



**NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**

Monday, June 23, 2014 - 7:00 PM

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Mayor Pro Tem James Daniels

PROCLAMATION: U12 RBI

CITIZENS' COMMENTS:

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.

CONSENT AGENDA:

Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.

- C1. Consider approval of minutes from the City Council Regular Meeting held June 9, 2014.
- C2. Consider a resolution approving a site plan for additional communication facilities to be installed by Sprint Spectrum Realty Company, L.P. on or near the water tower located at 1011 East Beltline Road and approving the terms and conditions of a second amendment to the license for communication facilities agreement for the purpose of allowing the construction, installation and maintenance of additional communication equipment and increasing the license fee to be paid to the City.
- C3. Consider an ordinance amending the Code of Ordinances by Amending Chapter 16, "Planning and Miscellaneous Development Regulations", providing for a new Article 16.04, "Flood Damage Prevention."

PUBLIC HEARING:

- 4. Conduct a public hearing and consider an ordinance amending the Code of Ordinance by amending Chapter 14 "Offenses and Additional Provisions" by amending Article 14.02, "Minors" by repealing and replacing with a new Division 2, "Curfew."

ACTION:

- 5. Consider an ordinance amending Chapter 8 titled "Building Regulations" by adding a new Article 8.18 titled "Boarding Home Facilities" setting forth regulations for boarding homes located within the city; providing definitions; providing licensing procedures, requirements, qualifications, and fees for boarding home facilities; providing for inspection of boarding home facilities; providing construction, maintenance, reporting

record-keeping, education, and care requirements for boarding home facilities; providing for criminal background history checks for the owners, operators, and employees of boarding home facilities; and providing food handler requirements for boarding home facilities.

6. Discuss and consider a resolution amending the Master Fee Schedule Article 4.000 Business Related Fees by adding Section 4.1200 Boarding Home Facilities Permit to provide for an annual operational permit.

EXECUTIVE SESSION:

7. The City Council shall convene into closed executive session pursuant to Section 551.071(a) and (b) to discuss and deliberate with the City Attorney the following pending matter in litigation, settlement and/or matters involving attorney-client privilege:
 - (a) Cause No. DC-13-10151; Healthspace Regions Lancaster, LLC v. City of Lancaster in the 191st Judicial District Court of Dallas County.
8. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

ADJOURNMENT

EXECUTIVE SESSION: The Council reserves the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the TEXAS GOVERNMENT CODE to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: The Municipal Center is wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 20, 2014, @ 12:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Sorangel O. Arenas
City Secretary

LANCASTER CITY COUNCIL

Item 1

Agenda Communication

June 23, 2014

Consider approval of minutes from the City Council Regular Meeting held June 9, 2014.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held June 9, 2014

Submitted by:
Sorangel O. Arenas, City Secretary

MINUTES

LANCASTER CITY COUNCIL MEETING OF JUNE 9, 2014

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on June 9, 2014 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Stanley Jaglowski
Carol Strain-Burk
Marco Mejia
Mayor Pro Tem James Daniels
Deputy Mayor Pro Tem LaShonjia Harris
Nina Morris

City Staff Present:

Opal Mauldin Robertson, City Manager
Rona Stringfellow, Assistant City Manager
Cynthia Pearson, Finance Director
Baron Sauls, Assistant Finance Director
Cheryl Wilson, Police Chief
Thomas Griffith, Fire Chief
Sean Johnson, Managing Director of Quality of Life and Cultural Services
Dori Lee, Human Resources Director
Jim Brewer, Director Public Works
Robert E. Hager, City Attorney
Andy Waits, Water/Wastewater Superintendent
Angie Arenas, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on June 9, 2014.

Invocation:

John Richardson with Ministerial Alliance gave the invocation.

Pledge of Allegiance:

Mayor Marcus E. Knight led the pledge of allegiance.

Proclamation:

Mayor Knight read and presented a proclamation declaring June 9, 2014 as Texas Rangers Day citywide. Sean Johnson Director of Quality of Life and Cultural Services presented a poster with a photo collage of Lancaster's youth baseball participants along with their signatures to a Texas Rangers Foundation representative. The Texas Rangers Foundation representative thanked the City and Council for their support and stated that The Texas Rangers are a team that desires to be a representation of their community. Director Johnson also presented City Council with individual autographed posters of Lancaster's youth baseball participants.

Mayor Knight read a proclamation proclaiming June 14, 2014 as Juneteenth Celebration Day in the City of Lancaster and invited everyone to attend the celebration on Saturday, June 14 from 5 to 9 p.m. at Armstrong Park in Duncanville.

Mayor Knight read a proclamation acknowledging the Lancaster I.S.D. Girls Track Team and their accomplishments. Coach Beverly Humphrey accepted the proclamation and thanked the City and City Council for their acknowledgement and support.

Citizens Comments:

Joe Metcalfe, 508 E. Pleasant Run, Suite 102, speaking on item C5 stated that he was protesting the basis for award on the contract for mowing services. Mr. Metcalfe shared that his company has been in Lancaster for 3 years and since has had 5 contracts with the City. Mr. Metcalfe claims that there was no transparency by staff in making the recommendation for the contract and asks that item C5 be tabled until justification can be given.

Pastor John Richardson, Lancaster Interdenominational Ministerial Alliance, 1004 N. Jefferson, shared that Cedar Valley College was holding a Sustainability Conference Friday, June 13th from 8 a.m. to 5 p.m. and extended an invitation to the community and Council. The conference is a community based effort to finding ways to improve the quality of life through various programs.

Mayor Knight announced that additional information was necessary regarding consent item C5 and item C5 is being pulled from consent agenda.

Consent Agenda:

City Secretary Arenas read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held May 19, 2014.**
- C2. Consider a resolution approving the terms and conditions of an Interlocal Agreement by and between the City of Seagoville, Texas, and the City of Lancaster for the cooperative purchase of goods and services.**
- C3. Consider a resolution authorizing an agreement with Automatic Data Processing (ADP) for the procurement of services for payroll processing through an interlocal agreement with The Cooperative Purchasing Network (TCPN).**
- C4. Consider a resolution approving the terms and conditions of a Cooperative Agreement by and between the City of Lancaster and Dallas County Department of Planning and Development to provide Community Development Block Grant (CDBG) and HOME Program funding.**
- C6. Consider a resolution awarding RFP 2014-161 for an annual contract for litter removal services within City of Lancaster rights- of- way and street medians to Good Earth Corporation.**
- C7. Consider a resolution awarding RFP 2014-159 for an annual contract for mowing services at the Lancaster Regional Airport and specified rights-of-way, street medians, HMGP acquired City owned lots, and drainage areas to JBa Land Management LLC.**

Councilmember Strain-Burk pulled items C6 and C7 from consent agenda.

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro Tem Daniels, to approve consent items C1 – C4. The vote was cast 7 for, 0 against.

- C5. Consider a resolution awarding RFP2014-155 for annual contract of mowing services for code enforcement purposes to Dawn of a New Lawn II.**

Assistant City Manager Rona Stringfellow stated the contract for mowing and cleaning of properties in violation of code and compliance expired on the 31st of May and was a temporary contract. Assistant City Manager Stringfellow stated that this RFP is an annual contract with

renewal options which gives staff the opportunity to do evaluations and assure contract compliance.

Mr. Metcalfe with Metcalfe Grounds Maintenance submitted a protest prior to the meeting and Assistant City Manager Stringfellow read the protest into the record.

**METCALFE GROUNDS MAINTENANCE
508 E. Pleasant Run, Suite 102
Lancaster Texas 75146**

June 9, 2014

SENT VIA EMAIL AND HAND CARRIED

City of Lancaster Texas
ATTN: Sorangel Arenas, City Secretary
211 N. Henry Street
Lancaster, Texas 75146

To whom it may concern,

The purpose of this letter is to Protest the award of the Code Compliance Mowing Contract, Bid Number 2014-155.

Under Part 32. BID PROTESTS, it states that protests related to staff recommendations may be directed to the City Secretary PRIOR to Council Award. The Council agenda for this evening has a Resolution to vote on the award of the Contract.

The basis for our protest are as follows:

This Contract is a Best Value Procurement. The Evaluation Criteria provides a listing of criteria to be considered in evaluating the ability of firms interested in providing the services specified and is graded on a total point system of 100 as specified:

Responsiveness to the Proposal	10 points
Pre-Bid Meeting Attendance	10 points
Experience/References	40 points
Price	40 points

Using the Evaluation Criteria set forth in the contract, our company should be given a score of 100 and therefore be Awarded the Code Contract. The following will detail how we come to this conclusion:

Our company provided the Responsiveness to the Proposal through the City's e-procurement system as specified therefore we should have received the maximum 10 points.

Our company attended the Pre-Bid Meeting therefore we should have received the maximum 10 points.

Our company has met the requirement under Experience/References by providing services similar to those specified in the Code Contract of at least three (3) clients in the past five (5) years. Our experience included references with the cities of Grand Prairie and Glenn Heights as well as the Veterans Affairs Administration. We have also performed three (3) contracts for mowing services with the City of Lancaster in the past three (3) years for Right of Way Mowing including a 60 day contract that ended on May 31, 2014. In addition, we have been awarded two (2) contracts at the Lancaster Municipal Airport in the past two (2) years. Taking into consideration that our company has performed multiple contracts with the city of Lancaster and has never been assessed any monetary penalties and/or fines for non-performance as stated under the PENALTIES section of the Contract we should have received the maximum total of 40 points.

Under the requirements for PRICE our company bid \$108,150.00 for services and the proposed Awardee, Lawns by Dawn II, bid \$110,720.00 thereby giving us the maximum total of 40 points.

It is our belief that our company is entitled to receive Award of the Code Compliance contract based on the Evaluation Criteria set forth in the contract. The city has not been transparent in showing justification for non-Award.

This is a Timely Protest.

Sincerely,



Joseph Metcalfe, Partner
Metcalfe Grounds Maintenance

Assistant City Manager Stringfellow stated that staff would like to take the opportunity to provide some insight based on that protest. By December 31, 2013 staff had a number of documented performance issues with the current contractor at the time, Metcalfe Grounds Maintenance. Acting on advice given by the City Attorney, staff terminated the contract with the current contractor. The contractor was made aware of the performance issues prior to the termination of contract by both City Manager Opal Mauldin-Robertson and City Attorney Robert Hager.

Staff made the determination that Dawn of a New Lawn II was the recommended contractor and feels certain that they followed all of the criteria required in evaluating the bids.

Councilmember Mejia recused himself from the vote due to knowing Mr. Metcalfe personally and excused himself from chambers. Councilmember Jaglowski asked if the violations were brought to the contractor's attention and Assistant City Manager Stringfellow confirmed they were. Councilmember Jaglowski asked if there was repetitiveness in the violations.

Deputy Mayor Pro Tem Harris asked if there was documentation for the discussions held between staff and the contractor regarding the violations, Director Johnson confirmed. Director Johnson stated that there were numerous emails and photographs and also shared the Parks Superintendent spent between 15-20 hours weekly managing this contract.

Mayor Knight clarifies that staff had taken into consideration the history of noncompliance with this particular contractor. Assistant City Manager Stringfellow stated that these concerns would fall under the "experience/references" portion along with the consideration that the city was a reference for Metcalfe Ground Maintenance and their performance did not meet the city's expectations.

MOTION: Councilmember Morris made a motion, seconded by Councilmember Strain-Burk, to approve consent item C5 as presented. The vote was cast 5 for, 1 against [Daniels][Mejia Recused].

Councilmember Strain-Burk stated that she pulled this item in order to give citizens the opportunity to gather more information and help them understand that this moves towards expanding the goals council has made for the city.

Mayor Knight shared that this action would improve the appearance of the city but also that is unfortunate to spend such a great amount of money because people will not utilize proper disposal of litter. These funds could certainly be better utilized in the city.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Morris, to approve consent item C6 as presented. The vote was cast 7 for, 0 against.

Councilmember Strain-Burk shared that she pulled this item in order to express that these contracts are components in improving appearance and cleanliness in the city.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Morris, to approve consent item C6 as presented. The vote was cast 7 for, 0 against.

8. Consider an Ordinance Amending Chapter 6 of the Lancaster Code of Ordinances to Add Article 6.12, "Single Family Rental Property Regulations", Sections 6.12.001 Through 6.12.009; Providing for Definitions; Providing the Powers and Duties of the Building Official as the Designated Administrator; Providing for the Establishment of a Rental Property Registration Fee; Proving a Penalty of Fine not to exceed Five Hundred Dollars (\$500).

Assistant City Manager Stringfellow stated that upon request from Deputy Mayor Pro Tem Harris this item was brought forth to council during work sessions held on March 17th and April 21st of this year. Council requested that a Single Rental Property Registration be brought forward. Assistant City Manager Stringfellow stated that there would be a companion item should the ordinance be approved to make changes to the master fee schedule.

Councilmember Strain-Burk expressed concern with the fact that there seems to be no penalties for noncompliance and shared that 10% of the housing stock in the community are renters.

Water/Wastewater Superintendent Andy Waits stated that there is an indication of renters through the presentation of leases for utility services and in turn those properties that are not registered will be liable to fees not to exceed \$500.

Assistant City Manager Stringfellow stated that the once fines are imposed they will go through the city's municipal court system. Assistant City Manager Stringfellow also shared that there would be a strong public information campaign through the city's social media outlets and standard mail communication to inform the citizens.

