

City of Houston, Texas, Ordinance No. 2018-225

AN ORDINANCE AMENDING ARTICLE XIV OF CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO REGULATION OF BOARDING HOMES, AND MAKING CONFORMING AMENDMENTS TO OTHER PROVISIONS OF THE CODE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Chapter 260 of the Texas Health and Safety Code authorizes municipalities to provide oversight of boarding home facilities; and

WHEREAS, in 2013, the City of Houston (the "City") recognized that facilities providing living quarters and care services to persons with disabilities and elderly persons, commonly known as boarding home facilities, had proliferated throughout Texas and predominately in major urban areas; and

WHEREAS, the City further recognized that because of their housing needs, the residents of boarding home facilities had a strong likelihood of requiring personal care, medical, mental health, social, and financial management services, and thus were especially vulnerable to exploitation regarding such services; and

WHEREAS, in 2013, City Council enacted Ordinance No. 2013-674 which required operators of boarding home facilities operating in the City of Houston to register with the Administration and Regulatory Affairs Department ("ARA"), so that the City could provide some oversight of the boarding home facilities; and

WHEREAS, under the 2013 ordinance, operators of approximately 117 boarding home facilities registered with ARA; and

WHEREAS, the Houston Police Department ("HPD") has actively monitored the boarding home facilities, and thus, the City gained a greater understanding of the number of facilities operating in the City and the needs of the residents of these facilities; and

WHEREAS, HPD has determined that many boarding home facilities lack adequate bedding for each of its individual residents; and

WHEREAS, HPD has determined that boarding home facilities have repeatedly failed to comply with the safety requirements of the boarding home facility ordinance; and

WHEREAS, requiring a boarding home facility permit will provide HPD with a greater ability to enforce the boarding home ordinance's safety and health requirements; and

WHEREAS, based on the recommendations made by HPD, ARA, Houston Public Works, and the Houston Fire Department, City Council believes that it is in the interest of the public health, safety, and welfare of the City's citizens to require a boarding home facility permit; **NOW, THEREFORE**,

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

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

Section 2. That Article XIV of Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. That Section 1-9(g) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

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

Section 4. That Section 1-10(b)(6) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(6) Permits for boarding homes and boarding home operators issued pursuant to chapter 28, article XIV of this Code:

- a. Any offense involving fraud or theft;
- b. Any offense involving forgery;
- c. Any violation of state or federal laws regulating firearms;

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

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

Section 5. That Section 1-15(a)(10) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(10) Permits for boarding homes issued pursuant to article XIV of chapter 28 of this Code;"

Section 6. That the definition of the term *sensitive use* in Section 9-352 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Sensitive land use* means a childcare facility, nursing home, assisted living center, boarding home as defined in section 28-451 of this Code, school, hospital or medical facility."

Section 7. That Section 10-296(3) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(3) *Lodging house.* The term "lodging house" is used in this article in its ordinary and customary meaning and shall also mean and include hotels, boarding home, as defined in section 28-451 of this Code, lodging facilities, as defined in section 28-601 of this Code, rooming houses, tenement houses, or any other house (by whatever name known) used and occupied, or designed and constructed so that the same may be used and occupied, for the permanent or temporary occupancy for living quarters for ten or more persons."

Section 8. That the definition of the term *congregate living facility* in Section 10-317 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Congregate living facility* means a building containing facilities for living, sleeping, and sanitation for occupancy by other than a family. Examples of congregate living facilities include shelters, convents, monasteries, dormitories, boarding homes, as defined in section 28-451 of this Code, lodging facilities, as defined in section 28-601 of this Code and rooming houses, and fraternity and sorority houses. Notwithstanding the foregoing, the following buildings are not congregate living facilities:

- (a) Jails;
- (b) Hotels (as defined by article III of chapter 44 of this Code);
and
- (c) Buildings providing sleeping facilities primarily for the purpose of rendering services regulated by a department or agency of the federal government or of the State of Texas (including, but not limited to, the Texas Department of State Health Services)."

Section 9. That Section 10-481(1) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(1) *Business building* means any structure, whether public or private, regardless of the type of material used in its construction, located within the boundaries of the city that is adapted to occupancy for the transaction of business, whether vacant or occupied, for the rendering of professional services, for the display, sale, or storage of goods, wares, or merchandise, or for the performance of work or labor, including hotels, boarding homes, as defined in section 28-451 of this Code, lodging facilities, as defined in section 28-601 of this Code, rooming houses, beer parlors, office buildings, public buildings, stores, markets, restaurants, grain elevators and abattoirs, warehouses, workshops and factories."

Section 10. That the definition of the term *hotel* in Section 28-201 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Hotel.* Any building or buildings in which the public may obtain transient sleeping accommodations. The term shall include hotels, motels, suites hotels, tourist homes, houses, or courts, inns, rooming houses, or other buildings where transient rooms are furnished for a consideration, but shall not include properties that are residential in character."

Section 11. That Section 34-48 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 34-48. Fire prevention division; duties generally.

The fire prevention division of the fire department and its personnel shall be charged with the primary duty of enforcing all laws of the state and ordinances of the city covering the following:

- (1) The prevention of fires.
- (2) The storage and use of explosives and inflammables.
- (3) The installation and maintenance of automatic and other fire alarm systems and protection systems, fire extinguishers and equipment.
- (4) The maintenance and regulation of fire escapes.

- (5) The means and adequacy of exits in cases of fires from factories, schools, boarding homes, as defined in section 28-451 of this Code, lodging facilities, as defined in section 28-601 of this Code, convalescent homes, hotels, asylums, hospitals, churches, public halls, theaters, and in all other places where numbers of persons work, live, or congregate from time to time for any purposes.
- (6) The investigation of causes, origin and circumstances of fire.
- (7) The conducting of fire prevention campaigns and the circulation of fire prevention literature, for the benefit of civic clubs, labor organizations, business and commercial enterprises, schools, factories, boarding homes, as defined in section 28-451 of this Code, lodging facilities, as defined in section 28-601 of this Code, hotels, lodges, hospitals, convalescent homes, churches, halls, theaters and the general public in the interest of fire prevention and public safety.
- (8) Such other duties as may be imposed from time to time by the mayor, the laws of the state, ordinances of the city, and by the chief of the fire department and the fire marshal."

Section 12. That the definition of the term *hotel* in Section 44-101 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"*Hotel* means any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses, or courts, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but shall not include hospitals, sanitariums, or nursing homes. *Hotel* does not include a boarding home, as defined in section 28-451 of this Code or a lodging facility, as defined in section 28-601 of this Code."

Section 13. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 14. That the City Council hereby approves the new Boarding Home fees established by this Ordinance in Section 28-462 of the Code of Ordinances, Houston, Texas, in the amounts shown below:

Name	Description	Statutory Authority	Amount
Boarding Home	Annual Permit (nonrefundable)	28-462(a)	\$ 81.00
Boarding Home	Inspection (nonrefundable)	28-462(b)	\$192.00

These fees shall not be subject to the annual fee increase under Section 1-13 of the Code of Ordinances, Houston, Texas. The Director of Finance shall incorporate the new fees in the City Fee Schedule and remove the former Boarding Home Registration fee from the City Fee Schedule.

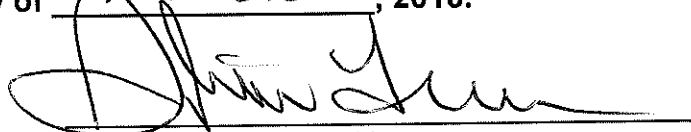
Section 15. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 16. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the

Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 21st day of March, 2018.

APPROVED this 22nd day of March, 2018.


 Mayor of the City of Houston

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

 City Secretary

Prepared by Legal Dept. _____
 JWG:asw 3/06/2018
 Requested by Carol Haddock, Director, Houston Public Works
 L.D. File No. 0371800049001


 Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		STARDIG
ABSENT		DAVIS
✓		COHEN
ABSENT		BOYKINS
✓		MARTIN
ABSENT		LE
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		LASTER
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		EDWARDS
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: **MAR 27 2018**

EXHIBIT A

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS

* * *

ARTICLE XIV. BOARDING HOMES

DIVISION 1. GENERALLY

Sec. 28-451. Definitions.

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

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

Boarding home or boarding home facility means an establishment that:

- (1) Furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
- (2) Provides residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication, but does not provide personal care services as defined by Section 247.002 of the Texas Health and Safety Code to those persons.

Business day means the city's standard days of operation; 8:00 a.m. to 5:00 p.m., Monday through Friday, but shall exclude any day designated as an official city holiday or for which the operations of the city have been reduced or closed due to any unforeseen circumstance or emergency.

Department means Houston Public Works.

Director means the director of the department and the director's designees.

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

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

Hearing officer means an individual designated by the director to conduct administrative appeal hearings.

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

Owner means the proprietor if a sole proprietorship, all general partners if a partnership, or the corporation and all officers, directors, and persons holding 50 percent or more of the outstanding shares of the corporation, if a corporation.

Permit means a current, valid permit issued by the director pursuant to the terms of this article to an operator for a boarding home facility.

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

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

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

Sec. 28-452. Scope.

This article applies to all boarding home facilities as defined in this article, regardless of when they began operation, except as otherwise provided by this article.

Sec. 28-453. Previously registered boarding homes.

A boarding home that is operating under a current and valid registration certificate on 3-22-18¹ shall come into full compliance with this article by October 1, 2019.

Sec. 28-454. Exemptions.

This article does not apply to:

- (1) Home and community support services licensed under Texas Health and Safety Code Chapter 142, as amended.
- (2) Convalescent and nursing facilities and related institutions licensed under Texas Health and Safety Code Chapter 242, as amended.

¹ City Secretary shall insert the date of passage and approval of this Ordinance.

- (3) Continuing care facilities licensed under Texas Health and Safety Code Chapter 246, as amended.
- (4) Assisted living facilities licensed under Texas Health and Safety Code Chapter 247, as amended.
- (5) Intermediate care facilities for individuals with an intellectual disability licensed under Texas Health and Safety Code Chapter 252, as amended.
- (6) A person who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:
 - a. The home and community-based services (HCS) waiver program;
 - b. The Texas home living (TxHmL) waiver program;
 - c. The STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or
 - d. Texas Government Code Section 534.152.
- (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 as described in Texas Health and Safety Code Section 242.003(3), as amended.
- (8) A facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Health and Human Services (HHS) and that is monitored by HHS or its designated local intellectual and developmental disability authority in accordance with standards set by HHS or is funded in whole or in part by the Texas Department of State Health Services and that is monitored by that department or by its designated local mental health authority in accordance with standards set by HHS, as described in Texas Health and Safety Code Section 247.004(4), as amended.
- (9) A hotel as defined by Texas Tax Code Section 156.001, as amended.
- (10) A retirement community as defined by Texas Tax Code Section 11.18, as amended.
- (11) The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows, such as a monastery or convent.

- (12) A child-care facility as defined by Texas Human Resources Code Section 42.002, as amended.
- (13) A family violence shelter center as defined by Texas Human Resources Code Section 51.002, as amended.
- (14) A fraternity or sorority house, or other dormitory, associated with an institution of higher education.
- (15) A multi-family rental building, as defined in section 10-152 of this Code.

Sec. 28-455. Rules; forms.

The director may issue rules and regulations for the operation of this article and shall promulgate application and permit forms. A copy of the forms, rules, and procedures, if any, shall be maintained in the office of the director or on the city's web site for inspection, and copies may be purchased at the fee prescribed by law.

Sec. 28-456. Notices.

(a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant, operator or owner of a boarding home may be given by personal delivery, electronic mail, or United States mail, postage prepaid, addressed to the most recent address as specified in the application for the permit most recently received by the director, or any notice of address change most recently received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of residence or mailing address.

Sec. 28-457. Penalty; continuing violations.

(a) Violation of any provision of this article shall be punishable by a fine of \$500.00. Each day any violation continues shall constitute and be punishable as a separate offense.

(b) The revocation of any permit 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 permit.

Secs. 28-458—28-460. Reserved.

DIVISION 2. PERMITS

Sec. 28-461. Permit.

(a) It shall be unlawful for any person to own or operate a boarding home within the city limits without a permit issued by the department pursuant to this article.

(b) Obtaining or holding a permit under this article shall not be interpreted to excuse or relieve a boarding home facility or its owner, operator, or any employee from compliance with state law or other provision of this Code.

(c) A permit is personal to the owner of the facility for which it is issued and may not be transferred or otherwise assigned. Any change in ownership of the facility will require the filing of a new permit application within ten business days following the effective date of the change. The application shall be subject to the same fees and shall be treated in the same manner in all respects as an original application. Failure to timely file the new application for a permit may result in denial of the permit. If the permit holder for the facility is a corporation, and there is any transfer in the interest of the corporation or of any entity having an interest in the corporation after the permit is issued, the corporation must submit a new permit application within ten business days following the effective date of the change.

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

(e) Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner renewed, revoked or surrendered. A permit may be renewed by filing an application for renewal with the director not more than 90 days prior to the expiration date of the permit.

Sec. 28-462. Fees.

(a) The annual permit fee stated in the city fee schedule shall be payable upon the issuance of a permit and shall be nonrefundable. The annual boarding home permit fee shall not be subject to the annual adjustment in section 1-13 of this Code.

(b) The boarding home inspection fee stated in the city fee schedule shall be payable prior to the commencement of a scheduled inspection and shall be nonrefundable. The boarding home inspection fee shall not be subject to the annual adjustment in section 1-13 of this Code.

Sec. 28-463. Application for permit.

(a) *Application form.* An operator of a boarding home shall apply to the director for a permit annually on forms provided by the director and shall include the following information:

- (1)
 - a. The name, street address (and mailing address if different), email address, and Texas driver's license number of the intended operator; and
 - b. The name, street address (and mailing address if different), and email address of the owner;
- (2) The name under which the boarding home is to be operated;
- (3) The boarding home facility telephone number;
- (4) If the boarding home is to be operated under an assumed name, a certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Business and Commerce Code, Chapter 71);
- (5) If the boarding home is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (6) If the boarding home is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
- (7) If the boarding home is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;
- (8) If the boarding home is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;
- (9) The address and legal description of the real property on which the boarding home is or is to be situated;
- (10) Proof of ownership of the real property upon which the boarding home will be operated in the form of a certified copy of the recorded deed;
- (11) If the person identified as the owner of the real property in item (8) is not the owner or operator of the boarding home, then the lease, purchase contract, purchase option contract, lease option contract or other document evidencing the legally enforceable right of the owner or operator of the boarding home to use and possess the real property;

- (12) A general description of the services provided;
- (13) All security and resident monitoring plans and any additional security and monitoring measures which are to be implemented;
- (14) The date on which the applicant began or expects to begin operations as a boarding home at the location;
- (15) Copies of the statements required in section 28-466(b) of this Code;
- (16) Any other information that may be reasonably requested by the director; and
- (17) The following statements conforming to minimum state law requirements for unsworn declarations:
 - a. A statement by the owner of the real property upon which the boarding home is situated attesting to the knowledge of that owner that the property will be used for the operation of a boarding home;
 - b. A statement by the owner and operator of the boarding home attesting that the applicant's operation will not violate deed restrictions;
 - c. A statement by the owner and operator of the boarding home attesting that only framed beds at least six feet long and three feet wide equipped with supportive springs and clean supportive mattresses will be used by the boarding home facility; and
 - d. A statement by the operator of the boarding home that it is in full compliance with Chapter 325 of the Texas Health and Safety Code.

Any of items (2) through (9) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the original application or previous renewals thereof remain correct and current.

(b) *Criminal history documents.* Along with the application form, an applicant or operator of a boarding home shall submit, for each owner or operator, fingerprints and the signed authorization form described in section 28-464 of this Code in order to facilitate the criminal history check required by that section.

(c) *Request for inspection.* At the time of submission of the application, the owner or operator of a boarding home shall submit a request to the building official for an inspection, as described in section 28-467 of this Code.

Sec. 28-464. Criminal history check.

Upon receipt of an application for a permit under this article, the director shall cause the criminal history of each owner and operator designated in the application to be researched. In accordance with the provisions of section 28-463(b) of this Code, each owner and operator shall complete any forms, including any state or federal request and release forms, required for the director to obtain a criminal history report for the owner and operator, and the applicant shall present the required completed forms to the director and shall reimburse the city for any fees imposed by state or federal agencies for the report. This provision shall not be construed to preclude the director from obtaining interim reports at the expense of the city

As provided in sections 28-465(b)(2)a and section 28-468(a) of this Code, the registration for a boarding home facility may be denied, revoked, or denied for renewal in accordance with section 1-9 of this Code if (1) the owner or operator has been convicted of a criminal offense listed in section 1-10(b)(6) of this Code, or (2) the owner, operator, or boarding home facility has any employee convicted of a criminal offense listed in section 1-10(b)(6) of this Code.

Sec. 28-465. Permit process.

(a) *Initial acceptance of application.* The director shall initially review each application for issuance or renewal of a permit to determine whether the application is complete and all required information has been provided. If not, the director shall return the application to the applicant with a statement of deficiencies. The applicant may then correct the deficiencies and resubmit the completed application.

(a-1) *Internet posting by director.* Within five business days of the director's receipt and acceptance of the completed application for the issuance or renewal of a permit, the director shall cause to be posted on an internet website hosted by the department and being accessible to the public the following information as contained in the completed application:

- (1) The department's identification, reference, case or application number for the application;
- (2) The name of the operator and owner making the application; and
- (3) The physical street address and legal description of the real property as contained in the completed application, including but not limited to: the subdivision name, the subdivision section number, and the lot and block number on which the boarding home is or is to be situated.

(b) *Review of application.* The director shall review a complete application to determine whether the applicant has met all applicable requirements of this article and of other applicable provisions, including section 1-10(b)(6) of this Code, and shall:

- (1) Return an application that contains any incorrect information;
 - (2) Deny the issuance or renewal of a permit for which the application:
 - a. Is submitted by or on behalf of an owner or operator who has been convicted of a criminal offense listed in section 1-10(b)(6) of this Code;
 - b. Contains materially false information; or
 - c. Is submitted for a boarding home that is not in compliance with this article; or
 - (3) Approve the application and issue the permit, subject to compliance with this article, including, but not limited to, inspection of the boarding home and payment of any required fees.
- (c) *Denial.* If the director proposes to deny the issuance or renewal of a permit, he shall notify the applicant of the proposed grounds for the denial.
- (1) If the denial is not based on section 28-465(b)(2)a of this Code, the applicant may, within ten business days after the date of the notice letter, cure any defect. If the applicant timely cures all defects, the director shall approve the application. If the applicant fails to cure all defects within ten business days after the date of the notice letter, the applicant may appeal the denial through the procedure described in section 28-470 of this Code.
 - (2) If the denial is based on section 28-465(b)(2)a of this Code, the applicant may appeal the denial through the procedure described in section 1-9 of this Code.
- (d) *Decision final.* The director shall provide written notice to an applicant of either final approval or denial of an application. The director's decision on an application shall be final, unless an appeal is timely filed.
- (e) *Additional conditions for issuance of permit.* Notwithstanding the foregoing, no permit shall be issued until:
- (1) The director determines that the boarding home facility has passed the required inspection; and
 - (2) The applicant has paid all required fees.

Sec. 28-466. Operating requirements.

(a) *Posting.* The owner or operator of a boarding home facility shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents and visitors:

- (1) The permit issued by the city under this article;
- (2) In a font of sufficient size to be easily read, the provisions of Section 102.003 of the Texas Human Resources Code; and
- (3) A phone number for the Texas Department of Family and Protective Services for reporting abuse, neglect and exploitation.

(b) *Employee statement.* The operator of a boarding home facility permitted under this article shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement in a form acceptable to the director that the employee acknowledges that the employee may be criminally liable under Section 48.052, Texas Human Resources Code, for failure to report abuse, neglect, or exploitation of any resident. The operator of a boarding home facility shall provide copies of the statement for a new employee to the director within ten business days of hire.

(c) *Framed beds.* The owner or operator of a boarding home facility shall provide a separate framed bed at least six feet long and three feet wide equipped with supportive springs and a clean supportive mattress 24 hours a day for each resident at the boarding home facility.

(d) *Records.* The owner or operator of each boarding home facility shall maintain on the premises of the facility records sufficient to verify and substantiate all information provided under section 28-463 of this Code. In addition, the owner or operator of each boarding home shall maintain on the premises of the boarding home documentation showing:

- (1) Staffing and shift assignments for all employees;
- (2) The name of each resident, accompanied by personal identifier information, including date of birth and copy of driver's license or other acceptable state recognized means of identification;
- (3) Resident service agreements signed by each resident or the resident's legal representative detailing the services to be provided to the resident by the boarding home facility, and the cost of those services; and
- (4) Contact information for the resident's legal representative, if any.

The owner or operator shall maintain information relating to employees or residents required under this section for a period of at least five years after the employee or resident ceases to be employed by or reside at the boarding home, as applicable, and shall maintain all other information required under this section for as long as the boarding home is in operation and two years after it ceases to operate.

(e) *Report of death or criminal activity.* The owner or operator of each boarding home facility shall immediately notify the Houston Police Department of any death or criminal activity that occurs on the premises of the boarding home facility.

