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CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2013-__

AN ORDINANCE AMENDING CHAPTER 30 "BUSINESSES" OF THE CITY'S CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE I "GROUP HOMES AND BOARDING HOME FACILITIES"; ESTABLISHING THE REGISTRATION OF GROUP HOMES AND THE PERMITTING AND INSPECTION OF BOARDING HOME FACILITIES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES NOT TO EXCEED $2,000.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, in response to a study concerning unregulated board home facilities in Texas, the State Legislature enacted H.B. 216 in 2009, which is now codified in Chapter 260 of the Texas Health and Safety Code; and

WHEREAS, Chapter 260 authorizes, but does not require, municipalities to require boarding home facilities to obtain a permit and comply with model standards; and

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

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

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

WHEREAS, City Council has considered the issue of the regulation of group homes and boarding home facilities in several public meetings, including a workshop meeting which was dedicated to this issue and where citizens and operators of such homes were given an opportunity to directly address Council; and

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

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WHEREAS, City Council has determined that the regulation of boarding home facilities through this Ordinance, which includes the adoption of standards, the issuing of permits, the inspection of boarding home facilities, and the ability to enforce the provisions of the Ordinance is in the best interest of the public and will promote the public health, safety, and welfare of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Chapter 30 "Businesses" of the Code of Ordinance of the City of Kerrville, Texas, is amended by adding a new Article I "Group Homes and Boarding Homes Facilities" to add the language that is underlined (added) and deleting the language that is bracketed and stricken ([~~deleted~~]) as follows**:**

"Chapter 30 - BUSINESSES

ARTICLE I. GROUP HOMES AND BOARDING HOME FACILITIES

DIVISION 1. GENERAL

Sec. 30-1. Purpose of Article.

(a) The purpose of this article is for the City to maintain a record of group homes, which generally provide personal care services and are licensed by the State of Texas, and boarding home facilities. These records will enable the City to try to ensure adequate fire, police, or emergency response vehicles or patrols are available, to identify and facilitate appropriate emergency responses for residents who may require special assistance during an emergency, and to enable enforcement of the spacing requirement between boarding home facilities. These standards are implemented pursuant to the City's home-rule authority under Article XI, Section 5 of the Texas Constitution and the authority to license or permit lawful businesses subject to the City's police power granted by Sections 54.005 and 215.075 of the Texas Local Government Code.

(b) The City seeks and intends that this article is legally compliant with the Federal Fair Housing Amendments Act of 1988 ("FHAA"), the Americans with Disabilities Act of 1990 ("ADA"), and the Americans with Disabilities Amendments Act of 2008, and all other applicable state and federal legislation. It is the express intent of the City that this article is applied and enforced in a manner consistent with the FHAA, the ADA, and all other applicable federal and state legislation.

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Sec. 30-2. Definitions. The following definitions apply:

(a) *Boarding home facility* means an establishment, including a residence or dwelling, other than a hotel, that furnishes, in one or more buildings, lodging to three or more persons unrelated to the owner of the establishment by blood or marriage, and is not listed in Sec. 30-12.

(b) *Department* means the department designated by the City Manager enforce and administer this article.

(c) *Disability* means a disability as defined in 42 U.S.C. §12102.

(d) *Director* means the director of the department designated by the City Manager to enforce and administer this article and includes representatives, agents, or department employees designated by the director.

(e) *Habitable space* means space in a residence or dwelling used for living, sleeping, eating, or cooking and includes bathrooms, closets, and hallways but does not include garages, attics, or porches.

(f) *Operator* means the person in control of a boarding home facility.

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

(h) *Resident* means a person who is residing in a boarding home facility.

(i) *Sleeping room* means a room intended and used for sleeping purposes but does not include a kitchen, bathroom, hallway, or garage.

DIVISION 2. GROUP HOMES LICENSED BY THE STATE

Sec. 30-6. Registration. A person commits an offense if he owns or operates the following types of group homes without registering with the Department and providing proof of a valid state license, where applicable:

(a) Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code;

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(b) Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code;

(c) Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code;

(d) Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code;

(e) Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code;

(f) A person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation or its successor ("TDMHMR") and monitored by TDMHMR or its designated local authority in accordance with standards set by TDMHMR;

(g) A child-care facility as defined by Section 42.002 of the Texas Human Resources Code; and

(h) A family violence shelter as defined by Section 51.002 of the Texas Human Resources Code.

DIVISION 3. BOARDING HOME FACILITIES.

Sec. 30-11. Permit Required.

(a) A person commits an offense if he owns or operates a boarding home facility within the City without a valid permit under this division.

(b) It is a defense to prosecution under this division if a person operates a boarding home facility while an application under Sec. 30-13 is pending.

(c) It is a defense to prosecution under this division if a person operates a facility listed in Sec. 30-12.

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Sec. 30-12. Exemptions. This division does not apply to:

(a) Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code;

(b) Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code;

(c) Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code;

(d) Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code;

(e) Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code;

(f) A person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation or its successor ("TDMHMR") and monitored by TDMHMR or its designated local authority in accordance with standards set by TDMHMR;

(g) 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 and 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 including Sec. 30-28.

(h) A hotel as defined by Section 156.001 of the Texas Tax Code;

(i) A retirement community as defined by Section 11.18 of the Texas Tax Code;

(j) A monastery or convent;

(k) A child-care facility as defined by Section 42.002 of the Texas Human Resources Code

(l) A family violence shelter as defined by Section 51.002 of the Texas Resources Code; and

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(m) A sorority, fraternity house, or dormitory located on the property of an institution of higher education.

Sec. 30-13 Permit Application. To obtain an annual permit to operate a boarding home facility, a person must submit an application to the director on a form provided for that purpose and pay the permit fee. 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 submit the form. The application must contain the following information before it is considered complete and subject to review:

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

(b) The name, form of business, mailing address, email 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 mailing 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.

(c) The names, mailing addresses, email 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 mailing 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.

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

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

(f) The name, mailing address, email address, and telephone number of a person(s) to contact in an emergency.

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

(h) The maximum number of residents that will reside at the boarding home facility pursuant to Sec. 30-26.

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

(j) A zoning verification letter from the City stating that the proposed use of the property complies with the City's zoning regulations.

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

(l) A statement that, by filing this 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.

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

Sec. 30-14 Notification of Change of Information. The permit holder shall notify the director within 10 days after any material change in the information contained in the application for a permit to operate a boarding home facility, including any change in ownership.

Sec. 30-15 Permit Fees.

(a) The annual fee for a permit to operate a boarding home facility is as determined from time to time by City Council.

(b) The City will not refund a permit fee.

Sec. 30-16 Issuance or Denial of Permit.

(a) Upon payment of the fee and the submission of a complete application, the director shall issue an annual permit to operate a boarding home facility to the applicant, to include the number of authorized residents, if the director determines that:

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1) The applicant has complied with all requirements within this article for issuance of the permit;

2) The applicant, owner(s), operator(s), or employee(s) of the boarding home facility do not own or operate another permitted boarding home facility in the City for which the permit is currently suspended or has been revoked;

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

4) The proposed boarding home facility is not within one-half (1/2) mile of an existing boarding home facility. For purposes of this section, the measurement consists of a straight line without regard to intervening structures or objects, from the nearest property line of the lot or tract on which the proposed boarding home facility is located to the nearest property line of the existing registered or permitted boarding home facility, which requires separation. An exception exists where two or more boarding home facilities exist within one-half (1/2) mile of each other as of the adoption date of this Ordinance, such boarding home facilities are exempt from this distance requirement and may remain in operation, but only where they are issued a permit by the City and comply with the remaining requirements of this article. Following the issuance of a permit, should the permit be revoked or a boarding home facility cease operations for a period of time greater than 90 days, then the distance requirement will apply.

(b) If the director determines that the requirements of (a) have not been met and, if applicable, a variance under the article has been denied, the director shall deny the permit and notify the applicant in writing that the application is denied, the reason for denial, and a statement informing the applicant of the right to appeal.

Sec. 3-17.Variance from Distance Requirement.

(a) City Council may grant a variance to a proposed boarding home facility authorizing its location within one-half (1/2) mile of another boarding home facility.

(b) The variance procedure is as follows:

1) *Application*. When requesting a variance from the distance requirement found within Sec. 30-18, the applicant must submit the following information to the director:

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A. Completed variance request form with the following information:

i. The name and address of the applicant for the boarding home facility;

ii. The name and address of the boarding home facility subject to the request, if applicable;

iii. The name of the property owner for the property where the boarding home facility is proposed to be located;

iv. The name and address of the boarding home facility currently in existence which triggered the request for variance;

v. Notarized authorization of the property owner consenting to the variance request; and

vi. The payment of the applicable fee for the variance, which is nonrefundable.

B. Statement of justification as to how the variance meets the criteria in this section;

C. A site and floor plan showing the following information:

i. North arrow and scale;

ii. Boundaries of the property;

iii. Location and dimensions of all buildings and structures; and

iv. All fences, parking area, and landscape area.

(2) *Hearing*. The director shall set a date for a public hearing on the first available City Council agenda after the passage of 30 days from the date a complete variance application is received;

(3) *Notices*. No later than 10 days prior to the date of the hearing, the director shall send written notice of the variance request, to include the date and time of the scheduled public hearing, to:

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A. The property owner of the boarding home facility currently in existence which triggered the request for variance;

B. The applicant requesting the variance; and

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

(4) *Council Decision*.

A. In determining whether to grant a variance, City Council must find that the enforcement of the distance requirement is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a permit, does not serve its intended purpose, and/or is not effective or necessary.

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

(5) *Renewal and Transfer*. A variance granted pursuant to this subsection is valid for subsequent renewals of the permit for which a variance was sought.

(6) *Variance Violation*. The director may request the City Attorney to seek any and all remedies available at law and or equity to assure the conditions imposed on the granting of the variance are enforced.

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

Sec. 30-18. Suspension of Permit; Prohibition of New Residents.

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

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

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

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

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

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

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

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

Sec. 30-19. Revocation of Permit.

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

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

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

(3) A cause for suspension has occurred and the permit has already been suspended at least once within the preceding 12 months.

(b) In lieu of revoking a permit for a boarding home facility, the director, at his sole discretion, may enter into a compliance agreement with a permit holder if the director determines that the compliance agreement would eliminate the noncompliance that would

otherwise justify a revocation, result in prompt future inspections, and elevate one or more conditions at the boarding home facility to the standards of this article.

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

(d) If after 10 days from the date of the notice required in Subsection (c) was sent or delivered, whichever is later, the permit holder has not complied with required actions listed in the notice, the director shall revoke the permit and notify the permit holder in writing of the revocation. The notice must include the reason for the revocation and a statement informing the permit holder of the right of appeal.

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

Sec. 30-20. Appeals. If the director denies the issuance or renewal of a permit or suspends or revokes a permit issued under this article, the action is final unless the permit holder files a written appeal within 10 days of the director's action with City Council.

Sec. 30-21. Expiration and Renewal of Permit.

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

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

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

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Sec. 30-22. Non-transferability. A permit to operate a boarding home facility is not transferable to another location.

Sec. 30-23. Posting Requirements. The permit holder shall prominently and conspicuously post for display in a public area inside the boarding home facility that is readily available to residents, the operator, employees, and visitors the following:

(a) The permit issued under this article to operate the boarding home facility. The permit must be presented upon request to the director for examination; and

(b) A sign provided by the director specifying how complaints may be registered with the City and a copy of the most recent inspection report conducted by the director.

Sec. 30-24. Reasonable Accommodations.

(a) The City intends to ensure that all persons with a disability have equal opportunity to use and enjoy a dwelling by providing such persons with reasonable accommodations in rules, policies, practices, and procedures promulgated under this article consistent with the FHAA and the ADA, as amended.

(b) The method of submitting a request for reasonable accommodation is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

C. An individual with a record of such impairment.

(5) The section(s) of this article from which a reasonable accommodation is being requested; and

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

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

(e) Before making a decision, the director may request an inspection of the boarding home facility and the property on which it is located. If the director makes such a request, the applicant must make the property, the facility, and its records available for the inspection within 20 days after the date of the request or the application is automatically denied.

