

AN ORDINANCE 2007-12-13-1349

**SUPPORTING THE IMPLEMENTATION OF A STATE PILOT  
PROGRAM TO REGULATE BOARDING HOUSES, AS DEFINED BY  
THE STATE OF TEXAS.**

\* \* \* \* \*

**WHEREAS**, the Legislature of the State of Texas enacted House Bill (HB) 1168 calling for the development of a pilot program to adopt and enforce rules and regulations for boarding houses, as defined by the State; and

**WHEREAS**, boarding houses are defined by the State in HB 1168 as establishments that provide services, including community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the boarding house who are unrelated to the owner or proprietor of the establishment; and

**WHEREAS**, HB 1168 establishes that, subject to funding appropriation, the pilot program shall be implemented not later than August 1, 2008 in each municipality that has adopted an order or ordinance regulating the operation of boarding houses, as defined by the State; and

**WHEREAS**, HB 1168 became effective on September 1, 2007; and

**WHEREAS**, the City supports the Legislature's intent and purpose in regulating boarding houses, as defined by the State, and seeks implementation of the pilot program described in HB 1168 in the City of San Antonio; and

**WHEREAS**, the City finds that the municipal public purpose of promoting the health, safety and welfare of the elderly and disabled, as well as the community at large, are served by the regulation of adult care facilities in general, including boarding houses as defined by the Legislature in HB 1168; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City of San Antonio supports the State Legislature's intent and purpose in regulating boarding houses, as defined by the State in House Bill (HB) 1168, and seeks implementation of the pilot program described in HB 1168 in the City of San Antonio. A copy of HB 1168 is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** The City of San Antonio shall continue to enforce and apply the City Code of San Antonio, Texas, and its definitions, as it exists until it is amended to coordinate with the implemented pilot program.

**SECTION 3.** This ordinance shall be effective on and after December 23, 2007.


PASSED AND APPROVED this 13<sup>th</sup> day of December, 2007.



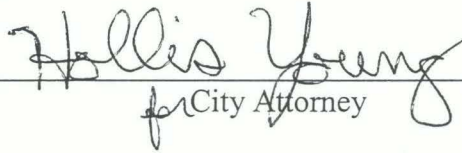
M A Y O R

PHIL HARDBERGER

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
for City Attorney

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AN ACT

relating to licensing and regulation by a state agency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 2005, Government Code, is amended to read as follows:

CHAPTER 2005. MISCELLANEOUS PROVISIONS RELATING TO STATE LICENSES  
AND PERMITS [~~PERMIT PROCESSING~~]

SECTION 2. Sections 2005.001 through 2005.007, Government Code, are designated as Subchapter A, Chapter 2005, Government Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. PERMIT PROCESSING

SECTION 3. Chapter 2005, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE

STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE INFORMATION

Sec. 2005.051. DEFINITIONS. In this subchapter:

(1) "License" means a license, certificate, registration, permit, or other authorization:

(A) that is issued by a licensing authority;

(B) that is subject before expiration to suspension, revocation, forfeiture, or termination by the issuing licensing authority; and

(C) that a person must obtain to:

(i) practice or engage in a particular business, occupation, or profession; or

(ii) engage in any other regulated activity, including hunting, fishing, or other recreational activity for which a license or permit is required.

(2) "Licensing authority" means an agency of the executive, legislative, or judicial branch of state government that

issues a license.

Sec. 2005.052. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE INFORMATION.

(a) A licensing authority may deny a person's application for a license or suspend or revoke a person's license if the licensing authority determines, after notice and hearing, that the person knowingly:

(1) made a false statement in connection with applying for or renewing the license;

(2) made a material misrepresentation to the licensing authority in connection with applying for or renewing the license;

(3) refused to provide information requested by the licensing authority; or

(4) failed to provide all of the person's criminal history information in response to the licensing authority's request for the information.

(b) A denial, suspension, or revocation by a licensing



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authority under this section is governed by the administrative  
procedures that apply to other disciplinary actions taken by the  
licensing authority.

Sec. 2005.053. CRIMINAL PROSECUTION. A person who knowingly  
makes a false statement in connection with applying for or renewing  
a license may be subject to criminal prosecution under Section  
37.10, Penal Code.

SECTION 4. Section 2005.001, Government Code, is amended to  
read as follows:

Sec. 2005.001. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Permit" means an authorization by a license,  
certificate, registration, or other form that is required by law or  
state agency rules to engage in a particular business.

(2) "State agency" means a department, board, bureau,  
commission, division, office, council, or other agency of the  
state.

SECTION 5. Section 2005.002, Government Code, is amended to

read as follows:

Sec. 2005.002. EXCEPTIONS. This subchapter [~~chapter~~] does not apply to a permit:

(1) for which an agency's median time during the preceding calendar year for processing a permit application from receipt of the initial application to the final permit decision did not exceed seven days;

(2) issued in connection with any form of gaming or gambling; or

(3) issued under the Alcoholic Beverage Code.

SECTION 6. Section 2005.005, Government Code, is amended to read as follows:

Sec. 2005.005. DUTY OF HEAD OF AGENCY. The head of each state agency shall ensure that the agency complies with this subchapter [~~chapter~~].

SECTION 7. Section 2005.006(a), Government Code, is amended to read as follows:

(a) A state agency subject to this subchapter [~~chapter~~] shall establish by rule a complaint procedure through which a permit applicant can:

(1) complain directly to the chief administrator of the agency if the agency exceeds the established period for processing permits; and

(2) request a timely resolution of any dispute arising from the delay.

SECTION 8. Section 2005.007(b), Government Code, is amended to read as follows:

(b) The report must include:

(1) a statement of the periods the agency has adopted under this subchapter [~~chapter~~] for processing each type of permit it issues, specifying any changes the agency made since the last report;

(2) a statement of the minimum, maximum, and median times for processing each type of permit during the period since



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the last report from the date the agency receives the initial  
permit application to the final permit decision;

(3) a description of the complaint procedure required by  
Section 2005.006;

(4) a summary of the number and disposition of  
complaints received by the agency under Section 2005.006 since the  
last report; and

(5) a description of specific actions taken by the  
agency since the last report to simplify and improve its permit  
application, processing, and paperwork requirements.

SECTION 9. Section 247.045, Health and Safety Code, is  
amended by amending Subsections (d) and (e) and adding Subsections  
(h) and (i) to read as follows:

(d) The attorney general may institute and conduct a suit to  
collect a penalty and fees under this section at the request of the  
department. If the attorney general fails to notify the department  
~~[take action]~~ within 30 days of referral from the department that

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the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless ~~[the department or other state agency assesses and collects]~~ a penalty described under this chapter is assessed.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an

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obligation imposed under this section from an insurance policy,  
letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited  
partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power  
to vote at least 10 percent of any class of securities issued by  
the corporation, regardless of whether the power is of record or  
beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the  
partnership in which the individual or any other affiliate of the  
individual is a partner; and

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(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and

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(B) each owner who is a controlling individual; and  
(6) with respect to any other business entity, a  
controlling individual.

SECTION 10. (a) In this section:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Disabled person" has the meaning assigned by Section 48.002, Human Resources Code.

(3) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Boarding house" means an establishment that:

(A) provides services, including community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the boarding house



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who are unrelated to the owner or proprietor of the establishment;

(B) is not:

(i) required to be licensed under Chapter 142, 242, 246, 247, or 252, Health and Safety Code; or

(ii) exempt from licensing under Section 142.003(a)(19) or 247.004(4), Health and Safety Code; and

(C) is not a:

(i) child-care facility as defined by Section 42.002, Human Resources Code;

(ii) family violence center as defined by Section 51.002, Human Resources Code;

(iii) hotel as defined by Section 156.001, Tax Code;

(iv) retirement community;

(v) monastery or convent; or

(vi) sorority or fraternity house or other dormitory affiliated with an institution of higher education.

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(b) Subject to the appropriation of funds for the express purpose of implementing the pilot program described by this section, the executive commissioner by rule shall develop and implement a pilot program in each county or municipality described by Subsection (d) of this section. The pilot program must:

(1) require boarding houses to be licensed and inspected; and

(2) enforce rules and regulations for licensed boarding houses.

(c) In implementing the pilot program, the executive commissioner shall adopt rules and regulations for boarding houses that include:

(1) minimum standards to ensure the health and safety of residents of boarding houses, including fire safety requirements;

(2) a requirement that a boarding house may not allow an individual required to register under Chapter 62, Code of Criminal Procedure, to reside in the boarding house;

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(3) required disclosures by boarding houses;

(4) reporting requirements regarding resident deaths, injuries, or accidents; and

(5) administrative penalties for a boarding house of not less than \$100 or more than \$1,000 for each violation by a boarding house of a rule adopted or order issued under the pilot program.

(d) Subject to the appropriation of funds for the express purpose of implementing the pilot program described by this section, not later than August 1, 2008, the executive commissioner shall implement the pilot program in each county or municipality that has adopted an order or ordinance regulating the operation of boarding houses.

(e) Not later than January 1, 2009, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each house and senate standing committee having jurisdiction over adult protective services. The

report must include:

(1) if the pilot program has been developed and implemented:

(A) the number of:

(i) boarding houses licensed through the pilot program;

(ii) violations by boarding houses of rules adopted under the pilot program; and

(iii) investigations of boarding houses licensed under the pilot program related to alleged abuse, neglect, or exploitation of a resident;

(B) a description of any penalties against a boarding house licensed under the pilot program resulting from a department investigation; and

(C) a recommendation regarding the advisability of expanding the pilot program statewide; or

(2) if the pilot program has not been developed and

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implemented, a study and recommendations regarding the most effective method for regulating boarding houses, including recommendations on whether clarifying the authority of and granting additional authority to counties and municipalities to establish health and safety standards for boarding houses is recommended.

(f) This section expires September 1, 2011.

SECTION 11. Subchapter B, Chapter 2005, Government Code, as added by this Act, applies only to a statement, misrepresentation, or refusal made, in connection with applying for or renewing a license, on or after the effective date of this Act.

SECTION 12. The change in law made to Section 247.045, Health and Safety Code, by this Act applies only to a violation that occurs on or after the effective date of this Act. A violation occurs before the effective date of this Act if any element of the violation occurs before that date. A violation that occurs before the effective date of this Act is covered by the law in effect when the violation occurred, and the former law is continued in effect



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for that purpose.

SECTION 13. This Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1168 was passed by the House on May 11, 2007, by the following vote: Yeas 138, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1168 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1168 on May 28, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

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Chief Clerk of the House

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I certify that H.B. No. 1168 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1168 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor