**Chapter 28**

**MISCELLANEOUS OFFENSES AND PROVISIONS**

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**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.

 *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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[1]](#footnote-1) shall come into full compliance with this article by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[2]](#footnote-2)

**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.

(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 in accordance with section 1-6 of this Code. 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 permittee to whom it is issued and may not be transferred or otherwise assigned.

 (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 increase 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 increase 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) 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);

(3) If the boarding home is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(4) If the boarding home is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(5) If the boarding home is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;

(6) If the boarding home is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under Texas Business Organizations Code chapter 153 or its successor statute;

(7) The address and legal description of the real property on which the boarding home is or is to be situated;

(8) 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;

(9) 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;

(10) The name under which the boarding home is to be operated;

(11) A general description of the services provided;

(12) All security and resident monitoring plans and any additional security and monitoring measures which are to be implemented;

(13) The boarding home facility telephone number;

(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 the boarding home inspection 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.

 (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 a permit. The director’s decision on an application is 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 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 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) 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;

(3) The name of each resident, accompanied by personal identifier information, including date of birth, driver's license, or other acceptable state recognized identification; and

(4) Contact information for the resident's legal representative, if any.

The information relating to employees or residents required under this section shall be maintained 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. All other information required under this section shall be maintained 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 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 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 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 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; or

(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 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 make 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 denial notice.

 (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 official’s 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.

**Secs. 28-471—28-480. Reserved.**

1. City Secretary shall insert the date of passage and approval of this Ordinance. [↑](#footnote-ref-1)
2. City Secretary shall insert the date 548 days after passage and approval of this Ordinance. [↑](#footnote-ref-2)