

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.**

AN ORDINANCE

**REGULATING CAREGIVERS HIRED BY A PERSON TO
PROVIDE IN-HOME HEALTH AND PERSONAL
ASSISTANCE SERVICES; AND AMENDING THE CITY
CODE OF SAN ANTONIO, TEXAS TO REFLECT SUCH
CHANGES.**

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WHEREAS, the elderly and disabled citizens of San Antonio are at risk of being physically and financially harmed by persons who provide in-home health and personal assistance services; and

WHEREAS, persons who provide these services are not licensed by the State of Texas if the person has a permanent residence in the client's residence or the person is hired and paid directly by the client or the client's family or legal guardian; and

WHEREAS, persons who perform these services without a state license have not been required to undergo a background check for criminal convictions; and

WHEREAS, persons with criminal convictions for offenses against the person of another or involving the property of another are not disqualified by the State of Texas from providing in-home services to these vulnerable members of our community; **NOW THEREFORE:**

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

SECTION 1. That CHAPTER 16, of the City Code of San Antonio, Texas is hereby amended by adding new Article 21, "In-home Caregiver Licensing Regulation," composed of Sections 21-01 through 21 - 12, to read as follows:

**CHAPTER 16, ARTICLE 21.
IN-HOME CAREGIVER LICENSING REGULATIONS**

Sec. 21-01. - Short title and purpose.

(a) This article may be known and cited as "In-home Caregiver Licensing Regulation."

(b) The purpose of this article is to protect the welfare of the elderly and disabled citizens of the City of San Antonio who require in-home health and personal assistance services, by requiring a criminal background check and a license for those persons who provide these services, who are not otherwise licensed by the State of Texas, and to prevent these vulnerable citizens from being abused, neglected or exploited by their in-home caregivers.

Sec. 21-02. - Definitions.

As used in this article:

- (a) ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION means and is limited to:
- (1) assisting a patient by reminding the patient to take medication;
 - (2) opening and removing medications from a container;
 - (3) placing medication in a patient's hand or in or on a clean surface such as a pill cup or medication reminder box for the patient's self-administration; and
 - (4) reminding a patient when a prescription medication needs to be refilled.
- (b) CAREGIVER means a person who provides in-home personal assistance and home health services who is exempt from the licensing requirement under Texas Health and Safety Code Sec. 142.003 (4) as "an individual whose permanent residence is in the patient's residence" or (13) as "an individual hired and paid directly by the patient or the patient's family or legal guardian to provide home health or personal assistance services."
- (c) CONVICTION means 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 community supervision, including probation and deferred adjudication.
- (d) DIRECTOR means the director of the department designated by the city manager, or the city manager's designee, to enforce and administer this article and includes representatives, agents, and department employees designated by the director.
- (e) DISABLED PERSON means an individual who by reason of physical or mental disease, defect or injury is substantially unable to protect himself from harm or to provide food, shelter or medical care for himself.
- (f) ELDERLY PERSON means an individual 65 years of age or older.
- (g) HOME HEALTH SERVICE has the meaning given that term in Section 142.001(13) of the Texas Health and Safety Code.
- (h) PATIENT means an elderly or disabled person.
- (i) PERSONAL ASSISTANCE SERVICE has the meaning given that term in Section 142.001(22) of the Texas Health and Safety Code.
- (j) PERSONAL CARE has the meaning given that term in Section 142.001(22-a) of the Texas Health and Safety Code.

Sec. 21-03. - Registration Required.

- (a) A person commits an offense if the person acts or provides services as a caregiver to a patient under this article without a license.
- (b) An offense under this article is punishable by a fine of not more than \$500. A separate offense occurs each day or part of a day that the violation is committed.
- (c) A culpable mental state is not required for the commission of an offense under this article and need not be proved.
- (d) It is an affirmative defense to prosecution, with the same effect as Sec. 2.04 of the Texas Penal Code, that the caregiver is related within the third degree by consanguinity or affinity to the client, as determined under Chapter 573 of the Texas Government Code.

Sec. 21-04. - License Application.

To obtain a license to act or provide services as a caregiver, a person must submit an application to the director on a form provided for that purpose. The application must include the following:

- (a) 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 patient unless the applicant actually resides full-time at this location;
- (b) A statement whether the applicant has ever been convicted or placed on community supervision, including probation and deferred adjudication, and including the offense and the date; and
- (c) A non-refundable application fee of \$50.

Sec. 21-05. - Notification of Change of Information.

A caregiver shall notify the director within 10 days after any material change in the information contained in the application for a license to act or provide services as a caregiver, including, but not limited to any change of address and any convictions as defined by this article.

Sec. 21-06. - Issuance and Denial of License.

- (a) The director shall issue a license to a person to act or provide services as a caregiver if the director determines:
 - (1) the license application is complete;
 - (2) the applicant is not disqualified under Section 21-12 (Criminal History) of this Chapter; and

(3) the applicant has not made a false statement as to a material matter in the application for a license.

(b) The director shall deny a license if the director determines the applicant does not meet all the requirements of Sec. 21-06(a). The director, at the time he denies a license, shall notify the applicant in writing by certified mail, return receipt requested, that the license is denied. The notice must include the reason for the denial, and a copy of Sec. 21-08 regarding the procedure for appeals.

Sec. 21-07. - Revocation of License.

(a) The director shall revoke a license issued to a caregiver if the director determines that:

(1) the caregiver currently fails to meet the criminal history qualifications of Section 21-12 of this article; or

(2) the caregiver intentionally made a false statement as to a material matter in the application or in a hearing concerning the license.

(b) The director, at the time he revokes a license, shall notify the caregiver in writing by certified mail, return receipt requested, that the license is revoked. The notice must include the reason for the proposed revocation, and a copy of Sec. 21-08 regarding the procedure for appeals.

Sec. 21-08. -Procedure for appeals.

(a) An applicant or caregiver shall have ten (10) business days from the date of receipt of notice from the director of the denial or revocation of a license to appeal such decision to a hearing officer. The appeal shall be in writing, accompanied by an appeal fee of one hundred dollars (\$100.00), and directed to the Director of Administrative Services, San Antonio Police Department. If no appeal is made to a hearing officer within ten (10) business days after receipt of the director's decision, the director's decision shall become final.

(b) Upon timely notice of appeal, the city manager, or the city manager's designee, shall appoint a hearing officer for such appeals. The applicant or caregiver shall be given an opportunity to appear before said officer and present to him any information, including witnesses, which may be of assistance in arriving at a decision on the matter. Such hearing officer is hereby authorized to affirm or reverse the director's decision, and the decision of the hearing examiner shall become final.

(c) Upon denial or revocation of a license by the director, the applicant or caregiver shall immediately cease acting or providing services as a caregiver.

Sec. 21-09. - Expiration and Renewal of License

- (a) A license to act or provide services as a caregiver expires one year after the date of issuance.
- (b) A caregiver shall apply for renewal at least 30 days before the expiration of the license by submitting an application required under Section 21-04 of this chapter.
- (c) The director shall follow the procedures set forth in Section 21-06 when determining whether to renew a license.

Sec. 21-10. - Non-transferability of License

A license to act or provide services as a caregiver is non-transferrable.

Sec. 21-11. - Duty to Carry License

A caregiver, while acting or providing services under this article, shall carry the license on his or her person. This license must be presented for examination upon request to the director, to a peace officer, or to the client's family or legal guardian.

Sec. 21-12. - Criminal History

- (a) A person may not be issued a license as a caregiver if the person has been 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);
 - (2) Chapter 19, Texas Penal Code (criminal homicide);
 - (3) Chapter 20, Texas Penal Code (kidnapping and unlawful restraint);
 - (4) Section 21.02, Texas Penal Code (continuous sexual abuse of young child or children);
 - (5) Section 21.08, Texas Penal Code (indecent exposure);
 - (6) Section 21.11, Texas Penal Code (indecent with a child);
 - (7) Section 21.12, Texas Penal Code (improper relationship between educator and student);
 - (8) Section 21.15, Texas Penal Code (improper photography or visual recording);
 - (9) Section 22.01, Texas Penal Code (assault) as amended, that is punishable as a Class A misdemeanor;
 - (10) Section 22.011, Texas Penal Code (sexual assault);
 - (11) Section 22.02, Texas Penal Code (aggravated assault);
 - (12) Section 22.021, Texas Penal Code (aggravated sexual assault);
 - (13) Section 22.04, Texas Penal Code (injury to a child, elderly individual or disabled individual);
 - (14) Section 22.041, Texas Penal Code (abandoning or endangering child);
 - (15) Section 22.05, Texas Penal Code (deadly conduct);
 - (16) Section 22.07, Texas Penal Code (terroristic threat).

- (17) Section 22.08, Texas Penal Code (aiding suicide);
- (18) Section 25.031, Texas Penal Code (agreement to abduct from custody);
- (19) Section 25.08, Texas Penal Code (sale or purchase of a child);
- (20) Section 28.02, Texas Penal Code (arson);
- (21) Section 29.02, Texas Penal Code (robbery);
- (22) Section 29.03, Texas Penal Code (aggravated robbery);
- (23) Section 30.02, Texas Penal Code (burglary);
- (24) Section 31, Texas Penal Code (theft);
- (25) Section 32.45, Texas Penal Code (misapplication of fiduciary property or property of a financial institution);
- (26) Section 32.46, Texas Penal Code (securing execution of a document by deception);
- (27) Section 33.021, Texas Penal Code (online solicitation of a minor).
- (28) Section 34.02, Texas Penal Code (money laundering).
- (29) Section 35A.02, Texas Penal Code (Medicaid fraud).
- (30) Section 42.09, Texas Penal Code (cruelty to animals).
- (31) Section 37.12, Texas Penal Code (false identification as peace officer); or
- (32) Section 42.01(a)(7), (8), or (9), Texas Penal Code (disorderly conduct involving a firearm).

(b) A person may not be issued a license as a caregiver if the person has been convicted of an offense under the laws of another state, federal law, or the Uniform Code of Military Justice containing the elements that are substantially similar to the elements of an offense listed in Sec. 21-12(a).

SECTION 2. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be illegal, inoperative, unconstitutional, invalid or ineffective.

SECTION 3. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 4. The City Clerk of the City of San Antonio is hereby directed to publish notice of this ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 5. This ordinance shall take effect January 1, 2013.

PASSED and APPROVED this ___ day of _____, 2012.

M A Y O R
Julián Castro

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Michael D. Bernard, City Attorney

DRAFT