

**ORDINANCE NO. 2023-25**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING ITS CODE OF ORDINANCES BY ADDING ARTICLE VIII (22-196-22-276), BOARDING HOME REGULATIONS, OF CHAPTER 22, HEALTH AND SANITATION, TO COMPLY WITH CHAPER 260 OF THE TEXAS HEALTH & SAFETY CODE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR EACH VIOLATION OF THIS ORDINANCE WITH EVERY DAY CONSTITUTING A NEW VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Tomball, Texas (the “City”) is a home-rule municipality pursuant to section 5 article 11 of the Texas Constitution and as such, is vested with the power of local self-government; and

**WHEREAS**, the City desires comply with Chapter 260 of the Texas Health & Safety Code, as amended and the current Texas Model Standards for Boarding Homes; and

**WHEREAS**, the City Council finds it to be in the best interest of the health, safety and welfare of its residents to establish reasonable and uniform regulations of Boarding Homes to promote and protect the health, safety, and general welfare of the City of Tomball, and to protect the residents of Boarding Homes from abuse, neglect, exploitation, Medicare and Medicaid fraud, and other criminal or unethical behaviors, to amend its code of ordinances as set forth herein; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The findings contained in the preamble of this Ordinance are hereby found to be true and correct and are hereby adopted as part of this Ordinance

**Section 2.** The City of Tomball Code of Ordinances is hereby amended by adding a new Article VIII, (Sections 22-196-22-276), to Chapter 22, Health and Sanitation, to read as follows:

**“Sec. 22-196. – Purposes.**

(a) The purposes of this article are to ensure that:

(1) Residents of boarding home facilities live in safe, sanitary, and decent housing;

(2) These residents are not abused, neglected, or exploited by the owners, operators, or employees of boarding home facilities;

(3) The city can identify and facilitate appropriate responses for residents who may require special assistance during an emergency or at any other time.

(b) The city is accomplishing those purposes by implementing standards for construction, maintenance, reporting, recordkeeping, education, and care for the protection of the health, safety, and welfare of residents 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 lawful businesses subject to the city's police power granted by sections 54.004 and 215.075 of the Texas Local Government Code.

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

**Sec. 22-197. Definitions.**

Unless the context clearly indicates otherwise, in this article:

Abuse, neglect, and exploitation. Are defined in the Texas Human Resource Code section 48.002 as the following:

(1) Abuse. The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or the sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under section 21.08, Penal Code (indecent exposure) or chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Exploitation. The illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or

disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

(3) Neglect. The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

Assistance with self-administration of medication. Assisting a resident by reminding the resident to take medication, opening, and removing medications from a container, placing medication in a resident's hand or in/on a clean surface such as a pill cup or a medication reminder box, and reminding the resident when a prescription medication needs to be refilled.

Boarding home facility. An establishment that furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration or medication but does not provide personal care services to those persons.

Department. The Fire Department of the City of Tomball or any other department designated by the city manager to enforce and administer this article.

Elderly person. A person who is 65 years of age or older.

Injury, incident, or unusual accident. An event that results in a change in the resident's physical or mental status that occurred in the boarding home facility or on the grounds of the boarding home facility that requires intervention by a private or public entity responsible for physical or mental health services, or an event that requires the facility taking resident safety and protection measures including: an allegation of abuse, neglect, or exploitation; death; a resident's absence from the facility when circumstances place the resident's health, safety or welfare at risk; fire; criminal acts; and altercations between residents.

Licensee. A person who is the owner/operator of a boarding home facility in which a boarding home facility license has been issued; each individual listed as an owner or operator of the boarding home facility on the application for a boarding home facility license; 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 license application; and 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 license application.

Person with a disability. A person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.

Personal care services. Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or 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.

Resident. A person who is residing in a boarding home facility.

**Sec. 22-198. License required.**

- (a) A person commits an offense if the person owns or operates a boarding home facility in the city without a valid license issued under this article.
- (b) It is a defense to prosecution under this article if a person operates a boarding home facility while an application under section 22-200 is pending.
- (c) It is a defense to prosecution under this section if a person operates a facility listed in section 22-199 of this article.

**Sec. 22-199. Exemptions.**

This article 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 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.
- (7) An establishment conducted by or for persons who have a sincere religious belief in providing facilities to care and treat the sick by depending 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 of this article.

- (8) A hotel as defined by section 156.001 of the Texas Tax Code, as amended.
- (9) A retirement community as defined by section 11.18 of the Texas Tax Code, as amended.
- (10) A child-care facility as defined by section 42.002 of the Texas Human Resources Code, as amended.
- (11) A family violence shelter center as defined by section 51.002 of the Texas Human Resources Code, as amended.

**Sec. 22-200. License application.**

To obtain a license to operate a boarding home facility within the City of Tomball, a person must submit an application to the department 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 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 22-211 of this article.
- (6) Documentary evidence of payment of 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, 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.

(8) 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.

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

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

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

(12) If the boarding home facility has one or more residents who are recovering from an addiction to alcohol or a controlled substance but are not currently using alcohol or the controlled substance, a document that describes the applicant's, owner's, or operator's plan for ensuring that the residents continue to refrain from using alcohol or the controlled substance, including all rules by which residents must abide, as required by section 22-252 of this article.

