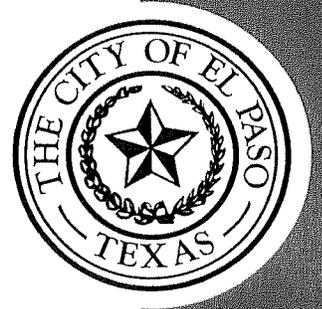


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**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: ENGINEERING & CONSTRUCTION MANAGEMENT

AGENDA DATE: INTRODUCTION: MAY 31, 2011
PUBLIC HEARING: JUNE 7, 2011

CONTACT PERSON NAME AND PHONE NUMBER: VICTOR MORRISON-VEGA (915) 541-4557

DISTRICT(S) AFFECTED: ALL

SUBJECT:

An ordinance amending Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code by adding Chapter 5.47 (Boarding Home Facilities) in order to set forth the requirements and standards for permits, fees, inspections and revocation of such permits of boarding home facilities and providing for a criminal penalty.

BACKGROUND / DISCUSSION:

Discussion and action on development of regulations pertaining to boarding homes facilities as allowed under the 2009 Texas Legislative changes.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

LRC – April 7, 2011 – Recommended for City Council to take action.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

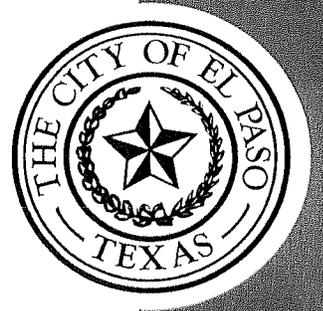
District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

*****REQUIRED AUTHORIZATION*****



Engineering & Construction Management
Two Civic Center Plaza – 5th Floor · El Paso, Texas 79901
Phone (915) 541-4622 · Fax (915) 541-4799



DEPARTMENT HEAD: _____
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

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District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE EL PASO CITY CODE BY ADDING CHAPTER 5.47 (BOARDING HOME FACILITIES) IN ORDER TO SET FORTH THE REQUIREMENTS AND STANDARDS FOR PERMITS, FEES, INSPECTIONS AND REVOCATION OF SUCH PERMITS OF BOARDING HOME FACILITIES AND PROVIDING FOR A CRIMINAL PENALTY

WHEREAS, during the 2009 Texas Legislative Session, an amendment was made to Chapter 254 of the Health and Safety Code to allow local regulation of boarding home facilities by municipalities; and,

WHEREAS, a boarding home facility is defined in Chapter 254 as an establishment that furnishes lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage and provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services; and,

WHEREAS, the amendment to Chapter 254 of the Health and Safety Code required the Executive Commissioner of the Health and Human Services Commission and publish in the Texas Register model standards for the operation of a boarding home facilities; and,

WHEREAS, the purpose as stated in Chapter 254 of the regulation of the facilities that provide lodging services for a fee is to ensure for the quality care provide to and for the protection of the health and safety of boarding home facility residents; and,

WHEREAS, residents residing in a boarding home facility may be especially vulnerable to abuse and exploitation and therefore the City recognizes the need to regulate business providing boarding home services and the El Paso City Council agrees with the purpose as stated in Chapter 254 and has determined that the City of El Paso shall regulate boarding home facilities; and,

WHEREAS, the statute prohibits the City from restricting boarding home facilities from residentially zoned area if the boarding home facility complies with the regulatory requirements established by the City; and,

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

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code shall be amended to add Chapter 5.47 (Boarding Home Facilities) to read as follows:

5.47 Boarding Home Facilities

Purpose. The purpose of this chapter is to implement the provisions of Chapter 254, Texas Health and Safety Code, as amended, which allows the city to establish regulations for the protection of the health and safety of residents of boarding home facilities. In the event of a conflict, this chapter must be construed so as to comply with Chapter 254, Texas Health and Safety Code. It is the intent and purpose of the city to administer and enforce this chapter 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.

Applicability. This Chapter applies to all boarding home facilities within the City of El Paso. This Chapter 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 Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation;
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; or
12. A sorority or fraternity house or other dormitory associated with an institution of higher education.

5.47.10 Definitions

A. Definitions. For purposes of this Chapter, the following terms have these specially defined meanings.

1. "Abuse" is defined in the Texas Human Resource Code Section 48.002 and 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. "Assistance with self-administering 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 medication reminder box and reminding the resident when a prescription medication needs to be refilled.
3. "Boarding home facility" means an establishment that:
 - a. 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
 - b. 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.
4. "Commission" means the Health and Human Services Commission.
5. "Elderly person" means a person who is 65 years of age or older.
6. "Enforcement Official" means employees of the building permits and inspection division, fire department, public health department and other enforcing officers as defined or designated by the city manager, and are authorized to enforce provisions of this Chapter.
7. "Exploitation" is defined in the Texas Human Resource Code Section 48.002 and 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.
8. An "injury, incident or unusual accident" means 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 medical or mental health services or an event that requires the facility taking resident safety and protection measures including:
 - a. an allegation of abuse, neglect, or exploitation;
 - b. death;
 - c. a resident's absence from the facility when circumstances place the resident's health, safety or welfare at risk;
 - d. fire;
 - e. criminal acts; and
 - f. altercations between residents.

9. "Neglect" is defined in the Texas Human Resource Code Section 48.002 and 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.

10. "Personal care services" means:

a. assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;

b. the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or

c. 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

11. "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 who is 18 years of age or older or under 18 years of age and who has had the disabilities of minority removed.

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

5.47.20 Permit Required and Fee

A. After the effective date of the ordinance codified in this section, no person shall operate a boarding home facility, as defined in the Chapter, without first obtaining a permit from the City and paying the established fee for such permit. The Building Permits & Inspections Division is the responsible agency for issuance of a final permit. A permit issued under this Chapter shall permit the permittee to engage in the operation of a boarding home facility, provided that all other provisions of this Chapter are complied with.

B. Fees. 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.

C. Boarding home owners/operators must provide to the Building Permits & Inspections Division documentation of any applicable construction or remodeling permits as part of the permit process before an initial permit is issued. All permits must be prominently displayed in the boarding home.

D. An annual operational permit shall be required by the fire official for boarding home facilities operating under the following occupancy classifications (as per the adopted fire code): R-3, R-4, I-1.

5.47.30 Inspections

A boarding home site 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 Building Permits & Inspections Division prior to the issuance of a permit. The following inspections are required:

1. Annual fire inspection by the fire code official.
2. Annual kitchen inspection by the local health authority;
3. Annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission, if required.
4. Annual inspection to determine compliance with the property maintenance code, building codes and zoning ordinances.

5.47.40 Construction/Remodeling

A. Each owner/operator of a boarding home facility must ensure the resident's health, safety, comfort and protection from fire hazard through the following standards that address the construction or remodeling of a boarding home facility, including locally adopted fire code, plumbing, heating, lighting, ventilation and other housing conditions.

B. Each facility must meet the following applicable codes and regulations:

1. local zoning and building codes;
2. federal, state and local adopted fire codes and applicable standards;
3. federal, state and local health & safety codes; and
4. federal and state accessibility regulations.

C. Mobile homes shall not be permitted for use as boarding homes or additions to existing boarding homes.

D. Sleeping rooms must have at least 70 square feet of floor space in single-occupancy rooms and at least 60 square feet of floor space for each occupant in multi-occupancy rooms.

E. A telephone must be available, 24 hours per day, must be easily accessible, and must afford privacy for use by residents. 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.

