EG/efg
12/13/12
Item # 9A

AN ORDINANCE 2012-12-13-0971

AMENDING CHAPTER 16, OF THE CITY CODE OF SAN ANTONIO, BY ADOPTING ARTICLE XX ENTITLED "BOARDING HOMES," ESTABLISHING THE INSPECTION, REGISTRATION AND PERMITTING OF BOARDING HOMES, AND ESTABLISHING ENFORCEMENT AUTHORITY, ESTABLISHING PENALTIES AND FINES FOR VIOLATIONS AND SETTING THE EFFECTIVE DATE FOR MARCH 1, 2013; AND PROVIDING FOR PUBLICATION; AND MODIFYING THE PERSONNEL COMPLEMENT.

* * * * *

WHEREAS, the State Legislature enacted H.B. 216 in 2009 which provided municipalities and counties with the option to issue permits, charge fees to boarding homes and require compliance with adopted model standards; and

WHEREAS, the Texas Health and Human Services Commission published model standards for municipal regulation of boarding home facilities in the August 27, 2010 edition of the Texas Register; and

WHEREAS, H.B. 216 was codified in Chapter 260 of the Texas Health and Safety Code; and

WHEREAS, neither Chapter 260 nor any other state law requires boarding home facilities to comply with uniform state standards; and

WHEREAS, Section 215.075 of the Texas Local Government Code grants home-rule municipalities the authority to license any lawful business or occupation that is subject to the police power of the municipality; and

WHEREAS, the City Council for the City of San Antonio has reviewed the issue of the regulation of boarding homes through its Quality of Life Committee and as a group through two B Session presentations; and

WHEREAS, community meetings were held in the four quadrants of the City, with two meetings each on November 13, 2012 and November 27, 2012, as well as a fifth meeting on December 10, 2012 within City Council District 1; and

WHEREAS, the City Council believes that the standards in this ordinance will provide adequate standards to protect the health and safety of residents of boarding home facilities, including ensuring that adequate life-safety measures are present in boarding homes; and

WHEREAS, City Council acknowledges that if neighborhoods become composed largely of boarding homes, that could adversely affect individuals with disabilities and would be

inconsistent with the objective of integrating persons with disabilities into the community in a residential setting; and

WHEREAS, the City Council for the City of San Antonio has determined that the regulation of boarding home facilities through this ordinance, which includes the adoption of model standards, the issuing of permits, the inspection of boarding home facilities and the ability to enforce the provisions of the ordinance 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 SAN ANTONIO:

SECTION 1. The current Chapter 16, of the City Code of San Antonio, Texas, entitled "Licenses and Business Regulations," is amended by adding language that is underlined (added) and deleting language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance. Chapter 16 is amended by creating and inserting Article XX as follows, and such amendments will become effective on March 1, 2013:

CHAPTER 16 – LICENSES AND BUSINESS REGULATIONS

ARTICLE XX. – BOARDING HOMES

DIVISION I – GENERAL

SEC. 16-940. PURPOSE

(a) The purpose of this article is to implement the provisions of Chapter 260, Texas Health and Safety Code, entitled "Boarding Home Facilities", as amended, which allows the city to establish regulations for the protection of the health and safety of residents of boarding home facilities. It is the intent and purpose of the city to administer and enforce this chapter to ensure the health, safety and welfare of boarding home facility residents by establishing standards for construction, maintenance, reporting, record-keeping, education, and training for owners, operators and employees of boarding home facilities. These standards are implemented pursuant to the city's home-rule authority under Article XI, Section 5 of the Texas Constitution and the authority to license or permit lawful businesses subject to the city's police power granted by Sections 54.005 and 215.075 of the Texas Local Government Code.

(b) The city intends that this chapter fully comply with the Federal Fair Housing Amendments Act of 1988 ("FHAA"), the Americans with Disabilities Act of 1990 ("ADA"), and the Americans with Disabilities Amendments Act of 2008, and all other applicable state and federal legislation. It is the express intent of the city that this chapter be construed in a manner consistent with the FHAA, the ADA, and all other applicable state and federal legislation at all times.

SEC. 16-941. DEFINITIONS.

Unless the context clearly indicates otherwise, in this chapter:

(1) ABUSE means:

(A) The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the person's caretaker, family member, or other individual who has an on-going relationship with the person; or

(B) Sexual abuse of a resident, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08 of the Texas Penal Code (indecent exposure), as amended, or Chapter 22 of the Texas Penal Code (assaultive offenses), as amended, committed by the person's caretaker, family member or other individual who has an on-going relationship with the person.

(2) ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION means:

(A) Assisting a resident by reminding the resident to take medication;

(B) Opening and removing medications from a container;

(C) Placing medication in a resident's hand or in or on a clean surface such as a medication reminder box; and

(D) Reminding a 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 elderly and/or disabled 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 to persons/residents who are capable of feeding, dressing, moving, self-evacuating, bathing and attending to other personal needs or maintenance without assistance; and

(C) Does not provide personal care services to persons/residents.

(4) CONVICTION means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. "Conviction" includes disposition of charges against a person by community supervision, including probation and deferred adjudication.

(5) DEPARTMENT means the department designated by the city manager to enforce and administer this chapter.

(6) DIRECT THREAT means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(7) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter and includes representatives, agents, or department employees designated by the director.

(8) DISABILITY means a disability as defined in 42 U.S.C. § 12102, as amended.

(9) ELDERLY means 65 years of age or older.

(10) EMPLOYEE means a person who performs caretaking duties or regularly works in a boarding home facility.