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

request, the applicant must provide the additional information to the director within 20 days after the date of the request or the application is automatically denied.

(g) All proposed decisions of the director must be submitted to the City Attorney for legal review to determine compliance with local, state, and federal laws and regulations.

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

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

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

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

(3) Whether the requested accommodation would impose an undue financial or administrative burden on the City;

(4) Whether the requested accommodation would require a fundamental alteration in the nature of City regulations;

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

(6) Whether a failure to grant an accommodation would result in the property having no economically viable use; and

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

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

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

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

(3) The director's receipt of all additional requested information.

(k) The director's written decision must explain in detail the basis of the decision and notify the applicant of the right to appeal the director's decision to the City Council.

Sec. 30-25. Inspection; Fees.

(a) *Required inspections.*

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

(2) The permit holder shall keep a current file of reports and other documentation on site that is needed to demonstrate compliance with applicable City ordinances and federal and state laws. Inspection records must be signed and dated by the appropriate authority and there may not be any pending corrective actions.

(3) The following inspections are required:

(A) Permitting inspection.

(B) Annual permitting inspection.

(C) Annual inspection for compliance with the fire code.

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

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

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

(c) *Consequences of refusal to inspect*. If the owner, occupant, or person in control denies permission to search any part of the interior or exterior of the structure or the

surrounding premises, the director may suspend or revoke the permit to operate a boarding home facility.

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

(d) *Re-inspection fee*. The permit holder shall pay the director a fee for each re-inspection after the first inspection that the violation is determined to be eliminated, including any other applicable fees from other departments.

Sec. 30-26 Residents. A boarding home facility operating within one of the following zoning districts, is subject to residency limitations as follows:

(a) *"R1" Single Family Zoning District, "R1-A" Residential Zoning District, "RC" Residential Cluster District*. The number of residents, including owners, operators, managers, and caregivers for a boarding home facility located within an "R1" Single Family Zoning District, "R1-A" Residential Zoning District, and "RC" Residential Cluster District may not exceed the lowest number of residents derived from the following, with any resulting fraction for the number of residents being rounded down:

1. 50% of the total gross square footage of the habitable space divided by 125 square feet;

2. Number of sleeping rooms, meeting the requirements found within Sec. 30-28, multiplied by 2 residents;

3. Number of bathrooms multiplied by 6 residents; or

4. Maximum of 8 residents.

(b) "*RT" Residential Transition Zoning District*. The number of residents, including owners, operators, managers, and caregivers for a boarding home facility located within an "RT" Residential Transition Zoning District may not exceed the lowest number of residents derived from the following, with any resulting fraction for the number of residents being rounded down:

1. 50% of the total gross square footage of the habitable space divided by 125 square feet;

2. Number of sleeping rooms, meeting the requirements found within Sec. 30-28, multiplied by 2 residents;

3. Number of bathrooms multiplied by 6 residents; or

4. Maximum of 10 residents.

(c) *"R-3", "RM" Residential Mix, Commercial, and Industrial Zoning Districts*. The number of residents, including owners, operators, managers, and caregivers for a boarding home facility located within an R3, RM, Commercial, or Industrial Zoning District may not exceed the lowest number of residents derived from the following, with any resulting fraction for the number of residents being rounded down:

1. 50% of the total gross square footage of the habitable space divided by 125 square feet;

2. Number of sleeping rooms, meeting the requirements found within Sec. 30-28, multiplied by 2 residents; or

3. Number of bathrooms in the single family residence multiplied by 6 residents.

Sec. 30-27 Parking. Off-street parking spaces must be provided as part of the use and operation of a boarding home facility. Required spaces must be located on the lot or tract for which the boarding home facility is located and must be provided as either improved surface parking areas or within garages. In addition, the number of spaces are based upon the zoning district in which the boarding home facility is located as follows, with any resulting fraction for the number of spaces being rounded up:

(a) *"R1" Single Family Zoning District, "R1-A" Residential Zoning District, "RC" Residential Cluster District*. The number of required off-street parking spaces for a boarding home facility located within an "R1" Single Family Zoning District, "R1-A" Residential Zoning District, or "RC" Residential Cluster District is derived by multiplying the number of residents authorized by Sec. 30-26 by 75%.