(13) 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.

(14) Such additional information as the applicant desires to include or that the city manager or the city manager's designee deems necessary to aid in the determination of whether the requested license should be granted.

#### **Sec. 22-201. Notification of change of information.**

The licensee shall notify the building and permits department within ten (10) days after any material change in the information contained in the application for a license 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. 22-202. Fees.**

(a) The fee for a license to operate a boarding home facility shall be as set forth in the Master Fee Schedule adopted and amended from time to time by the City Council.

- (b) No refund of a license fee will be made.
- (c) An applicant for a license may file an application with the city manager 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 disabilities of the residents and the number of residents with each 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 (3) 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 article.
  - (8) Such additional information as the applicant desires to include or that the city manager deems necessary to aid in the determination of whether the requested waiver or reduction should be granted.
- (d) The city manager may waive or reduce the annual license fee if the city manager, 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) An applicant may appeal a decision of the city manager under this section to the city council by filing a written notice with the city secretary within ten (10) days after the date of the decision of the city manager. The city secretary shall place the appeal on the next regularly scheduled meeting of the city council. The city council shall use the same standard required for the city manager. The city council may affirm, reverse, or modify the decision of the city manager. Appeal to the city

council constitutes the final administrative remedy.

**Sec. 22-203. Issuance and denial of license.**

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

- (1) The applicant has complied with all requirements for issuance of the license;
- (2) The applicant, owners, operators, and employees of the boarding home facility meet the criminal history qualifications of section 22-255 of this article;
- (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;
- (4) The applicant has not made 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 minimum standards of this code of the city and the 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.

(b) If the building and permits department determines that the requirements of subsection (a) have not been met the department shall deny the license.

(c) If the building and permits department determines that an applicant should be denied a license, the department shall notify the applicant in writing that the application is denied and include in the notice the reason for the denial and a statement informing the applicant of the right of appeal.

**Sec. 22-204. Prohibition of new residents; suspension of license.**

(a) The building and permits department may suspend a boarding home facility license for a period not to exceed 90 days if the department finds that the licensee 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 department authorized under this article.



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

(c) In lieu of suspending a license for a boarding home facility, the department, at its discretion, may enter into a good neighbor agreement with a licensee if the department determines that the good neighbor 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 article.

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

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

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

**Sec. 22-205. Revocation of license.**

(a) Except as provided in subsection (b), the department 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 22-255 of this article or employs a person 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 article at the time it was due; or

(4) A cause for suspension under section 22-204 has occurred and the license has already been suspended once within the preceding 12 months.

(b) In lieu of revoking a license for a boarding home facility, the department, at its discretion, may enter into a good neighbor agreement with a licensee if the department determines that the good neighbor 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 article.

(c) Before revoking a license under subsection (a), the department shall notify the licensee in writing by certified mail, return receipt requested, that the license is being considered for revocation. The notice must include the reason for the

proposed revocation, action the licensee must take to prevent the revocation, and a statement that the licensee has ten (10) days to comply with the notice.

(d) If, after ten (10) days from the date the notice required in subsection (c) was sent or delivered, the licensee has not complied with required actions listed in the notice, the department shall revoke the license and notify the licensee in writing of the revocation. The notice must include the reason for the revocation, and a statement informing the licensee of the right of appeal.

(e) If a license has been revoked, the licensee has ten (10) days to relocate the residents of the facility and cease operations. An appeal of the revocation does not suspend or toll this deadline.

### **Sec. 22-206. Appeals.**

(a) If the department denies issuance or renewal of a license or suspends or revokes a license issued under this article, the action is final unless the licensee files an appeal, in writing, within ten (10) days with the city manager.

(b) After reviewing the material facts and basis for the department's decision, the city manager may affirm, reverse, or modify the decision of the department.

(c) An applicant may appeal a decision of the city manager by filing a written notice with the city secretary within ten (10) days after the date of the decision by the city manager. The city secretary shall place the appeal on the next regularly scheduled meeting of the city council. The city council shall use the same standard required for the city manager. The city council may affirm, reverse, or modify the decision of the city manager. Appeal to the city council constitutes the final administrative remedy.

### **Sec. 22-207. Expiration and renewal of license.**

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

(b) A licensee shall apply for renewal at least 30 days before the expiration of the license on a form provided by the department. The licensee shall update the information contained in the original license application required under section 22-200 of this article, or any subsequent renewals under this section. If any of the information has changed. The licensee shall sign a statement affirming that there is either no change in the information contained on the original license application and any subsequent renewal applications, or that any information that has been updated is accurate and complete.

(c) The department shall follow the procedures set forth in section 22-203 of this article when determining whether to renew a license.

**Sec. 22-208. Nontransferability.**

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

**Sec. 22-209. Records.**

(a) The licensee shall maintain the records listed in subsection (b) either at the boarding home facility to which the records pertain or at a single location within the city. The licensee shall make those records available for inspection by the department or a peace officer at reasonable times upon request for purposes of administering this article.

