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81-O-96

AN ORDINANCE

Regulating Child Residential Care Homes

WHEREAS, the City Council of the City of Evanston has determined it is in the best interest of the City to enact an ordinance regulating and licensing child residential care homes; and

WHEREAS, Section 6-4-4-2 of the Evanston Zoning Ordinance requires a child care residential home to obtain a valid license before its establishment and operation;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Title 8 of the Evanston City Code, 1979, as amended, be and hereby is further amended by adding a new chapter as follows:

CHAPTER 23

CHILD RESIDENTIAL CARE HOMES

8-23-1: GENERAL PROVISIONS AND DEFINITIONS:

8-23-1-1: **DECLARATION OF POLICY:** It is the purpose of this Chapter and the policy of the City to support, foster and establish standards for the creation, licensing and regulation of facilities designed to care for youth who will benefit from the security and support of a group, and who may need limited supervision from others.

8-23-1-2: DEFINITIONS:

ANNUAL LICENSE: A license issued to a home after the period of provisional licensure and annually thereafter, when a home is in substantial compliance with this

Chapter and other applicable City ordinances.

APPLICANT: Any person, agency, association, corporation, partnership, or organization proposing to operate a home and making application for a license.

CHILD: Any person under 18 years of age. For purposes of admission to and residence in child residential care homes, the term also means any person under 21 years of age who is referred by a parent or guardian, including an agency having legal responsibility for the person pursuant to the Juvenile Court Act or the Juvenile Court Act of 1987.

DEPARTMENT: The City of Evanston's Department of Health and Human Services.

DIRECTOR: The Director of the City of Evanston's Department of Health and Human Services or his/her designee.

LICENSEE: A person, agency, association, corporation, partnership or organization which has been issued a license to operate a child residential care home.

8-23-1-3: ADOPTION OF STATE RULES AND REGULATIONS: The City adopts by reference Sections 403.8 through 403.29 of the "Illinois Department of Children and Family Services Text of Adopted Rules, Subchapter e: Requirements for Licensure, Part 403: Licensing Standards for Group Homes," as promulgated by the Department of Children and Family Services, pursuant to the Child Care Act of 1969, 225 Illinois Compiled Statutes 10/1 et seq. as may from time to time be amended. Violation of any of said rules and regulations shall be considered a violation of this Chapter, provided that:

- (A) Any references in said rules and regulations to "Department" shall refer to the City of Evanston's Department of Health and Human Service; and
- (B) Any reference in said rules and regulations to "Director" shall refer to the Director of the City of Evanston's Department of Health and Human Services.

One copy of said minimum standards, rules and regulations shall be kept in the office of the City Clerk and the Evanston Public Library and available for public use, inspection and examination for a period of at least fifteen (15) days prior to the effective date hereof. At least one copy of said rules and regulations shall be available for public inspection in the office of the Director.

8-23-2: REQUIREMENTS FOR LICENSURE:

8-23-2-1: LICENSE REQUIRED; APPLICATION FEE: No person, firm, corporation, association, partnership or religious or other organization may establish, operate, maintain, offer, or advertise a child residential care home within the City unless that person or entity obtains a valid license as provided herein. Application to conduct and operate a home shall be made to the Director on forms furnished by the Department, and a nonrefundable application fee of twenty dollars (\$20.00) per resident bed shall accompany the application. The application shall be under oath and shall contain all the information required in Section 8-23-2-2.

8-23-2-2: LICENSE APPLICATION REQUIREMENTS:

(A) Each applicant shall submit a completed application form and renewal application form which shall contain the following:

1. The name and address of the applicant if an individual; the name and address of every member, if a firm, partnership or association; and in the case of a corporation, the name and address thereof and of its officers and its registered agent.
2. The name and location of the home.
3. List of other programs, services, institutions, facilities and activities operated by the applicant;
4. Current and previous experience with child residential care programs and/or a specific plan for developing and securing expertise in the management of a child residential care home.

(B) All applications shall be accompanied by the following:

1. A current State license issued pursuant to the Child Care Act of 1969;
2. Proof of current licensure as a child welfare agency;
3. A staffing plan, including job descriptions and qualifications of staff;
4. A program plan;
5. Current annual operating budget;
6. Criminal background investigations pursuant to §§10/4.1 and 10/4.2 of the Child Care Act of 1969;

7. Child Abuse and Neglect Reports pursuant to §10/4.3 of the Child Care Act of 1969;
8. Other information necessary to determine the applicant's identity and qualifications to operate a facility in accordance with this Chapter, as required by the Department; and
9. An annual license fee of twenty dollars (\$20.00) per resident bed.

8-23-3: LICENSING AND ENFORCEMENT PROCEDURES:

8-23-3-1: LICENSE APPLICATION REVIEW: The Director of Health and Human Services, in conjunction with the appropriate Department staff, will review the application and request additional information as needed.

- (A) The Director of Community Development or his/her designee shall determine that the building or structure occupied by the home complies with the applicable provisions of the Evanston Housing, Building and Zoning Codes.
- (B) The Fire Chief or his/her designee shall determine that the building and premises meet the minimum applicable life safety standards established by the State standards and Evanston City Code.
- (C) The Public Health Director or his/her designee shall certify that all food service occurring within the home complies with the applicable provisions of the Evanston City Code regulating food service sanitation.

8-23-3-2: ISSUANCE OF LICENSE: The Director shall determine whether the specific licensing and other Chapter requirements have been met, and will grant a license upon finding of compliance with this and other applicable City ordinances. No license shall be granted unless the Director determines that the proposed home meets all applicable requirements of those ordinances of the City and the statutes of the State.

8-23-3-3: DENIAL OF LICENSE:

- (A) Notice of Denial: The Director shall notify the applicant in writing of license denial. Notice of denial shall include a clear and concise statement of the reasons upon which denial is based and notice of the opportunity for a hearing under Section 8-23-5.
- (B) Denial Contested: If the applicant desires to contest the denial of a license, it shall provide written notice to the Director requesting a hearing, within ten (10) days after receipt of notice of denial. The hearing shall be conducted pursuant to Section 8-23-5.

8-23-3-4: LICENSE CATEGORIES; TERMS, FEES: The following license categories and corresponding terms and fees are established. All licenses shall be prominently displayed in the home.

- (A) **Provisional License:** Each initial license granted shall be provisional. A provisional license shall be valid for six (6) months, unless extended by the Director for good cause shown. No fee in addition to the application fee shall be required. If the home fails to open within six (6) months of provisional licensing, or extension for good cause granted by the Director, said license shall expire and the home must reapply for licensing and pay a new license application fee.
- (B) **Annual License:** When the Director has found the licensee to be in substantial compliance, he/she shall issue an annual license to said licensee. The license shall be valid for a period of one year, unless otherwise revoked or terminated as a result of transfer of ownership.

8-23-3-5: TRANSFER OF LICENSE: A license shall not be transferred or transmitted to another person, organization, sponsor, or agency.

8-23-3-6: ANNUAL INSPECTION: No less than sixty (60) days prior to expiration of an annual license, an inspection of the home will be conducted by a staff team appointed by the Director to evaluate continued compliance with all licensing requirements in this Chapter. The Director shall mail a report of inspection pursuant to Section 8-23-3-9(B). After the time period allowed for correction, the Director will make a determination to review or revoke or not renew the license pursuant to Section 8-23-3-7 below. Notice of the intent to revoke or not renew a license shall be sent by certified mail to the licensee in accordance with Section 8-23-3-8.

8-23-3-7: LICENSE REVOCATION: The Director may revoke or refuse to renew the license of a home on the following grounds:

- (A) Failure to maintain standards prescribed and published by the Department;
- (B) Violation any of the provisions of the license issued;
- (C) Furnishing or make any misleading or any false statement or report to the Department;
- (D) Refusal to submit to the Department any reports or refusal to make available to the Department any records required by the Department in making investigation of the facility for licensing purposes;
- (E) Failure or refusal to submit to an investigation by the Department;
- (F) Failure or refusal to admit authorized representatives of the Department at any reasonable time for the purpose of investigation;
- (G) Failure to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by the

- Department, or as otherwise required by any law, regulation or ordinance applicable to the location of such facility;
- (H) Refusal to display its license or permit;
 - (I) Being the subject of an indicated report under Section 3 of the "Abused and Neglected Child Reporting Act" or failure to discharge or sever affiliation with the child residential care facility of an employee or volunteer at the facility with direct contact with children who is the subject of an indicated report under Section 3 of that Act;
 - (J) Failure to exercise reasonable care in the hiring, training and supervision of facility personnel;
 - (K) Failure to report suspected abuse or neglect of children within the facility as required by the Abused and Neglected Child Reporting Act;
 - (L) Failure to comply with Section 10/5.1 of the Child Care Act of 1969 (Transporting Children);
 - (M) Being identified in an investigation by the Department as an addict or alcoholic, as defined in the Alcoholism and Other Drug Abuse and Dependency Act, or being a person whom the Department knows has abused alcohol or drugs, and has not successfully participated in treatment, self-help groups or other suitable activities, and the Department determines that because of such abuse the licensee, holder of the permit, or any other person directly responsible for the care and welfare of the children served, does not comply with standards relating to character, suitability or other qualifications; and
 - (O) Violation of any part of this Chapter or other applicable ordinances of the City or State statutes.

8-23-3-8: NOTICE OF LICENSE REVOCATION:

- (A) The Director shall send by certified mail a written notice of a determination to revoke or not renew a license. The notice shall contain a clear and concise statement of the violations upon which the revocation or nonrenewal is based and notice of the right to contest the Director's decision under Section 8-23-5.
- (B) If a licensee desires to contest the revocation or nonrenewal of a license, the licensee shall, within ten (10) days after receipt of notice, notify the Director in writing of its request for a hearing under Section 8-23-5. Upon receipt of the request, the Director shall send notice to the licensee and hold a hearing as provided under Section 8-23-5.

8-23-3-9: DEPARTMENT ENFORCEMENT RIGHTS AND RESPONSIBILITIES: The Director of the Department of Health and Human Services shall have the primary authority and responsibility for enforcing all requirements of this Chapter.

In addition to the responsibilities specified elsewhere in this Chapter, the Department has the following specific rights and responsibilities:

- (A) Inspections: The Director or his/her designee, whenever he/she deems necessary, but not less than annually, shall inspect every home to determine compliance with applicable license requirements and standards. The Director or his/her designee may periodically visit a home for the purpose of consultation. Inspections and visits may be conducted without notice to the licensee.
- (B) Report of Inspection: If upon inspection, the Director determines that a home is in violation of this Chapter or other applicable ordinances, he/she shall promptly mail a report of inspection to the licensee. The report shall specify the nature of the violation and the time allowed to correct the violation not to exceed sixty (60) days.
- (C) Right of Entry: Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee or agent of the City, or any other licensing agent to enter and inspect the home. Refusal to permit such entry or inspection shall constitute grounds for denial, nonrenewal or revocation of a license.
- (D) Records: The Director shall have access to any books, records and other documents maintained by the licensee necessary to carry out this Chapter.

8-23-4: COMPLAINT PROCEDURES: The Director shall investigate all complaints thoroughly and promptly. Such investigation shall be carried out according to the following procedures.

8-23-4-1: COMPLAINT; INVESTIGATION: Any person who believes that any provision of this Chapter may have been violated may request an investigation. The request may be submitted to the Department in writing, by telephone, or by personal visit. An oral complaint shall be reduced to writing by the Director. Within ten (10) days of receipt of a complaint, the Director shall initiate an investigation. Within thirty (30) days of initiation of an investigation, the Department shall complete the investigation and determine whether any provision of this Chapter has been violated. Investigation of complaints of suspected abuse shall be initiated within twenty-four (24) hours.

8-23-4-2: CONFIDENTIALITY: The complaint, a copy of the complaint, or a record published, released or otherwise disclosed to the home shall not disclose the name of the complainant unless the complainant consents in writing to the disclosure, or the investigation results in a judicial proceeding or unless disclosure is essential to the investigation, in which case the complainant shall be given the opportunity to withdraw the complaint before disclosure. Upon the request of the complainant, the Director may permit the complainant or a representative of the complainant to accompany the person making the on-site inspection of the home.

8-23-4-3: FINDINGS; NOTICE TO LICENSEE: The Director shall inform the complainant and the licensee of its findings within ten (10) days of its determination. The notice of such

finding shall include a copy of the written determination and the report of inspection pursuant to Section 8-23-3-9(B).

8-23-5: HEARINGS:

8-23-5-1: HEARING PROCEDURES: An aggrieved party may request a hearing to contest the decision of the Director rendered in a particular case. The request shall comply with the following procedures:

- (A) A request for hearing shall be made in writing to the Director within ten (10) days of notification by the Director of the decision. The request shall include the mailing address and telephone number of the grievant.
- (B) The hearing shall commence no later than thirty (30) days after the receipt by the Director of the request.
- (C) The City Manager shall designate a person to serve as hearing officer to conduct a hearing to review the decision. After notice of hearing, the hearing officer shall not communicate, directly or indirectly, in connection with any issue of fact in that case or hearing with any person or party except upon notice and opportunity for all parties to participate.
- (D) At least ten (10) days prior to the hearing, the Director shall send notice of the hearing to all parties. The notice shall specify the date, time and place of the hearing and the purpose of the hearing. The notice to the aggrieved party shall be sent to the address set forth in the request for hearing by certified mail, or by personal service.
- (E) The hearing officer may compel by subpoena or subpoena duces tecum the attendance and testimony of witnesses and the production of books and papers, and may administer oaths to witnesses.
- (F) The hearing officer shall permit the aggrieved party to appear in person and to be represented by counsel at the hearing at which time he shall be afforded an opportunity to present all relevant matters in support of his position. In the event of the inability of either the aggrieved party, or the Director to procure the attendance of witnesses to give testimony or produce books and papers, either the aggrieved party or the Director may take the deposition of witnesses in accordance with the provisions of the laws of this State. All testimony taken at a hearing shall be recorded and all such testimony and other evidence introduced at the hearing shall be a part of the record of the hearing.
- (G) The hearing officer shall be bound by the Administrative Procedures Act of the State in so far as this Act requires the technical rules of evidence. All hearings shall be conducted in a manner sufficient to afford all parties full opportunity to be heard, to

be represented by counsel, to present complete evidence to the end of securing substantial justice.

- (H) All subpoenas issued by the hearing officer shall be served as provided for in civil actions. The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the circuit court and shall be paid by the party at whose request the subpoena is issued. If such subpoena is issued at the request of the Director or by a person proceeding in forma pauperis, the witness fees shall be paid by the Department as an administrative expense.
- (I) In case of refusal of a witness to attend or testify or to produce books or papers concerning any matter upon which he might be lawfully examined, the circuit court of the county wherein the hearing is held, upon application of any party to the proceeding, may compel obedience by a proceeding for contempt as in cases of a like refusal to obey a similar order of the court.
- (J) The Department, at its expense, shall record the testimony and preserve a record of all proceedings under this Section. The notice of hearing, the complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, and the findings and decision shall be the record of the proceedings. The Director shall make available such record.

3-23-5-2: HEARING OFFICER TO MAKE FINDINGS: The hearing officer shall make findings of fact in such hearing and shall make a recommendation for a decision to the City Manager. The City Manger shall render his decision within thirty (30) days after termination of the hearing, unless additional time not to exceed ninety (90) days is required by him for a proper disposition of the matter. The City manager shall review the record and findings of fact before rendering a decision. All decisions rendered by the City Manager shall be binding upon and complied with by the Director of the Department, the home, or the persons involved in the hearing, as appropriate.

8-23-5-3: REVIEW UNDER ADMINISTRATIVE REVIEW ACT: Final administrative decisions shall be subject to judicial review exclusively as provided in the Administrative Review Act.

8-23-6: WAIVERS:

8-23-6-1: RELIEF REQUESTED: A licensee may seek relief from the provisions of this Chapter when a specific or peculiar situation exists which makes compliance a practical impossibility or extreme hardship. A licensee requesting relief shall submit to the Director in writing a detailed explanation of why compliance with the provisions of this Chapter would create a practical impossibility or extreme hardship, and a plan for how an alternative method of service provision appropriate to the needs of the residents of the home will be implemented. Upon receipt of such request, the Director shall determine whether the home has provided evidence of these conditions.

A decision to grant relief from a provision of this Chapter shall be made only where the Director has found that a practical impossibility or extreme hardship exists in complying with the provision for which a waiver is sought and that an acceptable alternative method of service provision appropriate to the needs of the residents will be implemented. Written notice of the decision shall be sent by certified mail to the licensee within thirty (30) days of receipt of the request, and shall be prominently displayed in the home, unless the waiver pertains to an individual resident, in which case a copy of the notice of the decision shall be given to the resident. No waiver shall be granted from a requirement of this Chapter relating to licensing and inspection provided in Sections 8-23-1 through 8-23-6.

8-23-6-2: CONTINUATION OF RELIEF: A licensee which has been granted relief from a provision of this Chapter may request the continuation of such relief by a letter to the Director when the annual license renewal application is filed. The Director shall grant such relief if the licensee has submitted an adequate showing that the same conditions exist at the time of license renewal as existed when the relief was originally granted. Without said request, such relief terminates at the end of the license year.

8-23-6-3: APPEAL OF WAIVER DETERMINATION: An aggrieved party may appeal the Director's determination by requesting a hearing under Section 8-23-5. The request for hearing shall be submitted in writing to the Director within ten (10) days after receipt of the Director's determination. Upon receipt of the request, a hearing shall be conducted as provided under Section 8-23-5.

8-23-7: PENALTIES:

8-23-7-1: INJUNCTIVE RELIEF: If, in the judgment of the Director, immediate court action is necessary, he may at any time direct the corporation counsel to file a complaint in any court of competent jurisdiction for a fine, injunction, or other appropriate relief. Such action may be taken even though administrative hearings are still pending.

8-23-7-2: FINES: Any person or licensee violating the provisions of this Chapter shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each such offense. Every day a violation continues may be deemed a separate offense by appropriate finding.

8-23-8: SEVERABILITY: Should any section, subdivision, clause, phrase or provision of this Chapter be held unconstitutional or invalid for any reason whatsoever, that holding shall not affect the validity of the remaining portions of this Chapter.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced August 19, 1996

Adopted: September 9, 1996

Approved: September 18, 1996
Lorraine A. Norton
Mayor

ATTEST:

Gristen Davis
City Clerk

Approved as to form:

Ray M
Corporation Counsel

