

City of Leon Valley Planning and Zoning Commission

Code Amendment Case #2020-05
(Residential Care Facilities)

Brandon Melland, AICP
Planning and Zoning Director

September 8, 2020



Purpose:

- The purpose of this item is to discuss and provide direction to Staff regarding the regulation of care facilities providing services to aging and disabled individuals, in residential zoning districts.

Summary:

- In order to best understand the realm of services to aging and disabled individuals, the following definitions are relevant:
 - Personal Care - Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance, provided by a non-licensed caretaker.
 - Skilled Nursing Care - Services provided by a licensed nurse.
 - Convalescent - A state of recovering from an illness or operation.
 - Infirmary - A state of mental or physical weakness.
 - Hospice - a facility providing care for the sick or terminally ill.

Summary:

- The Texas Department of Health and Human Services (formerly “DAD’s - Department of Aging and Disability) generally classifies and regulates the following facility types as providers of care services to aging and disabled individuals:

Summary:

1. **Nursing Facilities** - A commercial facility that provides 24/7 skilled nursing care to individuals which may be in a state of convalescence, infirmity, or receiving hospice care. The facility may provide minor treatments by a licensed physician.

Summary:

- 2. Assisted Living Facilities (ALF)** - A facility that provides personal care, in a residential setting, such as an apartment community or a private residence. The owner of the must reside on the premises and nurses may visit the facility to provide limited skilled nursing. ALF's may be classified as either Type A or Type B.

Summary:

- Type A: Residents do not require routine assistance during sleeping hours and are capable of self-rescue.
- Type B: Residents require assistance during sleeping hours and are not capable of self-rescue.

Summary:

- Additionally, ALF's must be licensed if:
 - the facility has four (4) or more residents;
 - or the facility has three (3) or less residents but wishes to identify itself as an ALF. A facility with 3 or less residents, may not identify itself as an ALF unless it is licensed.

Summary:

- 3. Adult Foster Homes** - A residential home (typically single-family) which provides a 24-hour supervised living arrangement, in which the provider and residents live in the same household and share common living areas. Residents do not require routine assistance, are capable of self-rescue, and receive some personal assistance, but not comprehensive personal care services such as ALF's.

Summary:

- 4. Adult Day Care Facility (ADCF)** – A facility that provides personal care to individuals on a regular, if not daily basis, but not overnight. Similar to ALF's, the facility must be licensed if: the facility has four (4) or more residents; or the facility has three (3) or less residents but wishes to identify itself as an ADC. A facility with 3 or less residents, may not identify itself as an ALF unless it is licensed.

Summary:

- 5. Intermediate Care Facilities (ICF-IID) – A residential facility for individuals with intellectual disabilities or related conditions. Residents may require assistance during sleeping hours and may not be capable of self-rescue. Not required to be licensed if providing care for 3 or less residents.**

Summary:

- In addition to the facilities regulated and classified by HHS, state law also provides legal provisions for the following:

Summary:

- 6. Boarding Home Facilities** – A residential facility that provides lodging to three or more elderly or disabled individuals, including meals, laundry, transportation, shopping, money management; but not personal care. The HHS does not regulate Boarding Home Facilities, nor does it require licensure; but state law does allow municipalities to require a permit.

Summary:

- 7. Community Homes** – A State of Texas classification that ALF's and ICF-IID's may receive; which provides them exemption from municipal restrictions for locating in residential zoning districts, provided the facility meets the following requirements:

Summary:

- must be licensed;
- no more than six patients and two providers may reside in the home at the same time;
- may not be located within one-half mile of an existing community home;

Analysis:

- Chapter 15 (Zoning Code) of the City of Leon Valley Code of Ordinances, currently regulates the facility types above as follows:

Analysis:

1. **Nursing Homes** – specifically listed in the Zoning Code; not permitted in residential zoning districts.

Analysis:

2. **Assisted Living Facilities – not specifically listed in the Zoning Code; but classified as an “Adult Care Facility”; permitted in residential zoning districts as follows:**
 - 3 or less residents: no limitations
 - 4 to 6 residents: must qualify as a Community Home
 - 6 or more residents: requires SUP approval.

Analysis:

3. **Adult Foster Home** – not specifically listed in the Zoning Code; but classified as an “Adult Care Facility”; no more than six (6) residents.

Analysis:

4. **Adult Day Care Facility** – not specifically listed in the Zoning Code; but classified as an “Adult Care Facility”; permitted in residential zoning districts as follows:
- Hours of operation limited to 6:30 am - 7:30 pm
 - 1 to 6 visitors: no limitations
 - 6 or more visitors: requires SUP approval.

Analysis:

5. **Intermediate Care Facilities** – not specifically listed in the Zoning Code; classified as a “Group Home”; permitted in residential zoning districts provided they qualify as a Community Home.

Analysis:

6. **Boarding Homes** – not clearly defined by the zoning code; the zoning code allows “Boarding Houses” in residential zoning districts, but provides the following definitions:

Summary:

- Boarding House. A dwelling containing a single dwelling unit and not more than ten (10) guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation for more than one (1) week.

Summary:

- Boarding Home for Sheltered Care.
A group home for the sheltered care of persons with special needs, which in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

Analysis:

7. **Community Home** – not specifically listed in the Zoning Code, as a Community Home is not a use; but rather a classification that certain facilities may qualify for.

Issues Identified by Staff:

1. **Community Issue:** Staff has noticed a surge in inquiries and requests for care facilities, particularly care for the aging.

Land use planning for the uses that care for the aging and disabled is a community issue that will only become more amplified in the coming years. **Staff believes more discussion is necessary regarding where these types of uses are to be located.**

Issues Identified by Staff:

2. **More Specificity:** Staff believes that too many different types of facilities are being classified as Adult Care Facility. **Staff believes the code should be amended to specifically list each facility type above, in the Permitted Use Table (PUT).**

Issues Identified by Staff:

3. **Confusing Definitions:** The definitions listed in the Zoning Code are out of sink with the uses listed in the permitted use matrix. **Staff believes the definitions need to be updated, in order to make the code more legally enforceable.**

Issues Identified by Staff:

4. **More Stratification:** Currently, the only distinction the code makes is for facilities greater than 6 residents. **Staff believes that more distinction should be made between the following tiers or residents:**

- 1 – 3 residents
- 4 – 6 residents
- 6 or more residents

Issues Identified by Staff:

5. **Community Home Procedures:** Currently, the code does not provide any procedures for enforcing the State requirements pertaining to Community Homes; particularly the requirement that the City provide Certificate of Occupancy prior to a facility receiving license, as well as the one-half mile distance requirement.

Issues Identified by Staff:

- 6. Stronger Regulation of Facilities Over 6 Residents:** Currently, the Code allows for a facility to have over 6 residents in a residential district with SUP approval. **Staff believes the code should be amended to not allow any facilities over 6 residents in any residential district under any circumstances.**

Issues Identified by Staff:

- 7. Context Sensitive Allowances:** As a balance however, Staff believes that more allowances can be made for facilities seeking to locate closer than one-half mile in distance provided they are located at street corners abutting collector streets.

Issues Identified by Staff:

7. **Consistency with the Building and Fire Code:**
The building code and fire code have use classifications which vary from the zoning code and state law. Staff believes these separate codes should be made congruent as much as possible.

Issues Identified by Staff:

5. Staff believes that procedures should be added that provide expiration on a Certificate of Occupancy is a license is not obtained. Staff also believes that the method for measuring the one-half mile distance should be specified (i.e. as the crow flies or as the fire truck drives).

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