

2-22-23

ORDINANCE NO. 32397

An ordinance amending Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code by amending Chapter 8A; requiring a license for each boarding home facility; amending the requirements for a license application; requiring denial of a license for boarding home facilities located within 2,000 feet of another boarding home or group dwelling facility; providing that licenses are nontransferable; amending the structure and maintenance requirements; prohibiting retaliation against residents; providing a penalty not to exceed \$2,000 and/or 180 days in jail; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Subsection (a) of Section 8A-4, “License Required,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“(a) A person commits an offense if he owns or operates a boarding home facility in the city without a valid license issued under this chapter. A separate license is required for each boarding home facility that a person operates.”

SECTION 2. That Subsection (a) of Section 8A-6, “License Application,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“(a) To obtain a license 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 and be accompanied by the fee, if any, required under Section 8A-8 of this chapter 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) The street address and telephone number of the boarding home facility.

(5) 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 Section 8A-17 of this chapter.

(6) Documentary evidence of payment of ad valorem taxes, fees, fines, and penalties owed to the city in connection with the boarding home facility or documentary evidence that the applicant is current on a payment plan for any back ad valorem taxes, fees, fines, and penalties owed to the city in connection with the boarding home facility.

(7) 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, employees, and volunteers 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.

(8) If the owner or operator of the boarding home facility is not also the owner of the property on which the boarding home facility is located, a letter signed by the owner of the property stating that the applicant has permission to operate a boarding home facility on the property and acknowledging the requirements for the property to be used as a boarding home facility as set forth in this chapter. If the owner of the property is an entity, the letter must be on official letterhead and signed by an officer of the entity or other person with the authority to make binding representations on the entity's behalf regarding the use of the property.

(9) Criminal history reports for each owner, operator, employee, and volunteer of the boarding home facility showing that they are not disqualified to own, operate, or work at a

boarding home facility under Section 8A-37 of this chapter. Such reports must include a current official Texas criminal history report [~~with a fingerprint card~~] (issued within the preceding 12 months) for each owner, operator, employee, and volunteer of the boarding home facility as well as an official criminal history report issued within the preceding 12 months from all other states in which an owner, operator, employee, or volunteer has resided within the past 10 years.

(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) Proof that the proposed use of the property complies with the Dallas Development Code.

(13) If the boarding home facility has one or more residents with a disability, a list of the categories of disabilities of the residents (vision impairment, hearing impairment, mobility impairment, dementia, and other).

(14) A sworn certification from the applicant, owner, or operator that the boarding home facility does not have, and will not have, any residents with an addiction to alcohol or a controlled substance, or alternatively, a document that describes the applicant's, owner's, or operator's plan for ensuring that the residents who are addicted to alcohol or a controlled substance, or who are recovering from such an addiction, refrain from using alcohol or the controlled substance, including all rules by which residents must abide, as required by Section 8A-34 of this chapter.

(15) 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.

(16) A survey showing the location and distances of the boarding home facility from other boarding home facilities and group dwelling facilities located within 2,000 feet. For purposes of this paragraph, group dwelling facility includes a group residential facility and handicapped group dwelling unit, as those terms are defined in Section 51A-4.209 of the Dallas City Code. For purposes of this paragraph, the distance between uses is measured in a straight line, without regard to intervening structures or objects, between the nearest boundaries of the building sites on which the uses are located. (Note: The spacing component of these regulations is based, not on the handicapped status of the residents, but on the non-family status of the groups.)

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

SECTION 3. That Section 8A-8, "Fees," of Article II, "Administrative," of Chapter 8A, "Boarding Home Facilities," of the Dallas City Code is amended to read as follows:

"SEC. 8A-8. FEES.

- (a) The fee for a license to operate a boarding home facility is \$500.
- (b) No refund of a license fee will be made.

~~[(c) An applicant for a license may file an application with the director seeking a waiver or reduction of the annual license fee if the boarding home facility serves one or more persons with a disability and payment of the fee would result in substantial financial hardship to the applicant. The application must include the following information before it will be considered 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.~~

~~(2) The number of residents of the boarding home facility with a disability.~~

~~(3) A list of the categories of disabilities of the residents (vision impairment, hearing impairment, mobility impairment, dementia, and other) and the number of residents with each type of disability.~~

~~(4) The services provided by the boarding home facility to the residents.~~

~~(5) An explanation of the nature and severity of the financial hardship to the applicant if the fee were to be paid.~~

~~(6) A copy of the balance sheets and income statements for the boarding home facility, or equivalent documents, establishing the applicant's financial condition for the last three years in accordance with generally accepted accounting principles, unless the boarding home facility has been open for less than three years, in which case it must provide a copy of those documents during the time the facility has been in operation.~~

~~(7) 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 chapter.~~

~~(8) Such additional information as the applicant desires to include or that the director deems necessary to aid in the determination of whether the requested waiver or reduction should be granted.~~

~~(d) The director may waive or reduce the annual license fee if the director, after reviewing the complete application, finds that the applicant provides services to one or more persons with a disability and payment of the fee would result in substantial financial hardship to the applicant.~~

~~(e) If the director determines that an applicant should be denied a fee waiver or reduction, the director shall notify the applicant in writing by certified mail, return receipt requested, that the fee waiver or reduction is denied and include in the notice the reason for denial and a statement informing the applicant of the right to appeal.~~

~~(f) An applicant may appeal a decision of the director under this section to the permit and license appeal board in accordance with Section 2-96 as if it were a permit. The permit and license appeal board shall consider the facts as they existed at the time of the director's decision. The applicant has the burden of proof to establish the necessary facts to warrant favorable action.]”~~

SECTION 4. That Section 8A-9, “Issuance and Denial of License,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“SEC. 8A-9. ISSUANCE AND DENIAL OF LICENSE.

(a) Approval. Upon the submission of a complete application, the director shall issue a license to operate a boarding home facility to the applicant if the director determines:

- (1) the applicant has complied with all requirements for issuance of the license;
- (2) the applicant, owners, operators, employees, and volunteers of the boarding home facility meet the criminal history qualifications of Section 8A-37 of this chapter;
- (3) the applicant, owners, operators, or employees of the boarding home facility do not own or operate another licensed boarding home facility in the city for which the license is currently suspended or has been revoked within the past 12 months;
- (4) the applicant has not made a false statement as to a material matter in the application for a license;
- (5) the condition and use of the boarding home facility comply with the zoning regulations in the Dallas Development Code, the minimum housing standards in Chapter 27, and the standards in this chapter applicable to the property;
- (6) the applicant, owners, and operators are not delinquent in any ad valorem taxes, fees, fines, or penalties owed to the city in relation to the property where the boarding home

facility is located or have established and are current on a payment plan for any delinquent ad valorem taxes, fees, fines, or penalties owed; and

(7) the applicant, owners, and operators of the boarding home facility have not had a license for that boarding home facility revoked within the past 12 months.

(b) Denial. The director shall deny the license ~~[i]f:~~

(1) the director determines that the requirements of Subsection (a) have not been met; or ~~[, the director shall deny the license]~~

(2) the boarding home facility is located within 2,000 feet of another boarding home facility or group dwelling facility.

(A) This paragraph does not apply to a boarding home facility licensed before February 22, 2023 and that continuously maintains a boarding home license.

(B) For purposes of this paragraph, group dwelling facility includes a group residential facility and handicapped group dwelling unit, as those terms are defined in Section 51A-4.209 of the Dallas City Code. For purposes of this paragraph, the distance between uses is measured in a straight line, without regard to intervening structures or objects, between the nearest boundaries of the building sites on which the uses are located. (Note: The spacing component of these regulations is based, not on the handicapped status of the residents, but on the non-family status of the groups.)

(c) Notification. If the director determines that an applicant should be denied a license, the director shall notify the applicant in writing by certified mail, return receipt requested, that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right to appeal.”

SECTION 5. That Subsection (a) of Section 8A-11, “Revocation of License,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

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

(1) the licensee fails to meet the criminal history qualifications of Section 8A-37 of this chapter or allows an employee or volunteer to work at the facility who fails to meet the criminal history qualifications;~~[-]~~

(2) the licensee intentionally made a false statement as to a material matter in the application or in a hearing concerning the license;

(3) the licensee failed to pay a fee required by this chapter at the time it was due; or

(4) a cause for suspension under Section 8A-10 has occurred and the license has already been suspended at least once within the preceding 12 months.”

SECTION 6. That Section 8A-14, “Nontransferability,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“SEC. 8A-14. NONTRANSFERABILITY.

A license to operate a boarding home facility and a license fee under Section 8A-8 is not transferable to another owner, operator, applicant, or location.”

SECTION 7. That Section 8A-16, “Posting Requirements,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended by adding a new Paragraph (6) to read as follows:

“(6) Information concerning tenants’ rights and responsibilities including a copy of Article V, “Enforcement,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code, as amended.”

SECTION 8. That Section 8A-18, “Failure to Pay Ad Valorem Taxes, Fees, Fines and Penalties,” of Article II, “Administrative,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“SEC. 8A-18. FAILURE TO PAY AD VALOREM TAXES, FEES, FINES, AND PENALTIES.

(a) A licensee commits an offense if he allows any ad valorem taxes, fees, fines, or penalties owed to the city in connection with the boarding home facility to become delinquent.

(b) It is a defence to prosecution under this section that the licensee diligently entered into a payment plan and makes regular payments in accordance with that plan to pay the delinquent ad valorem taxes, fees, fines, or penalties.”

SECTION 9. That Section 8A-27, “Kitchen,” of Article III, “Structure and Maintenance,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended to read as follows:

“SEC. 8A-41. RETALIATION AGAINST RESIDENTS PROHIBITED.

(a) An operator commits an offense if the operator raises a resident’s rent, diminishes services to a resident, or attempts eviction of a resident within six months after:

(1) the resident files a valid complaint with the director complaining of a violation of this chapter on property occupied by the resident; a complaint is considered valid if it results in an action described in Paragraphs (2), (3), or (4) of this subsection;

(2) the director issues to the operator or the operator’s agent a written notice or citation listing any violation of this chapter that exists on property occupied by the resident;

(3) the city attorney files an action under Article V of this chapter, Chapter 54 of the Texas Local Government Code, or Chapter 260 of the Texas Health and Safety Code relating to any violation of this chapter that exists on property occupied by the resident;

(4) the resident, after filing a complaint with the director and the operator or the operator’s agent, files a written complaint with the city attorney complaining of a violation of this chapter on property occupied by the resident, unless the complaint is later withdrawn by the resident or dismissed on the merits; or

(5) repairs are completed on property occupied by the resident in compliance with either a written notice or citation issued by the director or a court order.

(b) It is a defense to prosecution under Subsection (a) that:

(1) rent was increased pursuant to an escalation clause in a written lease which provided for changes in costs of utilities, taxes, and insurance;

(2) rent was increased, services were reduced, or notices to vacate were issued as part of a pattern of rent increases, service reductions, or evictions for an entire boarding home facility;

(3) the resident was delinquent in rent when the operator gave notice to vacate or filed an eviction action;

(4) the resident was responsible for or caused a violation of this chapter that existed on property occupied by the resident;

(5) the resident’s written lease fixing the rent, services, or term of occupancy had expired, unless, at the time an action described in Subsection (a)(1), (2), or (3) occurred, a violation of this chapter that was reasonably dangerous to the physical health or safety of the resident or another person existed on property occupied by the resident;

(6) the resident holds over after giving notice of termination or intent to vacate;

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“SEC. 8A-27. 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. This surface area must not be primarily used for eating.

(c) If a boarding home facility has a kitchen without a dining area attached, the licensee shall provide a separate dining area of 15 square feet per resident. A kitchen with an attached dining area must be at least 100 square feet in area.

(d) A kitchen must contain a sink which allows [~~with at least two compartments~~] for manual dishwashing that is at least 22 inches by 27 inches by 5 inches.

(e) A kitchen must contain an operational cooking stove with at least two burners fuelled by gas or electricity and [~~or~~] an operational microwave oven.

(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) A kitchen must be equipped with at least one electrical outlet suitable for plugging in small kitchen appliances.

(h) The licensee shall keep the kitchen in a clean and sanitary condition.

(i) A kitchen must contain a refrigerator that is at least 12 cubic feet in area, is equipped with a thermometer, and is maintained in an operational, clean, and sanitary condition. A refrigerator must maintain foods at the temperatures required by Section 8A-33.”

SECTION 10. That Section 8A-40, “Violations; Penalty,” of Article V, “Enforcement,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended by adding a new Subsection (k) to read as follows:

“(k) It is an affirmative defense to prosecution under this section that the person is not an owner, operator, or employee of a boarding home facility as defined by this chapter.”

SECTION 11. That Article V, “Enforcement,” of Chapter 8A, “Boarding Home Facilities,” of the Dallas City Code is amended by adding a new Section 8A-41, “Retaliation Against Residents Prohibited,” to read as follows:

(7) the resident holds over after the operator gives notice of termination at the end of the rental term and, at the time the notice of termination was given, the operator or the operator's agent had not received actual notice that a valid complaint had been filed with the city complaining of violations of this chapter on property occupied by the resident;

(8) before filing a complaint with the city complaining of a violation of this chapter on property occupied by the resident, other than a violation that is reasonably dangerous to the physical health or safety of the resident or another person, the resident fails to comply with a written lease provision requiring the resident to:

(A) notify the operator or the operator's agent, in writing, of the violation; and

(B) allow the operator 15 days to correct the violation; or

(9) the operator proves that the rent increase, service reduction, or attempted eviction was for good cause and not for purposes of retaliation against the resident.

(c) An offense under this section may be prosecuted upon the filing of a written complaint by the resident with the city attorney."

SECTION 12. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000 or by up to 180 days in jail.

SECTION 13. That Chapter 8A of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 14. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 15. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

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SECTION 16. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, City Attorney

By 
Assistant City Attorney

Passed **FEB 22 2023**



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL FEB 22 2023

ORDINANCE NUMBER 32397

DATE PUBLISHED FEB 25 2023

ATTESTED BY: