

**CITY OF AUBREY
ORDINANCE NUMBER 414-09**

AN ORDINANCE OF THE CITY OF AUBREY, TEXAS, PROVIDING FOR PERMITTING AND REGULATIONS FOR CHILD DAY CARE CENTER AS A HOME OCCUPATION; PROVIDING SAVINGS, SEVERABILITY AND REPEALER CLAUSES; PROVIDING FOR A \$500 PENALTY FOR ANY VIOLATION OF ANY RULES AND REGULATIONS CONTAINED IN THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Aubrey, Texas ("City Council") has determined that in certain circumstance a child day care center may be permitted as a home occupation within a residential district of the City of Aubrey, Texas ("City"); and

WHEREAS, the City Council has determined that when a child day care center is permitted as a home occupation and accessory use in a residential area, the rules and regulation set forth in this ordinance would be in the interest of the City and its citizens, and provide for the general health and safety of the public;

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

Section 1. Recitals Incorporated.

The above-referenced recitals are incorporated herein as if set forth in full for all purposes.

Section 2. Definitions.

Home Child Day Care Center ("HCDCC") shall include a "listed family home," a "registered family home," and a "licensed family home" as described in Texas Administrative Code Title 40, Section 745.37, Figure 745.37(2), as amended, except that the total number of children in care at any given time, excluding the children related to the caregiver by birth, marriage or adoption, must not exceed eight. An HCDCC is subject to regulation by the Texas Department of Family and Protective Services.

HCDCC Permit is the City-issued permit required under this ordinance for the operation of an HCDCC.

Home Occupation shall have the same meaning as defined in Section 4 of Ordinance No. 135-87, City of Aubrey Zoning Ordinance.

Owner means a person who owns and actually resides in a building located in a Residentially-Zoned Area that contains only one dwelling unit located on a lot or

separate building tract having no physical connection to a building on any other lot or tract.

Residentially-Zoned Area shall mean those areas in the City located in the following zoning districts: SF1, SF10, and SF75.

Section 3. Purpose.

The purpose of this ordinance is to permit the operation of a limited number of HCDCCs in Residentially-Zoned Areas and to provide for regulations and minimum standards to govern the operations of same. Unless specifically allowed under this ordinance, no person shall operate any type of child day care facility, as a Home Occupation or otherwise, within a Residentially-Zoned Area.

Section 4. Permit Required.

4.01 Permit Required.

No HCDCC shall be allowed to operate in any Residentially-Zoned Area unless the City grants an HCDCC Permit to the Owner of the home where the HCDCC is proposed to be operated and no such permit shall be issued by the City unless the Owner is first listed, registered, or licensed with the State of Texas as a Listed Family Home, a Registered, or Licensed Child-Care Provider and the Owner has listed, registered, or licensed the owner's home as a listed family home, a registered, or licensed child-care home with the State of Texas. Documents proving that said listings, registrations, or licenses are current and valid shall be submitted to the City with the application required under this section.

4.02 Permit Fees.

The first time that an applicant applies for an HCDCC permit, the Owner shall pay to the City a nonrefundable permit-processing fee in the amount of \$100⁰⁰. If an HCDCC Permit is granted, the Owner must pay to the City a nonrefundable annual fee for permit renewal in the amount of \$75⁰⁰, starting the first time the permit is renewed. The annual permit fee must be accompanied by proof of the current State listing, registration or license referenced above, along with any changes in the information in the application originally submitted to the City. The annual fee is due on or before each anniversary date that the original HCDCC Permit is granted. An HCDCC Permit or renewal thereof is valid for only one year after issuance and failure to timely renew a permit or to timely pay any fee referenced herein shall be cause for the permit or renewal to expire. If a permit expires for any reason, the Owner must cease operations of the HCDCC until it pays a new permit-processing fee and obtains a new permit.

4.03 Application.

At a minimum, the application for an HCDCC Permit shall include the name, address and contact information of the applicant, and must certify that the proposed HCDCC is not located on the same block as a currently permitted HCDCC. The applications shall also include copies of the State listing, registration, or license, as applicable, referenced in subsection 4.01 of this ordinance.

4.04 Procedure, Background Check and Inspection

An applicant for an HCDCC Permit shall fully complete a permit application in the form prescribed by the City. Upon receipt by the City of a fully-completed HCDCC Permit application and all required fees, the application shall be forwarded to the Police Department for a background check as to the applicable items in Section 5 of this ordinance and the Code Enforcement Department to inspect the premises where the HCDCC is proposed to be located and to determine whether the premises satisfies all other applicable City codes and ordinances. A permit shall not be granted by the City until the Police Department completes the background check and the Code Enforcement Department inspects and approves the premises. If the Code Enforcement Department detects any conditions on the premises in violation of applicable City ordinances, the applicant shall be notified in writing (and such notification may or may not be accompanied by a citation) and such written notice shall provide a reasonable time to cure the violation, but in no event more than 30 days after the date of inspection. If for any reason the violation is not cured and approved by the Code Enforcement Department within 30 days of initial inspection, the application shall be denied. If the Police Department receives information in the background check that would disqualify the applicant, the application will be denied. To obtain an HCDCC Permit after the denial of an application, the applicant must file a new application and pay all required fees.

4.04 Nature of Permit.

An HCDCC Permit is a privilege that may be granted by the City and all persons applying for or holding an HCDCC Permit are on notice that the permit does not create any type of property interest or vested right. The City may at any duly noticed meeting repeal or amend this ordinance in a manner that would have the effect of invalidating all HCDCC Permits or further regulating, disallowing or otherwise limiting the operations of one or more HCDCCs if the City Council reasonably concludes that doing so generally advances the public's health, safety or welfare. An HCDCC Permit is valid only as to the Owner applying for same and is not transferable or assignable in any manner and does not pass to a purchaser of the Owner's property upon sale of the property upon which the HCDCC is located.

Section 5. Suspension or Revocation of Permit.

5.01 Reasons for Suspension or Revocation.

Set forth below is a nonexclusive list of events, conditions and occurrences for which an HCDCC Permit may be suspended or revoked by the City:

- (a) an Owner or Owner's employee, representative, agent or contractor is convicted of a violation of any provision of this ordinance;
- (b) an Owner or Owner's employee, representative, agent or contractor is or has been indicted for or convicted of: (1) any offense relating to child abuse; (2) any sexually-related offense including but not limited to any offense related to pornography; (3) any offense related to any interaction with a minor, including but not limited to indecency with a minor, endangering a minor, contributing to the delinquency of a minor, etc.; (4) any violent offense including but not limited to domestic violence, sexual assault, etc.; (5) any offense involving illegal drugs; (6) any other felony or crime of moral turpitude; or (7) any other offense that would raise a reasonable suspicion that any child left at the HCDCC may be in danger for any reason;
- (c) suspension or revocation of any permit held by the Owner and issued by the Department of Family and Protective Services recommends suspension or revocation; or
- (d) any other reason that would raise a reasonable suspicion that any child left at the HCDCC may be in danger for any reason.

5.02 Procedure.

Suspension or revocation becomes effectively immediately upon written notice provided by the City to the Owner when the City sends the notice of suspension or revocation to the Owner by mail or facsimile. The City Council may at its discretion hear an Owner's appeal at a duly noticed open meeting.

Section 6. Location of HCDCC.

6.01 Block Limitation.

An HCDCC may only be located in a Residentially-Zoned Area and may not be located in the same numbered block as another HCDCC that holds an unexpired, valid HCDCC Permit issued by the City. For example, if an unexpired, valid HCDCC Permit has been issued by the City and is held by an Owner for a location in the 400 block of Cherry

Street, no other HCDCC Permit may be issued for a location in the 400 block of Cherry Street.

6.02 Dead-End Street.

An HCDCC that also fits the definition of a Listed Family Home may be located on a dead-end street. Otherwise, an HCDCC may not be located on a dead-end street.

Section 7. Minimum Standards.

7.01 Generally.

An HCDCC must at all times operate within and otherwise meet the minimum standards applicable to its type of operation as established under Texas Administrative Code Title 40, Chapter 747. In addition, an HCDCC must at all times operate within and meet the minimum standards set forth in this ordinance and Section 5, Subsection P. of Ordinance No. 135-87, City of Aubrey Zoning Ordinance, governing home occupations.

7.02 Conflict.

To the extent of any conflicts between any applicable law, ordinance or administrative regulation governing the subject matter of this ordinance, the more restrictive provision shall govern, unless specifically set forth to the contrary herein.

7.03 Maximum Number of Children.

At any given time, an HCDCC may have on its premises a maximum of eight children, excluding children related to the Owner by birth, marriage or adoption.

7.04 Personnel.

Aside from immediate family members residing in the building containing the HCDCC, an Owner may employ only one person.

7.05 Advertising Signs Prohibited.

Notwithstanding any provision to the contrary in any other ordinance, an Owner may not advertise the HCDCC on any signage located on any part of the lot or tract owned by the Owner or on any adjacent property thereto.

7.06 Traffic.

An HCDCC shall not be operated in a manner that would increase traffic at the HCDCC's location such that more than two vehicles would be located at the location at any given time for picking up or dropping off children or supplies.

7.07 Days and Hours of Operation.

The operating hours of an HCDCC shall not exceed 6:00 a.m. to 6:00 p.m., Monday through Friday, and there shall be no overnight boarding of children.

7.08 Fire Inspections.

An HCDCC is subject to at least two fire inspections annually and the location of an HCDCC is subject to additional random inspections without notice, during normal operating hours. The area subject to inspection includes the entire building and premises at the location of the HCDCC.

7.09 Outside Activities.

An HCDCC may conduct no outside activities on the premises of the HCDCC unless such activities are screened from all adjacent properties and rights of way.

Section 8. Penalty.

Any violation of any of the terms of this ordinance, whether denominated in this ordinance as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be fined in an amount not to exceed \$500 for each incidence of violation. Each violation occurring on each day is considered a separate offense and will be punished separately.

Section 9. Savings, Severability and Repealing Clauses.

All ordinances of the City in conflict with the provisions of this ordinance are repealed to the extent of that conflict. If any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof. The City declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, and phrase be declared unconstitutional or invalid.

Section 10. Publication of the Caption Hereof and Effective Date.

This ordinance shall be in full force and effective from and after its passage and upon the posting and/or publication, if required by law, of its caption and the City Secretary is hereby directed to implement such posting and/or publication.


PASSED by the City Council of the City of Aubrey, Texas, this 24th day of March, 2009.

APPROVED:



Gary Hammett, Mayor

ATTEST:



Nancy Downes, City Secretary