(b) Records that must be maintained by the licensee include, but are not limited to:

(1) Current records of ownership of the property where the boarding home facility is located;

(2) A copy of any current good neighbor agreement as described in sections 22-204 and ;

(3) Records demonstrating compliance with applicable laws and regulations as required by section 22-213;

(4) Records documenting that each resident has received training on the emergency evacuation plan of the boarding home facility at least two (2) times per calendar year as required by section 22-222

(5) Records documenting that each resident was shown how to use all emergency exits from the facility within 24 hours of arrival at the facility, as required by section 22-222;

(6) Records documenting the initial screening of potential residents and the quarterly individualized assessments of residents as required by the Department;

(7) Records documenting whether residents have taken, or been reminded to take, their medication, as required by section 22-253;

(8) Records documenting injuries, incidents, and unusual accidents that involve residents, as required by section 22-252;

(9) Records documenting any allegations of abuse, neglect, or exploitation of a resident, as required by section 22-252;

(10) Financial records for each resident for which the licensee is the representative payee, as required by section 22-252;

(11) A copy of the service agreement signed by each current resident, as required by section 22-252;

- (12) Records documenting required in-service education of boarding home facility staff;
- (13) Records documenting annual assessment and periodic monitoring of current residents to determine if residents are capable of self-administering medication and completing basic elements of personal care, as required by section 22-256;
- (14) A roll of current residents, including their date of arrival, assigned room, and the name, address, and telephone number of the person or entity that referred them to the facility;
- (15) A roll of former residents, including their date of departure, and the name, address, and telephone number of the person or entity in control of the residence to which they moved (if known); and
- (16) Any other records deemed necessary by the department for the administration and enforcement of this article.

(c) Except as otherwise provided, a licensee shall maintain a record that concerns a resident for three years after the resident no longer resides at the boarding home facility.

(d) Except as otherwise provided, a licensee shall maintain a record that does not concern a resident for three years.

**Sec. 22-210. Posting requirements.**

The licensee 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:

- (a) The license issued under this article to operate the boarding home facility. The license must be presented upon request to a representative of the department or to a peace officer for examination.
- (b) A sign prescribed by the department specifying how complaints may be registered with the city.
- (c) A notice in a form prescribed by the department 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.
- (d) 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.
- (e) A notice in a form prescribed by the department that lists the name, location and contact information for:

- (1) The closest local public health services agency in the proximity of the facility; and
- (2) 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. 22-211. Emergency response information.**

- (a) The licensee shall provide the department with the name, street address, mailing address, e-mail address, and telephone number of a person or persons who can be contacted 24 hours a day, seven days a week in the event of an emergency condition on the property where the boarding home facility is located.
- (b) The licensee shall notify the department within five (5) days after any change in the emergency response information.
- (c) The licensee, or an authorized agent, must arrive at the property within one hour after a contact person named under this section is notified by city employee or emergency response personnel that an emergency condition has occurred on the property.

**Sec. 22-212. Failure to pay ad valorem taxes, fees, fines, and penalties.**

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

**Sec. 22-213. Inspections; fees.**

- (a) The following inspections shall be required:
  - (1) A boarding home facility must pass all required inspections.
  - (2) The licensee shall keep a current file of reports and other documentation on site that is needed to demonstrate compliance with applicable ordinances, laws, and regulations. 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) Licensing inspection;
    - (B) Annual licensing renewal inspection;
    - (C) Annual fire inspection;
    - (D) Annual kitchen inspection for a boarding home facility that provides meal preparation;

(E) A gas pipe pressure test performed every three years by the local gas company or a licensed plumber for a boarding home facility that receives natural gas service;

(F) Annual inspection of liquefied or natural gas systems performed by an inspector certified by the state railroad commission for a boarding home facility with a liquefied natural gas system.

(b) The Department may inspect any boarding home facility for the purpose of ascertaining whether violations of this article or any other city ordinances exist. The department 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) 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 department may suspend the license to operate a boarding home facility in accordance with section 22-204(a)(2).

(d) Whenever a boarding home facility is inspected by the department 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 department to determine that the violation has been eliminated.

(e) The licensee shall pay \$50.00 to the city for each reinspection after the first reinspection by the department that must be conducted before the violation is determined to be eliminated.

#### **Sec. 22-214. Reports to the Texas Health and Human Services Commission.**

Before September 30th of each year, the department shall submit a report to the Texas Health and Human Services Commission. The report must contain the following information:

(a) The total number of boarding home facilities licensed by the city during the preceding state fiscal year;

(b) The total number of boarding home facility applications for which licenses were denied, including a

summary of the causes for denial;

(c) The total number of boarding home facility licenses that were active on August 31st of the preceding state fiscal year;

- (d) The total number of residents housed in each boarding home facility reported;
- (e) The total number of inspections conducted by the city at each boarding home facility;
- (f) The total number of licenses suspended or revoked as a result of an inspection; and
- (g) A summary of the outcome for any residents displaced by suspension or revocation of a license.

**Sec. 22-215. Administration by interlocal agreement with other authority.**

The city may contract the administration and enforcement of this article to another government entity by interlocal agreement. In the event that any section or provision of this article is in conflict with those sections or provisions of the other government entity that are otherwise substantially similar, the more stringent section or provision shall apply and be enforced.

**Sec. 22-216. Construction, remodeling, and maintenance.**

- (a) Each owner/operator of a boarding home facility must ensure the health, safety, comfort, and protection of each resident through the following standards that address the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions.
- (b) Each facility must meet the following applicable codes and regulations:
  - (1) The adopted development, building and utility codes of the city as contained in the Code of Ordinances of the City of Tomball.
  - (2) The city's fire prevention and protection code as contained in chapter 20 of this code and any other applicable federal, state, or local codes and standards.
  - (3) The city's health and sanitation code as contained in chapter 22 and any other applicable federal, state, or local codes and standards.
  - (4) Federal and state accessibility regulations.
- (c) Mobile homes shall not be permitted for use as boarding homes or additions to existing boarding homes.
- (d) Interior doors to living spaces, bedrooms, bathrooms, and toilet rooms must fit the openings in which they are hung, be properly equipped with hardware, and be maintained in good working condition. Doors with locking devices must be provided where necessary to provide privacy and protection of the resident.
  - (1) Every closet door latch will be such that it can be readily opened

from the inside in case of an emergency.

(2) Every bathroom door or door lock must permit the opening of the locked door in case of an emergency.

(e) Public pathways and stairways in buildings must maintain a minimum unobstructed width concurrent with federal fire codes and must be provided with convenient light switches controlling an adequate lighting system.

(f) Boarding home facilities must be supplied with electric service and fixtures that are properly installed and maintained in safe working condition and connected to a source of electrical power.

(g) Every boarding home facility must have heating and cooling equipment that are properly installed, vented, and maintained in a safe good working condition. The temperature of rooms intended for human occupancy will remain at a temperature between sixty-eight (68) and eighty-two (82) degrees Fahrenheit.

(h) Every boarding home facility must have water heating facilities that are properly installed, vented, in good working condition, and are properly connected with hot and cold water lines. The temperature of water drawn at every required sink, lavatory basin, bathtub or shower will remain at a temperature between one hundred and ten (110) and one hundred and twenty (120) degrees Fahrenheit.

(i) Every habitable room must have at least one window that can be easily opened, or such other device as will ventilate the room. Locks that can be easily opened manually from inside must be provided on all exterior doors. All windows must be openable without tools. The window opening must meet local codes for emergency egress. The bottom of the window opening must not be more than 44 inches above the floor.

#### **Sec. 22-217. Sleeping rooms.**

(a) Sleeping rooms must have:

(1) At least 70 square feet of floor space in single occupancy rooms;

(2) At least 60 square feet of floor space for each occupant in multi-occupancy rooms;

(3) Beds spaced at least three feet apart when placed side-by-side or end-to-end;

(4) At least seven feet, six inches (7' 6") ceiling height;

(5) Required accessibility for non-ambulatory residents and residents with conditions that substantially limit ambulation and/or mobility;

(6) Beds at least six feet (6") long and three feet (3") wide equipped with supportive springs in good condition and a clean supportive mattress



in good condition, and a mattress cover that prevents bodily fluids from soiling the mattress;

(7) At least one pillow with a clean pillowcase, two (2) clean sheets, and a cover such as a blanket or quilt, in good condition, per bed, cleaned weekly or more often if soiled;

(8) Extra bed linens, including sheets, pillowcase and blankets must be available to each resident;

(9) At least one chest of drawers or equivalent, in good condition having a sufficient number of drawers or other areas to contain all necessary items of clothing and personal belongings of each resident that can be locked/secured;

(10) At least one chair in good condition in each sleeping room;

(11) At least one end table in good condition located adjacent to each bed in each sleeping room;

(12) Sufficient hanging space to allow clothes not stored in drawers to be hung. Clothing must not be stored on the floor;

(13) Bath towels, washcloths, soap, individual comb, and toothbrush must be available at all times and in quantity sufficient to meet the needs of the residents; and

(14) Access to emergency exit without passing through another sleeping room.

(b) All equipment fixtures, furniture, and furnishings, including windows, draperies, curtains, and carpets, must be kept clean and free of dust, dirt, vermin, and other contaminants, and must be maintained in good order and repair.

**Sec. 22-218. Bathroom facilities.**

Water closets, lavatories, and bathtubs or showers must be:

(a) Available on each floor when not provided in each individual room;

(b) Provided in the ratio of one toilet and one lavatory, and one bathtub or shower for every six residents, or fraction thereof; and,

(c) Accessible to the residents without going outside of the building or without going through a sleeping room of another resident.

**Sec. 22-219. Telephone.**

A telephone must be available, 24 hours per day, must be easily accessible, and must afford privacy for use by residents. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, the office of

local governmental entity that issued the boarding house permit, the Texas Department of Family and Protective Services (DFPS), the local mental health authority, and the Texas Information and Referral Network must be placed in plain view on or next to the telephone and accessible to persons who are visually or hearing impaired, as needed.

**Sec. 22-220. Laundry facilities.**

Each boarding home facility must provide a washer and dryer for every ten (10) residents, or fraction thereof that is properly vented to the outside. The washer or dryer must be in a utility room/area that is not in the kitchen area.

**Sec. 22-221. Community, kitchen, and dining spaces.**

Each boarding home facility must provide:

- (a) A sitting/communal/recreational room for the common use of all residents. Furniture must include comfortable chairs and tables, and lamps in good repair and appearance;
- (b) A dining room located on the same floor as the communal kitchen and must:
  - (1) Be as nearly adjacent to the communal kitchen as practicable;
  - (2) Be accessible to the residents, without going through a sleeping room or sleeping dormitory of another resident;
  - (3) Contain not less than 70 square feet of floor area; and
  - (4) Be supplied with one dining chair and 2 linear feet of dining table space for each resident of a boarding home facility; and
- (c) A kitchen that:
  - (1) Is accessible to the residents sharing the use without going through a sleeping room or sleeping dormitory of another resident;
  - (2) Has a food preparation area with a total of not less than six (6) square feet;
  - (3) Contains a minimum floor space of 60 square feet for dining area or, each kitchen with dining attached must be at least 100 square feet;
  - (4) Has a minimum two compartment sink for manual dishwashing;
  - (5) Has a cooking stove fueled by gas or electricity;
  - (6) Contains at least one (1) cabinet of adequate size, suitable for storage of food utensils; and

- (7) Is properly equipped to allow for the preparation of meals.

**Sec. 22-222. Emergency precautions.**

- (a) Fire precautions must include:
  - (1) Providing suitable fire escapes/exits that must be kept in good repair and accessible at all times;
  - (2) Having a written fire and evacuation plan that sets forth responsibilities and steps to be taken by staff and residents in the event of fire or other emergency;
  - (3) Posting an emergency evacuation plan throughout the facility; and
  - (4) Not storing gasoline operated maintenance equipment, lawn care equipment, and flammable supplies inside the boarding home facility.
- (b) Alarm precautions must include the following:
  - (1) Extinguishers must be sufficiently provided, accessible, checked monthly and recharged annually by a certified person;
  - (2) All fire protection measures must be in accordance with requirements of the local fire authority;
  - (3) Smoke detectors must be hard-wired, working and equipped in each bedroom, in corridors or hallways on each floor, and in laundry and basement areas;
  - (4) If a facility has a resident who is hearing impaired, a boarding house owner/operator must install a visual smoke detector that is capable of alerting a person with a hearing impairment of the presence of fire or smoke; and
  - (5) Carbon monoxide detectors must be working and equipped close to sleeping areas.
- (c) All residents must be shown how to use all emergency exits from the facility within 24 hours of arrival to the facility.

**Sec. 22-223. Inspections.**

The boarding home site must pass all required inspections and the owner/operator must keep a current file of reports and other documentation on-site needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. The following inspections are required:

- (a) Annual inspection by the local fire authority or the state fire marshal;

- (b) Annual inspection of the alarm system by the local fire authority or an inspector authorized to install and inspect such systems;
- (c) Annual kitchen inspection by the local health authority;
- (d) Gas pipe pressure test once every three (3) years by the local gas company or a licensed plumber;
- (e) Annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform these duties; and
- (f) Annual inspection of liquefied petroleum gas systems by an inspector certified by the state railroad commission.

**Sec. 22-224. Through Sec. 22-245. (Reserved)**

**Sec. 22-246. General conditions.**

- (a) Each owner/operator of a boarding home facility must be responsible for maintaining the dwelling and premises in a clean and sanitary condition.
- (b) Every boarding home facility must be kept in good repair, and so maintained as to promote the health, comfort, safety, and well-being of residents.
- (c) Interior walls, ceilings and floors must be capable of affording privacy and must be maintained free of holes, cracks, loose or deteriorated material, or any other condition that constitutes a hazard to the residents or is a harborage for insects, pests, or vermin.
- (d) Every window, exterior door and basement hatchway must be weathertight, watertight, insect and rodent-proof and must be kept in good working condition.
- (e) Water closets, lavatories, and bathtubs or showers must be:
  - (1) Kept clean and in good repair and must be well-lighted and ventilated;
  - (2) Adequately supplied with toilet paper, soap, and hand towels for each bathroom; and
  - (3) Supplied with nonslip surfaces in bathtub or shower, and curtains or other safe enclosures for privacy.
- (f) Each kitchen in a boarding home must:
  - (1) Be kept in a clean and sanitary condition;
  - (2) Have a food preparation area with a surface area that is smooth, impermeable, free of cracks and easily cleanable, that shall not be used for eating; and
  - (3) Have a refrigerator that is equipped with a thermometer and is

maintained in an operational, clean, and sanitary condition that is adequate to maintain foods at the required temperature.

- (g) Each facility shall meet all applicable state and local sanitary codes.
- (h) Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

**Sec. 22-247. Water quality.**

- (a) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system approved by the Texas Commission on Environmental Quality (TCEQ).
- (b) Every plumbing fixture, water pipe and waste pipe must be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions and properly connected to an approved sewage disposal system.
- (c) Every boarding home facility utilizing well water must provide water samples at least annually to the permit issuing entity. If the sample results show coliform present, a resample must be taken within seven (7) days of receipt of the results.

**Sec. 22-248. Garbage, refuse and pest control.**

- (a) All garbage and refuse must be kept in watertight, covered containers. The garbage and refuse area must be kept in a clean and sanitary condition. A sufficient number of garbage receptacles must be provided by the boarding home. All garbage, trash and refuse must be removed from the premises frequently to prevent nuisance and unsightly conditions.
- (b) Each owner/operator must be responsible for the extermination of any insects, rodents or other pests in the rooms occupied by residents, storage areas, attics or on the premises and yard.
- (c)

**Sec. 22-249. Linens and laundry.**

All linens and laundry shall be:

- (a) Bagged or placed in a hamper before being transported to the laundry area;
- (b) Properly identified to prevent loss; and
- (c) Not be transported through, sorted, processed, or stored in kitchens, food preparation areas, or food storage areas, if soiled.

**Sec. 22-250. Poisonous, toxic, and flammable materials.**

Poisonous, toxic, and flammable materials shall:

- (a) Be stored and maintained away from bed linens, towels, or kitchen equipment;
- (b) Be prominently and distinctly labeled for easy identification of contents; and
- (c) Not be used in a way that contaminates food equipment or utensils, or in a way that constitutes a hazard to employees or residents.

**Sec. 22-251. Food and drink; meals.**

- (a) After each usage, all eating and drinking utensils shall be thoroughly washed and sanitized in hot water containing a suitable soap or synthetic detergent and rinsed in clean hot water. In the event a mechanical dishwasher is used, dish detergent is required.
- (b) All food and drink shall be:
  - (1) Clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
  - (2) Prepared, stored, handled, and served so as to be safe for human consumption;
  - (3) Maintained at a temperature of 41 degrees Fahrenheit or below for foods subject to spoilage;
  - (4) Maintained at 140 degrees Fahrenheit or above at all times for hot foods ready to serve;
  - (5) Maintained in the freezer at a temperature of 0 degrees Fahrenheit or below for foods stored as frozen; and
  - (6) Stored in food containers that are appropriately labeled, dated, and protected from flies, insects, rodents, dust, and moisture.
- (c) Meals provided by the facility shall be nutritionally balanced and shall provide the USDA recommended daily allowances of vitamins, minerals, and calories.
- (d) With the exception of service animals for persons with disabilities, birds, cats, dogs, or other animals are not permitted in areas in which food is prepared, stored or where utensils are washed or stored.
- (e) Meals shall be served:
  - (1) At least three (3) times per day;

- (2) In sufficient quantity and quality to meet the nutritional needs of the residents;
  - (3) Daily at regular hours, with at least one hot meal per day;
  - (4) With no more than 14 hours between the beginning of the evening meal and the beginning of the morning meal; and
  - (5) With alternative selections for residents on medically prescribed diets.
- (f) A time schedule of meals shall be posted daily.
  - (g) Employees or residents engaged in food handling shall:
    - (1) Observe sanitary methods, including hand washing as appropriate; and
    - (2) Not be assigned to preparing food for others at the facility if carrying a disease that can be transmitted to others.
  - (h) Regardless of the number of residents, each boarding home facility shall hold a valid food handling permit issued by the applicable local or state regulator authority in the name of the owner/operator and for the specific boarding home facility.
  - (i) If preparing meals for residents, staff must have a food-handler's permit.
  - (j) Each boarding home facility shall maintain a minimum food and water supply sufficient for all residents as recommended by the American Red Cross.

**Sec. 22-252. Policies and procedures to ensure resident health and safety.**

- (a) Each owner/operator of a boarding home facility must develop and implement policies and procedures for investigating and documenting injuries, incidents and unusual accidents that involve residents. Owners/operators must also establish policies and procedures necessary to ensure resident health and safety.
  - (1) Minimum requirements for the documentation of injuries, incidents or unusual accidents should include, but are not limited to:
    - (A) Date and time of the injury, incident, or unusual accident occurred;
    - (B) Description of the injury, incident or unusual accident;
    - (C) Description of any medical or mental health treatment the resident received;

(D) Steps taken by the owner/operator to prevent future injuries, incidents, or unusual accidents if a problem at the boarding home facility resulted in the injury, incident, or unusual accident; and,

(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 the records as described in section 5.15.097(a) within 48 hours of requesting the records from the owner/operator.

(b) In addition to investigating and documenting injuries, incidents or unusual accidents, an owner/ operator must report any allegations of abuse, neglect, or exploitation of an adult age 65 or older or an adult with a disability to the state department of family and protective services. Failure to report suspected abuse, neglect or exploitation of an elderly adult or adult with a disability is a class A misdemeanor.

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

(2) The owner/operator shall ensure that no resident is harassed, retaliated against, threatened, or intimidated at any time for making a report of abuse, neglect, or exploitation.

(3) Owner/operators will provide each resident with a copy of the definitions of abuse, neglect or exploitation as outlined in chapter 48 of the Human Resources Code.

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

(c) No operator or other employee of a boarding home facility shall provide services or engage in behavior that constitutes a financial conflict of interest, including:

(1) Borrowing from or loaning money to residents;

(2) Witnessing wills in which the operator or employee is a beneficiary;

(3) Co-mingling the resident's funds with the operator's or other residents' funds; or,



- (4) Becoming the guardian, conservator, or power of attorney for a resident.
- (d) If an owner/operator becomes the representative payee for a resident or assists a resident with general money management, the owner/operator shall:
- (1) Maintain separate financial records for each resident for which the owner/operator is the representative payee for the entire period of time the owner/operator is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the owner/operator is the resident's representative payee;
  - (2) Include in the records an itemized list of expenditures that the owner/operator has made on behalf of the resident, including the charges that are assessed by the owner/operator;
  - (3) Maintain receipts for all expenditures in addition to the itemized documentation;
  - (4) Develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended; and
  - (5) The owner/operator will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the owner/ operator within 48 hours of receiving a request.
- (e) An owner/operator of a boarding home facility shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident.

**Sec. 22-253. Assistance with self-administration of medication.**

Assistance with self-administration of medication may be provided to adult residents who can identify their medication and know when their medication should be taken but require assistance with self- administration. Assistance with self-administration of medication may not be provided to minors.

- (a) Assistance with self-administration of medication is limited to:
- (1) Reminding the resident to take medication;
  - (2) Opening a container, removing medication from a container, and placing medication in a resident's hand or in/on a clean surface, such as a pill cup or medication reminder box, for the resident's self-administration; and

- (3) Reminding the resident when a prescription needs to be refilled.
- (b) All residents' medication must be stored in a locked area. The boarding home facility must provide a central locked storage or individual locked storage areas for each resident's medication.
- (1) If the boarding home facility uses a central medication storage area, a boarding home employee must be available to provide access at all times and each resident's medication must be stored separately from other residents' medications within the storage area.
  - (2) If a resident's medication requires refrigeration, the boarding home facility must provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.
  - (3) Medications labeled for "external use only" must be stored separately within the locked area.
  - (4) Poisonous substances must be labeled, stored safely, and stored separately from medications within a locked area.
  - (5) If a boarding home facility stores controlled drugs, the facility must adopt and enforce a written policy for preventing the diversion of the controlled drugs.
- (c) Medication that remains in the boarding home facility after a resident is no longer lodging in the facility must be properly disposed of by the owner or operator in accordance with applicable laws.

**Sec. 22-254. Requirements for in-service education of boarding home facility staff.**

- (a) Each owner/operator and employee is subject to the following initial training requirements prior to contact with residents:
- (1) Employer rules and policies;
  - (2) Recognizing and reporting abuse, neglect and exploitation;
  - (3) Resident's rights, including all applicable rights from the following:
    - (A) Texas Human Resource Code, chapter 102, rights of the elderly, as amended;
    - (B) Texas Human Resource Code, chapter 112, developmental disabilities, as amended;
    - (C) Texas Property Code, chapter 301, fair housing practices, as amended; and

- (D) Texas Property Code, chapter 92, residential tenancies, as amended.
- (4) Policies and procedures for contacting emergency personnel when a resident's health or safety is at risk;
- (5) Complaint process specific to the city and the boarding home facility;
- (6) Assistance with self-administration of medication;
- (7) Prevention of injuries, incidents and unusual accidents;
- (8) Emergency, evacuation, and disaster plan; and
- (9) Service specific orientation that includes, but is not limited to:
  - (A) Nutrition, including meal preparation and dietary needs;
  - (B) Sanitation;
  - (C) Laundry; and
  - (D) Housework.
- (b) Each owner/operator and employee is subject to the following ongoing training requirements:
  - (1) Updates and changes in any policies and procedures within ten (10) days of the owner, operator or employee becoming aware of the change;
  - (2) Orientation specific to the needs of each new resident within one (1) day of the resident moving into the home; and
  - (3) Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization, or other circumstances which affect the resident's needs within one day of the owner, operator, or employee becoming aware of the change.

**Sec. 22-255. Criminal history and background checks.**

- (a) A boarding home facility owner/operator's license to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator has been convicted of a criminal offense listed in subsection (c) or (d) of this section, or if the owner/operator has in its employ any person convicted of a criminal offense listed in subsection (c) or (d).
- (b) The owner/operator must complete any state or federal request and release forms that are required to obtain a criminal history report for the owner/operator. In addition to the permit fee, the owner/ operator will provide funding to the city in a manner specified by the city to cover any fees imposed by state or federal agencies for the report.

(c) The following histories will disqualify an owner/operator from obtaining a permit to operate a boarding home or will serve as a bar to being employed by a boarding home facility:

- (1) An offense under chapter 19, Penal Code (criminal homicide);
- (2) An offense under chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) An offense under section 21.02, Penal Code (continuous sexual abuse of young child or children), or section 21.11, Penal Code (indecent with a child);
- (4) An offense under section 22.011, Penal Code (sexual assault);
- (5) An offense under section 22.02, Penal Code (aggravated assault);
- (6) An offense under section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) An offense under section 22.041, Penal Code (abandoning or endangering a child);
- (8) An offense under section 22.08, Penal Code (aiding suicide);
- (9) An offense under section 25.031, Penal Code (agreement to abduct from custody);
- (10) An offense under section 25.08, Penal Code (sale or purchase of a child);
- (11) An offense under section 28.02, Penal Code (arson);
- (12) An offense under section 29.02, Penal Code (robbery);
- (13) An offense under section 29.03, Penal Code (aggravated robbery);
- (14) An offense under section 21.08, Penal Code (indecent exposure);
- (15) An offense under section 21.12, Penal Code (improper relationship between educator and student);
- (16) An offense under section 21.15, Penal Code (improper photography or visual recording);
- (17) An offense under section 22.05, Penal Code (deadly conduct);
- (18) An offense under section 22.021, Penal Code (aggravated sexual assault);
- (19) An offense under section 22.07, Penal Code (terroristic threat);
- (20) An offense under section 33.021, Penal Code (online solicitation of

a minor);

(21) An offense under section 34.02, Penal Code (money laundering);

(22) An offense under section 35A.02, Penal Code (Medicaid fraud);

(23) An offense under section 42.09, Penal Code (cruelty to animals);

(24) An offense under section 30.02, Penal Code (burglary);

(25) An offense under chapter 31, Penal Code (theft), that is punishable as a felony; or

(26) A conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

(d) A person may not own/operate 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;

(3) An offense under section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a class A misdemeanor;

(4) An offense under section 37.12, Penal Code (false identification as peace officer);

(5) An offense under section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct); or

(6) A conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

(e) The owner/operator must ensure that all employees, including volunteers who are not residents, have had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two (2) years, and is repeated every year thereafter, and that the individual is not disqualified under the provisions of subsections (c) and (d) of this section. The owner/operator will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a crime that bars employment or volunteer service.

**Sec. 22-256. Assessment and periodic monitoring of residents.**

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

(b) Elements of the self-administration of medication to be assessed by the boarding home facility owner/operator or designee include the ability to perform each of the following tasks with little assistance:

- (1) Identify the name of the medication;
- (2) Providing a reason for the medication (the owner/operator cannot force the resident to disclose a health condition that is the basis for the medication if the resident refuses); Distinguishing color or shape;
- (3) Preparing correct number of pills (dosage);
- (4) Confirming the time to take medication(s); and
- (5) Reading labels.

(c) Elements of personal care to be assessed by the boarding home facility owner/operator include the ability of each resident to:

- (1) Eat independently;
- (2) Bathe without assistance;
- (3) Dress without assistance; and
- (4) Move and transfer independently;

(d) As a result of an assessment, if an owner/operator finds that a resident is in a state of possible self-neglect due to no longer being able to perform basic elements of personal care as listed in subsection (c) and believes that a higher level of care is needed, the owner/operator is responsible for the following:

- (1) Contacting DFPS by phoning the statewide intake division at 1-800-252-5400;
- (2) Notifying the resident's guardian or legally authorized representative; and
- (3) Contacting the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility.

(e) A state of self-neglect does not exist if the resident receives outside

professional services that meet the resident's need for personal care or self-administration of medication. In these cases, the resident can remain in the boarding home facility provided that all needs for personal care and self-administration of medication are met.

**Sec. 22-257. through 22-275. (Reserved)**

**Sec. 22-276. Violations; penalty.**

(a) A person who violates any provision of this article, or who fails to perform a duty required by this article, commits an offense.

(b) A licensee, employee, or other person in control of a boarding home facility commits an offense if the person knowingly operates an unsafe facility that represents an immediate threat to the health or safety of a resident, including a situation that has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(c) An offense under this article is punishable by a fine not to exceed:

(1) \$2,000.00 if the provision violated governs fire safety, public health, or sanitation; or

(2) \$500.00 for all other offenses.

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

(e) If the department finds a boarding home facility operating in violation of the standards prescribed by this article and the violations create an immediate threat to the health and safety of a resident in the facility, the department may order immediate closing of all or part of the facility.

(1) The order of immediate closure as prescribed in this subsection (e) is effective immediately on providing written notice of the order to the owner or operator by facsimile, e-mail, or hand-delivery.

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

(3) If the licensee 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 license. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. The department is authorized to seek to recover the cost of relocating the residents from the owner and operator of the closed facility.

(4) The department and the city manager shall expedite any hearing or decision involving an emergency closing order issued under this section.

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

(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 3.** In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 4.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7<sup>th</sup> DAY OF August 2023.

COUNCILMAN FORD

COUNCILMAN STOLL

COUNCILMAN PARR

COUNCILMAN TOWNSEND

COUNCILMAN DUNAGIN



SECOND READING:

READ, PASSED AND ORDAINED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21<sup>st</sup> DAY OF August 2023.

COUNCILMAN FORD

COUNCILMAN STOLL

COUNCILMAN PARR

COUNCILMAN TOWNSEND

COUNCILMAN DUNAGIN

*Lori Klein Quinn*  
LORI KLEIN QUINN, Mayor  
City of Tomball

ATTEST:

*Tracylynn Garcia*  
TRACYLYNN GARCIA, City Secretary  
City of Tomball