F. Each facility must have a kitchen that:

- a. is accessible to the residents sharing the use without going through a sleeping room of another resident;
- b. has a food preparation area with a total of not less than 6 square feet;
- c. contains a minimum floor space of 60 square feet for dining area or, each kitchen with dining attached must be at least 100 square feet;
- d. has a minimum two compartment sink for manual dishwashing;

- e. has a cooking stove fueled by gas or electricity;
- f. contains at least one cabinet of adequate size, suitable for storage of food and utensils; and

5.47.50 Sanitary and Related Conditions

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

B. 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.

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

D. Poisonous, toxic, and flammable materials shall

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

E. All food and drink shall be:

1. clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
2. prepared, stored, handled, and served so as to be safe for human consumption;
3. maintained at a temperature of 41 degrees Fahrenheit or below for foods subject to spoilage;
4. maintained at 135 degrees Fahrenheit or above at all times for hot foods ready to serve;
5. maintained in the freezer at a temperature of no higher than 0 degrees Fahrenheit; and
6. stored in food containers that are appropriately labeled, dated and protected from flies, insects, rodents, dust, and moisture.

F. With the exception of service animals for the disabled birds, cats, dogs or other animals are not permitted in rooms or areas in which food is prepared, stored or where utensils are washed or stored.

G. Employees or residents engaged in food handling shall

1. observe sanitary methods, including hand washing as appropriate; and
2. not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.
3. Regardless of the number of residents, each boarding home facility shall hold a valid food handling permit issued by the applicable local or state regulatory authority in the name of the owner/operator and for the specific boarding home facility.
4. If preparing meals for residents, staff must have a food-handler's permit.

H. Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

5.47.60 Reporting and Investigation of Injuries, Incidents and Unusual Accidents and the Establishment of Other Policies and Procedures to Ensure Resident Health and Safety

A. 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 of 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. Steps taken by the owner/operator to prevent future injuries, incidents or unusual accidents if a problem at the room and board facility resulted in the injury, incident or unusual accident.

e. When the resident's legal guardian or legally authorized representative was notified about the injury, incident or unusual accident.

2. Residents, the resident's guardian, or legally authorized representatives should be given access to records within 48 hours of requesting the records from the owner/operator.

B. 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 65 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.

1. Each owner/operator should ensure that each resident has access to a telephone 24 hours per day that is easily accessible and affords privacy for use by residents.

2. The owner/operator shall ensure that no resident is harassed, threatened or intimidated at anytime for making a report of abuse, neglect or exploitation.

3. Owner/operators will 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. Owner/operators will allow law enforcement personnel, emergency medical and fire personnel access to the room and board facility when these professionals are responding to a call at the owner/operator's room and board facility.

C. No operator or other employee of a boarding home facility shall provide services or engage in behavior that constitutes a financial conflict of interest including:

1. borrowing from or loaning money to residents;
2. witnessing wills in which the operator or employee is a beneficiary;
3. co-mingling the resident's funds with the operator's or other residents' funds; or
4. becoming the guardian, conservator or power of attorney for a resident.

D. 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 one year past 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; and
4. develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended; and
5. the owner/operator will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the owner/operator within 48 hours of receiving a request.

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

5.47.70 Assistance with Self-Administration of Medication

A. 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.

B. 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.

C. 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.

1. If the boarding home facility uses a central medication storage area, a boarding home 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.
2. 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.
3. Medications labeled for "external use only" must be stored separately within the locked area.
4. Poisonous substances must be labeled, stored safely, and stored separately from medications within a locked area.
5. 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.

D. 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 or operator in accordance with applicable county or municipality requirements.

5.47.80 Posting Requirements

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

1. the permit issued by the City;
2. a sign prescribed by the City specifying how 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 facility;
4. a concise summary of the most recent inspection report relating to the 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 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.

5.47.90 Requirements for in-service education of facility's staff

A. 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 a resident's health or safety is at risk;
5. complaint process specific to the city and boarding home;
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.

B. Each owner/operator and employee is subject to the following ongoing training requirements:

1. Updates and changes in any policies and procedures within 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 day of the resident moving into the home.
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 day of the owner, operator, or employee becoming aware of the change.

5.47.100 Criminal Background History Checks

A. A boarding home facility owner/operator's 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 subsections C or D of this section or if the owner/operator has in its employ any person convicted of a criminal offense listed in subsection C or D.

B. 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. In addition to the permit fee, the owner/operator will provide funding to the county/municipality in a manner specified by the county/municipality to cover any fees imposed by state or federal agencies for the report.

C. The following histories will disqualify an owner/operator from obtaining a permit to operate a boarding home or will serve as a bar to 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 exposure 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 Chapter 31, Penal Code (theft), that is punishable as a felony;
25. an offense under Section 30.02, Penal Code (burglary); 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.

D. A person may not own a boarding home or be employed in a position the duties of which involve direct contact with a resident in a boarding home before the fifth anniversary of the date the person is convicted of any felony offense not listed in subsection C or any of the following non-felony offenses:

1. an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor;
2. an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;
3. an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;
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.

E. The owner/operator must ensure that all employees, including volunteers who are not residents, have had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every year thereafter, and that the individual is not disqualified under the provisions of Subsections C and D of this section. The owner/operator will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a crime that bars employment or volunteer service.

5.47.110 Assessment and periodic monitoring of residents

A. 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 Subsection B and C. 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.

B. 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.

C. Elements of personal care to be assessed by the boarding home facility owner/operator include the resident's ability to:

1. eat independently;
2. bathe without assistance;
3. dress without assistance; and
4. move and transfer independently.

D. 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 Subsection C 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 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.

E. 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 room and board facility provided that all needs for personal care and self-administration of medication are met.

5.47.120 Inspection

The enforcement official may inspect any boarding home facility at reasonable times as necessary to determine if it is an assisted living facility and to ensure compliance with this Chapter.

5.47.130 Required Reports to the Health and Human Services Commission

With the exception of the year this ordinance is adopted, each year thereafter, prior to September 30, the Building Permits & Inspections Division shall submit a report to 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;
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.

5.47140 Appeal Process for denial, revocation, suspension or denial for renewal of permit.

A. A boarding home facility owner/operator's permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator fails to comply with the requirements of this chapter.

B The applicable Enforcement Official shall notify the Building Official of a boarding home facility owner/operator's failure to comply with any of the provisions of this chapter. The Building Official shall send a written notice of violation to the owner/operator detailing the violation(s) and providing thirty (30) days within which to cure. The applicable Enforcement Official shall keep the Building Official informed as to the compliance/non compliance with the notice of violation. If the violations have not been cured within thirty (30) days, the Building Official shall notify the owner/operator that the permit has been denied, revoked, suspended or denied renewal.

C. Appeal.

1. The owner/operator may appeal the denial, revocation, suspension or denial of renewal of permit to the appellate authority, the Deputy City Manager for Health and Safety, by providing notice of such appeal within fifteen days of receipt of notice that permit has been denied, revoked, suspended or denied renewal.

2. Form of Appeal. The appeal shall be in writing and shall contain a written statement and other documentation to support the appellant's reasons why the permit should not be denied, revoked, suspended or denied renewal and shall be accompanied by an established fee. If the applicant is requesting a reasonable accommodation (modification or exception to this chapter) the applicant must state what type of accommodation is requested and why such accommodation is necessary. The written appeal shall be submitted to the Permit Official.

3. Upon receipt of a written appeal, the Permit Official shall forward the appeal along with all documents constituting the record of the Permit Official's decision and transmit the documents to the appellate authority within five business days from receipt of the written appeal. Receipt of a written appeal stays any action on the denial, revocation, suspension or renewal of the permit until a decision from the appellate authority is rendered, unless the Permit Official certifies in writing to the appellate authority that a stay would cause imminent peril to life or property.

4. The appellate authority shall decide the appeal within ten business days. The appellate authority shall notify the city attorney's office if the appellant is requesting a reasonable accommodation, so that such request can be reviewed in accordance with the provisions of the Fair Housing Act. The appellate authority shall affirm, reverse or modify the decision from which the appeal was taken. The appellant shall be notified of the appellate authority's decisions within five business days. After notification to the appellant has been provided, action in accordance with the appellate authority's decision can be taken by the Building Official.

5.47.150 Offenses and Criminal Penalties

Any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and punished by a fine not exceeding two thousand dollars; and if such violation shall be continuing, each day's violation shall constitute a separate offense.

SECTION 2. Except as expressly herein amended, Title 5, Business Taxes, Licenses and Regulations, of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer