment is in violation of or is not in compliance with any of the requirements outlined in section 16-27 or section 16-25, or any other applicable law, ordinance or regulation.

An applicant, or applicant's spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in subsection (9)c. or (9)d. above, may qualify for a sexually oriented business license only when the time period required by subsection (9)e.1--3. above, has elapsed.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in accordance with the provisions of section 16-26.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-28. Manager/entertainer license required.

A person commits an offense if the person manages and/or or entertains in a licensed sexually oriented business without a valid manager and/or entertainer license, issued by the city.

The person desiring to obtain a manager and/or entertainer license shall make an application on a form provided by the city secretary and provide all of the following information:

- (1) A valid copy of the current sexually oriented business license for each of the sexually oriented businesses in which the manager and/or entertainer proposes to work or perform;
- (2) Applicant's name, any aliases, mailing address for receipt of notices, home address and telephone number, date and place of birth, social security number, and, in the case of entertainers, any stage names or nicknames used in entertaining;
- (3) Name and address of each sexually oriented business where the applicant intends to work;
- (4) A statement that the applicant is eighteen (18) years or older, confirmed by provision of documentation issued by a state or federal agency bearing the applicant's date of birth and photograph;
- (5) A statement that the applicant has not been convicted of, or released from confinement or conviction of, or received an order for, deferred adjudication or disposition, of any felony or any misdemeanor (other than traffic offenses) where such felony or misdemeanor violation constitutes a specified criminal act; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (6) A statement that the applicant has not been convicted of or released from confinement for conviction of, or received an order for, deferred adjudication or disposition, whichever event is later, of any other felony within the five (5) years or any other misdemeanor (other than traffic

offenses) within the two (2) years immediately preceding the date of application; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;

- (7) A statement that the applicant has not had a sexually oriented business manager or entertainer license, or comparable license, of any type revoked within the past five (5) years nor one (1) suspended within the past two (2) years, immediately preceding the date application, the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (8) A statement that the applicant has not had, within the two (2) years immediately preceding the date of application, an ownership, operational or managerial position, of a sexually oriented business that has demonstrated an inability to operate in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (9) A statement that the applicant does not owe delinquent taxes, assessments or other financial obligations to the city, or if such debts and/or obligations are owed, that arrangements satisfactory to the city manager have been made for the payment of such debts or obligations; and
- (10) A statement signed under oath by the applicant that the information contained in the application is true and correct; that the applicant grants permission to the city to perform any necessary background checks on the applicant; and that the applicant has read all the provisions of the chapter regulating sexually oriented businesses.

If the applicant fails to provide all of the information required by this section, or if the information provided is false or misleading, the application shall be denied. Further, a license issued under this section may be revoked and/or suspended after issuance if the information provided by the applicant is later found to be false or misleading.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-29. Issuance of manager/entertainer license.

The annual fee for a manager and/or entertainer license shall be one hundred fifty dollars (\$150.00). A manager and/or entertainer's license shall be valid from the date of issuance through January 31 of the following year. The annual fee for a manager/entertainer license shall not be prorated.

If the applicant meets all the applicable requirements, the chief of police, or his designee, shall approve the issuance of a license by the city secretary to an applicant within forty-five (45) days after receipt of a complete application.

In the event the application is determined incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete. The applicant may resubmit the application within ten (10) days of the city's written notice to the applicant. Once a completed application has been re-submitted, the police chief shall have forty-five (45) days to approve or disapprove the application.

The chief of police shall base his decision on the information provided by the applicant, the police

department's investigation, license requirements and denial criteria, and any other information provided by other city departments or governmental agencies. The applicant shall be notified in writing within ten (10) days after the chief's decision.

The license, if granted, shall state on its face: the license number, the name of the license holder (including any stage names), a photograph of the licensee, the date of issuance and expiration, the address of the sexually oriented business where such license is applicable.

A valid copy of the manager's license shall be posted in accordance with the provisions of section 16-26. A valid copy of the entertainer's license shall not be posted but shall be available for inspection on the premises of the sexually oriented business at any time.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-30. Certificate of occupancy.

Prior to submitting an application for a sexually oriented business license, the applicant must obtain a certificate of occupancy from the city's building official.

If a building and/or other construction related permit is required under applicable city ordinances, the applicant shall submit to the building inspection department, all necessary plans and permit applications. The building official shall cause all plans and permit applications to be processed and reviewed under the terms of applicable codes and ordinances. Upon approval of a final inspection, by applicable city departments, the building official shall issue a certificate of occupancy.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-31. Inspection and maintenance of records.