MOTION: Deputy Mayor Pro Tem Harris made a motion, seconded by Councilmember Morris, to approve an ordinance amending Chapter 6.12, "Single Family Rental Property Regulations", Sections 6.12.001 through 6.12.009. The vote was cast 7 for, 0 against.

9. Discuss and consider a resolution amending the Master Fee Schedule, Article 3.000 Building Related Fees to provide an annual inspection fee for Single Family residential rental units.

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro Tem Daniels, to approve the resolution amending the Master Fee Schedule, Article 3.000 Building Fees. The vote was cast 7 for, 0 against.

10. **Consider an ordinance amending the Code of Ordinances by amending Chapter 22, by adopting Article 22.13 “Photographic Enforcement and Administrative Adjudication of School Bus Stop Arm Violations”, Sections 22.13.001 through 22.13.020 creating a civil offense for a school bus stop arm violation involving a camera-enforced school bus.**

City Manager Mauldin-Robertson stated that this item was a result of a request for policy made by Lancaster Independent School District and Dallas County Schools. Lancaster Independent School District has entered into an Interlocal Agreement with Dallas County Schools, which they will supply video recording equipment to capture video and photographic evidence of vehicles that do not stop when the stop arm of a bus is out. Dallas County Schools request that Council approve to make this violation a civil offense. City Manager Mauldin-Robertson stated that Dallas County Schools will administer the program and that the Chief of Police and the Administrator of Dallas County Schools are present to answer any questions. City Manager Mauldin-Robertson also shared that should the ordinance be approved a companion item would be presented to establish fees to the Master Fee Schedule in which the City of Lancaster would receive 12.5% of the monetary fees collected.

Councilmember Strain-Burk asked if this program was similar to a “red light camera.” The Dallas County Schools Administrator stated that it is similar in the sense that the violators will receive the citation in their mail and that they have their own police department who are authorized to administer citations in Texas. The Dallas County Schools Administrator also shared that the buses already have 8 cameras on the exterior and 3 cameras on the interior installed and upon approval the program can begin immediately.

Councilmember Strain-Burk asked what the penalty would be for repeat violators and if the Dallas County Schools Police department has the ability to issue warrants or make arrests. The Dallas County Administrator stated that the police department cannot issue warrants or make arrest but they have the ability to report to the violator’s credit report.

MOTION: Deputy Mayor Pro Tem Harris made a motion, seconded by Councilmember Morris, to approve an ordinance amending the Code of Ordinances by amending chapter 22, by adopting Article 22.13. “Photographic Enforcement and Administrative Adjudication of School Bus Stop Arm Violations.” The vote was cast 7 for, 0 against.

11. **Consider a resolution amending the Master Fee Schedule, Article 14.00 Police Department to provide fines, costs and fees for school bus stop arm violations.**

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Jaglowski, to approve the resolution amending the Master Fee Schedule, Article 14.00 Police Department. The vote was cast 7 for, 0 against.

At 8:15 p.m. the Council convened into closed Executive Session pursuant to:

Executive Session:

12. **The City Council shall convene into closed executive session pursuant to Section 551.071 (a) and (b) to discuss and deliberate with the City Attorney the following pending matter in litigation, settlement and/or matters involving attorney-client privilege:**

(a) **Cause No. DC-13-10151; Healthspace Regions Lancaster, LLC v. City of Lancaster in the 191st Judicial District Court of Dallas County.**

13. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

The City Council reconvened into open session at 8:31 p.m.

No action was taken following Executive Session.

MOTION: Councilmember Morris made a motion, seconded by Councilmember Jaglowski, to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 8:31 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
Agenda Communication
June 23, 2014

Item 2

Discuss and consider a resolution approving a site plan for additional communication facilities to be installed by Sprint Spectrum Realty Company, L.P. on or near the water tower located at 1011 East Beltline Road and approving the terms and conditions of a second amendment to the license for communication facilities agreement for the purpose of allowing the construction, installation and maintenance of additional communication equipment and increasing the license fee paid to the City.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Financially Sound City Government

Background

Spring Spectrum Realty Company, L.P. currently has a license agreement with the City for the location of certain communications equipment located at or near the water tower on East Beltline Road. The company is requesting to install new equipment and this requires an amendment to the license agreement and site plan.

Considerations

- **Operational** – The request is to replace current antennas and to provide space for additional structures on the water tower site. The Water Division of the Public Works Department will ensure compliance with the agreement.
- **Legal** – The City Attorney prepared and approved the resolution and license agreement.
- **Financial** – The City currently receives \$1983.75 and this amendment increases this annual amount to \$2283.75.
- **Public Information** – This item is being considered at regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the resolution as presented.
2. City Council may deny the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- License Agreement
- Site Plan

Submitted by:

Jim Brewer, Public Works Director
Andrew Waits, Water & Wastewater Superintendent

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A SITE PLAN FOR ADDITIONAL COMMUNICATION FACILITIES TO BE INSTALLED BY SPRINT SPECTRUM REALTY COMPANY, L.P. ON OR NEAR THE WATER TOWER LOCATED AT 1011 EAST BELTLINE ROAD, LANCASTER, TEXAS; APPROVING THE TERMS AND CONDITIONS OF A SECOND AMENDMENT TO THE LICENSE FOR COMMUNICATION FACILITIES AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS, AND SPRINT SPECTRUM REALTY COMPANY, L.P. FOR THE PURPOSE OF ALLOWING THE CONSTRUCTION, INSTALLATION, AND MAINTENANCE OF ADDITIONAL COMMUNICATION EQUIPMENT AND INCREASING THE LICENSE FEE TO BE PAID TO THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster, Texas and Sprint Spectrum Realty Company, L.P. (collectively, the “Parties”) previously entered into a certain License Communication Facilities Agreement dated June 9, 2003 to allow for the licensed use of a water tower located at 1011 East Beltline Road, Lancaster, Texas (the “Premises”) for the installation of communication facilities and equipment (the “License Agreement”); and,

WHEREAS, the Parties previously entered into a First Amendment to the License Agreement on August 20, 2012 (the “First Amendment”); and,

WHEREAS, Sprint Spectrum Realty Company, L.P. is requesting a license to install additional communications facilities and equipment on the Premises and has submitted a proposed site plan detailing the location of additional communication facilities and equipment to be installed by Sprint Spectrum Realty Company, L.P. on or near the Premises (the “Site Plan”); and,

WHEREAS the Parties desire to enter into a Second Amendment to the License Agreement (the “Second Amendment”) to allow Sprint Spectrum Realty Company, L.P. to add additional communication facilities and equipment to the Premises and to require Sprint Spectrum Realty Company, L.P. to pay an additional License Fee for the addition of said facilities and equipment; and,

WHEREAS, upon full review and consideration of the Site Plan and all matters related thereto, the City Council is of the opinion and finds that said Site Plan should be approved; and,

WHEREAS, upon full review and consideration of the Second Amendment and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Second Amendment on behalf of the City of Lancaster, Texas.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the Site Plan detailing the location of additional communication facilities and equipment to be installed by Sprint Spectrum Realty Company, L.P. on or near the water tower located at 1011 East Beltline Road, Lancaster, Texas, attached as Exhibit B-2 to the Second Amendment to the License for Communication Facilities Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. That the terms and conditions of the Second Amendment to the License for Communication Facilities Agreement, attached hereto as Exhibit "A", with Sprint Spectrum Realty Company, L.P., (the "Second Amendment") for the purpose of adding communication facilities and equipment to the Premises and requiring Sprint Spectrum Realty Company, L.P. to pay an additional License Fee for the addition of said facilities and equipment, are hereby approved.

SECTION 3. That the City Manager is hereby authorized to execute the Second Amendment on behalf of the City.

SECTION 4. This Resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Lancaster, Texas, this the 23rd day of June, 2014.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

SORANGEL O. ARENAS, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY

EXHIBIT "A"
SECOND AMENDMENT TO THE LICENSE FOR COMMUNICATION FACILITIES
AGREEMENT BETWEEN CITY OF LANCASTER AND
SPRINT SPECTRUM REALTY COMPANY, L.P.

**SECOND AMENDMENT TO
LICENSE FOR COMMUNICATION FACILITIES**

THIS Second Amendment to the License for Communications Facilities (“Second Amendment”) is entered into by and between Sprint Spectrum Realty Company, L.P., successor in interest to Sprint Spectrum, L.P. (“LICENSEE”) and City of Lancaster, Texas (“CITY”), a municipal corporation, (collectively the “Parties” or each a “Party”) acting by and through their authorized representatives.

WHEREAS, the Parties previously entered into that certain License Agreement dated June 9, 2003 (the “License Agreement”); and

WHEREAS, the Parties previously entered into a First Amendment to the License Agreement on August 20, 2012 (the “First Amendment”)

WHEREAS, the parties desire to amend the License Agreement to allow the Licensee to add additional Equipment to the water tower located at 1011 East Beltline Road, Lancaster, Texas as set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. That paragraph 2 (“Equipment”) of the License Agreement is hereby amended to add the following language at the end of paragraph 2, allowing LICENSEE to install additional equipment, to be depicted in Exhibit B-2, attached hereto, to read as follows:

“2. [...]Exhibit B-2 supplements Exhibit B and Exhibit B-1 to the Agreement, and shall not be deemed to supersede or otherwise modify Exhibit B, Exhibit B-1, or any part thereof except to the extent specifically set forth in Exhibit B-2. Upon full execution of this Amendment, Licensee is permitted to do all work necessary to prepare, maintain and alter the Site to install or otherwise modify the Facilities, all as more fully described and contemplated in Exhibit B-2, with prior City approval of construction and installation plans in cooperation with the manufacturer of the facility.”

2. That paragraph 10 (“Consideration”) of the License Agreement is hereby amended to add the following language at the end of paragraph 10, providing for an “Additional Equipment Fee” to be added to the rental payment, to read as follows:

“10. ... Effective thirty (30) days after the start of construction of the modification to the Premises to install new Equipment at the Premises reflected in Exhibit B-2 (“Equipment Date”), the License Fee of nineteen hundred eighty three dollars and seventy five cents (1983.75) (the License Fee as of June 1, 2014) shall increase by Three Hundred and No/100 Dollars (\$300.00) per year (the “Additional License Fee”), partial year to be prorated. The prorated Additional License Fee shall be paid by LICENSEE to CITY in a single payment

within thirty (30) days of the Equipment Date. The Additional License Fee shall be subject to the same escalations to which rent is subject in accordance with this Agreement.”

3. That paragraph 25 (“Entire Agreement”) of the License Agreement is hereby amended to read as follows:

“25. This Agreement, together with all Exhibits attached hereto and the Memorandum of Agreement attached, is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral or written agreement between the parties that in any matter relates to the subject matter of this Agreement.”

4. General Terms and Conditions.

(a) Except as hereby amended, all other provisions of the License Agreement and First Amendment will remain in full force and effect as originally written and the License Agreement and First Amendment are hereby confirmed as to all provisions contained therein. In the event of any conflict between the terms of this Second Amendment and the terms of the License Agreement and First Amendment, the Amendment shall control.

(b) All capitalized terms used in this Second Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the License Agreement.

(c) Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

(d) This Amendment shall become effective on the last date of execution hereof.

[Signature Page to Follow]

EXECUTED this ____ day of _____, 2014.

CITY:

CITY OF LANCASTER, TEXAS

By: _____
OPAL MAULDIN ROBERTSON,
CITY MANAGER

ATTEST:

SORANGEL O. ARENAS, CITY SECRETARY

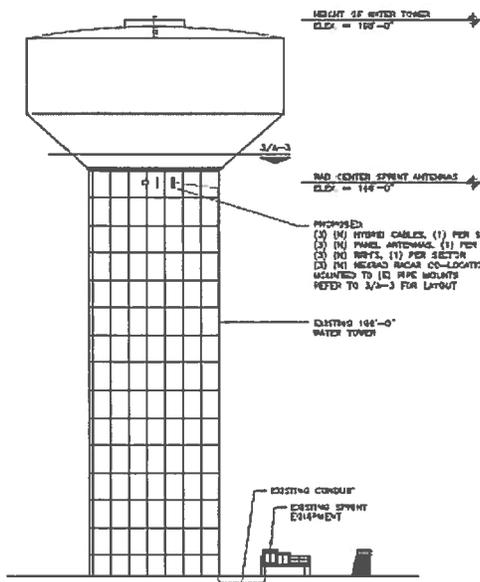
EXECUTED this ____ day of _____, 2014.

LICENSEE:

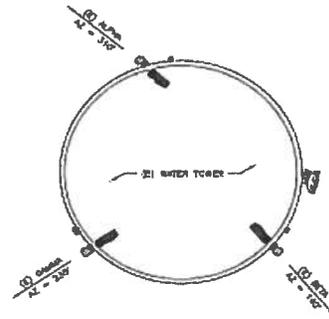
SPRINT SPECTRUM REALTY COMPANY, L.P.

By: _____
Name: _____
Title: _____

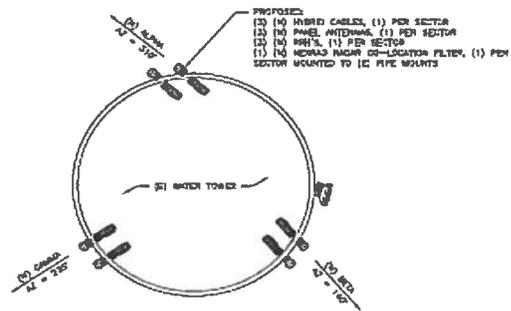
**EXHIBIT B-2 SITE PLAN
[TO BE ATTACHED]**



TOWER ELEVATION
SCALE: N.T.S.



2 EXISTING ANTENNA PLAN
SCALE: N.T.S.



3 PROPOSED ANTENNA PLAN
SCALE: N.T.S.

LANCASTER CITY COUNCIL

Item 3

Agenda Communication

June 23, 2014

Consider an ordinance amending the Code of Ordinances by Amending Chapter 16, “Planning and Miscellaneous Development Regulations”, providing for a new Article 16.04, “Flood Damage Prevention.”

This request supports the City Council 2013-2014 Policy Agenda.

**Goal: Healthy, Safe and Vibrant Neighborhoods
Sound Infrastructure**

Background

As a participating community in the National Flood Insurance Program (NFIP), the City of Lancaster is responsible for making sure that its floodplain management regulations meet or exceed the minimum requirements of the NFIP. By law, the Department of Homeland Security’s Federal Emergency Management Agency (FEMA) cannot offer flood insurance in communities that do not have regulations that meet or exceed these minimum requirements. These regulations are pursuant to Title 44 of the Code of Federal Regulations (44 CFR) Section 60.3 as well as in model ordinances developed by most States and by FEMA Regional offices.

The basis of the floodplain management regulations is the flood hazard data provided to the City by FEMA. FEMA identifies flood hazards nationwide and publishes and updates flood hazard data in support of the NFIP. Under Map Modernization, FEMA will be updating and modernizing the flood hazard maps for most communities. Flood hazard data was provided to the City in the form of a Flood Insurance Rate Map (FIRM) hereafter referred to as “flood map” and a Flood Insurance Study (FIS) hereafter referred to as the “flood study”.

The City will need to adopt the new or revised flood map and flood study as a result of the update to the FEMA firm map.

Considerations

- **Operational** – The Engineering Division oversees floodplain administration for the City. The identification of flood hazards serves many important purposes. Identifying flood hazards creates an awareness of the hazard, especially for those who live and work in flood-prone areas. Maps provide States and communities with the information needed for land use planning and to reduce flood risk to floodplain development and implement other health and safety requirements through codes and regulations to incorporate the new data and meet any additional requirements that result from any changes in the data, such as the designation of a floodway for the first time. The City’s floodplain management

regulations meet current state requirements and have been adopted through the ordinance process.

- **Legal** – The City Attorney has reviewed the model ordinance and approved it as to form. The City is establishing and adopting new regulations before the effective date of the flood map. Adoption of this ordinance will bring the City into compliance. If a community does not adopt new floodplain management regulations or amend its existing regulations before the effective date of the flood map, the community will be suspended from the NFIP.
- **Financial** – There is no financial cost to the city for the adoption of the ordinance. In fact, it will provide financial incentives to residents as an on-going participant in the NFIP. The City currently participates in the NFIP, should the City be suspended from the NFIP, the following sanctions would apply:
 - Property owners will not be able to purchase NFIP flood insurance policies and existing policies will not be renewed.
 - Federal grants or loans for development will not be available in identified flood hazard areas under programs administered by Federal agencies such as the Department of Housing and Urban Development, Environmental Protection Agency, and Small Business Administration.
 - Federal disaster assistance will not be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
 - Federal mortgage insurance or loan guarantees will not be provided in identified flood hazard areas such as those written by the Federal Housing Administration and the Department Veteran Affairs.
 - Federally insured or regulated lending institutions, such as banks and credit unions, are allowed to make conventional loans for insurable buildings in flood hazard areas of non-participating communities. However, the lender must notify applicants that the property is in a flood hazard area and that the property is not eligible for Federal disaster assistance. Some lenders may voluntarily choose not to make these loans.
- **Public Information** – This item is being considered at regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may adopt the ordinance as presented
2. City Council may deny the ordinance. It should be noted that the City would be suspended from the NFIP and the above listed sanctions would apply to our community.

Recommendation

Staff recommends adoption of the ordinance as presented.

Attachments

- Ordinance
-

Submitted by:
Rona Stringfellow, Assistant City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 16 , PLANNING AND MISCELLANEOUS DEVELOPMENT REGULATIONS", PROVIDING FOR A NEW ARTICLE 16.04, "FLOOD DAMAGE PREVENTION"; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster has determined that it is necessary to amend the City's Code of Ordinances to include those provisions required to be included by FEMA.

WHEREAS THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the Code of Ordinances of the City of Lancaster, Texas, be and is hereby amended by amending Chapter 16, "Planning and Miscellaneous Development Regulations," by adding a new Article 16.04, to read as follows:

**"ARTICLE 16.04
FLOOD DAMAGE PREVENTION**

Sec. 16.04.001 Statutory Authorization, Findings of Fact, Purpose and Methods

(a) Statutory Authorization

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Lancaster, Texas does ordain as follows:

(b) Findings of fact

(1) The flood hazard areas of Lancaster are subject to periodic inundation,

which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(c). **Statement of purpose**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Insure that potential buyers are notified that property is in a flood area.

(d). **Methods of reducing flood losses**

In order to accomplish its purposes, this ordinance uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or

velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec 16.04.002 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

Alluvial fan flooding - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

Area of future conditions flood hazard – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of shallow flooding - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a

clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date.

"Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood insurance rate map (FIRM) - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS) – see *Flood Elevation Study*

Floodplain or flood-prone area - means any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such

as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway – see *Regulatory Floodway*

Functionally dependent use - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure - means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with

historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior or;

(b) Directly by the Secretary of the Interior in states without approved programs.

Levee - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction - means, for the purpose of determining insurance rates,

structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area – see *Area of Special Flood Hazard*

Start of construction - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or

walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

Violation - means the failure of a structure or other development to be fully compliant with this Article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Water surface elevation - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine

areas.

Section 16.04.003 GENERAL PROVISIONS

(a) Lands to which this ordinance applies

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of Lancaster.

(b) Basis for establishing the areas of special flood hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Dallas County, Texas and Incorporated Areas," dated July 7, 2014, with accompanying Flood Insurance Rate Maps (FIRMs) dated July 7, 2014.

. And any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(c) Establishment of development permit

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

(d) Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(e) Abrogation and greater restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) Interpretation

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

(g) Warning and disclaimer or liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec16.04.004 ADMINISTRATION

(a) Designation of the floodplain administrator

The Managing Director of Public Works and Development Services is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

(b) Duties & responsibilities of the floodplain administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.

(2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by adoption of this ordinance.

(4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the

boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB), and the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Article 16.04, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

(9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

(c). **Permit procedures**

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(A) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(B) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(C) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 16.04.005 (B)(2);

(D) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(E) Maintain a record of all such information in accordance with Section 16.04.004(B)(1);

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

(A) The danger to life and property due to flooding or erosion damage;

(B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(C) The danger that materials may be swept onto other lands to the injury of others;

(D) The compatibility of the proposed use with existing and anticipated development;

(E) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(F) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(G) The expected heights, velocity, duration, rate of rise and

sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(H) The necessity to the facility of a waterfront location, where applicable;

(I) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(d). **Variance procedures**

(1) The Board of Adjustments shall hear and render judgment on requests for variances from the requirements of this ordinance.

(2) The Board of Adjustments shall hear and render decision on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(3) Any person or persons aggrieved by the decision of the Board of Adjustments may appeal such decision in the district court for a review based on the record before the Board of Adjustment.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 16.04.004 (C) (2) of this Article have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

(A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(B) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(C) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Section 16.04.004(D)(1-9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Section 16.04.005 Provisions for flood hazard reduction

(a). General standards

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(b). Specific standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) 16.04.003(B), (ii) Section 16.04.004 (B)(8), or (iii) Section 16.04.005 (C)(3), the following provisions are required:

(1) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 16.04.004 (C)(1), is satisfied.

(2) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the

base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(A) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

(B) The bottom of all openings shall be no higher than 1 foot above grade.

(C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured Homes -

(A) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(B) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(C) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 16.04.004(C)(1), and the elevation and anchoring requirements for "manufactured homes" as provided in this subsection. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(c). Standards for subdivision proposals

(1) All subdivision proposals including the placement of manufactured

home parks and subdivisions shall be consistent with **Article 1, Sections B, C, and D** of this ordinance.

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Section 16.04.003(C) and the provisions of Section 16.04.005 of this ordinance.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 16.04.003 (B) or Section 16.04.004 (B)(4) of this ordinance.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(d). Floodways

Floodways - located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Section 16.04.005 (E)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 16.04.005.

(3) Under the provisions of 44 CFR Chapter 1, **Section 65.12**, of the National Flood Insurance Program Regulations, a community may permit

encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

.....”

SECTION 4. That all ordinances of the City of Lancaster in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. That should any section, paragraph, sentence, subdivision, clause, phrase or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of the remainder of this ordinance or any other provision of the Code of Ordinances of the City of Lancaster.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and each and every day such violation shall

continue shall be deemed to constitute a separate offense.

SECTION 8. That this Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and Charter in such cases provide.

DULY PASSED by the City Council of Lancaster, Texas on the 23rd day of June 2014.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

SOREANGEL O. ARENAS, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY

LANCASTER CITY COUNCIL

Item 4

Agenda Communication

June 23, 2014

Conduct a public hearing and consider an ordinance amending the Code of Ordinances by amending Chapter 14, “Offenses and Additional Provisions” by amending Article 14.02, “Minors”, by repealing and replacing with a new Division 2 “Curfew.”

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Healthy, Safe, & Vibrant Neighborhoods

Background

Chapter 370.002 of the Texas Local Government Code provides that curfew ordinances be reviewed by the governing body of the city every three years. The last review date of this ordinance was in May of 2011. The police department requested that the City Attorney review the ordinance. It is the recommendation of the police department and the City Attorney that the city amend the code of ordinance and continue the provisions of the curfew as prescribed by law without any modifications and schedules the next review in June of 2017.

Considerations

- **Operational** – The police department will take the necessary enforcement action on any individual found in violation of this article and will not issue a citation or make an arrest under this article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under the Section is present. Defenses include:
 - (a) It is a defense to prosecution under this Section that the minor was:
 - (1) accompanied by the minor’s parent or guardian;
 - (2) on an errand at the direction of the minor’s parent or guardian, without any detour or stop;
 - (3) in a motor vehicle involved in interstate travel;
 - (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) involved in an emergency;

- (6) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
- (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor;
- (8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (9) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.

(b) It is a defense to prosecution under this Section that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Note: Item (b) above is a defense for the owner, operator, or employee of an establishment, but not for the minor. Section 14.02.032(c) states that an owner, operator, or employee commits an offense if he knowingly allows a minor to remain on the premises of the establishment during curfew hours. It is a defense if the owner, operator, or employee promptly notified the police department that a minor was present on the premises during curfew hours and refused to leave.

- **Legal** – A public hearing must be conducted prior to consideration of the ordinance. The City Attorney reviewed and approved the curfew ordinance.
- **Financial** – There is no financial requirement associated with this ordinance.
- **Public Information** – City Council must conduct a public hearing and consider this ordinance at a meeting of the Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Conduct the public hearing and approve the continuance of the ordinance
2. Conduct the public hearing and modify the ordinance.
3. Conduct the public hearing and abolish the ordinance.

Recommendation

Following the public hearing, staff recommends approval of the ordinance as presented.

Attachments

- Ordinance
 - Ordinance No. 2011-05-10, as ratified
 - Ordinance No. 2004-06-19, as originally adopted
-

Submitted by:

Cheryl Wilson, Chief of Police

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14, "OFFENSES AND ADDITIONAL PROVISIONS", BY AMENDING ARTICLE 14.02, "MINORS", BY REPEALING AND REPLACING WITH A NEW DIVISION 2, "CURFEW"; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has previously passed and adopted Ordinance No. 2007-02-06, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

WHEREAS, such Ordinance has been codified as Chapter 14, Article 14.02, Minors, Division 2, Curfew, Section 14.02.031 through Sections 14.02.036, of the Code of Ordinances; and

WHEREAS, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

WHEREAS, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

WHEREAS, the City desires to continue the provisions of the Code without any modifications and schedule.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the Code of Ordinance is hereby amended by amending Chapter 14, Offenses and Additional Provisions, amending Article 14.02, Minors, by repealing and replacing in its entirety Division 2, Curfew, to read as follows:

"CHAPTER 14

OFFENSES AND ADDITIONAL PROVISIONS

.....

Division 2. Curfew

Sec. 14.02.031 Definitions

Curfew hours.

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day;
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (3) 9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday; provided, however, the hours defined in this subsection shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to section 25.085, Texas Education Code, nor shall the hours defined in this subsection be considered as curfew hours on days or during periods in which the school where the minor is enrolled is closed or classes for which the minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment. Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian.

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court. Minor. Any person ten (10) years of age to sixteen (16) years of age.

Operator. Any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or parents [partners] of an association or partnership and the officers of a corporation.

Parent. A person who is:

- (1) A natural parent, adoptive parent, or step-parent of another person;
or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place. Any place to which the public or a substantial group of the public has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain. To:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Sec. 14.02.032 Offenses

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Sec. 14.02.033 Defenses

- (a) It is a defense to prosecution under section 14.02.032 that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel;

- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
- (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (9) Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as amended.

(b) It is a defense to prosecution under section 14.02.032(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Sec. 14.02.034 Enforcement

Before taking any enforcement action under this division, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under section 14.02.033 is present. (2002 Code, sec. 8.804)

Sec. 14.02.035 Review of ordinance

In accordance with section 370.002 of the Texas Local Government Code, as amended, the city council shall review this division and the conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter. Upon review, public hearings shall be conducted on the need to continue, modify or abolish the ordinance.

Sec. 14.02.036 Penalty

(a) A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine in accordance with section 1.01.009 of this code.

(b) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 14.02.032(a) of this division and shall refer the minor to juvenile court.

.....”

SECTION 2. That all provisions of the Code of Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Any person, firm or corporation violating any of the provisions of this ordinance of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of five hundred (\$500.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 4. That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That this ordinance shall take effect immediately from and after its passage and publication, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 23rd day of June, 2014.

APPROVED:

By: _____
MARCUS E. KNIGHT, MAYOR

ATTEST:

By: _____
SORANGEL O. ARENAS, CITY SECRETARY

APPROVED AS TO FORM:

By: _____
ROBERT E. HAGER, CITY ATTORNEY
(REH/mpm)

ORDINANCE NO. 2011-05-10

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING ORDINANCE NO. 2007-02-06, CODIFIED AS CHAPTER 8 OF THE CODE OF ORDINANCES, ARTICLE 8.800, CURFEW HOURS FOR MINORS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has previously passed and adopted Ordinance No. 2007-02-06, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

WHEREAS, such Ordinance has been codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806, of the Code of Ordinances; and

WHEREAS, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

WHEREAS, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

WHEREAS, the City desires to continue the provisions of the Code without any modifications and schedule the same for review in May 2014.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That Ordinance No. 2007-02-06, codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806 of the Code of Ordinances is hereby readopted, ratified, republished and extended from the date of its execution and shall remain in effect through May 2014, unless otherwise terminated under the provisions of State law.

SECTION 2. That all provisions of the Code of Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. That this ordinance shall take effect immediately from and after its passage and publication, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 23rd day of May 2011.

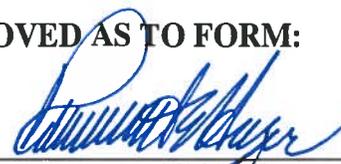
APPROVED:

By: 
MARCUS E. KNIGHT, MAYOR

ATTEST:

By: 
DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

By: 
ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb 5/23/11)

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS

ORDINANCE NO. 2004-06-19

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING CHAPTER 7, ARTICLE 7.800, "CURFEW HOURS FOR MINORS", SECTIONS 7.801 THROUGH 7.805 OF THE CODE OF ORDINANCES PROVIDING CURFEW HOURS FOR MINORS IN THE CITY OF LANCASTER, TEXAS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING A SUNSET CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the safety of children is a public concern; and

WHEREAS, the City Council has previously passed and adopted an Ordinance, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and,

WHEREAS, such Ordinance has been codified in Chapter 7, Article 7.800, "Curfew Hours For Minors", Sections 7.801 through 7.805; and

WHEREAS, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

WHEREAS, the Police Department has furnished records and reports indicating the need for such to remain in effect in order to provide a safe environment for persons under the age of seventeen (17); and

WHEREAS, the City desires to continue the provisions of the Code without any modifications, and schedule the same for review in June 2007

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS;

Section 1. That the City Council hereby readopts, ratifies, republishes and extends Chapter 7, Article 7.800, "Curfew Hours For Minors", Sections 7.801 through 7.805 of the Code of Ordinances, which reads as follows:

“ARTICLE 7.800 CURFEW HOURS FOR MINORS

Sec. 7.801 Definitions

- (a) Curfew Hours mean:
- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
 - (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
 - (3) 9:00 a.m. until 2:30 p.m. any Monday, Tuesday, Wednesday, Thursday, or Friday; provided however, the hours defined in this article shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to Section 21.032, Texas Education Code, nor shall the hours defined in this paragraph be considered as curfew hours on days or during periods in which the school where the minor is enrolled is closed or classes for which the minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives.
- (b) Emergency: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (c) Establishment: Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- (d) Guardian. Means:
- (1) a person who, under court order, is the guardian of the person of a minor; or
 - (2) a public or private agency with whom a minor has been placed by a court.
- (e) Minor. Any person ten (10) years of age to sixteen (16) years of age.
- (f) Operator. Any individual firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or parents of an association or partnership and the officers of a corporation.
- (g) Parent. A person who is:

- (1) a natural parent, adoptive parent, or step-parent of another person; or
- (2) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(h) Public place. Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospital, apartment houses, office buildings, transport facilities, and shops.

(i) Remain. Mean to:

- (1) linger or stay; or
- (2) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(j) Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Sec. 7.802 Offenses

(a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.

(b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.

(c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Sec. 7.803 Defenses

(a) It is a defense to prosecution under Section 7.802 that the minor was:

- (1) accompanied by the minor's parent or guardian;
- (2) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) in a motor vehicle involved in interstate travel;

- (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) involved in an emergency;
 - (6) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
 - (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor;
 - (8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
 - (9) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.
- (b) It is a defense to prosecution under Section 7.802(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Sec. 7.804 Enforcement

Before taking any enforcement action under this Article, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under Section 7.803 is present.

Sec. 7.805 Administration

In accordance with Chapter 370.002 of the Texas Local Government Code, as amended, the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years for its date of passage and every third year thereafter. Upon review, public hearings shall be conducted on the need to continue, modify or abolish the ordinance.

Sec. 7.806 Penalties

(a) A person who violates a provision of this Section is guilty of a separate offense for each day or part of day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

(b) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 7.802(a) of this Section and shall refer the minor to juvenile court.”

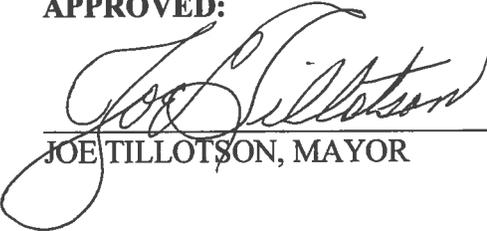
Section 2. That the provisions of this ordinance shall remain in effect through June 2007, unless otherwise terminated under the provisions of the State law

Section 3. That all provisions of the Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 4. That this ordinance shall take effect immediately from and after its passage as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 28th day of June 2004.

APPROVED:



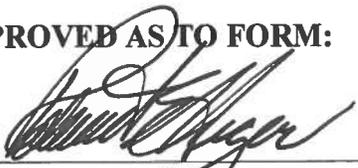
JOE TILLOTSON, MAYOR

ATTEST:



DOLLE K. SHANE, CITY SECRETARY

APPROVED AS TO FORM:



ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb/6/29/04)

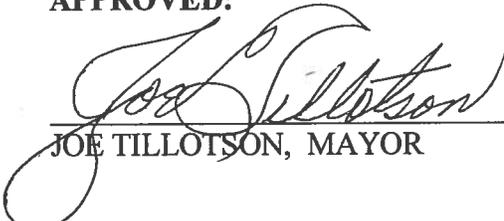
AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS

ORDINANCE NO. 2004-06-19

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING CHAPTER 7, ARTICLE 7.800, "CURFEW HOURS FOR MINORS", SECTIONS 7.801 THROUGH 7.805 OF THE CODE OF ORDINANCES PROVIDING CURFEW HOURS FOR MINORS IN THE CITY OF LANCASTER, TEXAS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING A SUNSET CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 28th day of June, 2004.

APPROVED:



JOE TILLOTSON, MAYOR

ATTEST:



DOLLE K. SHANE, CITY SECRETARY

LANCASTER CITY COUNCIL

Item 5

Agenda Communication

June 23, 2014

Consider an ordinance amending Chapter 8 titled “Building Regulations” by adding a new Article 8.18 titled “Boarding Home Facilities” setting forth regulations for boarding homes located within the city; providing definitions; providing licensing procedures, requirements, qualifications, and fees for boarding home facilities; providing for inspection of boarding home facilities; providing construction, maintenance, reporting, record-keeping, education, and care requirements for boarding home facilities; providing for criminal background history checks for the owners, operators, and employees of boarding home facilities; and providing food handler requirements for boarding home facilities.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Healthy, Safe and Vibrant Neighborhoods

Background

City Council received a presentation at the Work Session held on Monday, June 16, 2014 regarding the establishment of regulations for Boarding Home Facilities. A recent study by Health Management Associates found that many low-income Texans reside in unlicensed boarding home facilities, particularly the aged, disabled, mentally ill, and persons with a history of substance abuse; and the study further found that many residents of boarding home facilities have a high likelihood of needing personal care, medical, mental health, and social services, and that these facilities often do not meet those needs.

Recently surrounding cities have adopted ordinances that regulate these facilities. Since their adoption of those ordinances; Lancaster has seen an influx of unlicensed and unregulated Boarding Homes move into town. In the locations public safety staff has found cases where the residents are vulnerable to exploitation, unsafe and unsanitary conditions.

Considerations

- **Operational** – A Boarding Home must apply for and receive an operational permit “License” from the Fire Marshal’s Office prior to the property being converted into a Boarding Home. The Fire Marshal’s office will inspect the property and premises for compliance with this ordinance. The property must also meet the requirements of the Lancaster Development Code. If deficiencies are found, the Fire Marshal may prohibit

occupancy of the residence and premises until such time as the owner takes action needed to bring the residence and premises into compliance.

- **Legal** – The City Attorney has reviewed the ordinance and has approved it as to form.
- **Financial** –The License fees are as follows:
 - Operational Permit “License” Fee: \$500.00/year
 - Fines not to exceed the sum of \$2,000.00 for each offense if fire safety or health and \$500.00 for all other.
- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. Council may approve the ordinance as presented.
2. Council may reject the ordinance

Recommendation:

Staff recommends approval of the ordinance as presented.

Attachments

- Ordinance
-

Submitted by:

Thomas Griffith-Fire Chief
Opal Mauldin-Robertson, City Manager
Rona Stringfellow, Assistant City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING CHAPTER 8 TITLED "BUILDING REGULATIONS" BY ADDING A NEW ARTICLE 8.18 TITLED "BOARDING HOME FACILITIES" SETTING FORTH REGULATIONS FOR BOARDING HOMES LOCATED WITHIN THE CITY; PROVIDING DEFINITIONS; PROVIDING LICENSING PROCEDURES, REQUIREMENTS, QUALIFICATIONS, AND FEES FOR BOARDING HOME FACILITIES; PROVIDING FOR INSPECTION OF BOARDING HOME FACILITIES; PROVIDING CONSTRUCTION, MAINTENANCE, REPORTING, RECORD-KEEPING, EDUCATION, AND CARE REQUIREMENTS FOR BOARDING HOME FACILITIES; PROVIDING FOR CRIMINAL BACKGROUND HISTORY CHECKS FOR THE OWNERS, OPERATORS, AND EMPLOYEES OF BOARDING HOME FACILITIES; PROVIDING FOOD HANDLER REQUIREMENTS FOR BOARDING HOME FACILITIES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS FOR EACH OFFENSE IF THE PROVISION VIOLATED GOVERNS FIRE SAFETY, PUBLIC HEALTH, OR SANITATION; OR, FIVE HUNDRED DOLLARS (\$500.00) FOR ALL OTHER OFFENSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Health Management Associates performed a study of unregulated boarding home facilities in Texas (hereafter "Study") for the Texas Health and Human Services Commission in 2008, Which the Commission presented to the Governor and Texas Legislature in 2009; and

WHEREAS, the Study identified 845 boarding home facilities in Texas, with most being in the major urban areas such as Dallas, but concluded that there were undoubtedly more facilities in existence because they were difficult to identify and locate; and

WHEREAS, the study found that many low-income Texans reside in unlicensed boarding home facilities, particularly the aged, disabled, mentally ill, and persons with a history of substance abuse; and

WHEREAS, the Study further found that many residents of boarding home facilities have a high likelihood of needing personal care, medical, mental health, and social services, and that these facilities often do not meet those needs; and

WHEREAS, the Study further found some residents have severe behavioral problems and may, without adequate treatment and intervention, present a danger to themselves or other residents; and

WHEREAS, the Study further found that many residents are vulnerable to being financially exploited by the facilities; and

WHEREAS, the Study further found that some facilities are unsafe and unsanitary and even unacceptably dangerous because they are unclean, not adequately heated or cooled, and in need of critical repairs; and

WHEREAS, many boarding home facilities leave residents in isolated environments, which subjects them to neglect and abuse; and

WHEREAS, many residents who lose control of their finances to other persons at the facilities lose the ability to care for themselves and relocate if needed; and

WHEREAS, many boarding home facilities are owned and operated by persons who do not reside on the premises or nearby and who seldom visit the facility; and

WHEREAS, some boarding home facilities have few or no employees or other staff; and

WHEREAS, the lack of on-site management at many boarding home facilities can directly affect the health, safety, and general welfare of the residents and the nearby neighbors; and

WHEREAS, the problems associated with boarding home facilities described above have been extensively documented by the Study, the news media, and city code inspectors, health inspectors, building inspectors, police officers, fire department personnel and staff; and

WHEREAS, the Research Triangle Institute and Brown University prepared a study titled, "Executive Summary: Analysis of the Effect of Regulation on the Quality of Care in Board and Care Homes" (hereafter "Analysis") for the U.S. Department of Health and Human Services in 1995; and

WHEREAS, the Analysis found that: (1) licensure alone was effective in ensuring that boarding home facilities provided care above a threshold of minimum performance; (2) extensive regulatory systems reduced the prevalence of unlicensed homes; (3) extensive regulatory systems and licensure were effective in promoting better safety, quality of life and quality of care; and (4) regulation achieved positive effects on quality without producing an excessively institutional model of care; and

WHEREAS, the Study recognized that municipalities may require licensure and otherwise specifically regulate boarding home facilities; and

WHEREAS, the Study recommended that staff members in boarding home facilities should be appropriately trained to recognize problems and to assist residents in obtaining health and social services; and

WHEREAS, the Study recommended that the State adopt a comprehensive state-wide approach to address the problems associated with boarding home facilities; and

WHEREAS, in response to the Study, 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 municipal regulation of boarding home facilities in the August 27, 2010 edition of the Texas Register; and

WHEREAS, the City Council believes it is in the interest of the public health, safety, and welfare to regulate and license boarding home facilities and to adopt, with certain modifications, the model standards published by the Texas Health and Human Services Commission; and

WHEREAS, the City Council believes the standards in this ordinance will provide adequate standards to protect the health and safety of residents of boarding home facilities, protect these residents from persons who try to take advantage of them, ensure that adequate fire-rescue and police personnel and vehicles are available to serve these residents, and help the city identify and facilitate appropriate responses for residents who may require special assistance during an emergency or at any other time; and

WHEREAS, the City Council believes it is in the interest of the public health, safety, and welfare to prohibit persons convicted of certain crimes from owning, operating, or being employed by a boarding home facility in the city of Lancaster until the respective time periods designated in Section 8.18.037 have expired; and

WHEREAS, the City Council, in accordance with Chapter 53 of the Texas Occupations Code, has considered the following criteria:

- (1) the nature and seriousness of the crimes;
- (2) the relationship of the crimes to the purposes for requiring a license to operate a boarding home facility;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
- (4) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a boarding home facility; and has determined that the crimes listed in Section 8.18.037 of this ordinance are serious crimes that are directly related to the duties and responsibilities of the owners, operators, and employees of a boarding home facility, whose job is to provide lodging and certain services for three or more people who are not related to the owner or operator of the boarding home facility; and

WHEREAS, the City Council has determined that the very nature of owning, operating, or being employed by a boarding home facility brings such a person into constant contact with the public, which gives the person repeated opportunities to participate in crimes of violence or dishonesty, or crimes against the public health, safety, or morals, should the person be so inclined, and, thus, it is the finding of the City Council that the crimes listed in Section 8.18.037 of this ordinance render a person unable, incompetent and unfit to perform the duties and responsibilities of the owner,

operator or employee of a boarding home facility in a manner that would promote the public safety and trust; and

WHEREAS, the City Council has determined that no person who has been convicted of a crime as set forth in Section 8.18.037 of this ordinance is presently fit to engage in the ownership or operation of a boarding home facility, or be employed by a boarding home facility, in the City until the respective time periods designated in Section 8.18.037 have expired; and, thus, should be disqualified from being issued a license to own or operate a boarding home facility until the expiration of those time periods.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the City of Lancaster Code of Ordinances is amended by amending Chapter 8 “Building Regulations” by adding a new Article 8.18 titled “Boarding Home Facilities”, to read as follows:

“ARTICLE 8.18 BOARDING HOME FACILITIES

Sec. 8.18.001 Purpose

- (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) adequate fire-rescue and police personnel and vehicles are available to serve these residents; and
 - (4) 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, record-keeping, education, and care for the protection of the health, safety, and welfare of residents of boarding home facilities. These standards are adopted pursuant to the authority granted under Chapter 260 of the Texas Health and Safety Code and 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. 8.18.002 Definitions

For purposes of this article, the following terms shall apply:

Abuse.

- (a) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the person's caretaker, family member, or other individual who has an on-going relationship with the person; or
- (b) sexual abuse of a resident, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08 of the Texas Penal Code (indecent exposure), as amended, or Chapter 22 of the Texas Penal Code (assaultive offenses), as amended, committed by the person's caretaker, family member, or other individual who has an on-going relationship with the person.

Appeals Board. The City of Lancaster's Zoning Board of Adjustment shall serve as the Appeals Board for purposes of this article.

Alcohol. Any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Assistance with Self-Administration of Medication.

- (a) assisting a resident by reminding the resident to take medication;
- (b) opening and removing medications from a container;
- (c) placing medication in a resident's hand or in or on a clean surface such as a medication reminder box; and
- (d) reminding a resident when a prescription medication needs to be refilled.

Boarding Home Facility.

- (a) an establishment that furnishes, in one or more buildings, lodging to three or more persons who are unrelated to the owner of the establishment by blood or marriage;
- (b) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services to those persons; and
- (c) is not listed in Section 8.18.005 of this article.

Controlled Substance. A substance regulated under 21 C.F.R. § 1308, as amended.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. "Conviction" includes disposition of charges against a person by probation.

Department. Designated by the city manager to enforce and administer this article.

Direct Threat. A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Director. 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.

Disability. Defined in 42 U.S.C. § 12102, as amended.

Emergency Condition. Any fire, natural disaster, collapse hazard, burst pipe, leaking sewage, lack of working utilities, dangerous utilities, serious police incident, or other condition that requires an immediate response to prevent harm to the property, the occupants of the property, or the public.

Employee. A person who performs caretaking duties or regularly works in a boarding home facility.

Exploitation. The illegal or improper act or process of an owner, operator, employee, caretaker, family member, or other individual who has an on-going relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

Injury, Incident, or Unusual Accident. An event that resulted in a change in a resident's physical or mental status that requires intervention by a private or public entity responsible for medical or mental health services or an event that requires the facility to take safety and protection measures for the resident or others. This term includes, but is not limited to, the following:

- (a) an allegation of abuse, neglect, or exploitation;
- (b) death;
- (c) a resident's unexplained absence from the boarding home facility;
- (d) fire;
- (e) criminal acts; or
- (f) fights between residents.

Licensee.

- (a) person in whose name a boarding home facility license has been issued;
- (b) each individual listed as an owner or operator of the boarding home facility on the application for a boarding home facility license;
- (c) 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
- (d) 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.

Neglect. Failure of a resident or licensee to provide goods or services, including medical services that are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

Operator. Person in control of a boarding home facility.

Owner. 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.

Personal Care.

- (a) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
- (b) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
- (c) 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. Person who is residing in a boarding home facility.

Sec. 8.18.003 Authority of Director

The director shall implement and enforce this article and may by written order establish such rules, regulations, or procedures, not inconsistent with this article or other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, as the director determines are necessary to discharge any duty under or to effect the policy of this article

Sec. 8.18.004 License Required

- (a) A person commits an offense if he owns or operates a boarding home facility in the city without a valid license issued under this article.
- (b) It is a defense to prosecution under this article if a person operates a boarding home facility while an application under Section 8.18.006 is pending.
- (c) It is a defense to prosecution under this section if a person operates a facility listed in Section 8.18.005 of this article.

Sec. 8.18.005 Exemptions

This article does not apply to the following:

- (a) Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code, as amended.
- (b) Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code, as amended.
- (c) Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code, as amended.
- (d) Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code, as amended.
- (e) Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code, as amended.
- (f) 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 as set forth in Chapter 142 of the Texas Health and Safety Code, as amended.

(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 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 including Sections 8.18.022, 8.18.023, 8.18.024, 8.18.027(h), 8.18.029, 8.18.030, 8.18.031, 8.18.032, 8.18.033, and 8.18.034 of this article.

(h) A hotel as defined by Section 156.001 of the Texas Tax Code, as amended.

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

(j) A monastery or convent.

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

(l) A family violence shelter center as defined by Section 51.002 of the Texas Human Resources Code, as amended.

(m) A college dormitory, fraternity, or sorority house associated with an institution of higher education.

Sec. 8.18.006 License Application

(a) To obtain a license to operate a boarding home facility, a person must submit an application to the director on a form provided for that purpose. The applicant must be the owner or operator of the boarding home facility. If the owner or operator is not an individual, an authorized officer or agent of the owner or operator must file the form. The application must contain the following information before it is considered to be complete:

- (1) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of the applicant. The street address may not be the address of the boarding home facility unless the applicant actually resides full-time at the boarding home facility.
- (2) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and position of the authorized officer or agent filing the form on behalf of the applicant, if the applicant is not an individual. The street address may not be the address of the boarding home facility unless the authorized officer or agent actually resides full-time at the boarding home facility.
- (3) The form of business of the applicant; the name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of a high managerial agent of the business; and, if the business is a legal entity, such as a corporation or association, a copy of the documents establishing the business.
- (4) The street address and telephone number of the boarding home facility.

- (5) The name, street address, mailing address, e-mail address, and telephone number of a person or persons to contact in an emergency as required by Section 8.18.017 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) 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 8.18.034 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 director deems necessary to aid in the determination of whether the requested license should be granted.

Sec. 8.18.007 Notification of Change of Information

The licensee shall notify the director within 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. 8.18.008 Fees

(a) The fee for a license to operate a boarding home facility shall be established by resolution 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 director seeking a waiver or reduction of the annual license fee if the boarding home facility serves one or more persons with a disability and payment of the fee would result in substantial financial hardship to the applicant. The application must include the following information before it will be considered complete:

- (1) The name, street address, mailing address, e-mail address, telephone number, a legible copy of the driver's license or other official state or federal identification card, and date of birth of the applicant.
- (2) The number of residents of the boarding home facility with a disability.
- (3) A list of the 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 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 director deems necessary to aid in the determination of whether the requested waiver or reduction should be granted.

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

(e) An applicant may appeal a decision of the director under this section to the Appeals Board by filing a written notice with the director within 10 days after the date of the decision of the director. The Appeals Board shall hear and decide the appeal at its next available meeting. The Appeals Board shall use the same standard required for the director. The Appeals Board may affirm, reverse, or modify the decision of the director. Appeal to the Appeals Board constitutes the final administrative remedy.

Sec. 8.18.009 Issuance and Denial of License

(a) Upon payment of all required fees and the submission of a complete application, the director shall issue a license to operate a boarding home facility to the applicant if the director determines 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 8.18.037 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 a false statement as to a material matter in the application for a license;
- (5) the condition and use of the boarding home facility comply with the zoning regulations in the Lancaster Zoning Ordinance, the Building Regulations in Chapter 8 that are applicable to the property, 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 director determines that the requirements of Subsection (a) have not been met, the director shall deny the license.

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

Sec. 8.18.010 Prohibition of New Residents; Suspension of License

(a) The director may suspend a boarding home facility license for a period not to exceed 90 days if the director 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 director 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) The director 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.

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

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

Sec. 8.18.011 Revocation of License

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

- (1) the licensee fails to meet the criminal history qualifications of Section 8.18.037 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 8.18.010 has occurred and the license has already been suspended at least once within the preceding 12 months.

(b) Before revoking a license under Subsection (a), the director 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 10 days to comply with the notice.

(c) If, after 10 days from the date the notice required in Subsection (b) was sent or delivered, the licensee has not complied with required actions listed in the notice, the director 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.

(d) If a license has been revoked, the licensee has 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. 8.18.012 Appeals

If the director 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 with the Appeals Board.

Sec. 8.18.013 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 director. The licensee shall update the information contained in the original license application required under Section 8.18.006 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 director shall follow the procedures set forth in Section 8.18.009 when determining whether to renew a license.

Sec. 8.18.014 Non-Transferability

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

Sec. 8.18.015 Records

(a) The licensee shall maintain the records listed in Subsection (b) at the boarding home facility to which the records pertain. The licensee shall make those records available for inspection by the director 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) records documenting any reasonable accommodation granted under Section 8.18.019;
- (3) records demonstrating compliance with applicable laws and regulations, as required by Section 8.18.020;
- (4) records documenting that each resident has received training on the emergency evacuation plan of the boarding home facility at least two times per calendar year, as required by Section 8.18.029;
- (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 8.18.030;
- (6) records documenting injuries, incidents, and unusual accidents that involve residents, as required by Section 8.18.034;
- (7) records documenting any allegations of abuse, neglect, or exploitation of a resident, as required by Section 8.18.034 ;
- (8) financial records for each resident for which the licensee is the representative payee, as required by Section 8.18.034;
- (9) a copy of the service agreement signed by each current resident, as required by Section 8.18.034 ;
- (10) records documenting required in-service education of boarding home facility staff;
- (11) 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 8.18.039;
- (12) 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;
- (13) 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

(14) any other records deemed necessary by the director 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. 8.18.016 Posting Requirements

(a) 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:

(1) The license issued under this article to operate the boarding home facility. The license must be presented upon request to the director or to a peace officer for examination.

(2) A sign prescribed by the director specifying how complaints may be registered with the city.

(3) A notice in a form prescribed by the director 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.

(4) 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.

(5) A notice in a form prescribed by the director that lists the name, location, and contact information for:

(A) the closest local public health services agency in the proximity of the facility; and

(B) 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. 8.18.017 Emergency Response Information

(a) The licensee shall provide the director 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 director within five 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 a city employee or emergency response personnel that an emergency condition has occurred on the property.

Sec. 8.18.018 Failure to Pay Ad Valorem Taxes, Fees, Fines, and Penalties

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

Sec. 8.18.019 Reasonable Accommodations

(a) Purpose. The city, pursuant to the Fair Housing Amendments Act of 1988 ("FHAA") 42 U.S.C. § 3601, *et seq.*, as amended, and the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, *et seq.*, as amended, intends to ensure that all persons with a disability have an 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. This section allows a person to seek relief from the enforcement of any regulation contained in this article that would result in illegal discrimination against the disabled.

(b) Method of submitting a request for a reasonable accommodation; fees; confidentiality.

- (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 licensee 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) The city will retain any information identified by an applicant as confidential in compliance with applicable law and will not disclose the information unless required by law.
- (6) 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) Application. An applicant shall submit the following information before an application for a reasonable accommodation is considered to be complete:

- (1) The applicant's name, mailing address, street address, telephone number, and e-mail address.
- (2) The applicant's relation to the individual or individuals with a disability, if applicable.
- (3) The address of the property to which the requested reasonable accommodation would apply.
- (4) Information substantiating that the individual who would obtain the benefit of the reasonable accommodation is disabled.

- (5) The section or sections of this article from which a reasonable accommodation is being requested.
 - (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) Review of application by director; required findings; appeals.
- (1) 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.
 - (2) Before making a decision, the director may request an inspection of the boarding home facility and the land on which it is located. If the director makes such a request:
 - (A) the director has no obligation to make a decision until 10 days after the date the inspection occurs; and
 - (B) 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 request is automatically denied.
 - (3) Before making a decision, the director shall consult with the city attorney to determine whether the accommodation should be granted.
 - (4) The director may impose reasonable conditions on any accommodation granted consistent with the purpose of this article.
 - (5) The written decision must be consistent with the FHAA and based on a consideration of the following factors:
 - (A) Whether the housing that is the subject of the request will be used by one or more individuals with a disability.
 - (B) Whether the requested accommodation is necessary to make specific housing available to one or more individuals with a disability.
 - (C) Whether the requested accommodation would impose an undue financial or administrative burden on the city.
 - (D) Whether the requested accommodation would require a fundamental alteration in the nature of a city program or law.
 - (E) The potential impacts of the requested accommodation on the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.
 - (F) Whether a failure to grant an accommodation would result in the property having no economically viable use.
 - (G) Whether there are alternative accommodations that are reasonable and have an equal or less of an impact on the city, the applicant, the other residents of the boarding home facility, and the surrounding neighborhood.

- (6) The director shall issue a written decision within 20 business days of receipt of a completed application, provided that the director is able to issue a decision based on the information provided in the original request. If the director deems it necessary to request additional information from the applicant consistent with federal law, the director shall contact the applicant in writing and specify the additional information that is required. In the event that a request for additional information is made, the 20-day period to issue a decision is stayed until the applicant responds to the request.
- (7) All written decisions must explain in detail the basis of the decision and notify the applicant of the right to appeal the director's decision to the Appeals Board.
- (8) If the director denies an application for a reasonable accommodation, the action is final unless the applicant files an appeal with the Appeals Board.

Sec. 8.18.020 Inspection Fees

(a) Required inspections.

- (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 natural gas systems performed by an inspector certified by the Texas Railroad Commission for a boarding home facility with a liquefied natural gas system.

(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 the license to operate a boarding home facility in accordance with Section 8.18.010.

(d) 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 reinspected by the director to determine that the violation has been eliminated.

(e) Re-inspection fee. The licensee shall pay:

- (1) to the director of code compliance \$50 for each re-inspection after the first re-inspection by that department that must be conducted before the violation is determined to be eliminated; and
- (2) to the director of any other city department the fee required (if any) by the applicable code for each re-inspection by that department that must be conducted before the violation is determined to be eliminated.

Sec. 8.18.021 Reports to Texas Health and Human Resources Commission

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

- (1) The total number of boarding home facilities licensed by the city during the preceding state fiscal year.
- (2) The total number of boarding home facility applications for which licenses were denied, including a summary of the causes for denial.
- (3) The total number of boarding home facility licenses that were active on August 31 of the preceding state fiscal year.
- (4) The total number of residents housed in each boarding home facility reported.
- (5) The total number of inspections conducted by the city at each boarding home facility.
- (6) The total number of licenses suspended or revoked as a result of an inspection.
- (7) A summary of the outcome for any residents displaced by suspension or revocation of a license.

Sec. 8.18.022 Construction, Remodeling and Maintenance

(a) In general. Each licensee shall ensure the residents' health, safety, comfort, and protection through the standards contained in this section that address the construction, remodeling, and maintenance of a boarding home facility.

(b) Applicable regulations. Each boarding home facility must comply with the following codes and regulations:

- (1) The Lancaster Zoning Development Ordinance.

- (2) The Lancaster Code of Ordinances, Chapter 8, Building Regulations, as applicable.
 - (3) The International Fire Code, with the adopted local amendments, and any other applicable federal, state, or local fire codes and standards.
 - (4) Federal, state, and local health and safety codes.
 - (5) Federal and state accessibility regulations.
- (c) Interior doors. An interior door to a living space, bedroom, bathroom, or toilet room must fit the opening in which it is hung, be properly equipped with hardware, and be maintained in good working condition. Unless a resident has a disability that requires frequent check-ups by others, a door with a locking device must be provided to provide privacy to and protection of the resident.
- (1) Every closet door latch must be such that it can be readily opened from the inside in case of emergency.
 - (2) Every bathroom door or door lock must permit immediate opening of the locked door in case of emergency.
- (d) Public pathways and stairways. A public pathway or stairway in a building must maintain a minimum unobstructed width in accordance with the Lancaster Fire Code, as amended, and must be provided with a convenient light switch controlling an adequate light system.
- (e) Windows and exterior doors.
- (1) Every habitable room must have at least one window that can be easily opened, or such other device as will ventilate the room.
 - (2) Locks that can be easily opened manually from inside must be provided on all exterior doors.
 - (3) All windows must be capable of being opened without tools. Window openings must meet the requirements of the Lancaster Building Regulations, as applicable, for emergency egress.
 - (4) The bottom of the window opening must be not more than 44 inches above the floor.
- (f) Maintenance.
- (1) The licensee shall maintain the dwelling and premises in a clean and sanitary condition.
 - (2) The licensee shall keep a boarding home facility in good repair and maintenance in a manner that will promote the health, comfort, safety, and well-being of residents.

Sec. 8.18.023 Sleeping Rooms

- (a) Sleeping space per person. Each room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one person must contain at least 60 square feet of floor space for each occupant.

- (b) Bed spacing. Beds must be spaced at least three feet apart when placed side-by-side or end-to-end.
- (c) Ceiling height. A sleeping room must have a ceiling height of at least seven feet, six inches (7'6").
- (d) Accessibility. A sleeping room must provide accessibility for non-ambulatory residents and residents with conditions that substantially limit ambulation or mobility.
- (e) Beds.
- (1) The licensee shall provide one bed for every resident. It is presumed that the boarding home facility has one resident for every bed present in the facility.
 - (2) All beds must be at least six feet long and three feet wide.
 - (3) The licensee shall equip all beds with a bed frame, supportive springs, and a clean, unsoiled supportive mattress, all of which must be in good condition.
 - (4) The licensee shall equip all beds provided for non-ambulatory residents or residents with a mobility impairment or reduced bladder or bowel function with mattress covers that prevent bodily fluids from soiling the mattress.
 - (5) More than two levels of stacked bunk beds are prohibited.
 - (6) The clear space above the top of the lower mattress of a double decker bunk bed and the bottom of the upper bunk must be at least 27 inches.
 - (7) The distance from the top of the upper mattress to the ceiling must be at least 36 inches.
- (f) Pillows and sheets.
- (1) The licensee shall provide each bed with at least one pillow with a clean, unsoiled pillow case, at least two clean, unsoiled sheets, and a cover such as a blanket or quilt.
 - (2) The licensee shall provide each resident with at least two extra, unsoiled pillow cases, sheets, and blankets.
- (g) Storage.
- (1) The licensee shall provide at least one chest of drawers in good working condition, or its equivalent, for each resident. The chest of drawers must contain a sufficient number of lockable drawers to house all necessary items of clothing and personal belongings of a resident.
 - (2) The licensee shall provide sufficient space in each resident's room or closet for residents to hang up clothes that are not stored in a chest of drawers.
 - (3) Clothing may not be stored on the floor.
- (h) Personal hygiene items. The licensee shall provide bath towels, washcloths, soap, combs or brushes, and toothbrushes at all times in a quantity sufficient to meet the needs of residents.

(i) Emergency exit. Each sleeping room must provide access to an emergency exit without passing through another sleeping room.

(j) At least one chair shall be provided in each sleeping room. A minimum of one end table in good condition located adjacent to each bed in each sleeping room shall also be provided.

Sec. 8.18.024 Bathroom Facilities

(a) If a boarding home facility has a resident who is non-ambulatory or has a mobility impairment:

(1) the licensee shall provide a toilet, lavatory, and bathtub or shower on each floor when not provided in an individual room; and

(2) a bathroom door must have a minimum opening of 32 inches with the door open 90 degrees, measured between the face of the door and the opposite stop.

(b) The licensee shall provide toilets, lavatories, and bathtubs or showers at a ratio of one toilet, one lavatory, and one bathtub or shower for each eight residents, or fraction of eight residents.

(c) Toilets, lavatories, and bathtubs or showers must be accessible to residents without going outside of the building or without going through a sleeping room of another resident.

(d) The licensee shall keep all bathroom facilities clean and in good repair.

(e) The licensee shall ensure that all bathroom facilities are well-lighted and ventilated.

(f) The licensee shall adequately supply all bathroom facilities with toilet paper, soap, and hand towels.

(g) The licensee shall supply bathtubs and showers with non-slip surfaces and curtains or other safe enclosures for privacy.

Sec. 8.18.025 Telephone

A telephone that is connected to a land line must be available 24 hours a day, be easily accessible, and afford privacy for use by residents. A list of emergency telephone numbers, including the numbers of the Lancaster Police Department, Lancaster Fire Department, ambulance, the director, 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 made accessible to persons who are visually or hearing impaired, as needed.

Sec. 8.18.026 Landry Facilities

(a) A washer or dryer:

(1) cannot be located in the kitchen area; and

(2) must be properly vented to the outside of the structure.

Sec. 8.18.027 Kitchen

- (a) A kitchen must be accessible to each resident without going through a sleeping room of another resident.
- (b) A kitchen must have a food preparation area of at least six square feet that is smooth, impermeable, free of cracks, and easily cleanable. This surface area must not be primarily used for eating.
- (c) If a boarding home facility has a kitchen without a dining area attached, the licensee shall provide a separate dining area of 15 square feet per resident. A kitchen with an attached dining area must be at least 100 square feet in area.
- (d) A kitchen must contain a sink with at least two compartments for manual dishwashing.
- (e) A kitchen must contain an operational cooking stove with at least two burners fuelled by gas or electricity or an operational microwave oven.
- (f) A kitchen must contain at least one cabinet with a minimum of five cubic feet of storage space per resident, suitable for storage of food and utensils.
- (g) A kitchen must be equipped with at least one electrical outlet suitable for plugging in small kitchen appliances.
- (h) The licensee shall keep the kitchen in a clean and sanitary condition.
- (i) A kitchen must contain a refrigerator that is equipped with a thermometer and is maintained in an operational, clean, and sanitary condition. A refrigerator must maintain foods at the temperatures required by Section 8.18.033.

Sec. 8.18.028 Dining Room

- (a) A dining room must be accessible to residents without going through the sleeping room of another resident.
- (b) The minimum floor area for a dining room is 15 square feet per resident.
- (c) If a boarding home facility provides community meals, the licensee shall equip a dining room with one dining chair and two linear feet of dining table space for each resident.

Sec. 8.18.029 Emergency Precautions

- (a) The licensee shall provide fire escapes and exits that are kept in good repair and accessible at all times in accordance with the Lancaster Building and Fire Codes, as amended.
- (b) The licensee shall implement a written fire and evacuation plan that sets forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency. If a boarding home facility has a resident who is non-ambulatory or has a mobility impairment, the licensee shall submit the written plan to Lancaster Fire Department and obtain its approval of the plan.
- (c) The licensee shall post an emergency evacuation plan in each sleeping room and the kitchen of the facility.
- (d) The licensee shall ensure that each resident receives training on the emergency evacuation plan at least two times per year and shall maintain documentation of such training.

(e) Flammable supplies and gasoline-operated maintenance equipment and lawn care equipment must be stored in the garage of the facility or in a detached storage shed.

(f) The licensee shall provide a sufficient number of accessible fire extinguishers in accordance with the Lancaster Fire Code, as amended. The licensee shall ensure that a person licensed to inspect fire extinguishers inspects the fire extinguishers annually. The licensee shall ensure the fire extinguishers are recharged when needed by a person licensed to inspect fire extinguishers.

(g) The licensee shall provide a smoke alarm approved by the fire marshal in each place in the facility required by the Lancaster Fire Code, as amended. The licensee shall maintain a smoke alarm in good working order.

(h) If a boarding home facility has a resident that is hearing impaired, the licensee shall install and properly maintain a visual smoke alarm that is capable of alerting a hearing impaired person of the presence of fire or smoke in accordance with the Lancaster Fire Code, as amended.

(i) The licensee shall install and properly maintain carbon monoxide detectors near sleeping rooms in accordance with Section 42.060 of the Texas Human Resources Code, as amended.

(j) The licensee shall ensure that all residents are shown how to use all emergency exits from the boarding home facility within 24 hours after arrival at the boarding home facility. The licensee shall maintain documentation of such training.

(k) First aid supplies.

(1) The licensee shall provide first aid supplies that are equivalent to the 16-unit first aid kit that complies with the latest edition of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) standard Z308.1.

(2) The licensee shall ensure that the first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

(3) The licensee shall provide one set of such supplies for each 50 persons, or fraction of 50 persons, residing in the boarding home facility.

Sec. 8.18.030 Water Quality

If a boarding home facility uses well water, the licensee shall supply the director with annual test results for water samples taken from the water well from a laboratory accredited by the State of Texas under the National Environmental Laboratory Accreditation Program. If the sample results show coliform bacteria present, a resample must be taken within seven days after receipt of the results. The licensee shall supply results of testing the resample to the director within seven business days of receipt.

Sec. 8.18.031 Linens and Laundry

(a) If a boarding home facility provides laundry service or has laundry facilities on site, all linens and laundry must be placed in a closed bag or covered hamper before being transported to the laundry area.

(b) If a boarding home facility provides laundry service, all linens and laundry must be properly identified to prevent loss.

(c) Soiled linens and laundry must not be sorted or processed in kitchens, food preparation areas, or food storage areas.

Sec. 8.18.032 Poisonous, Toxic and Flammable Materials

(a) The licensee shall ensure that poisonous, toxic, and flammable materials:

- (1) are stored and maintained away from bed linens, towels, food items, and kitchen equipment; and
- (2) are not used in a way that contaminates food equipment or utensils or constitutes a hazard to employees or residents.

(b) The licensee shall prominently and distinctly label poisonous, toxic, and flammable materials for easy identification of contents.

Sec. 8.18.033 Food and Drink, Meals

(a) General. If a boarding home facility serves meals to one or more residents, the licensee shall ensure the following:

- (1) All food and drink is clean and free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances.
- (2) All food and drink is prepared, stored, handled, and served so as to be safe for human consumption.
- (3) All food or drink subject to spoilage is maintained at a temperature of 41 degrees Fahrenheit or below.
- (4) Hot foods that are ready to be served are maintained at 135 degrees Fahrenheit or above at all times.
- (5) All food or drink stored in the freezer is maintained at a temperature of no higher than 0 degrees Fahrenheit.
- (6) Alternative food selections are provided for residents on medically prescribed diets.
- (7) A time schedule for meals is posted daily.
- (8) Meals are:
 - (A) nutritionally balanced and provide the U.S. Department of Agriculture recommended daily allowance of vitamins, minerals, and calories;
 - (B) of sufficient quantity and quality to meet the nutritional needs of residents; and
 - (C) served with not more than 14 hours between the beginning of the evening meal and the beginning of the morning meal.
- (9) A valid food handler's certificate issued under Section 6.803 of this code has been issued in the name of the licensee.

- (10) After each usage, all eating and drinking utensils are thoroughly washed and sanitized in hot water containing a suitable soap or synthetic detergent and rinsed in clean hot water. If a mechanical dishwasher is used, dish detergent is required.
- (b) Animals prohibited. With the exception of service animals for persons with disabilities, birds, cats, dogs, or other animals are not permitted in areas where food is prepared or stored, or where utensils are washed or stored.
- (c) Food handling.
 - (1) An owner, operator, employee, or resident engaged in food handling shall:
 - (A) observe sanitary methods, including hand washing; and
 - (B) not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.
 - (2) If preparing meals for residents, staff must meet food handling requirements and training approved by the director.

Sec. 8.18.034 Policies and Procedures to Ensure Resident Health and Safety

- (a) Initial screening. Before permitting a potential resident to move into a boarding home facility, the licensee shall ask each potential resident whether he or she:
 - (1) has the ability to comply with the requirements of being a resident at the boarding home facility, including:
 - (A) paying rent or other fees in accordance with the service agreement between the operator and the resident, unless the payment of rent or other fees is excused under the service agreement or by law;
 - (B) complying with the rules for the boarding home facility established by the licensee;
 - (C) paying for any damage to the boarding home facility caused by the resident; and
 - (D) timely vacating the premises when the service agreement, including any extension, expires or is terminated;
 - (2) is qualified to reside at the boarding home facility if the boarding home facility is available only to persons with disabilities or to persons with a particular type of disability;
 - (3) is currently an illegal abuser or addict of a controlled substance;
 - (4) is currently on probation or parole;
 - (5) is currently using any prescription drugs; or
 - (6) has been convicted of the illegal manufacture or distribution of a controlled substance.
- (b) Individualized assessment.
 - (1) Before allowing an individual to reside at a boarding home facility, the licensee shall conduct an individualized assessment of that individual to

determine if the individual would constitute a direct threat. The assessment must consider:

- (A) any prior criminal or violent acts of the person;
 - (B) the amount of time that has elapsed since the commission of any such acts; and
 - (C) any treatment or medication received by the person that may have eliminated the direct threat.
- (2) In the case of any resident or potential resident who has been convicted of an offense requiring registration with any sex offender registry, the individualized assessment must include a psycho-sexual evaluation of such person performed by a duly licensed psychiatrist or an individual having a Ph.D. in psychology. The licensee shall be responsible for determining whether any resident or potential resident has been convicted of an offense requiring registration with any sex offender registry.
- (3) Prior to the occupancy of any boarding home facility and at least quarterly thereafter, the licensee shall certify in a sworn affidavit to the director that, based on the individualized assessment performed for each resident, no person will or does reside in the boarding home facility whose tenancy would likely constitute a direct threat to the health or safety of that person or other individuals or whose tenancy would result in substantial physical damage to the property of others.
- (c) Persons who may not reside in a boarding home facility. The licensee shall not allow the following individuals to reside at a boarding home facility:
- (1) An individual convicted of the illegal manufacture or distribution of a controlled substance.
 - (2) An individual who, based upon an individualized assessment, is likely to constitute a direct threat to the health or safety of the individual or other individuals or whose tenancy would likely result in substantial damage to the property of others.
 - (3) An individual who requires the provision of personal care services or other services that state law requires a license to provide.
- (d) Illegal drug use.
- (1) All residents in a boarding home facility shall completely abstain from using controlled substances. The licensee shall immediately expel any resident who uses a controlled substance, whether on or off the premises, and shall not readmit the resident to any boarding home facility under the control of the licensee for a period of at least 60 days following the violation. However, nothing contained in this subsection may be construed to prohibit a resident from taking a prescription drug for which that resident has a valid and current prescription.
 - (2) If the boarding home facility has residents who are recovering from an addiction to a controlled substance, the licensee must develop a written plan for ensuring that the residents continue to refrain from using

controlled substances, including any and all rules by which residents must abide, and must provide such plan to the director at his request.

(e) Duty to document. The licensee shall document the following:

- (1) A resident's illegal use of a controlled substance.
- (2) A resident who poses a direct threat to the health or safety of other individuals.
- (3) A resident who poses a direct threat of substantial damage to the property of others.

(f) Log. If a resident is currently taking a prescription medication, the licensee shall note whether the resident has taken, or been reminded to take, his or her medication. Unless prohibited by law, the licensee shall make copies of the log available to the director for inspection upon request.

(g) Injuries, incidents, and unusual accidents.

- (1) The licensee shall notify a resident's legal guardian, resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative of any injury, incident, or unusual accident involving the resident.
- (2) The licensee shall investigate and document on a form provided by the director any injuries, incidents, or unusual accidents to a resident by providing the following information:
 - (A) The resident's name.
 - (B) The date and time the injury, incident, or unusual accident occurred.
 - (C) Description of the injury, incident, or unusual accident.
 - (D) Description of any medical or mental health treatment the resident received.
 - (E) Steps taken by the owner or 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.
 - (F) When the resident's legal guardian, resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative was notified about the injury, incident, or unusual accident.

(h) Access to records. Within one business day after a request by a resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative, the licensee shall allow access to, and provide copies at a reasonable cost of, the records documenting any injury, incident, or unusual accident involving that resident. Upon request, the licensee must explain how to examine the records.

(i) Abuse, neglect, and exploitation.

- (1) A licensee shall report any allegations of abuse, neglect, or exploitation of a minor, an adult age 65 or older, or an adult with a disability to the Texas Department of Family and Protective Services. Failure to report suspected abuse, neglect, or exploitation of a minor, an elderly adult, or an adult with a disability is a Class A misdemeanor under Texas law.
- (2) A licensee shall ensure that no resident is harassed, threatened, or intimidated at any time for making a report of abuse, neglect, or exploitation.
- (3) A licensee shall provide each resident with a copy of the definitions of abuse, neglect, or exploitation as outlined in Chapter 48 of the Texas Human Resources Code, as amended.
- (4) A licensee shall allow law enforcement, emergency medical, and fire personnel access to the boarding home facility when these professionals are responding to a call at the boarding home facility.
- (5) An owner, operator, or employee may not refer a person to the boarding home facility with which he is associated or to any other facility if he knows or reasonably should know that the facility or its services are not appropriate for the condition of the person being referred.
- (6) If the licensee or an employee has any medical or mental health professional examine, diagnose, treat, or provide any other medical or mental health services to a resident, the licensee or employee must provide the resident with:
 - (A) the name, business address, and telephone number of the person who examined, diagnosed, treated, or provided any other service to the resident;
 - (B) a written explanation of the nature and results of the examination, diagnosis, treatment, or other service; and
 - (C) a copy of any prescription for any medicine.
- (7) No licensee or employee may:
 - (A) use corporal punishment on a resident; or
 - (B) involuntarily seclude a resident from other residents.
- (8) Physical and chemical restraints.
 - (A) No licensee or employee may use a physical restraint or chemical restraint on a resident.
 - (B) For purposes of Subsection (i)(8)(A), a physical restraint includes a vest, a hand mitt, and a seatbelt, and a chemical restraint includes an anti-psychotic drug and a sedative.
 - (C) It is a defense to prosecution under Subsection (i)(8)(A) that:
 - (i) the restraint was authorized by a physician, in writing, for a specified and limited period of time; or

- (ii) the licensee or employee is the spouse, legal guardian, or next of kin of the resident or former resident.

(9) Access.

- (A) A licensee shall allow a resident's personal physician, nurse, or other health care provider to have immediate access to the resident.
- (B) A licensee shall allow the relatives, the guardian, and the legally authorized representative of a resident to have immediate access to the resident during the boarding home facility's visiting hours unless the resident objects.

(j) Conflicts of interests. The purposes of this subsection are to ensure both that residents have the right to manage their own affairs or to choose someone they trust to manage their affairs for them and that licensees and employees do not abuse their positions of power and trust for their own private gain.

(1) A licensee or employee of a boarding home facility shall not:

- (A) borrow money from or loan money to residents;
- (B) be a beneficiary of a current or former resident's will or life insurance;
- (C) co-mingle a resident's funds with the funds of the licensee, employee, or another resident;
- (D) employ a resident;
- (E) go into business with a resident;
- (F) serve as an employee or independent contractor of a resident;
- (G) have sexual relations with a resident; or
- (H) have a power of attorney for a resident's affairs for any purpose.

(2) It is a defense to prosecution:

- (A) under Paragraph (1) that the licensee or employee is the spouse, legal guardian, or next of kin of the resident or former resident;
- (B) under Paragraph (1)(D) that the licensee or employee employed the resident on the property where the boarding home facility is located; and
- (C) under Paragraph (1)(H) that the licensee or employee is assisting the resident to establish eligibility for a federal or state program that provides financial assistance for medical services, such as

(3) No licensee or employee may be a representative payee for a resident or assist a resident with general money management unless the resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative authorizes in writing the licensee or employee to be a representative payee or assist the resident with general money management.

- (4) If a licensee or employee becomes the representative payee for a resident or assists a resident with general money management, the licensee or employee shall do the following:
- (A) Maintain separate financial records for each resident for which the licensee or employee is the representative payee for the entire period of time the licensee or employee is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the licensee or employee is the resident's representative payee.
 - (B) Include in the records an itemized list of expenditures that the licensee or employee has made on behalf of the resident, including the charges that are assessed by the licensee or employee.
 - (C) Maintain receipts for all expenditures in addition to the itemized documentation.
 - (D) 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.
 - (E) Within one business day after receiving a request, allow the resident, the resident's guardian, the resident's legally authorized representative, or a family member designated by the resident, the legal guardian, or the legally authorized representative access to the resident's financial records that are maintained by the licensee or employee.

(k) Service agreement.

- (1) A licensee shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident, the resident's guardian, or the resident's legally authorized representative. The licensee shall give a copy of the signed agreement to the resident, the resident's guardian, or the resident's legally authorized representative.
- (2) The service agreement must specify the following:
 - (A) The length of the contract.
 - (B) The amount of rent charged and the date upon which rent is due.
 - (C) If service is accepted in lieu of rent, the dollar amount the rent is reduced per hour of service.
 - (D) The amounts of other fees or fines charged, an explanation of what those fees and fines are for, when they are charged, and why.
 - (E) The party responsible for paying the monthly rent and other fees.
 - (F) Any services to be provided or that could be provided by the boarding home facility.
 - (G) If the resident has a guardian, legally authorized representative, or a family member designated by the resident, the legal guardian, or

the legally authorized representative, that person's name, address, e-mail address, and telephone number.

- (H) The rules and regulations of the boarding home facility.
- (I) That a resident will be expelled if the owner or operator determines that the resident:
 - (i) has used a controlled substance within the past 30 days without a valid prescription;
 - (ii) has violated the rules of the boarding home facility if those rules require the expulsion for the violation;
 - (iii) poses a direct threat to the health or safety of other individuals; or
 - (iv) poses a direct threat of substantial damage to the property of others.

(l) If the resident earns any income from the licensee or an employee of the boarding home facility that exceeds the monthly rent owed, the licensee or employee's plan to allocate the income or system of disbursement of that income.

(m) Disclosure of charges and fees to resident. No licensee or employee may charge a resident for a service or item unless the licensee or employee has previously disclosed in writing that providing the service or item will incur an additional fee and the amount of that fee.

(n) Visitors. Operators, employees, and volunteers of the boarding home facility shall not have visitors on the premises, except for visitation necessary for the operation of the facility, for emergencies, or by family members of an operator, employee, or a volunteer.

Sec. 8.18.035 Assistance with Self-Administration of Medication

(a) Assistance with self-administration of medication may be provided to an adult resident who can identify his or her medication and knows when the medication should be taken but requires assistance with self-administration. Assistance with self-administration of medication may not be provided to a minor.

(b) 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 or 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.

(c) The licensee shall remind a resident to take medication if the licensee knows that the resident is required to take medication and needs assistance with remembering to take the medication.

(d) The licensee shall store all residents' medication in a locked area. The licensee shall provide a central locked storage area or individual locked storage areas at the boarding home facility 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 licensee shall provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.
 - (3) The licensee shall store medications labeled for "external use only" separately within the locked area.
- (e) The licensee shall ensure that poisonous substances are labeled and safely stored within a locked area separately from medications.
- (f) If a boarding home facility stores controlled substances, the licensee shall adopt and enforce a written policy for preventing the diversion of the controlled substances.
- (g) After a resident ceases to reside in the boarding home facility, the licensee shall properly dispose of any of the resident's remaining medication in accordance with applicable laws.

Sec. 8.18.036 Requirements for In-Service Education of Boarding Home Facility Staff

- (a) Each licensee and employee of a boarding home facility must be trained on the following subjects prior to contact with residents or within five days of beginning work, ownership, or management of the facility, whichever is later:
- (1) Employer rules and policies.
 - (2) Preventing, recognizing, and reporting abuse, neglect, and exploitation of residents.
 - (3) Residents' rights, including all applicable rights from the following:
 - (A) Chapter 102 (Rights of the Elderly) of the Texas Human Resource Code, as amended.
 - (B) Chapter 112 (Developmental Disabilities) of the Texas Human Resource Code, as amended.
 - (C) Chapter 301 (Fair Housing Practices) of the Texas Property Code, as amended.
 - (D) Chapter 92 (Residential Tenancies) of the Texas Property Code, as amended.
 - (4) Policies and procedures for contacting emergency personnel when health or safety of a resident or another individual is at risk.
 - (5) Complaint process specific to the city and the boarding home facility.
 - (6) Assisting residents with self-administration of medication.
 - (7) Prevention, recognition, and reporting of injuries, incidents, and unusual accidents to residents and others in the boarding home facility.
 - (8) Emergency, evacuation, and disaster plans.

- (9) Assisting residents with obtaining health and social services.
 - (10) Services provided by the boarding home facility, including:
 - (A) nutrition, meal preparation, and dietary needs, if the boarding home facility provides meal preparation;
 - (B) sanitation;
 - (C) laundry, if the boarding home facility provides laundry services; and
 - (D) house work, if the boarding home facility provides house work.
- (b) Each licensee and employee of a boarding home facility must be trained on the following subjects:
- (1) Updates and changes in any policies and procedures within 10 days after the licensee or employee becomes aware of the change.
 - (2) Orientation specific to the needs of each new resident within three business days of the resident moving into the facility.
 - (3) Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization, or other circumstances that effect the resident's needs within one day after licensee or employee becoming aware of the change.

Sec. 8.18.037 Criminal History

- (a) A person may not own or operate a boarding home facility or be employed in a position the duties of which involve direct contact with a resident in a boarding home facility before the 10th anniversary of the date the person is convicted of any of the following offenses:
- (1) Sections 481.112, 481.1121, 481.1122, 481.113, 481.114, 481.122, Texas Health and Safety Code (illegal manufacture or delivery of a controlled substance), as amended.
 - (2) Chapter 19, Texas Penal Code (criminal homicide), as amended.
 - (3) Chapter 20, Texas Penal Code (kidnapping and unlawful restraint), as amended.
 - (4) Section 21.02, Texas Penal Code (continuous sexual abuse of young child or children), as amended, or Section 21.11, Texas Penal Code (indecent with a child), as amended.
 - (5) Section 22.011, Texas Penal Code (sexual assault), as amended.
 - (6) Section 22.02, Texas Penal Code (aggravated assault), as amended.
 - (7) Section 22.04, Texas Penal Code (injury to a child, elderly individual, or disabled individual), as amended.
 - (8) Section 22.041, Texas Penal Code (abandoning or endangering child), as amended.
 - (9) Section 22.08, Texas Penal Code (aiding suicide), as amended.

- (10) Section 25.031, Texas Penal Code (agreement to abduct from custody), as amended.
- (11) Section 25.08, Texas Penal Code (sale or purchase of a child), as amended.
- (12) Section 28.02, Texas Penal Code (arson), as amended.
- (13) Section 29.02, Texas Penal Code (robbery), as amended.
- (14) Section 29.03, Texas Penal Code (aggravated robbery), as amended.
- (15) Section 21.08, Texas Penal Code (indecent exposure), as amended.
- (16) Section 21.12, Texas Penal Code (improper relationship between educator and student), as amended.
- (17) Section 21.15, Texas Penal Code (improper photography or visual recording), as amended.
- (18) Section 22.05, Texas Penal Code (deadly conduct), as amended.
- (19) Section 22.021, Texas Penal Code (aggravated sexual assault), as amended.
- (20) Section 22.07, Texas Penal Code (terroristic threat), as amended.
- (21) Section 33.021, Texas Penal Code (online solicitation of a minor), as amended.
- (22) Section 34.02, Texas Penal Code (money laundering), as amended.
- (23) Section 35A.02, Texas Penal Code (Medicaid fraud), as amended.
- (24) Section 42.09, Texas Penal Code (cruelty to animals), as amended.
- (25) Chapter 31, Texas Penal Code (theft), as amended, that is punishable as a felony.
- (26) Section 30.02, Texas Penal Code (burglary), as amended.
- (27) 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.

(b) A person may not own or operate a boarding home facility or be employed in a position the duties of which involve direct contact with a resident in a boarding home facility before the fifth anniversary of the date the person is convicted of any felony offense not listed in Subsection (a) or any of the following non-felony offenses:

- (1) Section 22.01, Texas Penal Code (assault), as amended, that is punishable as a Class A misdemeanor.
- (2) Section 32.45, Texas Penal Code (misapplication of fiduciary property or property of a financial institution), as amended, that is punishable as a Class A misdemeanor or a felony.
- (3) Section 32.46, Texas Penal Code (securing execution of a document by deception), as amended, that is punishable as a Class A misdemeanor or a felony.

- (4) Section 37.12, Texas Penal Code (false identification as peace officer), as amended.
- (5) Section 42.01(a)(7), (8), or (9), Texas Penal Code (disorderly conduct involving a firearm), as amended.
- (6) 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.

(c) The licensee shall 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 years, and is repeated every year thereafter, and that the individual is not disqualified under this section. The owner or operator shall immediately discharge any employee or volunteer whose criminal history reveals conviction of a crime that bars employment or volunteer service at a boarding home facility.

Sec. 8.18.038 Qualifications to Own, Operate or Work in Facilities with Persons Recovery from Substance or Alcohol Abuse

(a) If a boarding home facility allows an individual who has an impairment due to the illegal abuse of or addiction to a controlled substance to be a resident, the licensee and all employees and volunteers (other than residents) shall not have used a controlled substance within the previous year without a prescription from a licensed professional.

(b) All operators, employees, and volunteers of a boarding home facility shall completely abstain from illegally using controlled substances. The licensee shall immediately remove from the premises of the boarding home facility any owner, operator, employee, or volunteer who illegally uses a controlled substance, whether on or off the premises, and shall not allow that person to enter the premises of any boarding home facility under the control of the owner or operator for a period of at least one year following the violation. However, nothing contained in this subsection shall be construed to prohibit an operator, employee, or volunteer from taking a prescription drug for which that person has a valid and current prescription.

(c) The licensee shall immediately remove from the premises of a boarding home facility any owner, operator, employee, or volunteer who currently abuses alcohol, whether on or off the premises, such that the abuse of alcohol prevents that person from performing his or her job duties, if any, at the boarding home facility or who, by reason of such current alcohol abuse, constitutes a direct threat to the property or safety of others.

(d) If the licensee removes a person from the premises of a boarding home facility under Subsection (c), the licensee shall not allow that person to re-enter the premises of any boarding home facility under the control of the owner or operator until that person is able to perform his or her job duties, if any, at a boarding home facility and does not constitute a direct threat to the property or safety of others.

Sec. 8.18.039 Assessment and Periodic Monitoring of Residents

(a) The licensee, or a designee of the licensee, shall complete and document an annual assessment and conduct periodic monitoring to ensure that each 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 provided by a boarding home facility or if the resident needs personal care services or medication administration that cannot be provided by the boarding home facility. The initial assessment of a resident must be completed within 30 days after the date the resident began residing at the facility.

(b) Elements of the self-administration of medication to be assessed include the ability to perform each of the following tasks with little assistance:

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

(c) Elements of personal care to be assessed by the licensee include but are not limited to the resident's ability to do the following:

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

(d) As a result of an assessment, if a licensee 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 or operator shall:

- (1) contact the Texas Department of Family and Protective Services by phoning the state-wide intake division at 1-800-252-5400;
- (2) notify the resident's guardian or legally authorized representative;
- (3) notify a family member designated by the resident, the legal guardian, or the legally authorized representative; and
- (4) contact 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. 8.18.040 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 he or she 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 if the provision violated governs fire safety, public health, or sanitation; or
 - (2) \$500 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) Emergency closing order.
- (1) 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.
 - (2) The order of immediate closure under Paragraph (1) is effective immediately on providing written notice of the order to the owner or operator by facsimile, e-mail, or hand-delivery.
 - (3) The order of closure of all or part of a boarding home facility is valid for 10 days after its effective date.
 - (4) 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 director is authorized to seek to recover the cost of relocating the residents from the owner and operator of the closed facility.
 - (5) The director and the Appeals Board 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 at 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 2. That all provisions of the ordinances of the City of Lancaster in conflict with the provisions of this Ordinance be and the same are hereby, repealed, and all other provisions of the ordinances of the City of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid,

the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part thereof decided to be unconstitutional, illegal, or invalid.

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Ordinances of the City of Lancaster, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That any person, firm, or corporation violating any provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lancaster, as heretofore amended and upon conviction shall be punished by a fine not exceeding Two Thousand Dollars (\$2,000.00) for each offense if the provision violated governs fire safety, public health, or sanitation; or, Five Hundred Dollars (\$500.00) for all other offenses.

SECTION 6. This Ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS ON THIS THE 23rd DAY OF June, 2014.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL

Item 6

Agenda Communication

June 23, 2014

Discuss and consider a resolution amending the Master Fee Schedule, Article 4.000 Business Related Fees by adding Section 4.1200 Boarding Home Facilities Permit to provide for an annual operating permit.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Healthy, Safe and Vibrant Neighborhoods

Background

This is a companion item to the Boarding Home Facilities ordinance. Staff is proposing a yearly fee of \$500.00 for an operational permit to be included in the City's Master Fee Schedule.

Considerations

- **Operational** - The Fire Marshal's division will implement this program and conduct the annual inspections in compliance with the ordinance.
- **Legal** – The resolution is approved by the City Attorney for use in amending the Master Fee Schedule.
- **Financial** - The projected annual revenue would support the implementation of the program.
- **Public Information** - All Boarding Home Facilities will be notified of the required permit requirement and ordinance requirements. This item is considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Council may approve the resolution.
2. Council may deny the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
-

Submitted by:

Thomas Griffith, Fire Chief

Opal Mauldin Robertson, City Manager

Rona Stringfellow, Assistant City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AMENDING THE MASTER FEE SCHEDULE, ARTICLE 4.000 BUSINESS RELATED FEES, BY ADDING SECTION 4.1200 BOARDING HOME FACILITIES PERMIT TO PROVIDE FOR AN ANNUAL OPERATIONAL PERMIT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after consideration and adoption of a Boarding Home Facilities Ordinance which provides for an annual operations permit and fee to be set by City Council; and

WHEREAS, after consideration and review, the City Council finds that adding an annual operations permit fee for boarding home facilities to the Master Fee Schedule is in the best interest of the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the amendment to the Master Fee Schedule, as provided in Exhibit "A", attached hereto and incorporated herein by reference, be and the same is, hereby adopted to add an annual permit fee for boarding home facilities.

SECTION 2. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 23rd day of June 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL

Item 7

Agenda Communication

June 23, 2014

The City Council shall convene into closed executive session pursuant to Section 551.071(a) and (b) to discuss and deliberate with the City Attorney the following pending matter in litigation, settlement and/or matters involving attorney-client privilege:

- (a) Cause No. DC-13-10151; Healthspace Regions Lancaster, LLC v. City of Lancaster in the 191st Judicial District Court of Dallas County.**
-

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Professional and Committed City Workforce

Executive Session matters.

Submitted by:

Sorangel O. Arenas, City Secretary

LANCASTER CITY COUNCIL

Item 8

Agenda Communication

June 23, 2014

Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Professional and Committed City Workforce

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.

Submitted by:

Sorangel O. Arenas, City Secretary