

Memorandum



DATE January 16, 2015

TO Housing Committee Members: Carolyn R. Davis, Chair, Scott Griggs, Vice-Chair, Monica Alonzo, Rick Callahan, Dwaine Caraway, and Philip Kingston

SUBJECT Proposed Amendments to Boarding Home Facilities Ordinance

On Tuesday, January 20, 2015 you will be briefed on Proposed Amendments to Boarding Home Facilities Ordinance. A copy of the briefing is attached.

Please let me know if you have any questions.



Joey Zapata
Assistant City Manager

c: The Honorable Mayor and Members of the City Council
A. C. Gonzalez, City Manager
Rosa A. Rios, City Secretary
Warren M.S. Ernst, City Attorney
Craig Kinton, City Auditor
Daniel F. Solis, Administrative Judge
Ryan S. Evans, First Assistant City Manager
Eric D. Campbell, Assistant City Manager
Jill A. Jordan, P. E., Assistant City Manager
Mark McDaniel, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Sana Syed, Public Information Officer
Elsa Cantu, Assistant to the City Manager – Mayor and Council

Proposed Amendments to Boarding Home Facilities Ordinance

Presented to the
Housing Committee
January 20, 2015



City of Dallas



Boarding Home Facilities Ordinance

- Chapter 8A of the Dallas City Code was adopted by City Council on June 27, 2012 to ensure that:
 - Residents live in safe, sanitary, and decent housing
 - Residents are not abused, neglected, or exploited by owners, operators, or employees
 - Adequate Fire-Rescue and Police personnel and vehicles are available to serve these residents
 - The City can identify and facilitate appropriate responses for residents who may require special assistance during an emergency or at any other time

Definition of “Boarding Home Facility (BHF)”

- ❑ Furnishes **lodging to 3 or more persons** unrelated to the owner of the establishment by blood or marriage;
- ❑ Provides **services** such as meals, housework, transportation, money management, laundry services, or assistance with the self-administration of medication (but does not provide personal care services); **AND**
- ❑ Is **not exempt** under § 8A-5 (e.g., various entities licensed by the State, hotels, monasteries, dorms, etc.)

BHF Licensing Overview

- ❑ Sworn application, related materials, and \$500 fee
- ❑ Criminal background checks
- ❑ Proof of payment of ad valorem taxes, fees, fines, and penalties
- ❑ Annual inspections
- ❑ Fire and other emergency precautions
- ❑ Record-keeping and posting requirements

BHF Licensing Overview

- ❑ Basic property maintenance
- ❑ Compliance with existing safety and sanitation codes and with regulations for doors, windows, bed spacing, ceiling height, accessibility, pillows and sheets, bathrooms, kitchens, laundry facilities, dining rooms, and water quality
- ❑ Initial screenings, individualized assessments, and periodic monitoring of residents
- ❑ Residency prohibitions for certain individuals
- ❑ Illegal drug use prohibitions and consequences

BHF Licensing Overview

- ❑ Staff training
- ❑ Investigation, documentation, and notification requirements for injuries, abuse, neglect, exploitation or other incidents
- ❑ Medication log and reminders
- ❑ Locked areas for all medications
- ❑ Conflict of interests prohibitions
- ❑ Signed service agreements between residents and operators

Other Notable BHF Provisions

- Fee waivers
- Reasonable accommodations
- Enforcement
 - Suspensions and revocations
 - Fines up to \$2,000
 - Emergency closing order
 - Civil lawsuit (civil penalties and injunctive relief)

Implementation Actions to Date

□ October 2012

- Ordinance took effect October 1, 2012
- Application and pertinent information posted on the city's website
- 311 call center staff trained to provide and gather information based on new requirements for BHF's
- Staff provided ordinance information and registration forms through on-site visits to known facilities

□ November 2012

- Training conference held at Fair Park Music Hall with participation of 125 BHF's

Implementation Actions to Date

- December/January 2013
 - 226 notices issued to previously identified facilities to initiate the licensing process
- Spring 2013
 - Follow-up notices sent to 88 non-responsive facilities
 - Determined that the ordinance did not apply to a number of these facilities
 - Facilities providing personal care services, licensed by the State, less than 3 residents, etc.
 - On-site inspections revealed 158 facilities in operation that are required to adhere to the ordinance

Results to Date

- January 2015
 - Additional on-site inspections have revealed 30 more facilities in operation
- Current status of 188 BHF's
 - 54 facilities have voluntarily closed
 - 50 facilities have been licensed
 - 79 facilities have submitted licensing applications and are in various stages of review and/or inspections (applications are pending)
 - 4 facilities have not submitted applications
 - 1 application has been denied
 - 1 temporary restraining order (TRO) has been obtained

Results to Date

- ❑ 1,043 inspections and re-inspections have been conducted
- ❑ 52 Citations have been issued
 - 35 Operating without a license
 - 2 Electrical hazard (exposed wiring)
 - 2 Plumbing violations (leaky faucets, clogged drains)
 - 1 Illegal fence
 - 2 No building permit
 - 3 Structure not weather/water tight (leaky roof, weather stripping)
 - 6 Failure to protect exterior surface (peeling paint, exposed wood)
 - 1 Failure to register rental property

Previously Approved Amendments

- ❑ The briefing given to this Committee on January 6, 2014 provided recommendations for amending the ordinance, including:
 - Adding deadline for completing applications
 - Requiring letter of authorization from property owner
 - Modifying zoning verification letter requirement
 - Amending select conflict of interests provisions
 - Altering definitions of BHF and licensee
 - Toughening enforcement against BHFs that fail to apply for a license
 - Amending various sections to better address privacy concerns regarding disability-related information

Previously Approved Amendments

- Additional recommendations included:
 - Clarifying application's criminal background check requirement for employees
 - Reducing lifetime ban on potential residents with certain drug convictions
- Committee approved recommendations are in the final stages of drafting
- In the meantime, additional issues were identified that call for the ordinance to be amended further

Outline of Additional Proposed Amendments

- ❑ Definitions
- ❑ Application Process
- ❑ Monetary Issues
- ❑ Reasonable Accommodations
- ❑ Permit & License Appeal Board
- ❑ Criminal History Issues
- ❑ Enforcement
- ❑ Miscellaneous

Definitions

Amend definitions for:

- **“Conviction”** – include deferred adjudication
- **“Employee”** - include people receiving non-monetary forms of compensation and address non-profits
- **“Good neighbor agreement”** – reconcile potential conflict with language in suspension and revocation sections

Definitions

Amend definitions for:

- **“Injury, Incident, or Unusual Accident”** – limit to events that occur at BHF’s premises or under licensee’s supervision

- **“Licensee”**
 - Add threshold of minimum ownership interest
 - Add individuals who exercise *de facto* control over a BHF
 - Add directors and board members of entity owning or operating a BHF

Definitions

- **“Operator”** – expand to include anyone exerting control over a BHF, including non-profit actors

- **“Owner”**
 - Include those who personally own BHF
 - Include entities operating BHF
 - Add a threshold of minimum ownership interest

Definitions

Add definitions for:

- **“Own”** and **“operate”** – currently an offense to “own” or “operate” a BHF without a license (§ 8A-4)
- **“Volunteer”** – add to ensure access to criminal background histories

Application Process

- Threshold issue: exemptions
 - Address issue of pending applications for State licenses
 - Detail City's enforcement options when person claiming religious exemption fails to comply with safety, sanitary, and/or quarantine laws
- Require that application identify roles of each BHF owner, operator, employee, and volunteer

Application Process

- ❑ Require contact information, copy of ID, and criminal background checks for volunteers
- ❑ Limit “pending application” safe harbor provision solely to offense of owning or operating a BHF without a license

Application Process

- Grounds for denying BHF license application:
 - Add failure to provide or disclose all required information and documents
 - Require volunteers to pass criminal background checks
 - Failure to pay ad valorem taxes, fees, fines, and penalties:
 - Tie to specific location seeking the BHF license
 - Target delinquency rather than amount “owed”
 - Discuss how pending appeal of a suspension or revocation impacts other BHF license applications by same owner or operator

Application Process

- ❑ Add mandatory waiting period for re-applying after BHF license has been revoked
- ❑ Renewals
 - ❑ Clarify that new criminal background checks and \$500 licensing fee are required annually
 - ❑ Require application to be signed under penalty of perjury
 - ❑ Explain that pending renewal application does not affect the expiration date of previously issued BHF license

Monetary Issues

- Requests for fee waivers
 - Incorporate into reasonable accommodations section
 - Address how pending appeal of fee waiver decision would affect new application deadline
- Require that licensee keep financial records when assisting a resident with general money management
- Amend “representative payee” provisions since the Social Security Administration—not the resident—selects the representative payee

Reasonable Accommodations

- ❑ Modify reasonable accommodation requirements to address oral requests
- ❑ Clarify timing of director's decision
- ❑ Delete licensee's record-keeping requirement for reasonable accommodations since the City already has that information

Permit & License Appeal Board

Director's BHF decisions are appealable to the Permit and License Appeal Board ("PLAB"):

- ❑ Fee waivers
- ❑ Requests for reasonable accommodations
- ❑ Denials of license applications
- ❑ Suspensions
- ❑ Revocations
- ❑ Emergency closing orders

Permit & License Appeal Board

- ❑ Require written decisions by director for all appealable actions
- ❑ Ensure consistent mailing requirements
- ❑ Include tolling provisions
- ❑ Identify relevant time period for PLAB's decision

Permit & License Appeal Board

- ❑ PLAB's authority with respect to good neighbor agreements:
 - ❑ Prohibit licensee's appeal of good neighbor agreement
 - ❑ Bar PLAB from imposing good neighbor agreement in connection with appeal of suspension or revocation
- ❑ Add burden of proof provision for PLAB appeals
- ❑ Revise ordinance's procedures for appealing to PLAB to ensure consistency

Criminal History Issues

- ❑ Require official Texas DPS criminal history report with a fingerprint card issued within the past 12 months
- ❑ Require applicant—rather than City—to obtain all necessary criminal background checks

Criminal History Issues

- Add new 5-year disqualifying offenses:
 - Failure to report abuse, neglect, or exploitation of adult with a disability
 - Theft
 - Interference with an emergency call
 - DWI (if BHF provides transportation)
 - Harassment
 - Attempt, conspiracy, and solicitation offenses

Criminal History Issues

- ❑ Require criminal history background checks for BHF volunteers
- ❑ Require criminal background checks for every state in which the BHF owner, operator, employee, or volunteer lived within the previous 12 months
- ❑ State that pending appeal of conviction has no effect on the criminal history disqualification

Criminal History Issues

- ❑ Require applicant or licensee to notify City when any new criminal convictions or charges are brought against BHF owners, operators, employees, or volunteers
- ❑ Alter psycho-sexual evaluation requirements for sex offenders

Enforcement

- ❑ Add minimum fines
 - ❑ Baseline minimum fines
 - ❑ Increased minimum fines for subsequent offenses

- ❑ Enable director to suspend or revoke license if possession, use, or sale of controlled substances occurs at a BHF
 - ❑ Suspension for first offense
 - ❑ Revocation for second offense within 12 months

Enforcement

- Identifying potential BHF's in apartment complexes
 - Require disclosures by property owner or manager to City when any person or entity leases a block of apartment units and provides services to residents:
 - Contact information for person or entity leasing units
 - Number of units leased
 - Location of units
 - Number of residents in each unit
 - Description of any services provided on-site by person or entity leasing units
 - Check as part of multi-family inspections
 - Require property owner or manager to notify City whenever a new block of units is leased and being used as a potential BHF

Miscellaneous

- ❑ More narrowly tailor various disability-related provisions
- ❑ Slightly alter immediate expulsion requirement for drug use and people constituting a “direct threat”
- ❑ Modify § 8A-23’s presumption regarding number of residents
 - ❑ Circumstances other than number of beds can aid inspectors’ determination regarding number of residents

Miscellaneous

- ❑ Add requirement to exterminate insects, rodents, and other pests at BHF's
- ❑ Reconcile potentially conflicting personal care services provisions
- ❑ Amendments to make certain semantic, grammatical, and structural changes and to ensure consistent use of terminology

Next Steps

- Amend § 51A-4.209(b)(3.1) of the Dallas Development Code to address spacing of handicapped group dwelling units

Questions?