(11) EXPLOITATION means the illegal or improper act or process of an owner, operator, employee, caretaker, family member, or other individual who has an on-going relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(12) INJURY, INCIDENT, OR UNUSUAL ACCIDENT means an event that resulted in a change in resident's physical or mental status that requires intervention by a private or public entity responsible for medical or mental health services or an event that requires the facility to take safety and protection measures for the resident or others. This term includes, but is not limited to, the following:

(A) An allegation of abuse, neglect, or exploitation.
(B) Death.
(C) A resident's unexplained absence from the boarding home facility.
(D) Fire.
(E) Criminal acts.
(F) Fights between residents.

(13) NEGLECT means the failure of a resident or permit holder to provide goods or services, including medical services that are necessary to avoid physical or emotional harm or pain.

(14) OPERATOR means the person in control of a boarding home facility.

(15) OWNER means an individual who has an ownership interest in a corporation or other legal entity operating a boarding home facility or the owner of the real property where a boarding home facility is located.

(16) PERMIT HOLDER means:

(A) A person in whose name a boarding home facility permit has been issued;
(B) Each individual listed as an owner or operator of the boarding home facility on the application for a boarding home facility permit;
(C) Each individual who has an ownership interest in the corporation or other legal entity owning or operating the boarding home facility, regardless of whether the individual's name or signature appears on the boarding home facility permit application; and
(D) Each officer of the corporation or other legal entity owning or operating a boarding home facility, regardless of whether the individual's name or signature appears on the boarding home facility permit application.

(17) 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.

(18) RESIDENT means a person who is residing in a boarding home facility.

SEC. 16-942. AUTHORITY OF THE DIRECTOR.

The director shall implement and enforce this chapter and may by written order establish such rules, regulations, or procedures, not inconsistent with this chapter or other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, as the director determines are necessary to discharge any duty under or to effect the policy of this chapter.

DIVISION II – ADMINISTRATIVE

SEC. 16-943. PERMIT REQUIRED.

(a) A person commits an offense if he owns or operates a boarding home facility in the city without a valid permit issued under this chapter.

(b) It is a defense to prosecution under this section if a person operates a facility listed in section 16-944 of this chapter.

SEC. 16-944. EXEMPTIONS.

This chapter does not apply to the following:

(1) Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code, as amended.

(2) Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code, as amended.

(3) Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code, as amended.

(4) Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code, as amended.

(5) Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code, as amended.

(6) A person that provides from home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by a state agency with jurisdiction over mental health and mental disability and monitored by that state agency or its designated local authority in accordance with standards set by that agency as defined in Section 142.003(a)(19) of the Texas Health and Safety Code, as amended.

(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 and 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 defined in Section 242.003(3) of the Texas Health and Safety Code, 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 a state department or agency and that is monitored by a state department or agency or its designated local mental retardation authority in accordance with standards set by the state department or agency, as defined in Section 247.004(4) of the Texas Health and Safety Code, as amended.

(9) A hotel as defined by Section 156.001 of the Texas Tax Code, as amended.

(10) A retirement community as defined by Section 11.18 of the Texas Tax Code, as amended.

(11) A monastery or convent.

(12) A childcare facility as defined by Section 42.002 of the Texas Human Resources Code as amended.

(13) A family violence shelter center as defined by section 51.002 of the Texas Human Resources Code, as amended.

(14) A fraternity or sorority house, or other dormitory, associated with an institution of higher education.

SEC. 16-945. PERMIT APPLICATION

To obtain a permit to operate a boarding home facility, a person must submit an application to the director on a form provided for that purpose. The applicant must be the owner or operator of the boarding home facility. If the owner or operator is not an individual, an authorized officer or agent of the owner or operator must file the form. The application must contain the following information before it is considered to be complete:

(1) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of the applicant. The street address may not be the address of the boarding home facility unless the applicant actually resides full-time at the boarding home facility.

(2) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and position of the authorized officer or agent filing the form on behalf of the applicant, if the applicant is not an individual. The street address may not be the address of the boarding home facility unless the authorized officer or agent actually resides full-time at the boarding home facility.

(3) The form of business of the applicant; the name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of a high managerial agent of the business; and, if the business is a legal entity, such as a corporation or association, a copy of the documents establishing the business.

(4) If the operator of the boarding home is renting or leasing the home or facility, then the operator must present a letter from the owner of the real property authorizing the use of the rental property to operate a boarding home and acknowledging the requirements for the property to be used as a boarding home set out within this article.

(5) The street address and telephone number of the boarding home facility.

(6) The name, street address, mailing address, e-mail address, and telephone number of a person or persons to contact in an emergency as required by this chapter.

(7) Documentary evidence of payment of ad valorem taxes, fees, fines, and penalties owed to the city in connection with the real property used to operate the boarding home facility.

(8) The names, street addresses, mailing addresses, e-mail addresses, telephone numbers, legible copies of the drivers' licenses or other official state or federal identification cards, and dates of birth of any owners, operators, or employees of the boarding home facility other than the applicant. The street address may not be the address of the boarding home facility, unless the owner, operator, or employee actually resides full-time at the boarding home facility.

(9) Completed state or federal request and release forms authorizing the city to obtain a criminal history report on each owner and operator of the boarding home facility.

(10) The maximum number of residents that will reside at the boarding home facility.

(11) The services to be offered or provided to the residents of the boarding home facility.

(12) A zoning verification letter stating that the proposed use of the property complies with the city's Unified Development Code.

(13) If the boarding home facility has one or more residents with a disability, a list of disabilities of the residents.

(14) A statement that, by filing the application, the applicant swears or affirms under penalty of perjury that, to the best of the applicant's knowledge, all information contained in the application is true and correct and that the application is complete and includes all information required to be disclosed under this section.

(15) Such additional information as the applicant desires to include or that the director deems necessary to aid in the determination of whether the requested permit should be granted.

SEC. 16-946. NOTIFICATION OF CHANGE OF INFORMATION.

The permit holder shall notify the director within 10 days after any material change in the information contained in the application for a permit to operate a boarding home facility, including any change in ownership or operation of the property and any new disabilities served by the boarding home facility.

SEC. 16-947. FEES.

(a) The fee for a permit to operate a boarding home facility is $1,000.

(b) No refund of a permit fee will be made.

SEC. 16-948. ISSUANCE AND DENIAL OF PERMIT.

(a) Upon payment of all required fees and the submission of a complete application, the director shall issue a permit to operate a boarding home facility to the applicant if the director determines that:

(1) The applicant has complied with all requirements for issuance of the permit;

(2) The applicant, owners, operators, and employees of the boarding home facility meet the criminal history qualifications of this chapter;

(3) The applicant, owners, operators, or employees of the boarding home facility do not own or operate another permitted boarding home facility in the city for which the permit is currently suspended or has been revoked;

(4) The applicant has not made a false statement as to a material matter in the application for a permit;

(5) The condition and use of the boarding home facility complies with zoning regulations, and all other standards in this article applicable to the property; and

(6) The applicant, owners, and operators do not owe the city any ad valorem taxes, fees, fines or penalties.

(7) The proposed boarding home facility is not within one-half mile of an existing boarding home facility;

(A) For purposes of this section the measurement of the one-half mile shall be in a straight line, without regard to intervening structures or objects, from the nearest property line of the lot on which the proposed boarding home facility is located, to the nearest property line of the existing registered and permitted boarding home facility described in the above subsection, which requires separation.

(b) City council may grant a variance to the proposed boarding home facility authorizing its location within one-half mile of another registered permitted boarding home facility consistent with section 16-949 below.

(c) If the director determines that the requirements of Subsection (a) have not been met, and, if applicable, a variance under section 16-949 has been denied, the director shall deny the permit.

(d) If the director determines that an applicant should be denied a permit, the director shall notify the applicant in writing that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

SEC 16-949. VARIANCE FROM DISTANCE REQUIREMENT.

(a) The fee to file an application for the variance from the distance requirement set out above in section 16-948(a)(7) shall be $300.00.

(b) The variance procedure shall be as follows:

(1) *Application.* When requesting a variance in accordance with section 16-948(b) the applicant shall submit the following information to the director of the Development Services Department, or his or her designee:

(A) Completed variance request form with the following information:

(i) The name and address of the applicant for the boarding home facility;
(ii) The name and address of the boarding home facility subject to the request, if applicable;
(iii) The name of the property owner where the boarding home facility will be located;
(iv) The name and address of the registered permitted boarding home facility currently in existence which triggered the request for variance;
(v) Notarized authorization by the property owner consenting to the variance request.

(B) Statement of Justification for the variance, and how the variance meets the criteria in section 16-949(b)(4)(A) below;

(C) A Site and Floor Plan showing the following information:

(i) North arrow and scale
(ii) Boundaries of the property
(iii) Location and dimensions of all buildings and structures
(iv) All fences, parking area, and landscape area; and

(2) *Hearing.* The director of the Development Services Department, or his or her designee, shall set a date for a public hearing on the first available city council agenda after the passage of thirty (30) days from the date a complete variance application is received;

(3) *Notices.* No later than ten (10) days prior to the date of the hearing, the director of the Development Services Department, or his or her designee, shall send written notice of the variance request, to include the date and time of the scheduled public hearing, to:

(A) The property owner of the registered permitted boarding home facility currently in existence which triggered the request for variance;

(B) The applicant requesting the variance;

(C) Registered neighborhood associations within a ½ mile radius; and

(D) Each owner, as indicated by the most recently approved municipal tax roll, of real property, within two hundred (200) feet of the property.

(4) City council may grant a variance to the proposed boarding home facility authorizing its location within one-half mile of another registered permitted boarding home facility, as that distance is determined by the manner of measurement prescribed by section 16-948(a)(7)(A) provided that city council finds the following:

(A) Enforcement of the distance separation requirement is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation.

(B) If at the conclusion of the public hearing the city council grants the applicant's request for a variance, the city council may impose additional conditions on the granting of the variance, where such conditions are intended to mitigate the impacts caused by the boarding home facility and are in the public interest.

(5) *Renewal and Transfer.* A variance granted pursuant to this subsection is valid for subsequent renewals of the registration for which a variance was sought. A variance granted pursuant to this subsection may not be transferred to another location, or to another operator, except in the event when city council approves as a condition of the variance the transfer to another location.

(c) *Variance violation.* The director of the Development Services Department, or his or her designee, may request the city attorney to seek any and all remedies available at law and or equity to assure the conditions imposed on the granting of the variance are enforced.

(d) If a variance is denied, no new application for the same location shall be accepted within twelve (12) months from date of the denial.

16-950. SUSPENSION OF PERMIT; PROHIBITION OF NEW RESIDENTS.

(a) The director may suspend a boarding home facility permit for a period not to exceed 90 days if the director finds that the permit holder or an employee of the boarding home facility has:

(1) Failed to comply with any provision of this article, any other ordinance, or any state or federal law applicable to the operation of a boarding home facility; or

(2) Intentionally or knowingly impeded or refused to allow an inspection by the director authorized under this chapter.

(b) A boarding home facility for which the permit has been suspended may not admit any new residents during the time the permit is suspended.

(c) In lieu of suspending a permit for a boarding home facility, the director, at his sole discretion, may enter into a compliance agreement with a permit holder if the director determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a suspension, result in prompt future inspections, and elevate one or more conditions at the boarding home facility to a standard above the requirements of this chapter.

(d) The director shall send a written statement of the reasons for the suspension, the date the suspension is to begin, the duration of the suspension, and the permit holder's right to appeal by certified mail, return receipt requested.

(e) A permit holder whose permit is suspended may not be granted a permit to operate additional boarding home facilities during the period of suspension.

(f) A permit holder commits an offense if he operates or owns a boarding home facility that admits new residents during the time that the suspension of the permit is in effect.

SEC. 16-951. REVOCATION OF PERMIT.

(a) Except as provided in Subsection (b), the director shall revoke any permit issued to operate a boarding home facility if the director determines that:

(1) The permit holder fails to meet the criminal history qualifications of this article or employs a person at the facility who fails to meet the criminal history qualifications.

(2) The permit holder intentionally made a false statement as to a material matter in the application or in a hearing concerning the permit;

(3) The permit holder failed to pay a fee required by this article at the time it was due; or

(4) A cause for suspension under Section 16-950 has occurred and the permit has already been suspended at least once within the preceding 12 months.

(b) In lieu of revoking a permit for a boarding home facility, the director, at his sole discretion may enter into a compliance agreement with a permit holder if the director determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a revocation, result in prompt future inspections, and elevate one or more conditions at the boarding home facility to a standard above the requirements of this chapter.

(c) Before revoking a license under Subsection (a), the director shall notify the permit holder in writing by certified mail, return receipt requested, that the permit is being considered for revocation. The notice must include the reason for the proposed revocation, action the permit holder must take to prevent the revocation, and a statement that the permit holder has 10 calendar days to comply with the notice.

(d) If, after 10 calendar days from the date of the notice required in Subsection (c) was sent or delivered (whichever is later), the permit holder has not complied with required actions listed in the notice, the director shall revoke the permit and notify the permit holder in writing

of the revocation. The notice must include the reason for the revocation, and a statement informing the permit holder of the right of appeal.

(e) If a permit has been revoked, the permit holder has 10 calendar days from the date the notice was sent or delivered (whichever is later), to relocate the residents of the facility and cease operations. An appeal of the revocation does not suspend or toll this deadline.

SEC. 16-952. APPEALS.

If the director denies issuance or renewal of a permit or suspends or revokes a permit issued under this article, the action is final unless the permit holder files a written appeal within 10 business days to the director, or his designee. Appeals regarding technical matters will be reviewed by the Building Related and Fire Codes Appeals and Advisory Board or other appropriately identified board or committee.

SEC. 16-953. EXPIRATION AND RENEWAL OF PERMIT.

(a) A permit to operate a boarding home facility expires one year after the date of issuance.

(b) A permit holder shall apply for renewal at least 30 calendar days before the expiration of the permit on a form provided by the director. The permit holder shall update the information contained in the original permit application required under Section 16-945 of this article or any subsequent renewals under this section, if any of the information has changed. The permit holder shall sign a statement affirming that there is either no change in the information contained on the original permit application and any subsequent renewal applications, or that any information that has been updated is accurate and complete.

(c) The director shall follow the procedures set forth in this Article when determining whether to renew a permit.

(d) The fee for the renewal of a permit to operate a boarding home facility is $1,000.00.

SEC. 16-954. NONTRANSFERABILITY.

A permit to operate a boarding home facility is not transferable to another owner, operator, or location.

SEC. 16-955. POSTING REQUIREMENTS.

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

(1) The permit issued under this chapter to operate the boarding home facility. The permit must be presented upon request to the director or to a peace officer for examination.

(2) A sign prescribed by the director specifying how complaint may be registered with the city.

(3) A notice in a form prescribed by the director 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 copy of the most recent inspection report relating to the facility by the city or a concise and accurate summary of that inspection report.

(5) A notice in a form prescribed by the director 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.

SEC. 16-956. REASONABLE ACCOMMODATIONS.

(a) Purpose. The city intends to ensure that all persons with a disability have an equal opportunity to use and enjoy a dwelling by providing such persons with reasonable accommodations in rules, policies, practices, and procedures promulgated under this chapter consistent with the Fair Housing Amendments Act of 1988 ("FHAA") 42 U.S.C. § 3601, *et seq.*, and the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, *et seq.*, as amended.

(b) Method of submitting a request for a reasonable accommodation; fees; confidentiality.

(1) A request for a reasonable accommodation may be submitted at any time that the accommodation may be necessary to ensure equal access to housing.

(2) A request for a reasonable accommodation may be submitted by an individual with a disability, the person's representative, or a permit holder providing housing for one or more individuals with disabilities.

(3) A request for a reasonable accommodation must be submitted in writing to the director on the form provided by the department, or in the form of a letter.

(4) There is no fee for an application requesting a reasonable accommodation.

(5) If an individual needs assistance in making a request for a reasonable accommodation, the city will provide assistance to ensure that the application process is accessible to the individual.

(c) Application. An applicant shall submit the following information before an application for a reasonable accommodation is considered to be complete:

(1) The applicant's name, mailing address, street address, telephone number, and email address.

(2) The applicant's relation to the individual or individuals with a disability, if applicable.

(3) The address of the property to which the requested reasonable accommodation would apply.

(4) A disability determination by the Social Security Administration or the Department of Veteran's Affairs, or other substantially equivalent medical determination, that substantiates that the individual who would obtain the benefit of the reasonable accommodation is:

(A) An individual with a physical or mental impairment that substantially limits one or more major life activities;

(B) An individual who is regarded as having such an impairment; or

(C) An individual with a record of such an impairment.

(5) The section, or sections, of this chapter from which a reasonable accommodation is being requested.

(6) A brief explanation of why the requested accommodation is necessary for the individual or individuals with disabilities to have equal access to housing.

(d) Review of application by director; required findings.

(1) Upon receipt of a complete application for a reasonable accommodation, the director shall review the application and issue a written ruling that grants, grants with conditions, or denies the application.

(2) Before making a decision, the director may request an inspection of the boarding home facility and the land on which it is located. If the director makes such a request:

(A) The applicant must make the property, the facility, and its records available for the inspection within 20 calendar days after the date of the request or the application shall be automatically denied.

(3) If the director deems it necessary to request additional information from the applicant consistent with federal law, the director shall contact the applicant in writing and specify the additional information that is required. If the director makes such a request:

(A) The applicant must provide the additional information to the director within 20 calendar days after the date of the request or the application shall be automatically denied.

(4) All proposed decisions of the director shall be submitted to the city attorney for legal review to determine if the proposed decision complies with local, state and federal laws and regulations.

(5) The director may impose reasonable conditions on any accommodation granted consistent with the purpose of this chapter.

(6) The written decision must be consistent with the FHAA and based on a consideration of the following factors:

(A) Whether the housing that is the subject of the request will be used by one or more individuals with a disability.

(B) Whether the requested accommodation is necessary to make specific housing available to one or more individuals with a disability.

(C) Whether the requested accommodation would impose an undue financial or administrative burden on the city.

(D) Whether the requested accommodation would require a fundamental alteration in the nature of a city program or law.

(E) The potential impacts of the requested accommodation on the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.

(F) Whether a failure to grant an accommodation would result in the property having no economically viable use.

(G) Whether there are alternative accommodations that are reasonable and have an equal, or less of an, impact on the city, the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.

e) Written decision; appeal.

(1) The director shall issue a written decision within 20 business days of:

(A) receipt of a completed application, provided that the director is able to issue a decision based on the information provided in the original request; or

(B) the completed inspection of the property, facility and its records, as requested by the director; or

(C) the director's receipt of all additional requested information.

(2) All written decisions must explain in detail the basis of the decision and notify the applicant of the right to appeal the decision to the director, or his designee.

(3) If the director denies an application for a reasonable accommodation, the action is final unless the applicant files an appeal to the director or his designee. An appeal of technical matters will be considered by the Building Related and Fire Codes Appeals and Advisory Board, or other identified appropriate technical board, committee or entity.

SEC. 16-957. INSPECTIONS; FEES.

(a) Required inspections.

(1) A boarding home facility must pass all required inspections.

(2) The permit holder shall keep a current file of reports and other documentation on site that is needed to demonstrate compliance with applicable ordinances, laws, and regulations, including, but not limited to,

documentation of those requirements set out in sections 16-963, 16-966, 16-968, 16-969 and 16-970 of this article. Inspection records must be signed and dated by the appropriate authority and there must be no pending corrective actions.

(3) The following inspections are required:

(A) Permitting inspection.

(B) Annual permit renewal inspection.

(C) Annual fire inspection.

(D) Annual kitchen inspection for a boarding home facility that provides meal preparation.

(b) Other inspections. The director may inspect any boarding home facility for the purpose of ascertaining whether violations of this article or any other city ordinances exist. The director is authorized at a reasonable time to inspect:

(1) The exterior of a structure and the surrounding premises; and

(2) The interior of a structure if the permission of the owner, occupant, or person in control is given or a search warrant is obtained.

(c) Consequences of refusal to inspect. If the owner, occupant, or person in control denies permission to search any part of the interior or exterior of the structure or the surrounding premises, the director may suspend the permit to operate a boarding home facility in accordance with Section 16-950.

(d) Reinspections. Whenever a boarding home facility is inspected by the director and a violation of this code is found, the building or premises will, after the expiration of any time limit for compliance given in the notice or order issued because of the violation, be reinspected by the director to determine that the violation has been eliminated.

(e) Reinspection fee: The permit holder shall pay:

(1) To the director, $51.50 per inspector, per hour, for each reinspection after the first inspection by that department that must be conducted before the violation is determined to be eliminated; and

(2) To the director of any other city department the fee required (if any) by the applicable code for each reinspection by that department that must be conducted before the violation is determined to be eliminated.

SEC. 16-958. REPORTS TO THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION.

As required by Section 260 of the Texas Health and Safety Code, before September 30th of each year, the director shall submit a report to the Texas Health and Human Services Commission. The report must contain the following information:

(1) The total number of boarding home facilities issued permits by the city during the preceding state fiscal year.

(2) The total number of boarding home facility applications for which permits were denied, including a summary of the causes for denial.

(3) The total number of boarding home facility permits that were active on August 31st of the preceding state fiscal year.

(4) The total number of residents housed in each boarding home facility reported.

(5) The total number of inspections conducted by the city at each boarding home facility.

(6) The total number of permits suspended or revoked as a result of an inspection.

(7) A summary of the outcome for any residents displaced by suspension or revocation of a permit.

DIVISION III - STRUCTURE AND MAINTENANCE.

SEC. 16-959. CONSTRUCTION, REMODELING, AND MAINTENANCE.

(a) In general. Each permit holder shall ensure the residents' health, safety, comfort, and protection through the standards contained in this section that address the construction, remodeling, and maintenance of a boarding home facility.

(b) Applicable regulations. Each boarding home facility must comply with the following codes and regulations:

(1) Local zoning, building and property maintenance codes.

(2) Federal, state, or local adopted fire codes and standards.

(3) Federal, state, and local health and safety codes.

(4) Federal and state accessibility regulations.

(c) Public pathways and stairways. A public pathway or stairway in a building must maintain a minimum unobstructed width in accordance with the local fire code, as amended, and must be provided with a convenient light switch controlling an adequate light system.

(d) Maintenance.

(1) The permit holder shall maintain the dwelling and premises in a clean and sanitary condition.

(2) The permit holder shall keep a boarding home facility in good repair and maintenance in a manner that will promote the health, comfort, safety, and well-being of residents.

(3) The permit holder shall 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 or yard.

SEC. 16-960. SLEEPING ROOMS.

(a) Sleeping space per person. Each room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one person must contain at least 50 square feet of floor space for each occupant.

(b) Emergency exit. Each sleeping room must provide access to an emergency exit without passing through another sleeping room.

SEC. 16-961. TELEPHONE.

A telephone that is connected to a land line must be available 24 hours a day, be easily accessible, and afford privacy for use by residents. A list of emergency telephone numbers, including the numbers of the local police department, local fire department, ambulance, the City department that issued the boarding home 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 made accessible to persons who are visually or hearing impaired, as needed.

SEC. 16-962. KITCHEN.

(a) A kitchen must be accessible to each resident without going through a sleeping room of another resident;

(b) A kitchen must have a food preparation area of at least six square feet that is smooth, impermeable, free of cracks, and easily cleanable.

(c) If a boarding home facility has a kitchen it must contain a minimum floor space of sixty square feet for dining area. A kitchen with an attached dining area must be at least 100 square feet in area.

(d) A kitchen must contain a sink with at least two compartments for manual dishwashing.

(e) A kitchen must contain an operational cooking stove with at least two burners fueled by gas or electricity.

(f) A kitchen must contain at least one cabinet with a minimum of five cubic feet of storage space per resident, suitable for storage of food and utensils.

(g) The permit holder shall keep the kitchen in a clean and sanitary condition.

DIVISION IV. - RESIDENT HEALTH AND SAFETY

SEC. 16-963. EMERGENCY PRECAUTIONS.

(a) The permit holder shall provide fire escapes and exits that are kept in good repair and accessible at all times in accordance with applicable fire codes, as amended.

(b) The permit holder shall 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. If a boarding home facility has a resident who has a mobility-impairment, the permit holder shall submit the written plan to the local fire department and obtain its approval of the plan.

(c) The permit holder shall post an emergency evacuation plan in each sleeping room and the kitchen of the facility.

(d) The permit holder shall ensure that each resident receives training on the emergency evacuation plan at least two timer per year and shall maintain documentation of such training.

(e) Flammable supplies and gasoline-operated maintenance equipment and lawn care equipment must be stored in the garage of the facility or in a detached storage shed.

(f) The permit holder shall ensure that all 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 permit holder shall maintain documentation of such training.

(g) First aid supplies.

(1) The permit holder shall provide first aid supplies as recommended by the American Red Cross.
(2) The permit holder shall ensure that the first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

SEC. 16-964. POISONOUS, TOXIC, AND FLAMMABLE MATERIALS.

(a) The permit holder shall ensure that poisonous, toxic, and flammable materials:

(1) Are stored and maintained away from bed linens, towels, food items, and kitchen equipment; and

(2) Are not used in a way that contaminates food equipment or utensils or constitutes a hazard to employees or residents.

(b) The permit holder shall prominently and distinctly label poisonous, toxic, and flammable materials for easy identification of contents.

SEC. 16-965. FOOD AND DRINK; MEALS.

(a) In general. If a boarding home facility serves meals to one or more residents, the permit holder shall ensure the following:

(1) All food and drink is clean and free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances.

(2) All food and drink is prepared, stored, handled, and served so as to be safe for human consumption.

(3) All food or drink subject to spoilage is maintained at a temperature of 41 degrees Fahrenheit or below.

(4) Hot foods that are ready to be served are maintained at 135 degrees Fahrenheit or above at all times.

(5) All food or drink stored in the freezer is maintained at a temperature of no higher than 0 degrees Fahrenheit.

(6) All food stored in food containers shall be appropriately labeled, dated, and protected from flies, insects, rodents, dust and moisture.

(b) Animals prohibited. With the exception of service animals for persons with disabilities, birds, cats, dogs, or other animals are not permitted in areas where food is prepared or stored, or where utensils are washed or stored.

(c) Food handling.

(1) An owner, operator, employee, or resident engaged in food handling shall:

(A) Observe sanitary methods, including hand washing; and

(B) Not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.

(2) If preparing meals for residents, staff must obtain a valid food handler's permit in accordance with Chapter 13 of the city code.

SEC. 16-966. REPORTING AND INVESTIGATION OF INJURIES, INCIDENTS AND UNUSUAL ACCIDENTS AND THE ESTABLISHMENT OF POLICIES AND PROCEDURES TO ENSURE RESIDENT HEALTH AND SAFETY.

(a) Each permit holder of a boarding home facility must ensure that there is on-site supervision of its boarding home facility during any time that a resident is present at the facility.

(b) Each permit holder of a boarding home facility must develop and implement policies and procedures for investigating and documenting injuries, incidents and unusual accidents that involve residents. Permit holders 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 permit holder 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 forty-eight hours of requesting the records from the permit holder.

(c) In addition to investigating and documenting injuries, incidents or unusual accidents, a permit holder must report any allegations of abuse, neglect or exploitation of an adult age sixty-five 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 permit holder should ensure that each resident has access to a telephone twenty-four hours per day that is easily accessible and affords privacy for use by residents.

(2) The permit holder shall ensure that no resident is harassed, threatened or intimidated at anytime for making a report of abuse, neglect or exploitation.

(3) Permit holders 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) Permit holders 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 permit holder's room and board facility.

(d) 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.

(e) If a permit holder becomes the representative payee for a resident or assists a resident with general money management, the permit holder shall:

(1) Maintain separate financial records for each resident for which the permit holder is the representative payee for the entire period of time the permit holder is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the permit holder is the resident's representative payee;

(2) Include in the records an itemized list of expenditures that the permit holder has made on behalf of the resident, including the charges that are assessed by the permit holder;

(3) Maintain receipts for all expenditures in addition to the itemized documentation;

(4) Develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended; and

(5) The permit holder will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the permit holder within forty-eight hours of receiving a request.

(f) A permit holder of a boarding home facility shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident.

SEC. 16-967. ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION.

(a) Assistance with self-administration of medication may be provided to an adult resident who can identify his or her medication and knows when the medication should be taken but requires assistance with self-administration. Assistance with self-administration of medication may not be provided to a minor.

(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 or 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) The permit holder shall store all residents' medication in a locked area. The permit holder shall provide a central locked storage area or individual locked storage areas at the boarding home facility 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 permit holder shall provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.

(3) The permit holder shall store medications labeled "for external use only" separately within the locked area.

(d) The permit holder shall ensure that poisonous substances are labeled and safely stored within a locked area.

(e) If a boarding home facility stores controlled substances, the permit holders shall adopt and enforce a written policy for preventing the diversion of the controlled substances.

(f) After a resident ceases to reside in the boarding home facility, the permit holder shall properly dispose of any of the resident's remaining medication in accordance with applicable laws.

SEC. 16-968. REQUIREMENTS FOR IN-SERVICE EDUCATION OF BOARDING HOME FACILITY STAFF.

(a) Each permit holder, employee and staff member of a boarding home facility must be trained on the following subjects prior to contact with residents:

(1) Employer rules and policies.

(2) Preventing, recognizing, and reporting abuse, neglect, and exploitation of residents.

(3) Residents' rights, including all applicable rights from the following:

(A) Chapter 102 (Rights of the Elderly) of the Texas Human Resource Code, as amended.

(B) Chapter 112 (Developmental Disabilities) of the Texas Human Resource Code, as amended.

(C) Chapter 301 (Fair Housing Practices) of the Texas Property Code, as amended.

(D) Chapter 92 (Residential Tenancies) of the Texas Property Code, as amended.

(4) Policies and procedures for contacting emergency personnel when health or safety of a resident or another individual is at risk.

(5) Complaint process specific to the city and the boarding home facility.

(6) Assisting residents with self-administration of medication.

(7) Prevention, recognition, and reporting of injuries, incidents, and unusual accidents to residents and others in the boarding home facility.

(8) Emergency, evacuation and disaster plans.

(9) Assisting residents with obtaining health and social services.

(10) Services provided by the boarding home facility, including:

(A) nutrition, meal preparation, and dietary needs, if the boarding home facility provides meal preparation;

(B) sanitation;

(C) laundry, if the boarding home facility provides laundry services; and

(D) house work, if the boarding home facility provides house work.

(b) Each permit holder and employee of a boarding home facility is subject to the following ongoing training requirements:

(1) Updates and changes in any policies and procedures within 10 days after the permit holder or employee becomes aware of the change.

(2) Orientation specific to the needs of each new resident within one business day of the resident moving into the facility.

(3) Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization, or other circumstances that affect the resident's needs within one day after permit holder or employee becoming aware of the change.

SEC. 16-969. CRIMINAL BACKGROUND HISTORY CHECKS.

(a) A boarding home facility permit holder's permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the permit holder has been convicted of a criminal offense listed in subsections (c) or (d) of this section or if the permit holder has in its employ any person convicted of a criminal offense listed in subsection (c) or (d).

(b) The permit holder must complete any state or federal request and release forms that are required to obtain a criminal history report for the permit holder. In addition to the permit fee, the permit holder 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 a permit holder from obtaining a permit to operate a boarding home or will serve as a bar to being employed by a boarding home facility:

(1) Chapter 19, Texas Penal Code (criminal homicide);

(2) Chapter 20, Texas Penal Code (kidnapping and unlawful restraint);

(3) Section 21.02, Texas Penal Code (continuous sexual abuse of young child or children);

(4) Section 21.08, Texas Penal Code (indecent exposure);

(5) Section 21.11, Texas Penal Code (indecency with a child);

(6) Section 21.12, Texas Penal Code (improper relationship between educator and student);

(7) Section 21.15, Texas Penal Code (improper photography or visual recording);

(8) Section 22.011, Texas Penal Code (sexual assault);

(9) Section 22.02, Texas Penal Code (aggravated assault);

(10) Section 22.021, Texas Penal Code (aggravated sexual assault);

(11) Section 22.04, Texas Penal Code (injury to a child, elderly individual or disabled individual);

(12) Section 22.041, Texas Penal Code (abandoning or endangering child);

(13) Section 22.05, Texas Penal Code (deadly conduct);

(14) Section 22.07, Texas Penal Code (terroristic threat);

(15) Section 22.08, Texas Penal Code (aiding suicide);

(16) Section 25.031, Texas Penal Code (agreement to abduct from custody);

(17) Section 25.08, Texas Penal Code (sale or purchase of a child);

(18) Section 28.02, Texas Penal Code (arson);

(19) Section 29.02, Texas Penal Code (robbery);

(20) Section 29.03, Texas Penal Code (aggravated robbery);

(21) Section 30.02, Texas Penal Code (burglary);

(22) Section 31, Texas Penal Code (theft) that is punishable as a felony;

(23) Section 33.021, Texas Penal Code (online solicitation of a minor);

(24) Section 34.02, Texas Penal Code (money laundering);

(25) Section 35A.02, Texas Penal Code (Medicaid fraud);

(26) Section 42.09, Texas Penal Code (cruelty to animals); or

(27) 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 permit holder 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 permit holder will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a crime that bars employment or volunteer service.

SEC. 16-970. ASSESSMENT AND PERIODIC MONITORING OF RESIDENTS.

(a) The permit holder, or a designee of the permit holder, shall:

(1) Complete and document an initial assessment of a resident within 10 days after the date the resident begins residing at the facility, and conduct periodic monitoring thereafter, to ensure that the resident is capable of self-administering medication and completing basic elements of personal care as listed in subsections (b) and (c). The initial assessment will be used as a tool to determine if the needs of the resident can be provided by a boarding home facility or if the resident needs personal care services or medication administration that cannot be provided by the boarding home facility.

(2) Complete and document an annual assessment and conduct periodic monitoring to ensure that each resident is capable of self-administering medication and completing basic elements of personal care as listed in subsection (b) and (c). The annual assessment will be used as a tool to determine if the needs of the resident can continue to be provided by a boarding home facility or if the resident needs personal care services or medication administration that cannot be provided by the boarding home facility.

(b) Elements of the self-administration of medication to be assessed 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 or 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 the correct number of pills (dosage).

(5) Confirming the time to take medications.

(6) Reading labels.

(c) Elements of personal care to be assessed by the permit holder include but are not limited to the resident's ability to do the following:

(1) Eat independently.

(2) Bathe without assistance.

(3) Dress without assistance.

(4) Move and transfer independently.

(d) As a result of the initial assessment, or a subsequent annual assessment, if a permit holder finds that a resident is unable to perform basic elements of personal care as listed in Subsection (c), or is in a state of self-neglect, and believes that a higher level of care is needed, the owner or operator shall:

(1) Contact the Texas Department of Family and Protective Services by phoning the state-wide intake division at 1-800-252-5400;

(2) Notify the resident's guardian or legally authorized representative;

(3) Notify a family member designated by the resident, the legal guardian, or the legally authorized representative; and

(4) Contact the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility.

(c) A state of self-neglect does not exist if the resident receives outside professional services that meet the resident's need for personal care or self-administration of medication. In these cases, the resident can remain in the boarding home facility provided that all needs for personal care and self-administration of medication are met.

DIVISION V. - ENFORCEMENT.

SEC. 16-971. VIOLATIONS; PENALTY.

(a) A permit holder, employee, or other person who violates any provision of this chapter, or who fails to perform a duty required by this chapter, commits an offense.

(b) An offense under this chapter is punishable by a fine not to exceed $2,000.

(c) A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.

(d) Emergency closing order.

(1) If the director finds a boarding home facility operating in violation of the standards prescribed by this chapter and the violations create an immediate

threat to the health and safety of a resident in the facility, the director may order immediate closing of all or part of the facility.

(2) The order of immediate closure under Section 16-971(d)(1) is effective immediately on providing written notice of the order to the owner or operator by facsimile, email or hand-delivery.

(3) The order of closure of all or part of a boarding home facility is valid for 10 days after its effective date.

(4) If the permit holder does not promptly relocate the residents of the boarding home facility upon receiving the order of closure for that facility, the city shall provide for the relocation of those residents. If possible, the city will relocate those residents to a boarding home facility in the city for which there is a current valid permit. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. The director is authorized to seek to recover the cost of relocating the residents from the owner and operator of the closed facility.

(5) The director and the Building Related and Fire Codes Appeals and Advisory Board, or other appropriate technical board or committee, shall expedite any hearing or decision involving an emergency closing order issued under this section.

(e) The city attorney may petition a district court or a county court at law for civil penalties and for injunctive relief to restrain a continuing violation of the standards or permit requirements for a boarding home facility under this chapter if the violations create an immediate threat to the health or safety of the facility residents.

(f) The city attorney may petition a district court or a county court at law for civil penalties and for injunctive relief to restrain the continuing operation of a facility that is providing services inconsistent with those prescribed by this article and state law until such time as said facility becomes appropriately licensed by the State of Texas or meets the requirements to obtain a permit under this article.

(g) The remedies and procedures in this section and in other laws are cumulative law, and the use of any particular remedy or procedure does not prevent the enforcement of any other law.

SECTION 2. All other provisions of Chapter 16 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 3. Violations occurring on or after March 1, 2013 shall be punished as provided in the revised Chapter 16, Article XX of the City Code of San Antonio, Texas. Violations prior to March 1, 2013 shall be punished under the applicable sections of the City Code for those purposes.

SECTION 4. Funds generated by this ordinance will be deposited into Fund 29097000, Internal Order 229000000002 and General Ledger 4404167.

SECTION 5. Section 16.E. of Ordinance No. 2012-09-13-0696, the FY2013 Budget Ordinance, is hereby amended in its entirety to read as follows:

E. **Fire Uniform Positions.** Effective January 1, 2013, through September 30, 2013, the number of uniformed Fire positions is fixed by fund and rank as follows, which includes the creation of 1 Fire Engineer within the General Fund:

	General Fund	Aviation Fund	Total
Fund 11			
Firefighter	630	15	645
Engineer	684	12	696
Lieutenant	161	2	163
Captain	111	2	113
District Chief	33	0	33
Assistant Chief	6	0	6
Deputy Chief	3	0	3
Fire Chief	1	0	1
TOTAL	*1,629*	31	*1,660*

Ordinance No. 2012-09-13-0696, the FY2013 Budget Ordinance is hereby amended in accordance with the provisions above.

SECTION 6. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 7. The City Clerk is directed to publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

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SECTION 8. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 9. The Director of the Development Services Department is hereby authorized to provide boarding homes that register between January 1, 2012 and March 1, 2013, and remain otherwise legally in operation, the time to come into compliance with fire sprinkler system requirements by December 31, 2013.

SECTION 10. This Ordinance shall take effect immediately if passed by eight affirmative votes; otherwise, this Ordinance shall take effect ten days from the date of passage.

SECTION 11. Penalties provided for in this Chapter 16 of the City Code of San Antonio, Texas shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 13th day of December, 2012.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael Bernard, City Attorney