A licensee, owner, operator and/or employee of a sexually oriented business shall be subject to regulation under this article and shall permit representatives of the city, including but not limited to, the police department, health department, fire department, building inspections division and code enforcement division to inspect all portions of the premises and to inspect the records required to be maintained under this article, for the purpose of ensuring compliance with all applicable regulations, at any time it is occupied or open for business.

A licensee, owner or operator of a sexually oriented business commits an offense if:

- (1) The person operates the establishment without maintaining a current list of all employees of the business, along with a completed, updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.
- (2) The person refuses to permit a lawful inspection of the records and premises by a representative of the police department or other department of the city at any time the sexually oriented business is occupied or open for business.

- (3) The person does not maintain the required records on the premises of the licensed establishment.
- (4) The person does not permit representatives of the police department to take photographs of the licensee, owner, operator or employee of the sexually oriented business, for official police department purposes, at any time it is occupied or open for business.

The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-32. Expiration and renewal of licenses.

An application for renewal of a sexually oriented business license shall be submitted to the city secretary at least thirty (30) days before the expiration date of the then current and valid license. A licensee that fails to renew a license shall forfeit the right to conduct business within the city until such time as the renewal is approved. A sexually oriented business license may be renewed by submission to the city secretary of an application on the form prescribed by the city secretary and payment of a nonrefundable renewal fee of one thousand dollars (\$1,000.00). Annual renewal fees shall not be prorated.

An application for renewal of a manager and/or entertainer license shall be submitted to the city secretary at least thirty (30) days before the expiration date of the then current and valid license. A person that fails to renew their license shall forfeit the right to manage and/or entertain within the city until such time as the renewal is approved. A manager and/or entertainer license may be renewed by submission to the city secretary of an application on the form prescribed by the city secretary and payment of a nonrefundable renewal fee of seventy-five dollars (\$75.00). Annual renewal fees shall not be prorated.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-33. Suspension of license.

The chief of police shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-34. Revocation of license.

The chief of police shall issue a written notice of intent to revoke a sexually oriented business license if:

- (1) A cause of suspension in section 16-33 occurs and the license has been suspended one (1) other time within the preceding twelve (12) months;
- (2) On two (2) or more occasions within a five-year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred adjudication or disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a sexually oriented business that constitutes any of the offenses of the state or criminal attempt, conspiracy, or solicitation to commit same for:
 - a. Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 1. Prostitution;
 2. Promotion of prostitution;
 3. Aggravated promotion of prostitution;
 4. Compelling prostitution;
 5. Obscenity;
 6. Sale, distribution or display of harmful material to a minor;
 7. Sexual performance by a child;
 8. Possession of child pornography;
 - b. Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 1. Public lewdness;
 2. Indecent exposure;
 3. Indecency with a child;
 - c. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - d. Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
 - e. Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would

be classified as a felony as set forth in Section 12.04 of the Texas Penal Code.

- (3) A licensee or operator gave false or misleading information in the material submitted to the chief of police during the application process;
- (4) A licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
- (5) A licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
- (6) A licensee or operator knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (7) A licensee or operator has, on two (2) or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code;
- (8) A licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business;
- (9) The licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or
- (10) A license is transferred in violation of section 16-36;

The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subsection (7) above does not apply to adult motels as a ground for revoking the license, unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-35. Denial, suspension and revocation procedures.

If the chief of police determines that facts exist for denial, suspension or revocation of a license under this article, the city secretary shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the most current business address 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 license or 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 license has been denied, suspended, or revoked or if the license will be issued or allowed to remain in effect. If the license is denied, suspended or revoked such notice shall include a statement advising the applicant or licensee 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 license, then within five (5) business days after the hearing, the city manager shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the license or allow the license to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application of a license has been denied, or whose license 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 license shall remain in effect and be enforced.

A sexually oriented business license or the ownership or control of a sexually oriented business which is directly or indirectly a part of civil litigation, an administrative hearing, or procedures regarding the denial, suspension or revocation of the license, such license shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-36. Transfer of license.

A person commits a violation if the person transfers a license or permits to another person or operates a sexually oriented business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of ownership or control of a sexually oriented business.

A person commits a violation if the person counterfeits, forges, changes, defaces or alters a license.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-37. Regulations pertaining to exhibition of sexually explicit films, videos, or live entertainment in viewing rooms.

A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video, or live entertainment which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises providing all information specified in subsection 16-26(8) of this article. Manager stations shown on this diagram shall be dimensioned and shall not contain in excess of thirty-two (32) square feet of floor area per station.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.
- (3) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (5) It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (6) No viewing room may be occupied by more than one (1) person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) footcandles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (10) No person shall make or attempt to make an opening of any kind between viewing rooms or booths.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths or rooms to determine if any openings or holes exist.
- (12) The license shall cause all floor coverings in viewing booths or rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

A person having a duty under subsections (1) through (13) above commits a violation if he or she knowingly fails to fulfill that duty.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-38. Additional regulations for escort agencies.

An escort agency shall not employ any person under the age of eighteen (18) years.

A person commits a violation if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-39. Additional regulations concerning public nudity.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears nude or in a state of nudity or engages in specified sexual activities.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears in a semi-nude state, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

A person commits a violation if the person receives directly any pay or gratuity from any patron or customer, or if any patron or customer pays or gives any gratuity directly to the person, while the person is an employee and semi-nude in a sexually oriented business.

A person commits a violation if the person, while semi-nude, knowingly and intentionally touches a part on or the clothing of a patron or customer.

It is a defense to prosecution that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

b. Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

c. Where no more than one (1) nude model is on the premises at any one (1) time.

(Ord. No. O-11-009, § 3, 7-25-11; Ord. No. O-11-022, § 2, 11-3-11)

Sec. 16-40. Prohibition against children in a sexually oriented business.

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-41. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 12:00 a.m. and 8:00 a.m. on weekdays and Saturdays, and 12:00 a.m. and 12:00 p.m. on Sundays.

(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-42. Exemptions.

Any business activity or service that by federal or state law is required to be operated by or employing licensed psychologists, licensed physical therapists, registered massage therapists, registered nurses, licensed pharmacists or licensed athletic trainers engaged in practicing such licensed profession as generally recognized within their profession, including:

- (1) A state-registered massage establishment that employs only state-registered massage therapists to perform massage therapy; conforming to all requirements of state law and other applicable law;
- (2) A state-registered massage school with at least two (2) registered massage therapists that teaches the course of instruction required for registration as a massage therapist or a school approved by the Texas Department of State Health Services, or successor agency, or that is otherwise approved by the state;
- (3) A state-registered massage therapy instructor who instructs one (1) or more students in any section of the course of instruction required for registration as a massage therapist;
- (4) A business operated by or that employs a licensed physical therapist whose activities fall under the control of The Executive Council of Physical Therapy and Occupational Therapy Examiners or a license of another state agency performing health care service within the scope of the applicable licensing act who performs the activities for or on behalf of the business or commercial enterprise;
- (5) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts as its sole business; or
- (6) Any activity conducted or sponsored by any Texas independent school district, licensed or

accredited private school, or public or private college or university.
(Ord. No. O-11-009, § 3, 7-25-11; Ord. No. O-11-022, § 3, 11-3-11)

Sec. 16-43. Violation a misdemeanor.

Except as otherwise stated herein, any person, firm, corporation, agent or employee thereof who violates any provision of this article (a violation) shall be guilty of a class A misdemeanor punishable by a fine not to exceed four thousand dollars (\$4,000.00) and/or confinement in jail for a term not to exceed one (1) year.

Each day that a violation exists or is permitted to exist shall constitute a separate offense.

The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.

The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec. 16-44. Civil remedies.

The city reserves the right to seek all available civil remedies in a court of law to include, but not be limited to, injunction and civil fines for any violations of this article.

Any person, firm, corporation, agent or employee thereof who violates any provision of this article, in addition to any criminal remedies, shall be subject to a civil fine up to and including one thousand dollars (\$1,000.00) per day for each day the violation occurs.
(Ord. No. O-11-009, § 3, 7-25-11)

Sec 16-45. Amortization.

If, due to annexation, rezoning, or other reason, an existing sexually oriented business is in violation of the location requirements in section 16-25, the sexually oriented business may submit verified proof that the business has not recouped the owner's investment prior to the date of annexation, rezoning, or other reason for the location violation.

The required documentation shall include at a minimum, but is not limited to, the following:

- (1) The amount of the owner's investment in the existing enterprise to the date the proof is submitted;
- (2) The life expectancy of the enterprise;
- (3) The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of the lease;
- (4) Proof of the income of the enterprise since it commenced operations and a projection of yearly

income. Proof of income may be in the form of tax returns or reliable financial statements; and

- (5) A proposed schedule for amortization of the investment, to be considered in light of the intent of this section.

Upon evaluation of the proof and a finding that the proposed amortization is reasonable under the circumstances, the city council shall approve a contingent sexually oriented business permit. The contingent sexually oriented business permit shall specifically state the reasons that the sexually oriented business permit would have been denied but for the fact that the enterprise was in existence prior to being annexed into the city limits, rezoned, or for other appropriate reasons.

The contingent sexually oriented business permit shall be renewed annually only through the end of the amortization period. No sexually oriented business permit shall be issued for that location beyond that the amortization period unless circumstances change so as to bring the enterprise into compliance with this article. The contingent sexually oriented business permit shall be subject to revocation and suspension pursuant to this article.

Upon a finding that the proposal is not reasonable under the circumstances, the city manager, or his designee, shall make a counter-proposal or recommendation and the applicant may resubmit a revised proposal within fifteen (15) days of the city manager's determination and counter-proposal. The city council shall make a final determination using the counter-proposal.

(Ord. No. O-11-022, § 4, 11-3-11)

Sec. 16-46. Notice of violation.

The city shall provide to a sexually oriented business written notice of each citation issued to an operator or employee of the business for an alleged violation of this article. The notice may be sent by certified mail, return receipt requested, to the business address of the sexually oriented business as it appears on its license application, to the attention of the licensee, as it appears on the license application, or may be personally delivered to the licensee. A failure of the city to provide such notice is not a violation of this article, and shall not affect or invalidate the citation.

(Ord. No. O-11-009, § 3, 7-25-11; Ord. No. O-11-022, § 5, 11-3-11)

Editors Note: Former § 16-45.

Secs. 16-47--16-49. Reserved.

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.
(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

Sec. 16-52. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

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.

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.

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.

Boarding home facility means an establishment that:

- (1) Furnishes, in one (1) or more buildings, lodging to three (3) 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.

Elderly person means a person who is sixty-five (65) years of age or older.

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

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.

Resident means a person who is residing in a boarding home facility.
(Ord. No. O-12-21, § 1, 9-6-12)

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.
(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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. (Ord. No. O-12-21, § 1, 9-6-12)

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:

- (1) Mobile homes and manufactured homes shall not be permitted for use as boarding home facilities or additions to existing boarding home facilities.
- (2) 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.
 - a. Every closet door latch will be such that it can be readily opened from the inside in case of an emergency.
 - b. Every bathroom door or door lock must permit the opening of the locked door in case of an emergency.
- (3) Locks that can be easily opened manually from the inside must be provided on all exterior doors.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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 ten (110) and one hundred twenty (120) degrees Fahrenheit.

- (8) 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.
- (9) Sleeping rooms must have:
 - a. At least seventy (70) square feet of floor space in single-occupancy rooms;
 - b. At least sixty (60) square feet of floor space for each occupant in multi-occupancy rooms;
 - c. Beds spaced at least three (3) feet apart when placed side by side or end-to-end;
 - d. At least a seven-foot, six-inch ceiling height;
 - e. Required accessibility for nonambulatory residents and residents with conditions that substantially limit ambulation and/or mobility;
 - f. Beds at least six (6) feet long and three (3) feet 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;
 - g. At least one (1) 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;
 - h. Extra bed linens, including sheets, pillowcase and blankets must be available to each resident;
 - i. 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;
 - j. At least one (1) chair in good condition in each sleeping room;
 - k. At least one (1) end table in good condition located adjacent to each bed in each sleeping room;
 - l. Sufficient closet space to allow clothes not stored in drawers to be hung. Clothing cannot be stored on the floor;
 - m. 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

- n. Access to emergency exit without passing through another sleeping room.
- (10) 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.
- (11) Water closets, lavatories, and bathtubs or showers must be:
- a. Available on each floor when not provided in each individual room;
 - b. 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
 - c. Accessible to the residents without going outside of the building or without going through a sleeping room of another resident.
- (12) A telephone must be available, twenty-four (24) hours per day, must be easily accessible, and must afford privacy for use by residents.
- a. 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.
- (13) Each boarding home facility must provide:
- a. 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.
 - b. 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.
 - c. A dining room located on the same floor as the communal kitchen and must:
 - 1. Be as nearly adjacent to the communal kitchen as practicable;
 - 2. Be accessible to the residents, without going through a sleeping room or sleeping dormitory of another resident;
 - 3. Contain not less than seventy (70) square feet of floor area; and

4. Be supplied with one (1) dining chair and two (2) linear feet of dining table space for each resident of a boarding home facility.
- d. A kitchen that:
1. Is accessible to the residents sharing the use without going through a sleeping room of another resident;
 2. Has a food preparation area with a total of not less than six (6) square feet;
 3. 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;
 4. Has a minimum two (2) compartment sink for manual dishwashing;
 5. Has a cooking stove fueled by gas or electricity;
 6. Contains at least one (1) cabinet of adequate size, suitable for storage of food and utensils; and
 7. Is properly equipped to allow for the preparation of meals.

(14) Fire precautions must include:

- a. Providing suitable fire escapes/exits that must be kept in good repair and accessible at all times;
- b. 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;
- c. Posting an emergency evacuation plan throughout the facility; and
- d. Not storing gasoline operated maintenance equipment, lawn care equipment, and flammable supplies inside the boarding home facility.

(15) Fire precautions must also include the following:

- a. 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.
- b. All fire protection measures must be in accordance with requirements of the local fire authority.

- c. 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 inter-connected 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.
 - d. 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.
 - e. At least one (1) 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.
- (16) All residents must be shown how to use all emergency exits from the facility within twenty-four (24) hours of arrival to the facility.
- (17) 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:
- a. Annual inspection by the local fire marshal, or his designee;
 - b. 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;
 - c. Annual health inspection by the local health inspector;
 - d. Gas pipe pressure test once every three (3) years by a licensed plumber;
 - e. Annual inspection and maintenance of fire extinguishers by a service provider who is licensed by the state fire marshal to perform these duties; and
 - f. Annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission, if applicable.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

- (1) 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.
- (2) Every window, exterior door and basement hatchway must be weather tight, watertight, insect and rodent-proof and must be kept in good working condition.
- (3) 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).
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Water closets, lavatories, and bathtubs or showers must be:
 - a. Kept clean and in good repair and must be well-lighted and ventilated;
 - b. Adequately supplied with toilet paper, soap, and hand towels for each bathroom; and
 - c. Supplied with non-slip surfaces in bathtub or shower, and curtains or other safe enclosures for privacy.
- (9) Each kitchen in a boarding home must:
 - a. Be kept in a clean and sanitary condition;
 - b. 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

- c. 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.
- (10) Each facility shall meet all applicable state and local sanitary codes.
- (11) All linens and laundry shall be:
- a. Bagged or placed in a hamper before being transported to the laundry area;
 - b. Properly identified to prevent loss; and
 - c. If soiled, not transported through, sorted, processed, or stored in kitchens, food preparation areas, or food storage areas.
- (12) Poisonous, toxic, and flammable materials shall:
- a. Be stored and maintained away from bed linens, towels, or kitchen equipment;
 - b. Be prominently and distinctly labeled for easy identification of contents; and
 - c. Not be used in a way that contaminates food equipment or utensils, or in a way that constitutes a hazard to employees or residents.
- (13) 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.
- (14) All food and drink shall be:
- a. Clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
 - b. Prepared, stored, handled, and served so as to be safe for human consumption;
 - c. Maintained at a temperature of forty-one (41) degrees Fahrenheit or below for foods subject to spoilage;
 - d. Maintained at one hundred thirty-five (135) degrees Fahrenheit or above at all times for hot foods ready to serve;
 - e. Maintained in the freezer at a temperature of zero (0) degrees Fahrenheit or below for foods stored as frozen; and
 - f. Stored in food containers that are appropriately labeled, dated, and protected from flies,

insects, rodents, dust, and moisture.

- (15) 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.
- (16) 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.
- (17) Meals shall be served:
 - a. At least three (3) times per day;
 - b. In sufficient quantity and quality to meet the nutritional needs of the residents;
 - c. Daily at regular hours, with at least one (1) hot meal per day;
 - d. With no more than fourteen (14) hours between the beginning of the evening meal and the beginning of the morning meal; and
 - e. With alternative selections for residents on medically prescribed diets.
- (18) A time schedule of meals shall be posted daily.
- (19) Employees or residents engaged in food handling shall:
 - a. Observe sanitary methods, including hand washing as appropriate; and
 - b. Not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.
- (20) 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.
- (21) If preparing meals for residents, staff must have a food-handler's permit.
- (22) Each boarding home facility shall maintain a minimum food and water supply sufficient for all residents as recommended by the American Red Cross.
- (23) Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

(Ord. No. O-12-21, § 1, 9-6-12)

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 forty-eight (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.

(Ord. No. O-12-21, § 1, 9-6-12)

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. (Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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 anniversary of the date the person is convicted of any felony offense not listed in this section or any of the following nonfelony 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. (Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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. (Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

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.

(Ord. No. O-12-21, § 1, 9-6-12)

Secs. 16-72--16-79. Reserved.