(f) *Inspection reports.* The owner or operator shall maintain on the premises a current file of inspection reports and other documentation needed to demonstrate compliance with applicable laws and regulations, including the Fire Code and the Construction Code. The inspection reports must be signed by the inspector, dated, and free of any outstanding issues that require corrective actions.

(g) *Safety or emergency precautions.* The owner or operator of a boarding home shall:

- (1) Implement a written fire and evacuation plan for the facility that sets forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency and identifies two points of entry and egress. The owner or operator shall ensure that all staff and residents are shown how to use all emergency exits from the boarding home facility within 24 hours after arrival at the boarding home facility. The owner or operator shall maintain documentation of such training.
- (2) Post an emergency evacuation plan in a common area, such as the kitchen or living room.
- (3) Ensure that each employee receives training on the emergency evacuation plan at least two times per year and shall maintain documentation of such training.
- (4) Ensure that flammable supplies, gasoline-operated equipment, and compressed gas equipment are stored outside of the living area.
- (5) Provide a sufficient number of accessible fire extinguishers. The owner or operator shall ensure that a person licensed to inspect fire extinguishers inspects the fire extinguishers annually. The owner or operator shall ensure that the fire extinguishers are recharged when needed by a person licensed to inspect fire extinguishers.
- (6) Provide and maintain an operable smoke alarm and, if any gas utility is provided, a carbon monoxide detector in each sleeping area, kitchen, and laundry area. The owner or operator shall ensure that these devices remain in good working order. If a boarding home facility has a resident

who is hearing-impaired, the owner or operator shall install and properly maintain a visual smoke alarm that is capable of alerting a hearing-impaired person of the presence of fire or smoke.

- (7) Ensure that properly and visibly labeled first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

Sec. 28-467. Inspections.

(a) Upon receipt of a request by the owner or operator of a boarding home for an inspection to confirm that the boarding home is in compliance with this Code, including the Fire Code and the Construction Code, the building official shall meet with the owner or operator to determine whether the boarding home will require a certificate of occupancy.

- (1) If the building official determines that the owner or operator possesses a certificate of occupancy for the boarding home that is appropriate for the proposed use, the building official shall schedule the boarding home for a boarding home inspection, upon receipt of payment of the fee stated in the city fee schedule;
- (2) If the building official determines that the owner or operator possesses a certificate of occupancy for the boarding home that is not appropriate for the proposed use, the building official shall schedule the boarding home for a certificate of occupancy inspection, upon payment of any fee required therefor in the Construction Code;
- (3) If the building official determines that the owner or operator does not possess a certificate of occupancy for the boarding home and a certificate of occupancy will be required for the proposed use, the building official shall schedule the boarding home for a certificate of occupancy inspection, upon payment of any fee required therefor in the Construction Code; or
- (4) If the building official determines that a certificate of occupancy will not be required for the proposed use of the boarding home, the building official shall schedule the boarding home for a boarding home inspection, upon payment of any fee required therefor in the Construction Code.

The building official shall notify the boarding home operator of the date and time scheduled for the inspection.

(b) The building official or any peace officer may enter the premises of a boarding home facility at reasonable times to conduct an inspection, survey, or investigation to assure compliance with this article and to protect the health, safety, or welfare of the residents of a boarding home. The building official may be assisted in any

investigation by representatives of the police department, the fire department, the department of neighborhoods, the Houston Health Department, or other city or state agency or entity with appropriate jurisdiction over matters affecting the health, safety, or welfare of the residents of a boarding home. During the course of any inspection, the owner, operator, and any employee of the boarding home facility shall be required to identify himself and provide documentation of identity upon the request of the building official, or any other city representative participating in the inspection.

(c) At the time of any inspection, the owner or operator of a boarding home facility shall provide the director or peace officer access to books, records, and other documents maintained by or on behalf of a boarding home facility as required under section 28-466 of this Code.

Sec. 28-468. Revocation of permit.

- (a) A permit may be revoked in accordance with section 1-9 of this Code if:
 - (1) The owner or operator has been convicted of a criminal offense listed in section 1-10(b)(6) of this Code; or
 - (2) The owner, operator, or boarding home facility has any employee convicted of a criminal offense listed in section 1-10(b)(6) of this Code.
- (b) A permit may be revoked if the director determines that:
 - (1) The boarding home has not been in compliance with the requirements of any provision of Chapter 260 of the Texas Health and Safety Code;
 - (2) The owner or operator of the boarding home has received notice of more than five violations of this Code, including the Fire Code or Construction Code, in a one-year period;
 - (3) Any information supplied in the permit application was materially false or incorrect;
 - (4) The permit was obtained or issued as a result of error;
 - (5) The applicant obtained a permit by means of fraud, misrepresentation, or concealment of a fact or that the applicant falsified his original application for a permit; or
 - (6) Any fact or circumstance exists that would be a basis for denial of an application for issuance or renewal of a permit.

(c) The procedures set forth in section 28-470 of this Code shall apply to appeals to the revocation of permits.

Sec. 28-469. Variance.

(a) This article complies with the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990. An applicant or resident may request a variance from the application of relevant parts of this article to obtain a reasonable accommodation permitting equal access to housing.

(b) An applicant, permit holder, resident with a disability, or a representative of a resident with a disability may apply in writing to the director for a variance on forms provided by the director and shall include the following information:

- (1) The name, address, phone number, and e-mail address of the person requesting a variance;
- (2) The address of the property for which a variance is sought and the names, addresses and phone numbers of any known individuals with a disability who would benefit from the requested variance; and
- (3) A clear description of the variance requested, the applicable rule from which a variance is sought and explain how the variance would enable a reasonable accommodation of a person with a disability and afford equal access to housing.

(c) The director may conduct an inspection of the boarding home, its records and the real property upon which it is situated to facilitate the director's assessment of the variance request. The director shall assess the variance request based on:

- (1) The timeliness and extent of access to records, land and facility granted or denied by the applicant;
- (2) Whether the housing that is the subject of the request will be used by one or more individuals with a disability;
- (3) Whether the requested accommodation is necessary to make specific housing available to one or more individuals with a disability;
- (4) Whether the requested accommodation would impose an undue financial or administrative burden on the city;
- (5) Whether the requested accommodation would require a fundamental alteration in the nature of a city program or law;
- (6) The potential impacts of the requested accommodation on the applicant, the other residents of the boarding home facility, and the surrounding neighborhood;

- (7) Whether a failure to grant an accommodation would result in the property having no economically viable use; and
- (8) Whether there are alternative accommodations that are reasonable and have an equal or lesser impact on the city, the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.

(d) The director shall notify any person requesting a variance that the variance is approved or denied in writing, and if denied, state the director's reasons for denying the variance. The director may impose reasonable conditions on any variance granted.

(e) The procedures set forth in section 28-470 of this Code shall apply to appeals of requests for variances or accommodations under this section.

Sec. 28-470. Appeals.

(a) *Request for appeal.* An applicant or owner or operator of a boarding home may appeal a denial of a variance or the application for or renewal of a permit or the revocation of a permit within ten business days after date of deposit of written notice in the mail by submitting a written request for an appeal to the director. If the applicant does not request a hearing within ten business days, the denial is effective and final on the eleventh business day after the date of the director's notice of denial.

(b) *Conduct of hearing; rules and procedures.* An appeal hearing shall be conducted on a single weekday within 20 business days after the director receives a request for appeal and shall last no longer than eight hours. Further, an appeal hearing shall be informal and conducted under rules established by the director consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all appeal hearings conducted under this section:

- (1) All parties shall have the right to representation by an attorney licensed to practice in Texas, though an attorney is not required;
- (2) Each party may present witnesses in his own behalf
- (3) Each party shall have the right to cross examine all witnesses and
- (4) The hearing officer shall consider only the evidence presented at the appeal hearing in rendering a final decision.

(c) *Authority of hearing officer.* The hearing officer may affirm or reverse a denial or revocation under this article. The hearing officer shall affirm a denial or revocation if he determines by a preponderance of the evidence that grounds exist for the denial or revocation, respectively. The decision of the hearing official is final.

(d) *Notice of decision.* The hearing official shall give written notice of the decision to the applicant or owner or operator of the facility and the reasons therefor. The notice shall be provided by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable, but not more than 30 business days thereafter.

Sec. 28-471. Review to city council.

The director shall provide a review about this article to city council one year after it takes effect (3-22-18)² and each year thereafter.

Secs. 28-472—28-480. Reserved.

City Secretary shall insert the date of passage and approval of this Ordinance ²