(b) *"RT" Residential Transition Zoning District*. The number of required off-street parking spaces for a boarding home facility located within a "RT" Residential Transition Zoning District is the greater number from either the regulations applied to this use within an such a district or the amount derived by multiplying the maximum number of residents authorized by Sec. 30-26 by 75%.

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(c) *"R-3", "RM" Residential Mix, Commercial, and Industrial Zoning Districts*. The number of required off-street parking spaces for a boarding home facility located within an "R-3", "RM" Residential Mix, Commercial, or Industrial Zoning Districts is the greater amount from either the regulations applied to this use within the applicable zoning district or the amount derived by multiplying the maximum number of residents authorized by Sec. 30-26 by 75%.

Sec. 30-28. Operational Standards. Each permit holder shall ensure the residents' health, safety, comfort, and protection from hazards and shall comply with the following:

(a) City zoning and building codes; federal, state, and City adopted fire codes and applicable standards; federal, state, and City health and safety codes; and federal and state accessibility regulations;

(b) Mobile homes may not be used as a boarding home facility;

(c) Each sleeping room must contain at least 150 square feet of floor space for each occupant, a built-in closet, and the access must not be solely through another sleeping room;

(d) A kitchen must be accessible to each resident without the need to travel through a sleeping room of another resident, contain a sink with at least two compartments for manual dishwashing, and contain an operational cooking stove with at least two working burners;

(e) Smoke alarms must be installed in compliance with the City's fire code to include installation within each sleeping room, immediately outside of each sleeping area, on each story of the building, and in any basement area;

(f) Maintain the residence or dwelling and its premises in a clean and sanitary condition;

(g) Pathways and stairways must remain unobstructed; and

(h) Operation of a boarding home facility may not result in illegal or nuisance activities, including disturbance of the peace, illegal drug activity, harassment of passers-by, public urination, theft, assault, vandalism, littering, illegal parking, loud noise, disorderly conduct, lewd conduct, or police detention and/or arrests.

Sec. 30-29 Emergency Precautions. The permit holder shall provide fire escapes and exits that are kept in good repair and accessible at all times in accordance with applicable fire codes, as amended.

Deleted: (d) No boarding home facility may have more than eight (8) occupants, including tenants, boarders, renters, employees, managers, or operators of the boarding home facility reside on the premises; ¶

Deleted: Residents of a boarding home facility may not keep for the use of residents, operators of the home, manager of the home, either on the premises of the home or on a public right-of-way adjacent to the home, motor vehicles in numbers that exceed the number of bedrooms in the home;

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Sec. 30-30 Violations; Penalty.

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

(b) An offense under this article is punishable by a fine not to exceed $2,000.00.

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

(d) If the director 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 director may order immediate closing of all or part of the facility. An order of immediate closure is effective immediately on providing written notice of the order to the owner or operator by facsimile, email, or hand-delivery. The order of closure of all or part of a boarding home facility is valid for 10 days after its effective date.

(e) The City Attorney may petition the appropriate court for civil penalties and for injunctive relief to restrain a continuing violation of the standards or permit requirements for a boarding home facility under this article if the violations create an immediate threat to the health or safety of the residents. In addition, the City Attorney may petition a court for civil penalties and for injunctive relief to restrain the continuing operation of a facility that is providing services inconsistent with those prescribed by this article and state law until such time as said facility becomes appropriately licensed by the State of Texas or meets the requirements to obtain a permit under this article.

(f) 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 TWO. The City Secretary is authorized and directed to send this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the new Article I of Chapter 30 as adopted herein, to correct any typographical errors, and to index, format, number, and letter the paragraphs to the existing Code, as appropriate.

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

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SECTION FOUR. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7, or its successor section, of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS ($2,000.00).

SECTION SIX. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

SECTION SEVEN. This Ordinance shall become effective immediately upon the expiration of 10 days following publication, as provided for by Section 3.07b. of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the ___ day of _____, A.D., 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ___ day of _____, A.D., 2013.

_____
Jack Pratt, Jr., Mayor

ATTEST:

_____
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

_____
Michael C. Hayes, City Attorney

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