

# Memorandum



CITY OF DALLAS

DATE May 15, 2015

TO The Honorable Mayor and Members of the City Council

SUBJECT Proposed Amendments to Boarding Home Facilities Ordinance

On Wednesday, May 20, 2015, the City Council will be briefed on Proposed Amendments to Boarding Home Facilities Ordinance. The briefing is attached for your review.

Please contact me if you have any questions.

A handwritten signature in blue ink, appearing to read 'Joey Zapata'.

Joey Zapata  
Assistant City Manager

## Attachment

c: A.C. Gonzalez, City Manager  
Warren M.S. Ernst, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Ryan S. Evans, First Assistant City Manager

Eric D. Campbell, Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Mark McDaniel, Assistant City Manager  
Jeanne Chipperfield, Chief Financial Officer  
Sana Syed, Public Information Officer  
Elsa Cantu, Assistant to the City Manager – Mayor & Council

# Proposed Amendments to Boarding Home Facilities Ordinance

Presented to the  
City Council  
May 20, 2015



# Purpose of Briefing

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- Review proposed amendments to strengthen enforcement and improve effectiveness of Chapter 8A: Boarding Home Facilities

# Boarding Home Facilities Ordinance

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- Chapter 8A of the Dallas City Code was adopted by City Council on June 27, 2012
  - Took effect on October 1, 2012
  
- Housing Committee discussed changes to Chapter 8A on January 6, 2014

# Amendments Recommended in 2014

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- The Housing Committee recommended amending the ordinance in several ways, including:
  - Adding deadline for completing applications
  - Requiring letter of authorization from property owner
  - Modifying zoning verification letter requirement
  - Amending select conflict of interests provisions
  - Altering definitions of “BHF” and “licensee”

# Amendments Recommended in 2014

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- The Housing Committee recommended amending the ordinance in several ways, including (cont.):
  - Toughening enforcement against BHF's that fail to apply for a license
  - Amending various sections to better address privacy concerns regarding disability-related information
  - Clarifying application's criminal background check requirement for employees
  - Reducing lifetime ban on potential residents with certain drug convictions

# Amendments Recommended in 2015

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- ❑ On January 20, 2015, Housing Committee discussed additional changes and voted to take draft proposed changes to full Council for consideration
  - Summary of proposed changes
    - ❑ Clarify and add definitions
    - ❑ Clarify and tighten application process
    - ❑ Strengthen requirements related to money management
    - ❑ Modify reasonable accommodation requirements
    - ❑ Clarify authority and process for appeals to the Permit & License Appeal Board
    - ❑ Strengthen criminal history requirements
    - ❑ Enhance enforcement abilities
  - Details available in Appendix, pp. 23 - 45

# New Proposed Amendments

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- Since the last Housing Committee briefing, new proposed amendments have come from:
  - New problematic situations arising
  - New feedback received from Dallas Fire-Rescue and third-party stakeholders
  - Other cities passing BHF ordinances with new or creative provisions to strengthen enforcement



# New Proposed Amendments

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- New amendments for consideration
  - Incorporate Chapter 27 minimum housing standards
  - Enhance relocation assistance for residents if BHR license is revoked
  - Prohibit acts of abuse, neglect, and exploitation
  - Change representative payee provisions to further protect residents
  - Add new 10-year disqualifying criminal convictions
  - Alter registration requirements and evaluations for sex offenders
  
- Details available in Appendix, pp. 46 - 53

# Next Steps

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- ❑ Consider ordinance amendments at May 27, 2015 City Council Meeting
- ❑ Implement revised ordinance
- ❑ Consider amendment to handicapped group dwelling unit definition
- ❑ Continue application review and/or inspections for 65 facilities in process
- ❑ Continue ordinance enforcement actions

# Appendix



# Boarding Home Facilities Ordinance

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

# Definition of “Boarding Home Facility (BHF)”

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

# Implementation Actions to Date

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## □ October 2012

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

## □ November 2012

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

# Implementation Actions to Date

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- ❑ December/January 2013
  - 226 notices issued to previously identified facilities to initiate the licensing process
- ❑ Spring 2013
  - Follow-up notices sent to 88 non-responsive facilities
  - Determined that the ordinance did not apply to a number of these facilities
    - ❑ Facilities providing personal care services, licensed by the State, less than 3 residents, etc.
  - On-site inspections revealed 158 facilities in operation that are required to adhere to the ordinance
- ❑ February - May 2015
  - Additional on-site inspections to date have revealed 36 more facilities in operation

