

BEFORE THE BOARD OF COMMISSIONERS

MULTNOMAH COUNTY, OREGON

Ordinance No. 392

Ordinance No. 387, MCC 8.90.005 - 8.90.260 is amended to read:

An Ordinance providing for the registration and inspection of adult care homes, establishing fees for certificates of registration, requiring the posting of the Resident's Bill of Rights, establishing penalties, and authorizing civil action.

Multnomah County ordains as follows:

8.90.005 Title; Area of Application. This ordinance shall be known as the Multnomah County Adult Care Homes Registration Ordinance, may be so pleaded and referred to and shall apply to the unincorporated areas of Multnomah County.

8.90.010 Policy and Purpose.

A. The Board of County Commissioners finds that:

1. Unknown numbers of dependent adults, including the elderly and the mentally and physically disabled, live in unregulated adult care homes in Multnomah County, and
2. Multnomah County historically has had a large number of such facilities, and
3. Newspaper and other accounts recently and in the past have documented blatant cases of abuse and exploitation occurring in unregulated facilities, and
4. State regulations apply to only selected adult care homes.

B. The Board of County Commissioners has therefore determined that as a result of the conditions stated above and in the interests of public health, safety, and welfare, there is a need for registration and inspection of adult care homes and it is desirable to establish Chapter 8.90 of Title 8 of the Multnomah County Code to address the problem set forth above. It is the intent of this ordinance that information gained from registration and inspection shall be made available to the public to assist in its selection of an adult care home.

8.90.015 Definitions.

As used in this ordinance, unless the context requires otherwise:

- A. Adult Care Home means any home or other facility which provides room and board for compensation to one or more elderly, [or] handicapped or dependent person(s) over the age of 18 not related to the [provider] owner or operator by blood or marriage. Adult care homes include room and board homes where assistance with major life activities is provided. Adult care homes do not include [participants with Shared Housing, Inc., nor] any facility already licensed [or certified] by a public agency as [a foster care home,] a Residential Care Facility[, ] or a Long Term Care Facility [or a facility sheltering battered women].
- B. Director means the Director of the Department of Human Services of Multnomah County, Oregon, or his or her designee.
- C. Elderly person means any person over the age of 60 who is limited in one or more major life activities.
- D. Handicapped person means any person who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities.
- E. Dependent person means any person who has a physical or mental dependency which for the individual constitutes or results in a functional limitation to one or more major life activities.
- F. [E]. Major Life Activities means self-care, ambulation, communication, transportation, education, socialization, employment, and the ability to acquire and maintain adequate, safe, and decent shelter.
- G. Operator means the owner, lessor, sublessor, manager, or any other person with the right or power of control over the operations or physical structure of an adult care home.
- H. Owner means any person with any legal or equitable interest in, and with the right or power of control over the operations or physical structure of an adult care home.
- I. Person includes an individual, partnership, corporation, or organization.
- J. Resident means any elderly, handicapped or dependent person not related to the owner or operator by blood or marriage who is or was at any relevant time residing in an adult care home.

8.90.020 Administration and Enforcement; Powers and Duties of Director.

A. It shall be the responsibility of the Director to administer and enforce this chapter and rules adopted under it. The Director shall have the authority to initiate enforcement proceedings. Nothing in the provisions of this ordinance, however, shall be construed to create a cause or right of action against Multnomah County, its agents or employees for the failure to enforce any provision of this ordinance.

B. The Director shall have the authority to promulgate such rules as may be necessary for the administration and enforcement of this chapter, pursuant to the procedures set forth in MCC 8.90.160 through 8.90.260.

C. Variances from requirements of this chapter:

The specific requirements of this ordinance or rules adopted under it may be varied by the Director upon good and sufficient cause shown that this action is in keeping with the intent and purpose of this ordinance. When a variance is granted, the Director shall provide documentation of the reasons for it.

D. The Director shall have the authority to do the following:

1. Administer oaths;
2. Audit records in order to assure conformance with this ordinance;
3. Certify official acts;
4. Subpoena and require attendance of witnesses at meetings or hearings to determine compliance with this ordinance;
5. Require the production of relevant documents;
6. Swear witnesses;
7. Take testimony of witnesses in person or by deposition; and
8. Perform all other acts necessary to enforce the provision of this ordinance.

8.90.030 Institution of Legal Proceedings.

Upon recommendation of the Director, the County Counsel, acting in the name of the County, may bring an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction any violations of this chapter or the rules adopted under it.

8.90.040 Registration Required; Application Form.

- A. It is unlawful, and it shall constitute an offense in violation of this chapter, for any person to establish, maintain or conduct in Multnomah County any adult care home without first having registered with the Director of the Department of Human Services. Owners or operators of adult care homes at the time this ordinance becomes effective shall apply for a certificate of registration no later than January 1, 1984.
- B. Every person desiring to establish, maintain, or conduct an adult care home in Multnomah County shall make application to register upon a form supplied by and addressed to the Director. The application shall contain a statement giving clear and specific description of the property or place in or upon which the applicant proposes to maintain or conduct an adult care home; the number of residents which can be taken care of; the number of floors to be occupied; the number of beds on each floor; the name, address, telephone numbers, date of birth, and Social Security number of the applicant; the name, address, telephone numbers, date of birth and Social Security number of the resident manager, if other than the applicant, who will be living in the adult care home; [and partner, corporate officer or other persons having any interest in the property]; the names, addresses and telephone numbers of all owners of the adult care home; and any other information requested by the Director
- C. An owner or operator must live in an adult care home where assistance with major life activities is provided on a 24 hour basis or hire a resident manager in order for the adult care home to be registered pursuant to this section.

8.90.050 Certificate of Registration.

- A. After receipt of the application, subject to the provisions of 8.90.080, the Director shall issue to the owner or operator, a certificate of registration upon payment of the prescribed fee. Certificates of Registration shall be renewed annually on a date established by the Director. The Director shall maintain a registry of adult care homes registered under this ordinance.
- B. The owner or operator of the adult care home to whom a certificate of registration is issued shall post the certificate of registration in a conspicuous place on the premises.
- C. The certificate of registration shall state in bold type the telephone number and procedure for making complaints.
- D. The issuance of a certificate of registration under this chapter shall not mean that the Director has inspected, approved, or made any representation regarding the quality of an adult care home.

8.90.060 Registration Fee.

There shall be a registration fee of \$15.00 per annum, payable to the Department of Human Services.

8.90.070 Certificates Not Transferable.

No Certificate of registration which has been issued for the operation of an adult care home to any person for a given location shall be valid for use by any other person or at any location other than that for which is issued.

8.90.80 Revocation, Suspension, or Denial of Certificates.

A. The Director shall have the authority to revoke, suspend, or deny or attach conditions to any certificate of registration for an adult care home under the following circumstances:

1. When the [permit] certificate was issued upon fraudulent or untrue representation.
2. Where there exists a threat to the life, health, or safety of [the] any resident[s is in danger].
3. When there is reliable evidence of abuse, neglect or exploitation of any resident

4. [3.] When the owner or operator has substantially failed to comply with [existing] City and County codes and ordinances; [and] with the rules and standards duly promulgated by the Director for [the operation of] an adult care home; or any other State or Federal law or rule applicable or relevant to the health or safety of a resident.

B. Denial, suspension or revocation of a certificate of registration by the Director shall be preceded by a hearing under MCC 8.90.090 if requested by the owner or operator, unless the certificate of registration is denied, suspended or revoked for the reason of abuse, neglect or exploitation of a resident in which case the denial, suspension or revocation shall be effective upon order of the Director. Conditions attached to a certificate of registration shall be effective upon order of the Director.

C. [B.] Any owner or operator of an adult care home whose certificate of registration has been revoked, suspended or denied two times within one year, or who has had a total of four denials or revocations in any three year period, shall be disqualified from applying for a certificate of registration for a period of two years from the date of the last suspension, denial or revocation.

8.90.090 Appeals and Hearings; Review.

- A. Any owner or operator aggrieved by any decision of the Director with regard to its application for registration, or a violation of this ordinance, may request a hearing by filing a written request with the Director. The request for a hearing shall be filed within ten days of receipt of written notice of the Director's action and shall set forth reasons for the hearing and issues to be heard. The Director may prescribe forms for the filing of an appeal.
- B. Upon receipt of a timely request for a hearing, the Director shall designate and promptly notify the hearings officer, who shall set a time and place for a hearing. The hearing shall not be scheduled more than 30 days from the date of the receipt of request for hearing. The hearings officer shall give the [appellant] party requesting a hearing not less than 10 days written notice of the time and place of hearing and post such notice in a conspicuous place at the adult care home.
- C. The hearing shall be conducted by the hearings officer in accordance with the Attorney General's Model Rules of Procedure, Rule 137.03.005 and 137.03.030 through 137.03.050 (November 17, 1981) unless superceded by rules adopted by the Director.
- D. Party means a person who is a party to the proceeding or hearing and, unless such rights are waived, is entitled to participate in the manner or area(s) specified by the Hearings Officer according to rule duly promulgated pursuant to MCC 8.90.160 - 8.90.260. Parties include:
1. Multnomah County, through the initiating bureau or department;
  2. The named respondents
  3. Residents of the involved adult care home where vacation, closure, demolition, or relocation of residents is a reasonable possible outcome of the proceeding or hearing.
- E. [D] Disclosure of ex parte communications shall be made by the hearings officer, Director, or the Board of County Commissioners in accordance with the Attorney General's Model Rules of Procedure. Rules 137.03.062 through 137.03.064 (November 17, 1981).

- F.[E] The hearings officer shall issue a proposed final order as soon as is practicable but in no event later than 45 days after the termination of the hearing and shall mail a copy of the order to the parties. The order shall include an opinion containing findings of fact and conclusions of law explaining the reasons and rationale adopted by the hearings officer in arriving at his or her conclusions.
- G.[F] The hearings officer shall notify the parties of the date when written exceptions to the proposed order must be filed to be considered by the Board of County Commissioners.
- H.[G] Upon receipt of the proposed final order and after reviewing the record of the proceedings and written exceptions filed by the parties, the Board of County Commissioners may accept, modify or reject the proposed final order or may remand the matter to the hearings officer. Nothing in this section shall prevent the Board of County Commissioners from conducting a hearing or scheduling oral arguments if it shall not be required to do so before issuing a final order. The Board's action shall be taken at a regular meeting of the Board and shall be taken in the form of a Board order. The final order shall be filed with the Clerk of the Board and the Director and mailed to the parties.
- I.[H] Review of the final order of the Board of County Commissioners shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to ORS 34.100.

8.90.100 Inspections.

- A. The Director or an authorized representative of the Director, including but not limited to County, City, and State officials, shall have full authority to and may enter [and inspect], at any reasonable time, any adult care home registered pursuant to this chapter or any unregistered adult care home which the Director has cause to believe is operating without a certificate of registration and inspect the entire premises for the purposes of ascertaining the safe, sanitary and habitable condition thereof and the physical and mental condition of the residents. The Director or the Director's authorized representative shall have full authority to and may privately interview any resident and inspect any records concerning residents maintained by the adult care home.
- B. In the event that the Director or his or her authorized representative is denied access to any adult care home for the purpose of making an inspection in the administration of this ordinance, the Director or his or her authorized representative shall not inspect without a search warrant or its equivalent.

- C. The Director may proceed ex parte to seek a warrant or its equivalent. Application for a search warrant to inspect the premises shall be made to any magistrate authorized to issue a warrant of arrest. The application must be supported by an affidavit filed with the magistrate stating the purpose and extent of the proposed inspection, whether it is a routine or periodic inspection or an inspection instituted by complaint and other specific or general information concerning the premises.
- D. The Director or the Director's authorized representative shall report observations of or evidence of substandard conditions or poor care to the Director and shall report observations or evidence indicating a potential need for protective services including [of] abuse, neglect, or exploitation of a resident [to the Protective Services Unit of the Multnomah County Senior Services Division or] to the appropriate agency. The Director may make recommendations for corrective action.

8.90.110 Complaints.

- A. Complaints against registered or unregistered adult care homes [and room and board homes] may be filed with the Director by any person, whether or not a resident of the home. The Director shall investigate and respond promptly to each complaint subject to the resources of the Department of Human Services.
- B. The Director shall maintain a file of all complaints and the action taken on the complaint if any, indexed by the name of the owner or operator and the address of the adult care home. The filed complaint forms shall protect the privacy of both the complainant and the resident.
- C. It is the intent of this ordinance that information shall be made available to the public which would assist the public in its selection of an adult care home. To this end, the Director may make available the relevant information in the complaint files for inspection and copying by the public. The Director may, however, in accordance with the [requirements of the public records law, ORS 192.410 to 192.500, or in his or her discretion], provisions of ORS 410.610 - 410.690 (1981 Replacement Part) or according to rule duly promulgated pursuant to MCC 8.90.160 - 8.90.260, classify certain files as confidential.

- D. No owner or operator of an adult care home shall retaliate against a resident by increasing charges; decreasing services, rights or privileges; or threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility, including bringing or threatening to bring an action for possession; or by abusing or threatening to harass or to abuse a resident in any manner after the resident or any person acting on behalf of the resident has filed a complaint with the Director.

8.90.120 Resident's Bill of Rights.

- A. Each owner and operator of an adult care home shall comply with the Residents' Bill of Rights. Each owner and operator shall post in a conspicuous place on the premises the Residents' Bill of Rights, monthly rates and house rules. The Director shall provide owners and operators with copies of the Residents' Bill of Rights.
- B. The Residents' Bill of Rights shall read as follows:

The Residents' Bill of Rights

To guarantee that each resident is treated with respect and dignity, each resident has the right:

1. Not to be denied his or her constitutional and legal rights, including but not limited to the right:
  - a. to vote;
  - b. to practice the religion of his or her choice;
  - c. to freedom of movement;
  - d. to privacy.
2. To a safe and sanitary environment.
3. To be free from chemical or physical restraints except as ordered by a physician.
4. To talk privately with any doctor, nurse, attorney, family member, caseworker, and/or other person of choice.
5. To receive visitors free from arbitrary and unreasonable restrictions, including representatives of community and advocacy organizations.
6. To send and receive mail unopened, unless medically contra-indicated and documented by a physician.

7. To manage his or her own financial affairs unless a guardian or authorized representative requires in writing that the provider assume this responsibility.
8. To keep and use reasonable personal belongings and to have private, secure storage space.
9. Not to be forced to work against his or her will.
10. To be paid for agreed upon work done.
11. To daily adequate and nutritious meals.
12. To clean bedding.
13. To receive written notice 30 days prior to a rate increase and 30 days prior to eviction.
14. To prompt return of security deposits and advance payments of rent.
15. To a written statement signed by the owner/operator regarding the services to be provided and the rates, and, if requested, countersigned by the resident.

8.90.125 Civil Cause of Action.

A violation of any of the rights set forth in MCC 8.90.120 or the rules adopted in connection with MCC 8.90.120 creates a civil claim by the resident against the owner or operator of the adult care home. The resident may bring an individual action in an appropriate court for injunctive relief and/or to recover actual damages or \$1,000, whichever is greater. The court may provide such equitable relief as it deems proper, and may award, in addition to relief provided in this section, reasonable attorney fees, at trial and on appeal, and costs. If the defendant prevails, the court may award reasonable attorney fees at trial and on appeal, and costs if it finds the action to be frivolous.

8.90.130 Penalty; Additional Remedies.

- A. Any person who violates a provision of this chapter or the rules promulgated thereunder may be punished by a fine in an amount to be fixed by the Director, not to exceed \$1,000. In addition, a continuing violation will subject the [provider] owner or operator to an action for injunctive relief.
- B. The provisions of this ordinance are in addition to and not in lieu of other procedures and remedies provided by law.

8.90.140 Savings Clause.

In the event any subsection, subdivision, phrase, clause, sentence or word in this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not invalidate the remainder of this ordinance, but shall be confined to such subsection, subdivision, phrase, clause, sentence or word.

8.90.150 Intergovernmental Agreements.

The County may enter into agreements with municipal corporations in the County permitting enforcement of this ordinance within those municipal corporations. In addition, the County may enter into such agreements with the State as are necessary to permit administration and enforcement of this ordinance within Multnomah County.

ADOPTION OF RULES

8.90.160 Initiation of Rule Adoption.

The Director or any member of the Board of County Commissioners may propose adoption, amendment or repeal of a rule under this chapter.

8.90.165 Approval of Rule Form; Filing.

A proposed rule shall be approved as to form by the County Counsel and filed with the Director and the Clerk of the Board of County Commissioners.

8.90.170 Contents of Notice of Intent to Adopt.

Notice of intent to adopt a proposed rule shall contain the following information:

- A. Description of the proposed action, i.e., adoption, repeal, or amendment.
- B. A summary of the intent, subject and content of the proposed rule.
- C. Complete text of the proposed rule where practicable, or the location, time and contact person for obtaining a copy of the complete text of the proposed rule.
- D. The time limit, location, contact person and format for submitting views and comments on the proposed rule.
- E. The time limit, location, format and contact person for requesting postponement of the action on the proposed rule.

8.90.175 Notice Publicaton.

In addition to such notice as may be required by law, notice of intent to adopt a rule shall be made in the following manner:

- A. Publication in a newspaper of general circulation at least 15 days before the close of the review period.
- B. Posting in a prominent location in the County Courthouse at least 15 days before the close of the review period.

8.90.180 Review and Comment Period.

Notice of intent to adopt a proposed rule shall be made after the notice is filed with the clerk of the Board of COunty Commissioners. The review period for submitting comments shall be 15 days and shall commence with publication of notice of intent to adopt a proposed rule.

8.90.185 Rule Adoption.

If at the close of the review period there have been no requests for a postponement or a public hearing, the Director shall, within 10 days from the close of the review period, consider the review comments and either adopt or reject the proposed rule or adopt the rule with modifications. If a proposed rule is to be substantially amended as a result of review comments, it must be considered as a newly proposed rule. The adopted rule shall be filed with the Director and the Clerk of the Board of County Commissioners within 10 days from the close of the review period.

8.90.190 Postponement of Rule Action.

If within the review period an interested person requests postponement of the intended action, the Director, if the grounds are judged to be sufficient, shall postpone the intended action no less than 10 days nor more than 60 days to allow the requesting person an opportunity to submit data, views or arguments. A request for postponement must be made in writing to the Director and must include a statement of the identity and interest of the requesting person and of the grounds for requesting postponement.

8.90.195 Request for Public Hearing.

If within the review period 10 or more persons, or an association with 10 or more members or a corporation requests, in writing, a public hearing on the proposed rule, the Director shall announce and conduct a public hearing.

8.90.200 Public Hearing Notice Contents.

Notice for a public hearing on a proposed rule shall contain the following information:

- A. Description of the proposed action, i.e., adoption, repeal or amendment.
- B. A summary of the intent, subject and content of the proposed rule.
- C. The date, time, place and presiding officer of the public hearing and the manner in which interested persons may present their views.
- D. Complete text of the proposed rule if practicable or the location, time and contact person for obtaining a copy of the complete text of the proposed rule.
- E. The time limit, location, format and contact person for appealing the decision of the Director to the Board of County Commissioners.

8.90.205 Publication of Notice of Public Hearing.

The notice of a public hearing shall be published in a newspaper of general circulation within Multnomah County and posted prominently in the County Courthouse at least 10 days before the hearing. Notice of the public hearing shall also be given by mail to all parties who have submitted comments and to the mailing list of the interested parties.

8.90.210 Public Hearing; Action on Rule; Filing.

The Director shall conduct the public hearing. At the close of the hearing the Director shall adopt, reject or amend the proposed rule. No further notice is required for continuation of a hearing to a certain date. The Director shall file notice of the action taken with regard to the proposed adoption, amendment or repeal of a rule with the Clerk of the Board of County Commissioners within five days of the public hearing. Filing of the notice of action with the Clerk of the Board of County Commissioners initiates a 10-day appeal period. If no appeal is made, the action by the Director in regard to the rule shall take effect at the end of the appeal period, unless a later effective date is specified.

8.90.215 Appeal to the Board of County Commissioners.

Any interested person may appeal the action of the Director on a rule after a public hearing on the matter. Any member of the Board of County Commissioners may also request review of the action. Appeal must be made in writing and filed with the Director within 10 days of the filing of the notice of action with the Clerk of the Board of County Commissioners. Members of the Board of County Commissioners must request review within the same period.

8.90.220 Appeal and Review Request Contents.

The appeal request shall contain the following information:

- A. An identification of the decision or action being appealed, including its date.
- B. A statement of the identity interest of the person making the appeal.
- C. The specific grounds for the appeal.

8.90.225 Commissioner Request for Review.

A member of the Board of County Commissioners may initiate review by requesting that the matter be placed on the agenda for the Board's next regular meeting.

8.90.230 Date of Hearing.

Upon receipt of [a valid appeal] an appeal request in conformance with the requirement of MCC 8.90.220, the Director shall schedule a hearing by the Board of County Commissioners at the Board's next regular meeting for which the agenda has not closed and the date of which permits 10 days to publish notice in a newspaper of general circulation.

8.90.235 Notice of Appeal Hearing.

The County shall prepare notice for appeal of hearings. The notice shall contain the information described in subsections D and E of MCC 8.90.200. Notice shall be published in a newspaper of general circulation in the County and posted prominently in the County Courthouse at least 10 days prior to the hearing. The County shall also notify by mail persons who have submitted comments on the proposed rule and to the mailing list of interested parties.

8.90.240 Conduct of Appeal Hearing.

The appeal hearing shall be conducted as a regular meeting of the Board of County Commissioners. The Board's action shall take the form of a Board order.

8.90.245 Temporary Rules.

The Director may be confronted with a situation where it is necessary to put a rule into immediate effect in order to protect the public or the interests of particular parties. In that case, and where there is not sufficient time to follow the procedure requirements set forth in MCC 8.90.160 to 8.90.240, the Director is authorized to use temporary rules.

8.90.250 Requirements for Effective Temporary Rule.

The Director may proceed without prior notice or hearing that he or she finds practicable, to adopt a rule without the notice otherwise required by this ordinance. In that case, the Director shall:

- A. File a certified copy of the rule with the Clerk of the Board of County commissioners.
- B. File with the rule the Director's finding that failure of the Director to act promptly will result in serious prejudice to the public interest or to the interest of the parties concerned. Findings shall be supported by a statement of specific facts and reasons.
- C. Take appropriate measures to make the temporary rule known to the persons who may be affected by the temporary rule, including publication in a newspaper of general circulation in the County, as promptly after filing the rule as practicable and giving notice of the rule by mail to persons who may be affected by it.

8.90.255 Effective Date of Temporary Rule.

A temporary rule adopted in compliance with MCC 8.90.250 and this section becomes effective immediately upon filing with the Clerk of the Board of County Commissioners or at a later time which may be designated by the rule itself.

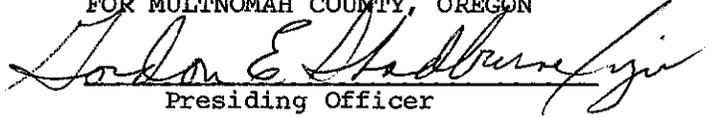
8.90.260 Duration of Temporary Rule.

A temporary rule may be effective for a period of not longer than 120 days. No temporary rule may be renewed after it has been in effect 120 days. The Director may, however, adopt an identical rule on notice in accordance with the procedures set forth in this chapter.

ADOPTED this 8th day of September, 1983, being the date of its second reading before the Board of County Commissioners of Multnomah County, Oregon.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Presiding Officer

AUTHENTICATED this 12th day of September, 1983.

  
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

BY   
Denise Francis  
Assistant County Counsel

[FM-0733A]