# Results to Date

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- Current status of 194 identified BHF's
  - 61 facilities have voluntarily closed and 1 application has been denied, reducing the number of identified BHF's to 132
  - 66 facilities have been licensed to date
  - 65 facilities have submitted licensing applications and are in various stages of review and/or inspections (applications are pending)
  - 1 temporary restraining order (TRO) has been obtained
- A total of 123 facilities were inspected but found not to be BHF's



# Results to Date

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- ❑ 1,270 inspections and re-inspections have been conducted
- ❑ 60 Citations have been issued
  - 43 Operating without a license
  - 2 Electrical hazard (exposed wiring)
  - 2 Plumbing violations (leaky faucets, clogged drains)
  - 1 Illegal fence
  - 2 No building permit
  - 3 Structure not weather/water tight (leaky roof, weather stripping)
  - 6 Failure to protect exterior surface (peeling paint, exposed wood)
  - 1 Failure to register rental property

# Before and After Pictures of Violations

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Mattresses Infested with Bed Bugs



New Mattresses and Supportive Springs Provided After Extermination



# Before and After Pictures of Violations

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Evidence of Bed Bug Infestation on Walls



Interior Walls Painted after Bed Bug Extermination



# Before and After Pictures of Violations

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Electrical Violation



Electrical Violation Abated



# Before and After Pictures of Violations

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Illegal Outside Storage, Litter and Substandard Structure



Illegal Outside Storage, Litter and Substandard Structure Abated



# Before and After Pictures of Violations

Illegal Outside Storage



Violation Abated - Mattresses Put Out for Bulk Trash Pick Up



# BHF Licensing Overview

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

# BHF Licensing Overview

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



# BHF Licensing Overview

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

# Other Notable BHF Provisions

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

# Outline of Proposed Amendments

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

# Definitions

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Amend definitions for:

- ❑ **“Boarding Home Facility”** – delete reference to Sec. 8A-5 exemptions to clarify burden of proof
- ❑ **“Conviction”** – include deferred adjudication
- ❑ **“Employee”** - include people receiving non-monetary forms of compensation
- ❑ **“Good neighbor agreement”** – reconcile potential conflict with language in suspension and revocation sections

# Definitions

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Amend definitions for:

- **“Injury, Incident, or Unusual Accident”** – limit to events that occur at BHF’s premises or under licensee’s supervision
  
- **“Licensee”**
  - Include applicants to increase enforcement opportunities
  - Add threshold of minimum ownership interest
  - Add individuals who exercise *de facto* control over a BHF
  - Add directors and board members of entity owning or operating a BHF

# Definitions

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Amend definitions for:

- **“Operator”** – expand to include anyone exerting control over a BHF and include specific examples
  
- **“Owner”**
  - Include sole proprietors and non-profit entities
  - Add a threshold of minimum ownership interest

# Definitions

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Add definitions for:

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

# Application Process

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- Threshold issue: exemptions
  - Address issue of pending applications for State licenses
  - Detail City's enforcement options when person claiming religious exemption fails to comply with safety, sanitary, and/or quarantine laws
  
- Require proof of authorization by the property owner to use property as a BHF



# Application Process

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- ❑ Require contact information, copy of ID, and criminal background checks for volunteers
- ❑ Amend zoning verification letter requirement to address different types of uses
- ❑ “Pending application” safe harbor provision
  - ❑ Add deadline to complete application after notification of deficiencies
  - ❑ Limit solely to offense of owning or operating a BHF without a license

# Application Process

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- ❑ Denial of BHF license applications
  - ❑ Address failure to provide or disclose all required information and documents
  - ❑ Add volunteer's failure to meet criminal history qualifications
  - ❑ Failure to pay ad valorem taxes, fees, fines, and penalties:
    - Tie to specific location seeking the BHF license
    - Target delinquency rather than amount "owed"

# Application Process

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

# Monetary Issues

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- ❑ Require that licensee keep financial records when assisting a resident with general money management
- ❑ Amend “representative payee” provisions since the Social Security Administration—not the resident—selects the representative payee

# Reasonable Accommodations

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

# Permit & License Appeal Board

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

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

# Permit & License Appeal Board

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

# Permit & License Appeal Board

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



# Criminal History Issues

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

# Criminal History Issues

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

# Criminal History Issues

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- ❑ Require criminal background checks for volunteers
- ❑ Clarify criminal background check requirements for employees
- ❑ Require criminal background checks for other states in which BHF owners, operators, employees, and volunteers previously lived
- ❑ State that pending appeal of conviction has no effect on the criminal history disqualification

# Criminal History Issues

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- ❑ Require applicant or licensee to notify City when any new criminal convictions or charges are brought against BHF owners, operators, employees, or volunteers
- ❑ Alter psycho-sexual evaluation requirements for sex offenders to better reflect current actuarial risk assessment measures
- ❑ Reduce lifetime ban on potential residents with certain drug convictions to match 10-year ban for owners, operators, and employees

# Enforcement

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- ❑ Clarify that persons owning, operating, or working at unlicensed BHF's may be prosecuted to the same extent as licensees for violations of Chapter 8A
- ❑ Add minimum fines
  - ❑ Baseline minimum fines
  - ❑ Increased minimum fines for subsequent offenses
- ❑ Enable director to suspend or revoke license if possession, use, or sale of controlled substances occurs at a BHF

# Enforcement

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

# Miscellaneous

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- Amend conflict of interests provisions
  - Ordinance currently prohibits owners/operators from employing residents outside of BHF
    - May limit residents' ability to earn income and secure housing
    - Allow residents to work on-site or off-site in exchange for rent
    - Add provisions to protect residents choosing this option

# Miscellaneous

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



# Miscellaneous

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

# Supplemental Ideas for New Amendments

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- Since the Housing Committee briefings, new problematic situations have arisen, additional feedback from DFR and third-party stakeholders has been received, and other cities have passed BHF ordinances with new or creative provisions to strengthen enforcement.

# Supplemental Ideas for New Amendments

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- ❑ Add bond requirement for licensees who are representative payees or assist residents with general money management
- ❑ Specifically incorporate Chapter 27's minimum housing standards
- ❑ Require written approval from the fire code official for doors, windows, emergency escape and rescue openings that do not comply with Chapter 8A's requirements

# Supplemental Ideas for New Amendments

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- ❑ Allow Code to relocate residents and seek to recover relocation costs when a BHF license is revoked
- ❑ Require list of residents to be provided at time of license suspension
- ❑ Prohibit the operation of a BHF that results in illegal or nuisance activities such as illegal drug activity, harassment of passers-by, public urination, theft, assault, vandalism, littering, loud noise, etc.
- ❑ Deem date of delivery of director's notices to be actual receipt or 3 days after mailing

# Supplemental Ideas for New Amendments

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- Include general prohibition on acts of abuse, neglect, and exploitation at a BHF or by licensee, employee, or volunteer
  - Also specifically prohibit:
    - Referral fees/kickbacks for placement of residents
    - Coercive practices involving residents' food stamps
    - Coercive practices involving residents' disability checks

# Supplemental Ideas for New Amendments

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- Change representative payee provisions to further protect residents
  - Require licensees, employees, and volunteers to:
    - Immediately cease acting as representative payee once resident moves out or no longer wants the licensee, employee, or volunteer to be his or her representative payee
    - Document termination of role as representative payee and any actions taken to ensure that the Social Security Administration recognizes this termination

# Supplemental Ideas for New Amendments

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- Add new 10-year disqualifying criminal convictions:
  - Delivery of marijuana (felony)
  - Possession or transport of certain chemicals with intent to manufacture controlled substance (felony)
  - Trafficking of persons
  - Assault on public servant

# Supplemental Ideas for New Amendments

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- Additional sex offender issues:
  - Slightly alter registration requirement
    - Ordinance currently requires licensees to determine if a resident has been convicted of an offense requiring registration with a sex offender registry
      - State law, not licensee, determines whether an offense triggers a registration obligation
    - Instead, require licensees to ensure that residents who are sex offenders maintain registration with the proper authorities



# Supplemental Ideas for New Amendments

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- Additional sex offender issues:
  - Psycho-sexual evaluations
    - Change credential requirements
      - Require evaluation to be done by a Licensed Sex Offender Treatment Provider (“LSOTP”) instead of licensed psychiatrist or person with a Ph.D. in psychology
    - Require letter from LSOTP summarizing risk assessment instead of full psycho-sexual evaluation report
    - Accept former LSOTP’s risk assessment to reduce costs but require new psycho-sexual evaluation if risk assessment is more than 3 years old